

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME and Description of Works and Services, as applicable]*

DESIGN SERVICES subCONTRACT (INTERNATIONAL)

(DSSCI-2023)

(For use with MCCI-2023)

***[Last amended: 21 June 2023 - PLEASE REMOVE PRIOR TO PUBLICATION OF TENDER DOCUMENTS]***

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FORMAL AGREEMENT

The Subcontract is made on day of

Parties The contractor specified in the Subcontract Particulars (Contractor)

The consultant specified in the Subcontract Particulars (Consultant)

The Commonwealth of Australia (**Commonwealth**) and the Contractor entered into the Managing Contractor Contract (International) for the design and construction of the MCCI Works.

The Contractor wishes to subcontract certain obligations under the Managing Contractor Contract (International) in relation to design to the Consultant under the Subcontract.

The Contractor and the Consultant promise to carry out and complete their respective obligations in accordance with the:

(a) attached Conditions of Subcontract; and

(b) other documents referred to in the definition of "Subcontract" in clause 1.1 of the Conditions of Subcontract.

This Formal Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

**SIGNED as an agreement**

***[S 127 OF CORPORATIONS ACT]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Contractor** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| Full name of director who states that they are a director of the **Contractor** |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of the **Contractor** |

***[OR - AUTHORISED SIGNATORY OF COMPANY]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Contractor** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

***[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. INSERT APPROPRIATE EXECUTION CLAUSE FOR CONTRACTOR]***

***[S 127 OF CORPORATIONS ACT]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Consultant** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| Full name of director who states that they are a director of the **Consultant** |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of the **Consultant** |

***[OR - AUTHORISED SIGNATORY OF COMPANY]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Consultant** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

***[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. INSERT APPROPRIATE EXECUTION CLAUSE FOR CONSULTANT]***

CONDITIONS OF SUBCONTRACT

1. Glossary of terms, interpretation AND MISCELLANEOUS
   1. Glossary of Terms

Unless the context otherwise indicates, whenever used in the Subcontract, each word or phrase in the headings in clause 1.1 has the meaning given to it under the relevant heading.

ACM

1. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Act of Prevention

1. Any one of:
   1. a breach of the Subcontract by the Contractor;
   2. any other act or omission of the Commonwealth, the Contractor, the MCCI Contract Administrator, the Contractor's Representative or an Other Contractor engaged by the Commonwealth or the Contractor; or
   3. a Variation the subject of a direction by the Contractor's Representative,
2. but excluding any act or omission of any person specified in paragraph (b) in accordance with or otherwise permitted by the Subcontract.
3. **Additional Host Nation Requirements**
4. Means those requirements set out in the Subcontract Particulars.

**Anti-Corruption Laws**

Means all Statutory Requirements relating to anti-bribery and anti-corruption, including:

* 1. laws in Australia relating to anti-bribery and anti-corruption including the Criminal Code;
  2. laws in the Host Nation relating to anti-bribery and anti-corruption; and
  3. if applicable to the Consultant or any of its officers, employees and agents:
     1. *Foreign Corrupt Practices Act of 1997*, 15 USC § 78dd-1; and
     2. *Bribery Act 2010* (UK).

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any national, state or local authority, body or other organisation having any jurisdiction in connection with the Site, the Services or the MCCI Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Services or the MCCI Works; or
   2. occupy, use, maintain or operate the completed MCCI Works, to the extent that the Services are relevant to such obtaining or satisfaction.

Asbestos

1. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* *2011* (Cth).

Australian Privacy Principle

1. Has the meaning given in the Privacy Act.

Award Date

1. The date on which the Formal Agreement, to which these Conditions of Subcontract are attached, has been completed and signed by the Contractor and the Consultant.

Brief

1. The brief in Annexure 1.

Change of Control

1. In relation to the Consultant, where a person who did not (directly or indirectly) effectively Control the Consultant at the Award Date, either alone or together with others, acquires Control of the Consultant other than by transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange.

Claim

1. Includes any claim for an increase in the Fee, for payment of money (including damages) or for an extension of time:
   1. under, arising out of or in connection with the Subcontract, including any direction of the Contractor's Representative;
   2. arising out of or in connection with the Services, the MCCI Works or either party's conduct before the Subcontract; or
   3. otherwise at law or in equity including:
      1. by statute;
      2. in tort for negligence or otherwise, including negligent misrepresentation; or
      3. for restitution.

Commonwealth

1. Commonwealth of Australia as represented by the Australian Department of Defence.

Commonwealth Procurement Rules

1. The Commonwealth Procurement Rules issued under section 105B(1) of the *Public Governance, Performance and Accountability Act* *2013* (Cth).

Completion

1. The point in time when, in respect of a Milestone:
   1. the Design Documentation has been completed in accordance with the Subcontract;
   2. the Services have been completed in accordance with the Subcontract;
   3. the Consultant has satisfied all Consultant HOTO Obligations and other obligations (if any) which must be satisfied in respect of that Milestone in accordance with the HOTO Plan and Checklist;
   4. all documents and other information (if any) required in respect of that Milestone have been submitted to the Contractor's Representative in accordance with the Subcontract; and
   5. without limiting the foregoing, the Consultant has done everything which the Subcontract requires it to do as a condition precedent to Completion, including those things specified in the Subcontract Particulars.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Subcontract;
     2. the Project Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf, whether or not owned by the Commonwealth or the Contractor, which is in any way connected with the Services or the MCCI Works, which:
        1. by its nature is confidential;
        2. the Consultant knows or ought to know is confidential; or
        3. is the subject of a Separation Arrangement; and
     4. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
  2. Confidential Information does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf, whether or not owned by the Commonwealth or the Contractor, which:
     1. is in the possession of the Consultant without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf;
     2. is in the public domain otherwise than due to a breach of clause 19; or
     3. has been independently developed or acquired by the Consultant.

Confidential Information Incident

1. A single breach or a series of breaches of clause 19, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

1. An identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.

Consolidated Group

1. A Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

Consultant

1. The person specified in the Subcontract Particulars.

Consultant Deed of Covenant

1. A consultant deed of covenant in the form set out in the Schedule of Collateral Documents.

Consultant Design Certificate

1. A consultant design certificate in the form set out in the Schedule of Collateral Documents.

Consultant HOTO Obligation

1. Any task, function, requirement or obligation relating to the HOTO Process (including commissioning of the MCCI Works or a Stage) required to be performed by the Consultant under this Subcontract or which the HOTO Plan and Checklist allocates, or would reasonably be inferred as allocating, to the Consultant.

Consultant's Representative

1. The person specified in the Subcontract Particulars or any other person from time to time appointed as the Consultant's Representative in accordance with clause 4.4.

Contamination

1. The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.
2. **Contractor**
3. The person specified in the Subcontract Particulars.
4. **Contractor Material**
5. All material provided to the Consultant by the Contractor, including documents provided in accordance with clause 6 and any other documents, equipment, machinery and data (stored by any means).

Contractor's Environmental Management Plan

1. The environmental management plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract (International).
2. **Contractor's Fraud and Corruption Control Plan**
3. The fraud and corruption control plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract (International).

Contractor's Program

1. The program prepared by the Contractor for the MCCI Works, as updated in accordance with the Managing Contractor Contract (International).

Contractor's Project Lifecycle and HOTO Plan

1. The commissioning, handover and takeover plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract (International).
2. Contractor's Project Plans The:
   1. Contractor's Environmental Management Plan;
   2. Contractor's Fraud and Corruption Control Plan;
   3. Contractor's Project Lifecycle and HOTO Plan;
   4. Contractor's Site Management Plan;
   5. Contractor's Work Health and Safety Plan; and
   6. additional plans specified in the Subcontract Particulars.
3. **Contractor's Representative**
4. The person specified in the Subcontract Particulars or any other person nominated by the Contractor from time to time under clause 4.2 to replace that person.

Contractor's Site Management Plan

1. The site management plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract (International).

Contractor's Work Health and Safety Plan

1. The work health and safety plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract (International).

Control

1. Includes:
   1. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
   2. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
   3. the ability to appoint or remove all or a majority of the directors of a corporation;
   4. the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
   5. any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.
2. **Criminal Code**
3. The Criminal Code enacted by the *Criminal Code Act* *1995* (Cth).

Cyber Security Event

1. An identified occurrence of a system, service or network state indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered occurrence of a system, service or network state which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Cyber Security Incident

1. A single or series of unwanted or unexpected Cyber Security Events that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Date for Completion

1. The date or period of time (if any) specified in the Subcontract Particulars for Completion of a Milestone, as adjusted under the Subcontract.

Date for Delivery Phase Agreement

1. The date (if any) specified in the Subcontract Particulars, as may be adjusted under clause 9.

Defence

1. The Australian Department of Defence.

Delivery Phase

1. The period (if any) commencing on the date specified in the notice issued under clause 9.4(a) (or, if no date is specified, the date of such notice) until the earlier of the:
   1. date the Delivery Phase Services have been completed in accordance with the Subcontract; and
   2. date of termination of the Subcontract.

Delivery Phase Agreement Minutes

Has the meaning in clause 9.3(a)(iii).

Delivery Phase Fee

1. The Indicative Delivery Phase Fee adjusted under clause 9.3(a)(iii) (if at all) and set out in the Delivery Phase Agreement Minutes issued under clause 9.3(a)(iv), as adjusted, subject to clause 14.5 (if applicable), under the Subcontract.

Delivery Phase Fee Proposal

1. The Delivery Phase Fee Proposal (if any) specified in the Subcontract Particulars.

Delivery Phase Services

1. The services described in, or reasonably to be inferred from, the Subcontract as Delivery Phase Services, including those Services described in the Brief.

DEQMS

1. The Defence Estate Quality Management System website available at www.defence.gov.au/estatemanagement.

Design Documentation

1. All design documentation required to be brought into existence by the Consultant as part of, or for the purpose of, carrying out the Services (including documents, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written form.
2. **Design Objectives and Principles**

Means the design objectives and principles identified in or reasonably to be inferred from the Brief.

direction

1. Any agreement, approval, authorisation, certificate, consent, decision, demand, determination, direction, explanation, failure to consent, instruction, notice, notification, order, permission, rejection, request or requirement.

Employers' Liability Insurance

1. If the Services are performed, or the Consultant's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, a policy of insurance covering the liability of the Consultant to its employees at common law, for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Environment

1. Includes:
   1. ecosystems and their constituent parts, including people and communities;
   2. natural and physical resources;
   3. the qualities and characteristics of locations, places and areas; and
   4. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a), (b) or (c).

Environmental Harm

1. Any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident

1. Any Environmental Harm or Contamination arising out of or in connection with the Services or the MCCI Works.

Environmental Management Plan

1. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail the procedures the Consultant will implement to manage the Services from an environmental perspective to:
   1. ensure compliance with Statutory Requirements; and
   2. maximise the achievement of the Environmental Objectives, the ESD Principles and the WOL Objectives.

The Environmental Management Plan must not be inconsistent with the Contractor's Environmental Management Plan and must address, at a minimum:

* 1. all Statutory Requirements;
  2. all Environmental Objectives;
  3. without limiting paragraph (d), all ESD Principles and WOL Objectives;
  4. the roles and responsibilities of all Consultant personnel (including the Consultant's key people under clause 4.4(a)(i)) regarding the Environment;
  5. the procedure for consultation, cooperation and coordination of activities with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative and Other Contractors regarding the Environment during the Services and the MCCI Works;
  6. the training and awareness programmes provided to Consultant personnel regarding the Environment;
  7. the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 7.4;
  8. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Services and the MCCI Works, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such identification, control and monitoring; and
     2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Services and the MCCI Works;
  9. the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 7.4 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on Commonwealth property or the Site during the Services and the MCCI Works);
  10. the procedure for regular auditing or other monitoring of Consultant compliance with the Environmental Management Plan, including the procedures for recording, reporting, responding to and finalising:
      1. matters arising out of or in connection with such audits or other monitoring; and
      2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Services and the MCCI Works;
  11. the additional matters specified in the Subcontract Particulars; and
  12. any other matters required by the:
      1. Subcontract; or
      2. Contractor's Representative.

Environmental Objectives

1. The following objectives:
   1. to encourage best practice environmental management through the planning, development, implementation and continuous improvement of environmental management procedures during the Services;
   2. to prevent and minimise adverse impacts on the Environment;
   3. to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
   4. the additional objectives specified in the Subcontract Particulars.

ESD

1. Ecologically sustainable development.

ESD Principles

1. Means:
   1. efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
   2. increased energy and water conservation and efficiency;
   3. sustainable development and use of renewable and alternative energy and water resources;
   4. reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
   5. improvements to interior and exterior environments leading to increased productivity and better health;
   6. efficiency in resource and materials utilisation, especially water resources;
   7. selection of materials and products based on their life-cycle environmental impacts;
   8. increased use of materials and products with recycled content;
   9. recycling of construction waste and building materials after demolition;
   10. reduction in harmful waste products produced during construction;
   11. use, operation and maintenance practices that reduce or minimise harmful effects on people and the natural environment;
   12. maintaining the cultural, economic, physical and social wellbeing of people and communities; and
   13. the additional principles specified in the Subcontract Particulars.

Executive Negotiators

1. The representatives of the parties specified in the Subcontract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Expert Determination Agreement

1. An expert determination agreement on the terms set out in the Schedule of Collateral Documents.

Fee

If:

* 1. clause 9 does not apply, the amount set out in the Subcontract Particulars as adjusted, subject to clause 14.5 (if applicable), under the Subcontract; or
  2. clause 9 applies, the sum of the Planning Phase Fee and the Delivery Phase Fee (if any).

Financial Representative

1. Means the Consultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Consultant.

**Fraud**

1. Includes dishonesty (such as obtaining a benefit, or causing loss, by deception or other means).

Fraud and Corruption Control Plan

The plan prepared by the Consultant and finalised under clause 7.4 which must set out in adequate detail the strategy and procedures the Consultant will implement to prevent, monitor, detect, investigate and address instances of known or suspected Fraud or corruption arising in connection with the Subcontract and the Services.

The Fraud and Corruption Control Plan must not be inconsistent with the Contractor's Fraud and Corruption Control Plan and must, at a minimum:

* 1. be consistent with the Commonwealth Fraud Control Framework 2017 (as published by the Commonwealth and amended from time to time);
  2. contain appropriate Fraud and corruption prevention, detection, investigation, reporting and audit processes and procedures;
  3. include protocols for detecting and handling incidents of known or suspected Fraud or breach of applicable Anti-Corruption Laws;
  4. include mechanisms on how the Consultant will ensure that its officers, employees and agents are made aware of what constitutes Fraud, bribery and corruption, including risks and arrangements for handling incidents relating to the Consultant;
  5. outline key roles and responsibilities of all Consultant personnel regarding Fraud and corruption control; and
  6. address any:
     1. other relevant matters to ensure the Consultant complies with its obligations under clause 17 with regards to Fraud, anti-bribery and corruption;
     2. relevant Statutory Requirements, including applicable Anti-Corruption Laws; and
     3. other matters required by the Contractor's Representative.

Governmental Requirements

1. Includes all policies, plans, manuals, guidelines, codes of conduct and instructions published by the Commonwealth or the Host Nation which are, or may become, applicable to the Site, the Services or the MCCI Works.

GST

1. The tax payable on taxable supplies under the GST Legislation.

GST Group

1. A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

1. *A New Tax System (Goods and Services Tax) Act* *1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Hazardous Substances

1. Has the meaning in the Special Conditions (if any).
2. **Host Nation**
3. The country specified in the Subcontract Particulars.

HOTO Plan and Checklist

1. The MCCI Worksheets contained within the excel workbook titled "IPACE HOTO Plan & Checklist" available at DEQMS or such other location notified by the Contractor's Representative, as updated, superseded or replaced from time to time.

HOTO Process

1. The process for handover and takeover of the MCCI Works or a Stage (as defined in the Managing Contractor Contract (International)) to enable the occupation, use, operation and maintenance of the MCCI Works or the Stage (as defined in the Managing Contractor Contract (International)) including the:
   1. commissioning of the MCCI Works or the Stage (as defined in the Managing Contractor Contract (International)) (including the inspection and testing process);
   2. handover of the MCCI Works or the Stage (as defined in the Managing Contractor Contract (International)) to the Commonwealth or such other persons as are nominated in writing by the Contractor's Representative (including the Host Nation); and
   3. occupation, use, operation and maintenance of the MCCI Works or the Stage (as defined in the Managing Contractor Contract (International)) by the Commonwealth (or other intended occupants) and Other Contractors,
2. in accordance with the HOTO Plan and Checklist and the other requirements of the Contract.

Indicative Delivery Phase Fee

1. The amount (if any) specified in the Subcontract Particulars.
2. **Information Security Requirements**
3. Means the:
   1. Australian Government's ProtectiveSecurityPolicy Framework available at https://www.protectivesecurity.gov.au;
   2. Australian Government's Information Security Manual available at https://www.cyber.gov.au/ism; and
   3. Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security,

each as amended from time to time.

Infrastructure Directorate Dispensations Process

1. The document of that title available on DEQMS or such other location notified by the Contractor's Representative, as updated, superseded or replaced from time to time.

Insolvency Event

1. Any one of the following:
   1. the Consultant becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Contractor in writing or its creditors generally that the Consultant is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Subcontract for financial reasons;
   2. execution is levied against the Consultant by a creditor;
   3. a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Consultant;
   4. where the Consultant is an individual person or a partnership including an individual person, the Consultant:
      1. commits an act of bankruptcy;
      2. has a bankruptcy petition presented against him or her or presents his or her own petition;
      3. is made bankrupt; or
      4. applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
         1. a moratorium of any debts; or
         2. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

by which his or her assets are subjected conditionally or unconditionally to the control of a creditor or trustee;

* 1. where the Consultant is a corporation, any one of the following:
     1. notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
     2. a liquidator or provisional liquidator is appointed in respect of a corporation;
     3. the corporation entering a deed of company arrangement with creditors;
     4. a controller, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to the corporation;
     5. an application is made to a court for the winding up of the corporation and not stayed within 14 days;
     6. any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of the Commonwealth under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
     7. a winding up order or deregistration order is made in respect of the corporation;
     8. the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding‑up);
     9. as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)); or
     10. a mortgagee of any property of the corporation takes possession of that property;
  2. the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
  3. anything analogous to anything referred to in paragraphs (a) to (f) or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

Intellectual Property Rights

1. All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Long Service Leave Legislation

1. Means any legislation in any State or Territory of Australia or the Host Nation addressing long service leave in the building and construction industry.

Managing Contractor Contract (International) or MCCI

1. The managing contractor contract between the Contractor and the Commonwealth specified in the Subcontract Particulars for the design and construction of the MCCI Works.

Material Change

1. Any actual, potential or perceived material change to the circumstances of the Consultant including any change:
   1. arising out of or in connection with:
      1. a Change of Control;
      2. an Insolvency Event; or
      3. the Consultant's financial viability, availability, capacity or ability to perform the Services, achieve Completion and otherwise meet its obligations under the Subcontract; or
   2. which affects the truth, completeness or accuracy of:
      1. if the Consultant lodged a registration of interest, the Consultant's registration of interest;
      2. if the Consultant lodged a tender, the Consultant's tender; or
      3. any other information, documents, evidence or clarifications provided by the Consultant to the Contractor arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Subcontract or the Services.

MCCI Contract Administrator

1. Means:
   1. the person specified in the Subcontract Particulars or any other person nominated by the Commonwealth from time to time under the Managing Contractor Contract (International) to administer the Managing Contractor Contract (International); and
   2. any representative of that person appointed under the Managing Contractor Contract (International),

as notified by the Contractor's Representative to the Consultant.

MCCI Dispute Procedures

1. The dispute resolution procedures under the Managing Contractor Contract (International) referred to in the first paragraph of clause 13.14.

MCCI Works

1. The physical works which the Contractor must design (to the extent required by the Managing Contractor Contract (International)), construct, commission, complete and hand over to the Commonwealth in accordance with the Managing Contractor Contract (International), a brief description of which appears in the Subcontract Particulars.

Method of Work Plan for Airfield Activities

1. Has the meaning in the Special Conditions (if any).

Milestone

1. A milestone described in the Subcontract Particulars.

Milestone Fee Payment Schedule

1. The milestone fee payment schedule (if any) set out in Annexure 4, as adjusted from time to time in accordance with clause 11.18, setting out:
   1. the instalments in which the Fee (or any part of the Fee) will be payable; and
   2. the Milestones which must be achieved by the Consultant for each instalment to become payable (failing which the Contractor's entitlement to be paid the relevant instalment of the Fee will not arise until such time as the applicable milestone is achieved).

Modern Slavery

Conduct defined as “modern slavery” in the Modern Slavery Act.

Modern Slavery Act

The *Modern Slavery Act* *2018* (Cth).

Modern Slavery Laws

Means:

* 1. any Statutory Requirement of Australia or the Host Nation related to Modern Slavery including the Modern Slavery Act;
  2. Division 270 or 271 of the Criminal Code;
  3. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); and
  4. Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Moral Rights

1. Has the meaning given by the *Copyright Act 1968* (Cth).

Moral Rights Consent

1. A moral rights consent in the form set out in the Schedule of Collateral Documents.

NATA

1. National Association of Testing Authorities Australia.

Other Contractor

1. Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person (including a facilities management or maintenance contractor) engaged to do work other than the Consultant.

Pandemic

1. The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Adjustment Event

1. A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services provided that the:
   1. disruption:
      1. arises from a change in circumstances relating to the Pandemic first occurring after the Award Date; and
      2. is a direct result of the Pandemic; and
   2. adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).

Personal Information

1. Has the meaning given in the Privacy Act.

Planning Phase

1. The period commencing on the Award Date and continuing until the earlier of:
   1. if applicable, the date of commencement of the Delivery Phase;
   2. if a notice is issued under clause 9.4(b), the date the Planning Phase Services have been completed in accordance with the Subcontract; and
   3. the date of termination of the Subcontract.

Planning Phase Fee

1. The amount specified in the Subcontract Particulars, as adjusted, subject to clause 14.5 (if applicable), under the Subcontract.

Planning Phase Services

1. The services described or reasonably to be inferred from the Subcontract as Planning Phase Services, including those Services described in the Brief.

Preliminary Design Solution

1. The preliminary design solution (if any) specified in the Subcontract Particulars.

Privacy Act

1. The *Privacy Act 1988* (Cth).

Professional Indemnity Insurance

1. A policy of insurance to cover claims made against the insured for:
   1. civil liability for breach of professional duty (whether owed in contract or otherwise); and
   2. unintentional breaches of third party intellectual property,

by the Consultant in carrying out the Services.

Project Documents

All data, documents, drawings, records, programs and information (including Works Information and information relating to the Consultant's compliance with the WHS Legislation) and other material:

* 1. produced; or
  2. provided, or required to be provided, to the Contractor or the Contractor's Representative,

under, for the purposes of, arising out of or in connection with the Subcontract, the Services or the MCCI Works by, for or on behalf of the Consultant.

Project Lifecycle and HOTO Plan

1. The plan prepared by the Consultant for the purposes of the HOTO Process and finalised under clause 7.4, which must not be inconsistent with the Contractor's Project Lifecycle and HOTO Plan and must:
   1. be prepared in accordance with the HOTO Plan and Checklist;
   2. meet all applicable Statutory Requirements; and
   3. include any other matters required by the:
      1. Subcontract; or
      2. Contractor's Representative.

Project Plans

1. The:
   1. Environmental Management Plan;
   2. Fraud and Corruption Control Plan;
   3. Project Lifecycle and HOTO Plan;
   4. Site Management Plan;
   5. Work Health and Safety Plan; and
   6. additional plans specified in the Subcontract Particulars and finalised by the Consultant under clause 7.4(a)(ii),
2. as updated or amended under clause 7.4.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Consultant for its liabilities; and
   2. Contractor for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Consultant,
2. to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with, the Services.
3. This policy is not required to cover liabilities or losses insured under Workers Compensation Insurance, Employers' Liability Insurance or Professional Indemnity Insurance.

Recipient

1. Any person provided with Confidential Information and, if clause 20 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form).

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Defence Design Services Subcontract (International) (DSSCI-2023):
   1. posted on DEQMS (or any alternative location notified by the Commonwealth), as may be amended from time to time by the Commonwealth; and
   2. which as at the Award Date include the contracts and other documents specified in the Subcontract Particulars.

Sensitive and Classified Information

1. Means:
   1. any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Consultant by the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or Contractor's behalf, whether or not owned by the Commonwealth or the Contractor:
      1. marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive";
      2. identified at the time of issue or communication as "Sensitive Information";
      3. marked with a national security classification or as "Classified Information";
      4. identified at the time of issue or communication as "Classified Information"; or
      5. the Consultant knows or ought to know is subject to, or ought to be treated as, sensitive or classified information in accordance with any Statutory Requirement of Australia (including the Information Security Requirements); and
   2. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

1. A single breach or a series of breaches of clause 20, any Separation Arrangements (in respect of Sensitive and Classified Information), any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

1. An identified fact, circumstance, occurrence or event indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Separation Arrangement

1. Any arrangement that the Consultant:
   1. has in place;
   2. will put in place; or
   3. is required to put in place in accordance with a Statutory Requirement or this Subcontract (including under clause 19.3),
2. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 19 and, if clause 20 applies, clause 20.

Services

1. The services described in, or reasonably to be inferred from, the Brief and comprising (if the Services are phased) the Planning Phase Services and (subject to clause 9) the Delivery Phase Services, as adjusted under the Subcontract.

Shadow Economy Procurement Connected Policy

1. The Australian Government's “Shadow Economy Procurement Connected Policy – Increasing the Integrity of Government Procurement – March 2019", as amended from time to time.

Site

1. The site or sites for the MCCI Works described in the Subcontract Particulars.

Site Management Plan

1. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail all procedures the Consultant will implement to manage the Services on and near the Site.
2. The Site Management Plan must not be inconsistent with the Contractor's Site Management Plan and must address, at a minimum:
   1. all Statutory Requirements;
   2. the roles and responsibilities of all Consultant personnel (including the Consultant's Representative and the Consultant's key people under clause 4.4(a)(i)) regarding management of the Services on and near the Site;
   3. the procedure for consultation, cooperation and coordination of activities with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative and any Other Contractor regarding the occupation, use, operation and maintenance of Commonwealth property and the Site (including for the purpose of military activities, expeditions and exercises) during the Services;
   4. procedures for access to:
      1. Commonwealth or Host Nation property; and
      2. the Site,

by Consultant personnel, visitors, pedestrians and vehicles, including procedures for:

* + 1. ensuring security (including identification and pass procedures and any physical security measures);
    2. minimising disruption and inconvenience to the Contractor, the Commonwealth and Other Contractors;
    3. vehicle and traffic management; and
    4. noise management;
  1. without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Consultant personnel in respect of Commonwealth property and the Site;
  2. procedures for (as applicable):
     1. establishing the Site (including site amenities, laydown areas and parking zones);
     2. cleaning, maintenance, waste management and debris control on Commonwealth property and the Site; and
     3. any dangerous or prohibited substances, material or goods (including Commonwealth property) on the Site relevant to the Services;
  3. if the Services are to be carried out on or in the vicinity of an airfield, the procedure for preparation and approval of a Method of Work Plan for Airfield Activities;
  4. the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 7.4;
  5. the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 7.4 (including as a result of any Site management complaint, incident, near-miss and other situation or accident on Commonwealth property or the Site during the Services);
  6. the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Services, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such identification, control and monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Services;
  7. the procedure for regular auditing or other monitoring of Consultant compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such audits or other monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Services;
  8. the additional matters specified in the Subcontract Particulars; and
  9. any other matters required by the:
     1. Subcontract; or
     2. Contractor’s Representative.

Special Conditions

1. The special conditions as set out in Annexure 2.
2. **Stage**
3. A Stage of the Works (as defined in the MCCI).

Statement of Tax Record or STR

1. Has the meaning given in the Shadow Economy Procurement Connected Policy.

Statutory Requirements

1. Means:
   1. any law applicable to the Services and the MCCI Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
   2. Approvals (including any condition or requirement under an Approval);
   3. Governmental Requirements;
   4. Information Security Requirements; and
   5. any additional requirements set out in the Subcontract Particulars.

Strategic Interest Issue

1. Any issue that involves an actual, potential or perceived risk of an adverse effect on the Commonwealth's international or diplomatic interests or relationships (including with the Host Nation) or national security interests, including:
   1. protecting Australia's national interests, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements);
   2. ensuring that the whole (or any part) of the Sensitive and Classified Information is not exported (or capable of being exported) outside of Australia or is not disclosed or transmitted (or capable of being disclosed or transmitted) to any person who does not hold (or is not eligible to hold) an Australian Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
   3. ensuring compliance by the Consultant with Australia's national security requirements, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements).

Subcontract

1. The contractual relationship between the parties constituted by:
   1. the Formal Agreement;
   2. these Conditions of Subcontract;
   3. the Subcontract Particulars;
   4. the Special Conditions;
   5. the Brief; and
   6. the other documents (if any) specified in the Subcontract Particulars.

Subcontract Particulars

1. The particulars annexed to these Conditions of Subcontract and entitled "Subcontract Particulars".

Table of Variation Rates and Prices

1. The table (if any) in Annexure 5, containing rates and prices to be used for the purposes of valuing Variations under clause 10.3.
2. **Tax or Taxes**
3. Means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing.
4. **Updated Delivery Phase Fee Proposal**
5. The updated Delivery Phase Fee Proposal prepared and submitted by the Consultant under and in accordance with clause 9.2(a).

Variation

1. Unless otherwise stated in the Subcontract, means any change to the Services, including any addition, increase, decrease, omission, deletion or removal to or from the Services.

WHS Legislation

1. The *Work Health and Safety Act 2011* (Cth)and *Work Health and Safety Regulations* *2011* (Cth)*.*

WOL

1. Whole of life.

WOL Cost

1. The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to the Commonwealth arising out of or in connection with the MCCI Works over the whole life of the MCCI Works, including the costs of designing and constructing the MCCI Works prior to Completion (as defined in the Managing Contractor Contract (International)) and occupying, using, operating and maintaining the MCCI Works after Completion (as defined in the Managing Contractor Contract (International)).

WOL Objectives

1. Means balancing the:
   1. WOL Cost;
   2. useful life of the MCCI Works;
   3. reliability and availability of the MCCI Works throughout their useful life;
   4. operability and maintainability of the MCCI Works throughout their useful life;
   5. value for money achieved by the Commonwealth from the design, construction, use, occupation, operation and maintenance of the MCCI Works;
   6. opportunity to reduce resource use during the occupation, use, operation and maintenance of the MCCI Works throughout their useful life; and
   7. achievement of the additional matters specified in the Subcontract Particulars.

Work Health and Safety Plan

1. The plan prepared by the Consultant and finalised under clause 7.4 (which is either Subcontract specific or Site specific) and which must set out in adequate detail the procedures the Consultant will implement to manage the Services from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation).
2. The Work Health and Safety Plan must not be inconsistent with the Contractor's Work Health and Safety Plan and must address, at a minimum:
   1. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Services;
   2. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Services are being undertaken regarding consulting, cooperating and coordinating activities where the PCBU(s) at the workplace and the Consultant owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Services are carried out, including:
      1. incident (including notifiable incident) reporting procedures;
      2. preventative and corrective action procedures; and
      3. record-keeping and reporting requirements, including reporting to the MCCI Contract Administrator and the Contractor's Representative with respect to incidents and accidents under clause 6.15(e);
   4. any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
   5. in relation to where any of the Services are carried out in the Host Nation, the:
      1. procedures and strategies for maximising the capability development, education and training of local Host Nation residents in the context of work health and safety, including in respect of the provision of first aid and emergency life support training at the workplace; and
      2. proposed risk assessment process that will be implemented to ensure the provision of adequate first aid and emergency life support personnel and associated first aid equipment at the Site;
   6. the arrangements for the collection and recording, and any assessment, monitoring and review of any applicable safe work method statements;
   7. the:
      1. procedures for:
         1. conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
         2. carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
         3. ensuring the results of such calculations, analysis, testing or examinations are provided to the Commonwealth prior to Completion (as defined in the Managing Contractor Contract (International)) and prior to the expiry of the Defects Liability Period (as defined in the Managing Contractor Contract (International)); and
      2. purchasing policies for substances, Plant, Equipment and Work;
   8. the procedures and arrangements for the management of work health and safety generally, including:
      1. details of the Consultant's work health and safety policy;
      2. details of any work health and safety management system (whether certified or uncertified);
      3. inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
      4. emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
   9. the procedures for ensuring the provision of written assurances to the Contractor's Representative under clause 6.15(g) regarding compliance with the WHS Legislation by the Consultant and Other Contractors;
   10. the procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 7.4 (including as a consequence of any review of hazards, risks and control measures regarding the Services and any notifiable incident or systemic risk management failure);
   11. details of the project and Subcontract specific hazards and risks identified by the Consultant and the Consultant's approach to the management of these hazards and risks including how the Consultant will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
       1. prior to commencing the Services; and
       2. during the delivery of the Services;
   12. the approach the Consultant will adopt in identifying, controlling and managing work health and safety hazards and risks concerning hazardous substances, including, where they are used or handled in the delivery of the Services, incorporated into the Works, stored by the Consultant at the workplace or transported by the Consultant to or from the workplace;
   13. the actions the Consultant will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Services;
   14. the procedures the Consultant will adopt to audit or otherwise monitor and verify its compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
   15. the procedures the Consultant will adopt to ensure it provides to the Contractor, when conducting any handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the MCCI Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 6.15(p));
   16. any additional matters specified in the Subcontract Particulars; and
   17. any other matters required by the:
       1. Subcontract; or
       2. Contractor's Representative.

Workers Compensation Insurance

1. A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Services are performed or the Consultant's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Consultant to its employees for death or injuries arising out of or in connection with their employment.
2. **Works Information**
3. Information and data created in connection with and relating to the design and construction of the MCCI Works or a Stage or otherwise relating to each element of the MCCI Works or a Stage and that part of the Site upon which they are constructed.
   1. Interpretation

In the Subcontract, unless the context otherwise indicates:

* + 1. words in the singular include the plural and vice versa;
    2. references to a person include an individual, firm, corporation or unincorporated body;
    3. except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Subcontract;
    4. references to any party to the Subcontract include its successors or permitted assigns;
    5. a reference to a party, clause, Annexure, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, Schedule or exhibit of or to the Subcontract;
    6. references to the Subcontract and any deed, agreement or instrument are deemed to include references to the Subcontract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
    7. words denoting any gender include all genders;
    8. references to any legislation or to any section or provision of any legislation include any:
       1. statutory modification or re‑enactment of or any statutory provision substituted for that legislation, section or provision; and
       2. ordinances, by‑laws, regulations and other statutory instruments issued under that legislation, section or provision;
    9. no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Subcontract or any part;
    10. a reference to:
        1. "$" is to Australian currency; and
        2. any amount is exclusive of GST,

except where otherwise specified in the Subcontract;

* + 1. where under the Subcontract:
       1. a direction is required to be given or must be complied with; or
       2. payment of money must be made (other than under clause 11.5),

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;

* + 1. for the purposes of clauses 8.8 and 8.9, any:
       1. extension of time stated in days; or
       2. reference to "day",

will exclude public holidays and include only those days which are stated in the Consultant's then current program under clause 8.2 as working days;

* + 1. for the purposes of clauses 11.4, 11.5 and 16.8, references to "business days" are to days other than:
       1. a Saturday or Sunday;
       2. a public holiday in the place where the Services are being carried out; and
       3. any other day specified in the Subcontract Particulars;
    2. other than as set out in paragraphs (k), (l) and (m) references to "day" are references to calendar days;
    3. the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
    4. where a clause contains two options, the option specified in the Subcontract Particulars will apply;
    5. derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1;
    6. unless agreed or notified in writing by the Contractor's Representative or the date of the standard or reference document is specified in the Brief, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the submission of the relevant Design Documentation.

If requested by the Contractor's Representative, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Design Documentation available to the Contractor's Representative;

* + 1. for the purposes of clauses 2.11(b), 2.13(b), 2.15(d)(i)B, 8.4(b)(ii)B and8.10(c), a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Consultant as a direct result of the applicable event delaying the Consultant; and
    2. requirements contained in the Brief whether or not they include the expression "the Consultant must" or "the Consultant shall" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise.
  1. Miscellaneous
     1. The Subcontract (including clause 13) is subject to and is to be construed in accordance with the laws of the State or Territory of Australia specified in the Subcontract Particulars.
     2. None of the terms of the Subcontract can be waived, discharged or released at law or in equity unless:
        1. to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
        2. otherwise, both parties agree in writing.
     3. The Subcontract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
        1. any prior agreement in conflict or at variance with the Subcontract; or
        2. any correspondence or other documents relating to the subject matter of the Subcontract which may have passed between the parties prior to the Award Date and which are not included in the Subcontract.
     4. Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Subcontract.
     5. Any provision in the Subcontract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Subcontract.
     6. The Consultant must indemnify the Contractor against:
        1. any liability to or claim by a third party including any Other Contractor; and
        2. all costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor,

caused by any breach by the Consultant of a term of the Subcontract.

* + 1. All obligations to indemnify under the Subcontract survive termination of the Subcontract on any basis.
    2. Unless expressly stated to the contrary in the Subcontract, the Consultant must perform the Services at its cost.

1. Role of the consultant
   1. Engagement

The Consultant must carry out the Services in accordance with the Subcontract.

* 1. Standard of Care

The Consultant:

* + 1. must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
    2. must:
       1. ensure that the Design Documentation complies with the requirements of the Subcontract; and
       2. use its best endeavours to ensure that the Design Documentation will be fit for the purposes as set out in, or reasonably to be inferred from, the Brief;
    3. must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Contractor notified to the Consultant; and
    4. must exercise the utmost good faith in the best interests of the Contractor and keep the Contractor fully and regularly informed as to all matters affecting or relating to the Services and the MCCI Works.
  1. Authority to Act
     1. Other than as expressly authorised, the Consultant has no authority to, and must not:
        1. enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Contractor; or
        2. take any act or step to bind or commit the Contractor in any manner, whether as a disclosed agent of the Contractor or otherwise.
     2. The Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Contractor.
  2. Knowledge of the Contractor's Requirements

The Consultant must:

* + 1. inform itself of the Contractor's requirements for the Services and the MCCI Works;
    2. refer to the Contractor Material and the Contractor's Program; and
    3. consult the Contractor during the Services and the MCCI Works.
  1. Notice of Matters Impacting on the Services or the MCCI Works

Without limiting clauses 14.1 - 14.5, if the Consultant becomes aware of any matter which:

* + 1. is likely to change or which has changed the scope, timing or cost of the Services or the MCCI Works;
    2. affects or may affect the Contractor's Program or the Consultant's then current program under clause 8.2;
    3. involves any error, omission or defect in any continuing or completed aspect of the Services; or
    4. involves any Defect (or similar term used or defined in the Managing Contractor Contract (International)) in any continuing or completed aspect of the MCCI Works,

the Consultant must promptly give written notice of that matter to the Contractor's Representative containing, as far as practicable in the circumstances:

* + 1. particulars of the change, error, omission or defect;
    2. its likely effect; and
    3. the Consultant's recommendation as to how to minimise its effect upon the scope, timing and cost of the Services and the MCCI Works.
  1. Co‑operation with Other Contractors

Without limiting clause 6.15(a)(ii), the Consultant must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co‑operate with Other Contractors;
    3. carefully co‑ordinate and integrate the Services with the work carried out or to be carried out by Other Contractors;
    4. carry out the Services so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors; and
    5. without limitation, provide whatever advice, support and co‑operation is reasonable to facilitate the work carried out or to be carried out by Other Contractors.
  1. Access to Consultant's Premises

Without limiting clause 6.11, the Consultant must at all reasonable times:

* + 1. give to the Contractor's Representative, or to any persons authorised in writing by the Contractor's Representative, access to premises occupied by the Consultant where Services are being carried out; and
    2. permit those persons referred to in paragraph (a) to inspect the carrying out of the Services and any Design Documentation or other Project Documents.
  1. Conflict of Interest

The Consultant warrants that:

* + 1. at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Subcontract;
    2. it will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subconsultants; and
    3. if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
       1. notify the Contractor's Representative immediately in writing of that conflict or risk; and
       2. take all steps required by the Contractor's Representative to avoid or minimise the conflict of interest or risk of conflict of interest.
  1. Subcontracting

The Consultant must not subcontract any Services.

* 1. Statutory Requirements
     1. In carrying out the Services, the Consultant must:
        1. unless otherwise specified in the Subcontract Particulars, comply with all applicable Statutory Requirements;
        2. without limiting subparagraph (i):
           1. apply for and obtain all Approvals specified in the Subcontract Particulars; and
           2. give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Subcontract obligations; and
        3. promptly give the Contractor's Representative copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Services or the MCCI Works issues to the Consultant.
     2. Without limiting paragraph (a), the Consultant must:
        1. comply with the Additional Host Nation Requirements;
        2. not engage in any political or unlawful activity during the carrying out of the Services in the Host Nation; and
        3. use its best endeavours to ensure that all its officers, employees and agents do not to engage in unlawful activity or misconduct during the carrying out of the Services in the Host Nation.
  2. Change in Statutory Requirements or Variance with Subcontract
     1. If:
        1. there is any change in a Statutory Requirement after the Award Date; or
        2. a Statutory Requirement is at variance with the Subcontract,

then, if it is discovered by:

* + - 1. the Consultant, the Consultant must promptly give the Contractor's Representative notice in writing. After receipt of the notice from the Consultant, the Contractor's Representative must, within 14 days of receipt of the notice, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the change or variance; or
      2. the Contractor, the Contractor's Representative must promptly give the Consultant notice in writing together with an instruction as to the course it must adopt insofar as the Services are affected by the change or variance.
    1. Subject to paragraph (c), the Consultant will be entitled to have the Fee increased by any extra costs reasonably incurred by the Consultant after the giving of the notice under paragraph (a) which arise directly from the change or variance and the Contractor's Representative's instruction under paragraph (a)(iii) or (iv), as determined by the Contractor's Representative.
    2. The Fee will be decreased by any savings made by the Consultant which arise directly from the change or variance and the Contractor's Representative's instruction under paragraph (a)(iii) or (iv), as determined by the Contractor's Representative.
    3. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the change or variance or the Contractor's Representative's instruction under paragraph (a), other than under paragraph (b).
  1. Consultant Deed of Covenant and Novation
     1. If requested by the Contractor's Representative, the Consultant must execute a Consultant Deed of Covenant, duly completed with all relevant particulars, within the period specified by the Contractor's Representative in such request and deliver the executed Consultant Deed of Covenant to the Contractor's Representative.
     2. The parties acknowledge that if the Commonwealth provides a written notice to the parties requiring novation of the Subcontract to the Commonwealth (or its nominee) in accordance with the Consultant Deed of Covenant, then the Subcontract will be deemed to have been novated in accordance with the Consultant Deed of Covenant.
  2. The Environment
     1. The Consultant must:
        1. ensure that in carrying out the Services:
           1. other than to the extent identified in writing by the Contractor's Representative, it complies with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment;
           2. it does not cause or contribute to any Environmental Incident;
           3. without limiting subsubparagraph B, it does not cause or contribute to Contamination of the Site or any other land, air or water or cause or contribute to any Contamination emanating from the Site; and
           4. it immediately notifies the Contractor's Representative of:

any non-compliance with the requirements of clause 2.13;

any breach of a Statutory Requirement for the protection of the Environment;

any Environmental Incident; or

the receipt of any notice, order or communication received from an authority for the protection of the Environment; and

* + - 1. clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in connection with the Services, whether or not it has complied with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment.
    1. To the extent that the requirement to clean up and restore the Environment under paragraph (a)(ii) arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with all Statutory Requirements and other requirements of the Subcontract, the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant which arise directly from the cleaning up and restoration of the Environment under clause 2.13, as determined by the Contractor's Representative.
  1. Commonwealth's Actions
     1. Under the Managing Contractor Contract (International):
        1. the Commonwealth may, either itself or by a third party, carry out an obligation under the Managing Contractor Contract (International) which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Managing Contractor Contract (International); and
        2. the costs, losses, expenses and damages suffered or incurred by the Commonwealth in so carrying out such a Managing Contractor Contract (International) obligation will be a debt due from the Contractor to the Commonwealth.
     2. The Consultant must indemnify the Contractor against any liability of the kind referred to in paragraph (a)(ii) to the extent that the liability arises out of or in connection with an obligation under the Subcontract which the Consultant was obliged to carry out but which it failed to carry out within the time required in accordance with the Subcontract.
  2. Pandemic Adjustment Event
     1. If the Consultant considers that there has been a Pandemic Adjustment Event, it must promptly give the Contractor's Representative notice in writing, together with detailed particulars of the following:
        1. the relevant change in circumstances and the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic and full details of the adverse effect;
        2. the likely duration of the Pandemic Adjustment Event;
        3. the Consultant's plan to deal with the consequences of the Pandemic Adjustment Event which must as a minimum include details of the steps that the Consultant will take to:
           1. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Adjustment Event; and
           2. minimise any additional cost to the Contractor in respect of the Pandemic Adjustment Event,

(**Consultant's Pandemic Adjustment Plan**); and

* + - 1. such other details or information as the Contractor's Representative may require.
    1. The Contractor's Representative must, within 14 days of receipt of the Consultant's notice under paragraph (a) notify the Consultant of its determination whether a Pandemic Adjustment Event has occurred.
    2. Where the Contractor's Representative has determined a Pandemic Adjustment Event has occurred, the Contractor's Representative may, without being under any obligation to do so, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the Pandemic Adjustment Event.
    3. If a Pandemic Adjustment Event occurs:
       1. subject to paragraph (f), the Consultant will be entitled to:
          1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 8.8; and
          2. have the Fee increased by the extra costs reasonably incurred by the Consultant:

after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Contractor's Representative under paragraph (c); and

to the extent such costs were exclusively incurred for the purposes of performing the Services,

as determined by the Contractor's Representative; and

* + - 1. the Consultant must:
         1. comply with any direction of the Contractor's Representative in relation to the Pandemic Adjustment Event; and
         2. subject to any amendments required by the Contractor's Representative, implement the Consultant's Pandemic Adjustment Plan.
    1. To the extent permitted by law:
       1. the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 2.15; and
       2. without limiting subparagraph (i), the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event, any instruction of the Contractor's Representative under paragraph (c) or any amendment required by the Contractor's Representative under paragraph (d)(ii)B, other than under paragraph (d)(i).
    2. The Contractor's Representative:
       1. will reduce any entitlement the Consultant would have otherwise had under paragraph (d)(i)B to the extent that the Consultant has failed to take all reasonable steps to minimise any additional cost to the Contractor in respect of the Pandemic Adjustment Event; and
       2. may, for the purposes of assessing the Consultant's entitlement under paragraph (d)(i)B, take into account any breakdown of the Fee submitted by the Consultant in its tender for the Services.

1. Role of the Contractor
   1. Information and Services

The Contractor must as soon as practicable make available to the Consultant:

* + 1. all relevant information, documents and particulars relating to the MCCI Works and to the Contractor's requirements for the MCCI Works, including the Contractor's Program; and
    2. details of the budget for the MCCI Works, as relevant to the Services.
  1. Additional Information

If:

* + 1. the Consultant, in its reasonable opinion, considers that any additional information, documents or particulars are needed to enable it to carry out the Services; and
    2. the additional information, documents or particulars are not provided by the Contractor under the Subcontract or by an Other Contractor,

then:

* + 1. the Consultant must give notice in writing to the Contractor's Representative of the details of the additional information, documents or particulars and the reasons why they are required; and
    2. the Contractor must, if the Contractor's Representative believes that the additional information, documents or particulars are needed by the Consultant, use its best endeavours to arrange the provision of the additional information, documents or particulars.
  1. Access to the Site

Subject to:

* + 1. the Managing Contractor Contract (International);
    2. any other agreement or arrangement with a party other than the Consultant (including any Other Contractor);
    3. the Environmental Management Plan, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 7.4;
    4. the Consultant having provided to the Contractor's Representative evidence satisfactory to the Contractor's Representative under clause 5.1(d) that the Consultant has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.1; and
    5. any other conditions specified in the Subcontract Particulars or elsewhere in the Subcontract,

the Contractor must:

* + 1. as soon as practicable, provide the Consultant with access to the Site upon which the MCCI Works are to be constructed; and
    2. arrange access to any other property which may be necessary for the Consultant to carry out the Services.

1. Personnel
   1. Contractor's Representative
      1. The Contractor's Representative will give directions and carry out all of the other functions of the Contractor's Representative under the Subcontract as the agent of the Contractor (and not as an independent certifier, assessor or valuer).
      2. The Consultant must comply with any direction by the Contractor's Representative given or purported to be given under a provision of the Subcontract.
      3. Except where the Subcontract otherwise provides, the Contractor's Representative may give a direction orally but will as soon as practicable confirm it in writing.
   2. Replacement of Contractor's Representative
      1. The Contractor may at any time replace the Contractor's Representative, in which event the Contractor will appoint another person as the Contractor's Representative and notify the Consultant of that appointment.
      2. Any substitute Contractor's Representative appointed under clause 4.2 will be bound by anything done by the former Contractor's Representative to the same extent as the former Contractor's Representative would have been bound.
   3. Parties' Conduct

Without limiting any of the rights or obligations of the Contractor and Consultant under the Subcontract, the Contractor and Consultant must co-operate with each other in carrying out their obligations under the Subcontract.

* 1. Key People for the Services
     1. The Consultant must:
        1. employ those people specified in the Subcontract Particulars, including the Consultant's Representative in the jobs specified in the Subcontract Particulars;
        2. subject to subparagraph (iii), not replace the people referred to in subparagraph (i) without the Contractor's Representative's prior written approval; and
        3. if any of the people referred to in subparagraph (i) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Contractor's Representative of at least equivalent experience, ability and expertise.
     2. A direction is deemed to be given to the Consultant if it is given to the Consultant's Representative.
  2. Removal of Persons
     1. The Contractor's Representative may by notice in writing instruct the Consultant to remove any person from the Site or the Services who in the reasonable opinion of the Contractor's Representative is guilty of misconduct or is incompetent or negligent.
     2. The Consultant must ensure that this person is not again involved in the Services.
  3. Monthly Meeting
     1. The Consultant must:
        1. meet monthly (or at such other times as the Contractor's Representative may require) with the Contractor's Representative and any other persons whom the Contractor's Representative nominates;
        2. discuss the report it has prepared under clause 4.7 and such other matters as the Contractor's Representative may from time to time require;
        3. promptly and fully respond to any questions which the Contractor's Representative asks in relation to any report; and
        4. if it requires instructions from the Contractor, make all necessary recommendations with respect to the instructions required.
     2. The Contractor's Representative must:
        1. before each meeting:
           1. prepare an agenda for the meeting; and
           2. issue an agenda for the meeting; and
        2. after each meeting:
           1. prepare minutes of the meeting; and
           2. issue minutes of the meeting.
  4. Consultant's Monthly Report

At least 7 days prior to each meeting under clause 4.6, the Consultant must provide the Contractor's Representative with a monthly report in such form as the Contractor's Representative requires from time to time and which must include, at a minimum:

* + 1. detailed particulars of the progress of the Services and the MCCI Works including:
       1. key activities, meetings and other events in the previous month;
       2. the status of all Design Documentation (including any alternative solutions or dispensations being pursued in accordance with the Infrastructure Directorate Dispensations Process);
       3. the status of all Approvals;
       4. photographs of the Services and the MCCI Works; and
       5. any deviations from the Contractor's program under clause 8.2;
    2. detailed particulars of all:
       1. payment claims, payment statements and payments;
       2. Variation Price Requests, responses, Variation Orders and proposed adjustments to the Fee;
       3. written claims and notices given and received under clause 8 in respect of delays and extensions of time;
       4. other Claims made by the Consultant (including in respect of Statutory Requirements and the resolution of ambiguities under clause 6.10);
       5. calls, attendances, recommendations and actions taken in respect of non-conforming Services (in accordance with clause 7.3);
       6. calls, attendances, recommendations and actions taken in respect of all Defects (or similar term used or defined in the Managing Contractor Contract (International));
       7. disputes under clause 13; and
       8. notices under clause 14.1 or 14.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Consultant's opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

the Services or the MCCI Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters;

* + 1. confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 6.15 including:
       1. the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 7.4);
       2. details of all proactive risk management measures implemented by the Consultant to prevent systemic work health and safety issues, incidents or accidents during the Services;
       3. details of lead indicator data, including:
          1. inductions, training and other work health and safety awareness programmes conducted;
          2. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
          3. inspections of Plant, Equipment and Work (or similar term used or defined in the Managing Contractor Contract (International));
       4. without limiting the Consultant's obligations to notify the MCCI Contract Administrator and the Contractor's Representative under:
          1. clause 6.15(e)(i) and (f), summary data regarding notifiable incidents; and
          2. clause 6.15(e)(ii) and (e)(iii), details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
       5. relevant statistics and other information regarding lost time injury days; and
       6. all other work health and safety matters required by the Subcontract or the Contractor's Representative;
    2. confirmation of compliance with, and (as applicable) an update in respect of:
       1. ESD and WOL requirements;
       2. Site-related requirements, including the Site Management Plan;
       3. commissioning and handover requirements, including the Project Lifecycle and HOTO Plan;
       4. environmental requirements, including the Environmental Management Plan;
       5. fraud and corruption control requirements, including the Fraud and Corruption Control Plan;
       6. information security requirements, including clause 19 and, if clause 20 applies, clause 20; and
       7. any other security requirements,

together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (vii) above;

* + 1. in respect of Hazardous Substances (if any) any information as required by the Special Conditions; and
    2. any other matters required by the Contractor's Representative.
  1. Meetings and Reports Generally

Without limiting clauses 4.6 and 4.7, the Consultant must comply with any additional meeting and reporting requirements specified in the Subcontract Particulars.

1. Insurance
   1. Consultant Insurance Obligations

The Consultant must:

* + 1. from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurance:
       1. Workers Compensation Insurance;
       2. Employers' Liability Insurance;
       3. Professional Indemnity Insurance; and
       4. such other insurances on such terms as are specified in the Subcontract Particulars,

each of which must be:

* + - 1. for the amounts specified in the Subcontract Particulars;
      2. with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
      3. on terms which are satisfactory to the Contractor's Representative (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to the Workers Compensation Insurance and Employers' Liability Insurance, ensure that, to the extent permitted by law, the insurance extends to provide indemnity to the Contractor and the Commonwealth as the Consultant's principal in respect of any statutory and common law liability to the Consultant's employees;
    2. in relation to the Professional Indemnity Insurance, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Services; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services are being carried out;
    3. promptly provide the Contractor's Representative with evidence satisfactory to the Contractor's Representative that:
       1. it has complied with clause 5.1; and
       2. each insurance required under clause 5.1 is current and complies with clause 5.1,

as required by the Contractor's Representative from time to time;

* + 1. ensure that:
       1. if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant as soon as possible informs the Contractor in writing that the notice has been given and effects replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contractor's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract; and
       2. if the Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contractor's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract;
    2. ensure that it:
       1. does not do or omit to do anything whereby any insurance may be prejudiced;
       2. complies at all times with the terms of each insurance policy;
       3. if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
       4. punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contractor's Representative copies of receipts for payment of premiums upon request by the Contractor's Representative;
       5. renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
       6. immediately notifies the Contractor's Representative (in writing) if the Consultant fails to renew any required insurance policy or pay a premium;
       7. does not cancel or allow an insurance policy to lapse during the period for which it is required by the Subcontract without the prior written consent of the Contractor's Representative;
       8. immediately notifies the Contractor's Representative (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
       9. complies fully with its duty of disclosure and obligation of utmost good faith toward the insurer and in connection with all of the required insurance policies;
       10. does everything reasonably required by the Contractor and the Contractor's Representative to enable the Contractor and the Commonwealth to claim and to collect or recover money due under any of the insurances in respect of which they are required to have the benefit of coverage under this Subcontract; and
       11. maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim; and
    3. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Consultant under this clause 5.1. Any excess borne by the Contractor will be a debt due from the Consultant to the Contractor.

For the purpose of paragraph (d), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirements) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.1.

The obtaining of insurance as required under clause 5.1 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Consultant under the Subcontract or otherwise at law or in equity.

* 1. Contractor Insurance Obligations
     1. The Contractor must:
        1. from the Award Date cause to be effected and maintained or otherwise have the benefit of Public Liability Insurance and the other insurance (if any) specified in the Subcontract Particulars; and
        2. promptly provide the Consultant with evidence satisfactory to the Consultant that the insurances required under subparagraph (i) are current, as required by the Consultant from time to time.
     2. The insurance referred to in paragraph (a)(i) is subject to the exclusions, conditions and excesses noted on the policy or policies and the Consultant must:
        1. satisfy itself of the nature and extent of the Contractor's insurance; and
        2. if required by the Consultant, take out insurance to:
           1. insure any risks not insured by the Contractor's insurance; or
           2. cover any such exclusions, conditions or excesses in that insurance,

which the Consultant wants to insure against or cover.

* 1. Failure to Insure
     1. If the Consultant fails to comply with clause 5.1, the Contractor may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Consultant to the Contractor.
     2. The Consultant must take all necessary steps to assist the Contractor in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contractor's Representative or anyone else acting on behalf of the Contractor.
  2. Period of Insurance

The insurance which the Consultant is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.1 and the insurance the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.2 must be maintained:

* + 1. in the case of Public Liability Insurance:
       1. written on an occurrence basis, until the completion of the Services; or
       2. written on a claims made basis, until the expiration of the run-off period specified in the Subcontract Particulars following the latest of the:
          1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract (International)); and
          2. completion of the Services;
    2. in the case of Workers Compensation Insurance and Employers' Liability Insurance, until the latest of the:
       1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract (International)); and
       2. completion of the Services; and
    3. in the case of Professional Indemnity Insurance, until the expiration of the run-off period specified in the Subcontract Particulars following the latest of the:
       1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract (International)); and
       2. completion of the Services.
  1. Notice of Potential Claim

The Consultant must:

* + 1. as soon as possible inform the Contractor's Representative in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.1 or any claim actually made against the Consultant or the Contractor which may be covered by an insurance policy required under clause 5.1;
    2. keep the Contractor informed of all significant developments concerning the claim, except in circumstances where the Contractor is making a claim against the Consultant,

provided that, in respect of Professional Indemnity Insurance, the Consultant:

* + 1. subject to paragraph (d), is not required to provide details of individual claims; and
    2. must notify the Contractor if the estimated total combined value of claims made against the Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Subcontract.
  1. Cross Liability
     1. Clause 5.6 does not apply to Professional Indemnity Insurance or Workers Compensation Insurance.
     2. Where the Subcontract requires insurance to provide cover to more than one insured, the Consultant must ensure that, to the extent permitted by law, the insurance policy provides that:
        1. the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;
        2. the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
        3. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
        4. a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
        5. the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
           1. liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction or the Host Nation; or
           2. proportionate liability legislation of any Australian jurisdiction or the Host Nation is lawfully excluded by the contract.
  2. Insurances Secondary
     1. The Contractor is not obliged to make a claim or institute proceedings against any insurer under the insurances required to be effected by the Contractor or the Consultant under the Subcontract before enforcing any of its rights or remedies under the indemnities referred to in this Subcontract or generally.
     2. The Consultant is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this Subcontract and at law regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any insurance responds or fails to respond.
  3. Exclusion of Consequential Loss and Limitation on Liability
     1. Subject to paragraphs (b) and (c):
        1. neither the Contractor nor the Consultant will be liable to the other for any Consequential Loss howsoever arising; and
        2. to the extent permitted by law, the maximum aggregate liability of the Consultant to the Contractor arising out of or in connection with the Subcontract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Subcontract Particulars.
     2. Paragraph (a) does not apply to a liability of the Consultant:
        1. for any deliberate breach or repudiation of the Subcontract;
        2. under the indemnities in clauses 1.3(f), 2.14(b), 5.1, 6.8(b), 11.13, 13.16(b)(ii), 16.2(a)(xii), 19.5(c), 20.6(c) and 21.3(c);
        3. for Fraud;
        4. to the extent that payments are received by the Consultant under any insurance policy or policies required to be effected and maintained under the Subcontract in relation to that liability or which would have been received by the Consultant under such insurance policy or policies but for:
           1. the failure of the Consultant to effect and maintain the required insurance policy or insurance policies;
           2. any failure of an insurance policy to respond due to the misconduct of the Consultant (including a failure to make proper disclosure or to comply with the requirements of the policy);
           3. the failure by the Consultant to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
           4. the reliance by the insurer of the required insurance on this clause 5.8 to deny liability on the basis that the party has no liability to the Contractor; and
        5. for fines or penalties incurred by the Contractor arising from the Services.
     3. Paragraph (a)(i) does not apply to a liability of the Contractor for:
        1. any deliberate breach or repudiation of the Subcontract;
        2. Fraud; or
        3. fines or penalties incurred by the Consultant arising from an act or omission of the Contractor.
     4. For the purposes of this clause 5.8:
        1. **Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the MCCI Works or other Commonwealth property) or loss of production or financing costs, whether present or future, fixed or unascertained, actual or contingent; and
        2. **Fraud** includesdishonesty (such as obtaining a benefit, or causing loss, by deception or other means).

1. DESIGN AND Documentation
   1. Consultant's Documentation Program

The Consultant must as part of the program it is to prepare under clause 8.2, submit to the Contractor's Representative for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contractor's Representative in a manner and at a rate which will give the Contractor's Representative a reasonable opportunity to review the Design Documentation within the period of time within which the Contractor's Representative may review the Design Documentation under clause 6.3.

* 1. Consultant's Design

The Consultant must:

* + 1. design the parts of the MCCI Works which the Subcontract requires it to design in accordance with the Brief, the Preliminary Design Solution and the other requirements of the Subcontract and for this purpose (but without limitation) prepare all relevant Design Documentation;
    2. without limiting paragraph (a) or the Consultant's other obligations under the Subcontract, prepare all Design Documentation and perform all other Services so as to maximise achievement of the Design Objectives and Principles;
    3. submit the Design Documentation it prepares to the Contractor's Representative in accordance with the documentation program approved by the Contractor's Representative under clause 6.1.
  1. Contractor's Representative May Review Design Documentation
     1. The Contractor's Representative may (in its absolute discretion):
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Consultant; and
        2. within the number ofdays specified in the Subcontract Particulars of the submission by the Consultant of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation.
     2. If any Design Documentation is rejected, the Consultant must submit amended Design Documentation to the Contractor's Representative.
  2. No Obligation to Review

Without limiting the Contractor's obligations and liability to the Commonwealth under the Managing Contractor Contract (International):

* + 1. the Contractor's Representative does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Design Documentation submitted by the Consultant for errors, omissions or compliance with the Subcontract; and
    2. no review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Consultant or any other direction by the Contractor's Representative about, or any other act or omission by the Contractor's Representative or otherwise by or on behalf of the Contractor in relation to, the Design Documentation will:
       1. relieve the Consultant from, or alter or affect, the Consultant's obligations whether under the Subcontract or otherwise at law or in equity; or
       2. prejudice the Contractor's rights against the Consultant whether under the Subcontract or otherwise at law or in equity.
  1. Copies of Design Documentation

For the purposes of clauses 6.2(c) and 6.3, the Consultant must submit or resubmit to the Contractor's Representative the number of copies specified in the Subcontract Particulars of Design Documentation in:

* + 1. hard copy; and
    2. electronic copy,

in accordance with the requirements specified in the Subcontract Particulars.

* 1. Licence over Project Documents

The Consultant grants to the Contractor a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

* + 1. arises, for each Project Document, immediately upon the Project Document being:
       1. produced; or
       2. provided, or required to be provided, to the Contractor,

under, for the purposes of, arising out of or in connection with the Subcontract, the Services or the MCCI Works by, for or on behalf of the Consultant;

* + 1. includes an unlimited right to sub-licence;
    2. without limitation, extends to:
       1. any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the MCCI Works; and
       2. in the case of the corresponding licence granted by the Contractor to the Commonwealth, use in any way for any other Commonwealth project; and
    3. survives the termination of the Subcontract on any basis.
  1. Intellectual Property Warranties

The Consultant warrants that:

* + 1. the Consultant owns all Intellectual Property Rights in the Project Documents or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by the Subcontract;
    2. use by the Contractor or any sublicensee or subsublicensee of the Project Documents in accordance with the Subcontract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
    3. neither the Contractor nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Project Documents, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
    4. the use by the Contractor or by any sublicensee or subsublicensee of the Project Documents in accordance with the Subcontract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).
  1. Intellectual Property Rights

The Consultant must:

* + 1. ensure that the Services do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
    2. indemnify the Contractor in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by, the Contractor arising out of or in connection with any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right.
  1. Contractor Material
     1. The Contractor Material will remain the property of the Contractor.
     2. The Contractor must inform the Consultant of any Contractor Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
     3. Without limiting clause 19 and if clause 20 applies, clause 20 the Consultant will be responsible for the protection, maintenance and return of the Contractor Material in its possession.
  2. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Subcontract or between the Subcontract and any Design Documentation or any other Project Document:

* + 1. subject to paragraphs (b) and (c), the order of precedence specified in the Subcontract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Brief and any other requirement of the Subcontract (including any other requirement of the Brief), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
    3. where the ambiguity, discrepancy or inconsistency is between the Subcontract and any part of the Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Subcontract will prevail; and
    4. irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
       1. the Consultant, the Consultant must promptly give the Contractor's Representative notice in writing. After receipt of a notice from the Consultant the Contractor's Representative must within 14 days of receipt of the notice instruct the Consultant as to the course it must adopt; or
       2. the Contractor, the Contractor's Representative must promptly give the Consultant notice in writing together with an instruction as to the course it must adopt,

including, where applicable, by applying the principles in paragraphs (a) to (c) above.

* 1. Access to Premises and Project Documents

The Consultant must at the request of the Commonwealth or the Contractor's Representative at any time during the Services and the period of 10 years following the latest of the:

* + 1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract (International)); and
    2. completion of the Services,

provide and make available:

* + 1. access to its premises and make the Project Documents available for inspection by the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor;
    2. such copies of the Project Documents as the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor may require, in such formats as may be required;
    3. all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor; and
    4. any officers, employees or agents for interviews with the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor.
  1. Measurements and Dimensions

Unless expressly stated to the contrary in the Subcontract or directed by the Contractor's Representative:

* + 1. the Consultant must obtain and check all relevant measurements and dimensions on the Site before proceeding with the Services;
    2. the layout of plant, equipment, duct work, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimensions information concerning the Site required to carry out the Services must be obtained and checked by the Consultant; and
    3. to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Consultant's failure to obtain and check measurements and dimension information concerning the Site as required by clause 6.12.
  1. Design Certification

Without limiting the Contractor's obligations to the Commonwealth under the Managing Contractor Contract (International) and the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must, with each submission of Design Documentation under clause 6.2, payment claim under clause 11.2 and prior to Completion (as defined in the Managing Contractor Contract (International)), provide the Contractor's Representative with a certificate in the form of the Consultant Design Certificate which certifies that (to the extent then applicable):

* + 1. the Design Documentation complies with:
       1. subject to clause 2.10(a)(i), all Statutory Requirements (including the WHS Legislation); and
       2. the requirements of the Subcontract; and
    2. the MCCI Works comply or the Stage (as defined in the Managing Contractor Contract (International)) complies with the Design Documentation which has not been rejected by the Contractor's Representative under clause 6.3; and

except to the extent set out in such certificate.

* 1. Samples
     1. The Consultant must:
        1. obtain each sample or range of samples required by the Subcontract; and
        2. submit the sample or range of samples it obtains to the Contractor's Representative in accordance with the Consultant's then current program under clause 8.2.
     2. The Contractor's Representative may:
        1. review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Consultant; and
        2. within the number of days specified in the Subcontract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples if, in the reasonable opinion of the Contractor's Representative, the sample or range of samples does not comply with the requirements of the Subcontract.
     3. If any sample or range of samples is rejected, the Consultant must submit an amended or substituted sample or range of samples to the Contractor's Representative.
     4. Without limiting the Contractor's obligations and liability to the Commonwealth under the Managing Contractor Contract (International):
        1. the Contractor's Representative does not assume or owe any duty of care to the Consultant to review, or in reviewing, the sample or range of samples submitted by the Consultant for errors, omissions or compliance with the Subcontract; and
        2. no review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Consultant or any other direction by the Contractor's Representative about, or any other act or omission by the Contractor's Representative or otherwise by or on behalf of the Contractor in relation to, the sample or range of samples will:
           1. relieve the Consultant from, or alter or affect, the Consultant's obligations whether under the Subcontract or otherwise at law or in equity; or
           2. prejudice the Contractor's rights against the Consultant under the Subcontract or otherwise at law or in equity.
  2. Work Health and Safety

The Consultant must:

* + 1. ensure that in carrying out the Services in Australia it complies with:
       1. all Statutory Requirements and other requirements of the Subcontract in respect of work health and safety, including the applicable WHS Legislation;
       2. the duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
       3. the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
       4. the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
          1. it is to assist an injured person or remove a deceased person;
          2. it is to make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site;
    2. ensure that in carrying out the Services in the Host Nation, so far as is reasonably practicable, it complies with the obligations set out in paragraph (a), as if the WHS Legislation applied to the Consultant;
    3. comply with any Statutory Requirements of the Host Nation concerning work health and safety in carrying out the Services, provided in the event there is a conflict between the standard prescribed by Statutory Requirements of the Host Nation concerning work health and safety and any Statutory Requirements of Australia concerning work health and safety, the Statutory Requirements of Australia shall prevail;
    4. carry out the Services to ensure the health and safety of persons is not put at risk;
    5. without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, notify the Contractor's Representative and the MCCI Contract Administrator in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident (irrespective of whether they occur in Australia or in the Host Nation);
       2. work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
       3. all other work health and safety matters arising out of or in connection with the Services or the MCCI Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 4.7;
    6. for the purposes of paragraphs (a)(iii) and (e) above, in respect of any notifiable incident:
       1. immediately provide the Contractor's Representative and the MCCI Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator or Host Nation regulator;
       2. promptly provide the Contractor's Representative and the MCCI Contract Administrator with copies of:
          1. all witness statements and the investigation report relating to the notifiable incident; and
          2. any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator or Host Nation regulator; and
       3. within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator or Host Nation regulator, provide the Contractor's Representative and the MCCI Contract Administrator with a summary of the related investigations, actions to be taken, and any impact on the Subcontract that may result from the notifiable incident;
    7. for Services that are carried out in:
       1. Australia, institute systems to:
          1. obtain regular written assurances from each Other Contractor about their ongoing compliance with the WHS Legislation; and
          2. provide, in a format specified by the Contractor's Representative, the written assurances regarding the Consultant's ongoing compliance with the WHS Legislation:

on a monthly basis in the reports under clause 4.7;

on a quarterly basis (when requested by the Contractor's Representative); and

as otherwise directed by the Contractor's Representative; or

* + - 1. the Host Nation, if requested by the Contractor's Representative, use its best endeavours to comply with the requirements of subparagraphs (i)A and (i)B;
    1. for Services that are carried out in:
       1. Australia, provide the written assurances obtained under paragraph (g)(i) to the Contractor's Representative in accordance with paragraph (g)(i); or
       2. the Host Nation, use its best endeavours to provide the written assurances obtained under paragraph (g)(ii) to the Contractor's Representative in accordance with paragraph (g)(ii);
    2. without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity within 10 days of receipt provide to the Contractor's Representative copies of all:
       1. formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Consultant relating to work health and safety matters;
       2. formal notices issued by a health and safety representative of the Consultant under or in compliance with the applicable WHS Legislation; and
       3. formal notices, written communications and written undertakings given by the Consultant to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,

arising out of or in connection with the Services;

* + 1. exercise a duty of the utmost good faith to the Contractor and the Commonwealth in carrying out the Services to enable the Contractor and the Commonwealth to discharge their duties under the WHS Legislation;
    2. ensure that if any Statutory Requirement (whether in Australia or the Host Nation) requires that:
       1. a person:
          1. be authorised or licensed (in accordance with the WHS Legislation or a Statutory Requirement of the Host Nation (as applicable)) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (in accordance with the WHS Legislation or any Statutory Requirement of the Host Nation (as applicable)), that person has the required qualifications or experience or is so supervised; or
       2. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    3. not direct or allow a person to carry out work, or use plant or a substance (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement (whether in Australia or the Host Nation) and paragraph (k) are met;
    4. immediately notify the Contractor’s Representative and the MCCI Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of an Australian or Host Nation regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
    5. without limiting the Consultant's obligations under the Subcontract (including paragraph (f) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contractor's Representative, the MCCI Contract Administrator or anyone else acting on behalf of the Commonwealth or the Contractor, provide all information or copies of documentation held by the Consultant to the Contractor's Representative, the MCCI Contract Administrator or anyone else acting on behalf of the Commonwealth or the Contractor to enable the Contractor and the Commonwealth to comply with their obligations under the WHS Legislation;
    6. if requested by the Contractor's Representative or required by the WHS Legislation or any Statutory Requirements of the Host Nation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contractor's Representative before the Consultant commences such work;
    7. provide to the Contractor's Representative prior to Completion (as defined in the Managing Contractor Contract (International)) and before the expiry of the Defects Liability Period (as defined in the Managing Contractor Contract (International)) information concerning:
       1. the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
       2. the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
       3. any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured;
    8. ensure that the Design Documentation:
       1. eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure and provide upon request such information and documentation (including analysis, testing and calculations) regarding the design as required by the Contract Administrator; and
       2. does not provide for Asbestos or ACM to be used in or incorporated into the MCCI Works;
    9. with each submission of Design Documentation under clause 6.2, provide the Contractor's Representative with a certificate in a form satisfactory to the Contractor's Representative as a condition precedent to Completion which states that:
       1. all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) described in the Design Documentation to be used in (or incorporated into) the MCCI Works have been designed and specified such that they are entirely (meaning 100%) free of Asbestos and ACM; and
       2. the Consultant has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Services;
    10. without limiting paragraph (r), if any materials, goods, products, equipment or plant described in the Design Documentation are to be used in (or incorporated into) the MCCI Works that were not manufactured in Australia, the Consultant must provide to the Contractor's Representative with each submission of Design Documentation under clause 6.2:
        1. sample test reports; and
        2. test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method,

in relation to the imported materials, goods, products, equipment or plant to be used in (or incorporated into) the MCCI Works; and

* + 1. provide to the Contractor's Representative, with each submission of Design Documentation under clause 6.2, a written report that specifies the hazards relating to the design of the structure (or part) which, as far as the Consultant is reasonably aware:
       1. create a risk to health or safety to those carrying out construction work on the structure (or part); and
       2. are associated only with that particular design.

1. Quality
   1. Quality Assurance

The Consultant:

* + 1. must implement the quality assurance process, system or framework consistent with best industry practice;
    2. without limiting clause 6.11, must allow the Contractor's Representative or anyone else acting on the behalf of the Contractor access to the quality assurance process, system or framework of the Consultant so as to enable auditing or other monitoring; and
    3. will not be relieved from compliance with any of its obligations under the Subcontract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the quality assurance requirements of the Subcontract;
       2. any direction by the Contractor's Representative concerning the Consultant's quality assurance process, system or framework or its compliance or non‑compliance with the process, system or framework;
       3. any audit or other monitoring by the Contractor's Representative or anyone else acting on behalf of the Contractor of the Consultant's compliance with the process, system or framework; or
       4. any failure by the Contractor's Representative, or anyone else acting on behalf of the Contractor, to detect any Services which are not in accordance with the requirements of the Subcontract including where any such failure arises from any negligence on the part of the Contractor's Representative or other person.
  1. Non-Complying Services

If the Contractor's Representative discovers or believes that any Services have not been performed in accordance with the Subcontract, the Contractor's Representative may give the Consultant a direction specifying the non-complying Services and doing one or more of the following:

* + 1. requiring the Consultant to:
       1. reperform the non-complying Services and specifying the time within which this must occur; and
       2. take all such steps as are reasonably necessary to:
          1. mitigate the effect on the Contractor of the failure to carry out the Services in accordance with the Subcontract; and
          2. put the Contractor (as closely as possible) in the position in which it would have been if the Consultant had carried out the Services in accordance with the Subcontract; or
    2. advising the Consultant that the Contractor will accept the non-complying Services despite the non-compliance.
  1. Reperformance of the Non-complying Services

If a direction is given under clause 7.2, the Consultant must reperform the non-complying Services:

* + 1. within the time specified in the Contractor's Representative's direction; and
    2. if after the Date for Completion, so as to minimise the delay and disruption to the Services or the MCCI Works.
  1. Project Plans
     1. The Consultant:
        1. must carry out the Services in accordance with, and otherwise implement, the Project Plans; and
        2. for the purposes of subparagraph (i), must:
           1. prepare Project Plans:

where applicable, based on the draft Project Plans lodged by the Consultant in its tender for the Services; and

otherwise in accordance with the requirements of the Subcontract,

and submit them to the Contractor's Representative so as to ensure that there is no delay or disruption to the Services and in any event no later than the number of days specified in the Subcontract Particulars after the Award Date for each Project Plan;

* + - * 1. not commence any of the Services to which any Project Plan applies, unless the Contractor's Representative has had the number of days specified in the Subcontract Particulars for each Project Plan to review the Project Plan and has not rejected the Project Plan;
        2. if any Project Plan is rejected, submit an amended Project Plan to the Contractor's Representative;
        3. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Services and in any event in accordance with the requirements of the Subcontract to the satisfaction of the Contractor's Representative;
        4. after each Project Plan has been finalised:

regularly review, update and amend each Project Plan in accordance with the process set out in each Project Plan and otherwise at least:

on each anniversary of the Award Date; and

if clause 9 applies, prior to the Date for Delivery Phase Agreement;

update or amend a Project Plan on request of the Contractor's Representative; and

continue to correct any defects in or omissions from a Project Plan (whether identified by the Contractor's Representative or the Consultant),

and submit an updated or amended Project Plan to the Contractor's Representative, after which:

the Consultant must continue to comply with the requirements of the then current Project Plan until the process in subparagraph (ii) has been completed in respect of the updated or amended Project Plan; and

subsubparagraphs B - E will apply (to the extent applicable); and

* + - * 1. document and maintain detailed records of all:

reviews, updates, amendments and submissions of each Project Plan;

audits or other monitoring of each Project Plan; and

training and awareness programs and communications provided to Consultant personnel in respect of each Project Plan (including each updated or amended Project Plan).

* + 1. The Contractor must promptly provide the Consultant with a copy of amendments to any Contractor's Project Plan insofar as they are relevant to the Services or a Project Plan.
    2. The Consultant will not be relieved from compliance with any of its obligations under the Subcontract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the requirements of any Project Plan;
       2. any direction by the Contractor's Representative concerning a Project Plan or the Consultant's compliance or non-compliance with a Project Plan;
       3. any audit or other monitoring by the Contractor's Representative or anyone else acting on behalf of the Contractor of the Consultant's compliance with a Project Plan; or
       4. any failure by the Contractor's Representative, or anyone else acting on behalf of the Contractor, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contractor's Representative or other person.
  1. Drawings

Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, all drawings which the Consultant is required to provide under the Subcontract must be prepared by competent draftspersons in accordance with:

* + 1. the standard prescribed in the Subcontract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the MCCI Works);
    2. all Statutory Requirements;
    3. the directions of the Contractor's Representative; and
    4. to the extent that they are not inconsistent with the requirements of the Subcontract, the requirements of all relevant standards of Standards Australia.
  1. HOTO Process

Without limiting clause 2.6, the Consultant must:

* + 1. fully co-operate with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative, Other Contractors and such other persons as may be nominated in writing by the Contractor's Representative (including the Host Nation) and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
    2. without limiting paragraph (a):
       1. carry out all Consultant HOTO Obligations;
       2. ensure that all Consultant HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Plan and Checklist and the other requirements of the Subcontract;
       3. comply with all commissioning, handover and takeover requirements described in the Subcontract;
       4. as and when required by the Contractor's Representative, provide the Contractor with such other specific assistance as may be required by the Contractor to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
       5. as and when required by the Contractor's Representative, meet with the Commonwealth, the MCCI Contract Administrator, the Contractor's Representative and such other persons as are nominated in writing by the Contractor's Representative (including the Host Nation) with a view to ensuring that the Contractor and such other persons have sufficient information to enable them to:
          1. occupy, use, operate and maintain the MCCI Works or the Stage (as defined in the Managing Contractor Contract (International)); and
          2. perform such other activities as may be required by the Contractor in respect of the MCCI Works or the Stage.

1. Time
   1. Progress

The Consultant must:

* + 1. regularly and diligently progress the Services; and
    2. subject to clause 8.10, achieve Completion of each Milestone by its Date for Completion.
  1. Programming
     1. The Contractor must:
        1. on the Award Date, provide the Consultant with a copy of the Contractor's Program insofar as it is relevant to the Services; and
        2. thereafter, promptly provide the Consultant with a copy of amendments to the Contractor's Program insofar as they are relevant to the Services.
     2. The Consultant must:
        1. within 14 days of the Award Date, prepare a program of the Services which must contain the details required by the Subcontract or which the Contractor's Representative otherwise reasonably directs;
        2. update the program periodically, at least at intervals of no less than that specified in the Subcontract Particulars, to record and take account of:
           1. actual progress of the Services to the date which is two working days prior to the date on which the update is provided;
           2. changes to the program;
           3. changes to the Contractor's Program; and
           4. delays which may have occurred, including any for which the Consultant is granted an extension of time under clause 8.8;
        3. give the Contractor's Representative copies of all programs; and
        4. provide all programs in a format compatible with the software specified in the Subcontract Particulars.
     3. If clause 9 applies (and without limiting paragraph (b)(ii)), the Consultant must, prior to the Date for Delivery Phase Agreement, update the program for any changes in the Delivery Phase Services and submit the updated program to the Contractor's Representative for review by no later than the date notified in writing by the Contractor's Representative.
     4. The Contractor's Representative may review and comment on any program given under this clause 8.2.
     5. The Contract Administrator may instruct the Consultant to change the order in which the Services are to be carried out. If such an instruction is issued, the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant which arise directly from such instruction, as determined by the Contract Administrator.
  2. Consultant Not Relieved

Any review of, comment upon or any failure to review or comment upon, a program by the Contractor's Representative will not:

* + 1. relieve the Consultant from or alter its obligations under the Subcontract especially (without limitation) the obligation to achieve Completion of each Milestone by its Date for Completion;
    2. evidence or constitute the granting of an extension of time or an instruction by the Contractor's Representative to accelerate, disrupt, prolong or vary any, or all, of the Services; or
    3. affect the time for the carrying out of the Contractor's or Contractor's Representative's Subcontract obligations.
  1. Suspension
     1. The Contractor's Representative:
        1. may instruct the Consultant to suspend and, after a suspension has been instructed, to re‑commence, the carrying out of all or a part of the Services; and
        2. is not required to exercise the Contractor's Representative's power under subparagraph (i) for the benefit of the Consultant.
     2. If a suspension under clause 8.4 arises as a result of:
        1. the Consultant's failure to carry out its obligations in accordance with the Subcontract, to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the suspension; or
        2. a cause other than the Consultant's failure to carry out its obligations in accordance with the Subcontract, an instruction to suspend under clause 8.4 will entitle the Consultant to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 8.8; and
           2. have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of the suspension, as determined by the Contractor's Representative.

The Consultant must take all steps possible to mitigate any extra costs incurred by it as a direct result of the suspension. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the suspension, other than under paragraph (b)(ii).

* + 1. The Consultant may only suspend the Services when instructed to do so under clause 8.4.
  1. Delays, Including Delays Entitling Claim in Extension of Time
     1. If the Consultant becomes aware of any occurrence that is likely to delay it in carrying out the Services it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contractor's Representative in writing of the occurrence and the likely delay.
     2. If the Consultant has been delayed in carrying out the Services:
        1. prior to the Date for Completion of a Milestone by an Act of Prevention or a Pandemic Adjustment Event in a manner which has delayed, or is likely to delay, the Consultant in achieving Completion of the Milestone; or
        2. after the Date for Completion of a Milestone by an Act of Prevention in a manner which has delayed, or is likely to delay, the Consultant in achieving Completion of the Milestone,

the Consultant may claim an extension of time.

* 1. Claim for Extension of Time

To claim an extension of time, the Consultant must:

* + 1. not later than 28 days after the commencement of the delay to the performance of the Services, submit a written claim to the Contractor's Representative for an extension to the relevant Date for Completion, which:
       1. gives detailed particulars of the delay and the occurrence causing the delay; and
       2. states the number (not exceeding 28) of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Completion in the manner set out in clause 8.7(c); and
    2. if the delay to the performance of the Services continues beyond 28 days from the commencement of the delay, and the Consultant wishes to claim an extension of time in respect of any further period, submit a further written claim to the Contractor's Representative:
       1. every 28 days after the last date for submitting the first written claim, provided however that the final written claim must be submitted not later than 7 days after the end of the delay to the performance of the Services; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

It is a condition precedent to the Consultant's entitlement to an extension of time that the:

* + 1. Consultant must give the written claim required by clause 8.6 as required by that clause;
    2. cause of the delay to the Services was beyond the reasonable control of the Consultant;
    3. Consultant must have actually been, or be likely to be, delayed in the manner set out in clause 8.5(b);
    4. Consultant must not have been given a direction under clause 8.10(a) with which it has been able to comply; and
    5. Contractor is entitled to grant the extension of time under clause 10.9 of the Managing Contractor Contract (International).
  1. Extension of Time
     1. If the conditions precedent in clause 8.7 have been satisfied, the relevant Date for Completion will be extended by (subject to paragraph (c)) a reasonable period determined by the Contractor's Representative and notified to the Contractor and the Consultant within 21 days of the Consultant's written claim under clause 8.6.
     2. The period determined by the Contractor's Representative under clause 8.8 cannot exceed the period approved by the MCCI Contract Administrator under clause 10.9 of the Managing Contractor Contract (International).
     3. In determining a reasonable period under paragraph (a), the Contractor's Representative must not include any period of delay in respect of which the Consultant:
        1. contributed to the delay; or
        2. failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.
  2. Unilateral Extension of Time

Whether or not the Consultant has made, or is entitled to make, a claim for an extension of time under clause 8, the Contractor may (in its absolute discretion) at any time and from time to time by written notice to the Consultant, unilaterally extend any Date for Completion.

The Consultant acknowledges that:

* + 1. the Contractor is not required to exercise the Contractor's discretion under clause 8.9 for the benefit of the Consultant;
    2. clause 8.9 does not give the Consultant any rights; and
    3. the exercise or failure to exercise the Contractor's discretion under clause 8.9 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review.
  1. Acceleration
     1. The Contractor's Representative may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a date earlier than the Date for Completion (**Accelerated Date for Completion**).
     2. If a direction is given by the Contractor's Representative under paragraph (a), the Consultant must:
        1. use its best endeavours to:
           1. accelerate the performance of the Services; and
           2. otherwise do all things necessary,

to achieve Completion of the Milestone by the Accelerated Date for Completion; and

* + - 1. keep the Contractor's Representative fully and regularly informed of the progress of the Services against the Accelerated Date for Completion.
    1. The Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of complying with paragraph (b).
    2. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a direction by the Contractor's Representative under paragraph (a), other than under paragraph (c).
    3. If the Consultant does not achieve Completion of a Milestone by its Accelerated Date for Completion, the Consultant must nevertheless:
       1. use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Date for Completion; and
       2. in any event, achieve Completion of the Milestone no later than its Date for Completion.

1. PLANNING PHASE AND DELIVERY PHASE

Clause 9 applies unless the Subcontract Particulars state that it does not apply.

* 1. Planning Phase and Delivery Phase
     1. The Consultant acknowledges and agrees that the Contractor has divided the Services into two distinct phases, being the:
        1. Planning Phase; and
        2. subject to this clause 9, the Delivery Phase.
     2. The Consultant acknowledges and agrees that the purpose of this division is to:
        1. allow for various departmental, government, parliamentary and other approvals required for the MCCI Works to be achieved;
        2. enable the Contractor to be satisfied (in its absolute discretion) that it will maximise value for money for the Commonwealth and the Contractor to have the Consultant proceed with the Delivery Phase Services; and
        3. give the Contractor an opportunity to elect (in its absolute discretion) not to proceed with the Consultant to the Delivery Phase.
     3. The Consultant acknowledges and agrees that, as a result of the matters described in paragraph (b):
        1. there may not be a Delivery Phase;
        2. even if there is Delivery Phase, the Consultant may not be engaged to carry out the Delivery Phase Services; and
        3. there may be periods of inactivity of various durations in and between the Planning Phase and Delivery Phase,

whether as a result of a delay in any notice or direction under clause 9.2, 9.3, 9.4 or otherwise. Such periods of inactivity will not amount to a suspension under clause 8.4 and, to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with such periods of inactivity.

* + 1. Notwithstanding paragraph (c)(iii), the Consultant must ensure that, in and between the Planning Phase and Delivery Phase (if any), it retains appropriate, suitably qualified personnel available to perform the Services required by the Contractor.
  1. Updated Delivery Phase Fee Proposal
     1. Prior to the Date for Delivery Phase Agreement, the Consultant must prepare and submit to the Contractor's Representative for approval an Updated Delivery Phase Fee Proposal for the Delivery Phase Services, which is based on the Delivery Phase Fee Proposal and must, as a minimum:
        1. include a resource plan for the Delivery Phase Services, which is based on the minimum resource plan included in the Delivery Phase Fee Proposal, and identifies in detail: 
           1. the Delivery Phase Services which an expert professional provider of the Delivery Phase Services would anticipate and provide for in its resource plan for the Delivery Phase Services (including identifying in detail all changes (if any) to the Delivery Phase Services required as a result of design development, cost planning and programming carried out in the Planning Phase);
           2. all changes (if any) to the resources required for the Delivery Phase Services as a result of:

changes (if any) to the Delivery Phase Services identified in subsubparagraph A; or

otherwise, design development, cost planning and programming carried out in the Planning Phase;

* + - 1. identify in detail:
         1. proposed adjustments (if any) to the:

Indicative Delivery Phase Fee, including a detailed cost breakdown of each part or discipline of the Delivery Phase Services and all disbursements; and

Milestone Fee Payment Schedule (if a Milestone Fee Payment Schedule applies in the Delivery Phase) including, to the extent that payments will be monthly in the Delivery Phase, a detailed explanation of proposed adjustments (if any) to cashflow for the Delivery Phase (for evaluation and cost planning purposes only); and

* + - * 1. how the Consultant has calculated the adjustment (if any) to the Indicative Delivery Phase Fee and Milestone Fee Payment Schedule (if any) by reference to the Delivery Phase Fee Proposal; and
      1. be prepared having regard to all relevant considerations, including:
         1. the Delivery Phase Fee Proposal;
         2. the paramount importance to the Commonwealth and the Contractor of balancing between minimising the cost of the Services and achieving Completion (on the one hand) and optimising the level of resources provided by the Consultant for the performance of the Delivery Phase Services (on the other hand);
         3. demonstrably maximising value for money for the Commonwealth and the Contractor and complying with the Commonwealth Procurement Rules; and
         4. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subsubparagraphs A - C, which the Contractor's Representative may from time to time notify to the Consultant in writing; and
      2. include all such other matters as the Contractor's Representative may require in writing.
    1. As part of the process of preparing an Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal under paragraph (c)(i)) for the approval of the Contractor's Representative under paragraph (a), the Consultant must undertake genuine and good faith negotiations with the Contractor's Representative to reach agreement as to the matters set out in the Updated Delivery Phase Fee Proposal, including:
       1. the resource plan for the Delivery Phase Services and details contemplated in clause 9.2(a)(i);
       2. the adjustment (if any) to the Indicative Delivery Phase Fee, as a result of any design development, cost planning and programming carried out by the Consultant in the Planning Phase; and
       3. if a Fee Payment Schedule applies in the Delivery Phase, the adjustment (if any) required to the Fee Payment Schedule,

in each case having regard to the Delivery Phase Fee Proposal and, in the case of the adjustment (if any) to the Indicative Delivery Phase Fee, the Table of Variation Rates and Prices.

* + 1. The Consultant must:
       1. if any Updated Delivery Phase Fee Proposal submitted by the Consultant is rejected by the Contractor's Representative (in its absolute discretion), promptly prepare and submit a revised Updated Delivery Phase Fee Proposal; and
       2. take all possible steps necessary to ensure that the proposed Delivery Phase Fee in its Updated Delivery Phase Fee Proposal does not exceed the Indicative Delivery Phase Fee, including all such reasonable steps directed by the Contractor's Representative.
  1. Approval (or otherwise) of Updated Delivery Phase Fee Proposal and adjustment of Fees for the Delivery Phase
     1. If the Contractor's Representative (in its absolute discretion): 
        1. approves any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal) submitted by the Consultant in accordance with clause 9.2(a) or 9.2(c)(i) (as the case may be); and
        2. reaches agreement on all of the matters in clause 9.2(b),

the Contractor's Representative will:

* + - 1. record the agreement in the form of minutes set out in the Schedule of Collateral Documents (**Delivery Phase Agreement Minutes**), including:
         1. the lump sum Delivery Phase Fee;
         2. an update to Annexure 3, to provide a breakdown of the lump sum Delivery Phase Fee which:

will be solely for the purpose of assisting in administration of the Subcontract, including determining the applicable currencies for any payment of, or adjustment to, the Delivery Phase Fee under the Subcontract; and

will not limit or affect the scope of the Services or the Subcontract; and

* + - * 1. any Milestone Fee Payment Schedule for the Delivery Phase; and
      1. provide the finalised Delivery Phase Agreement Minutes to the Consultant.
    1. The Consultant acknowledges that, for the purpose of determining whether or not to approve any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal) submitted by the Consultant the:
       1. Contractor's Representative may engage a third party to perform an external audit of any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal); and
       2. Consultant must:
          1. co‑operate with the Contractor's Representative and any third parties required by the Contractor's Representative;
          2. provide such other documents and information as the Contractor's Representative may require for the purposes of such external audit under subparagraph (i); and
          3. provide such other documents and information as the Contractor's Representative may require.
    2. If the Contractor's Representative (in its absolute discretion) does not:
       1. approve any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal); or
       2. reach agreement with the Consultant on all of the matters in clause 9.2(b),

by the Date for Delivery Phase Agreement, then the Contractor may (in its absolute discretion) elect to issue a notice under clause 9.4(b).

* + 1. If the Contractor's Representative provides finalised Delivery Phase Agreement Minutes to the Consultant under paragraph (a):
       1. the Consultant must sign the Delivery Phase Agreement Minutes and return them to the Contractor's Representative by the date required by the Contractor's Representative;
       2. the Commonwealth will execute the Delivery Phase Agreement Minutes on the same day that it issues a notice under clause 9.4(a); and
       3. subject to clause 9.4, the parties' rights and obligations under the Subcontract will be subject to the matters agreed, as recorded in the Delivery Phase Agreement Minutes.
  1. Notice to Proceed (or not Proceed) with Delivery Phase Services
     1. If the Consultant has signed and returned the Delivery Phase Agreement Minutes to the Contractor's Representative under clause 9.3(d), the Contractor may (in its absolute discretion) elect to issue a notice in writing directing the Consultant to proceed with the Delivery Phase Services and the Consultant must immediately commence to perform the Delivery Phase Services.
     2. If:
        1. various departmental, government, parliamentary and other approvals required for the MCCI Works are not achieved;
        2. clause 9.3(c)(i) applies;
        3. the Contractor is not satisfied (in its absolute discretion):
           1. that it will maximise value for money for the Commonwealth and the Contractor to have the Consultant proceed with the Delivery Phase Services; or
           2. with the Services provided by the Consultant; or
        4. the Contractor has elected (in its absolute discretion) not to proceed with the Consultant to the Delivery Phase,

then the Contractor may (in its absolute discretion) elect to issue a notice in writing directing the Consultant not to proceed with the Delivery Phase Services.

* + 1. If the Contractor issues a notice under paragraph (b), the Consultant:
       1. will be entitled to payment of the Planning Phase Fee due and payable for the Planning Phase Services completed in accordance with the Subcontract before the issue of the notice;
       2. will not be entitled to:
          1. perform the Delivery Phase Services; or
          2. payment of the Delivery Phase Fee or any other portion of the Fee;
       3. to the extent permitted by law, will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the notice, the Subcontract or the Delivery Phase Services, other than for the amount payable under subparagraph (i); and
       4. must:
          1. comply with clause 19.3 and, if clause 20 applies, clause 20.4 (including by handing over to the Contractor's Representative copies of Project Documents prepared by the Consultant before the issue of the notice (whether complete or not));
          2. co‑operate with the Contractor, the Contractor's Representative and any third parties required by the Contractor's Representative;
          3. provide such other documents and information as the Contractor's Representative may require; and
          4. take all other steps necessary to ensure that the Contractor is able to re-tender or procure the performance of the Delivery Phase Services.
    2. If the Contractor issues a notice under paragraph (b), the Contractor may (in its absolute discretion):
       1. re‑tender the performance of the Delivery Phase Services (whether with or without obtaining a tender from the Consultant) or procure the performance of the Delivery Phase Services in any other manner which the Contractor may (in its absolute discretion) determine; and
       2. use the Project Documents for the purpose of re‑tendering or procuring the performance of the Delivery Phase Services under subparagraph (i).
    3. The issue of a notice under paragraph (b) will not limit or affect the Consultant's obligations or liabilities under the Subcontract nor prejudice the right of the Contractor to exercise any right or remedy (including recovery of damages, whether while electing to keep the Subcontract on foot or after termination) which it may have where the Consultant breaches the Subcontract, whether under the Subcontract or otherwise at law or in equity.
    4. The Contractor may (in its absolute discretion) at any time and from time to time unilaterally extend the Date for Delivery Phase Agreement by notice in writing to the Consultant. The Consultant acknowledges that:
       1. the Contractor is not required to exercise the Contractor's discretion under paragraph (f) for the benefit of the Consultant;
       2. paragraph (f) does not give the Consultant any rights; and
       3. the exercise or failure to exercise the Contractor's discretion under paragraph (f) is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review.

1. VariationS
   1. Variation Price Request
      1. At any time prior to completion of the Services, the Contractor's Representative may issue a document titled "**Variation Price Request**" to the Consultant which will set out details of a proposed Variation which the Contractor is considering.
      2. Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contractor's Representative), the Consultant must provide the Contractor's Representative with a written notice in which the Consultant sets out the:
         1. adjustment (if any) to the Fee to carry out the proposed Variation; and
         2. effect (if any) which the proposed Variation will have on the then current program, including each Date for Completion.
   2. Variation Order

Whether or not the Contractor's Representative has issued a Variation Price Request under clause 10.1, at any time the Contractor's Representative may at any time prior to completion of the Services instruct the Consultant to carry out a Variation by a written document titled "**Variation Order**", in which the Contractor's Representative will state one of the following:

* + 1. the proposed adjustment to the Fee set out in the Consultant's notice under clause 10.1 (if any) is agreed and the Fee will be adjusted accordingly; or
    2. any adjustment to the Fee will be determined under clauses 10.3(b) and 10.3(c).

No Variation will invalidate the Subcontract irrespective of the nature, extent or value of the work the subject of the Variation.

* 1. Valuation of Variation

The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Contractor's Representative:

* + 1. as agreed under clause 10.2(a);
    2. if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Contractor's Representative determines that those rates and prices are applicable to or it is reasonable to use them for valuing the Variation; or
    3. to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
       1. agreed between the parties; or
       2. failing agreement, determined by the Contractor's Representative.
  1. Table of Variation Rates and Prices

Where the rates and prices in the Table of Variation Rates and Prices are used under clause 10.3(b), the rates and prices will be deemed to cover:

* + 1. all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Consultant's obligations under the Subcontract; and
    2. all costs which will be incurred by the Consultant arising out of or in connection with the Variation.
  1. Omissions

If a Variation the subject of a direction by the Contractor's Representative omits any part of the Services, the Contractor may thereafter carry out this omitted work either itself or by engaging Other Contractors.

1. Payment
   1. Payment Obligation

Subject to clause 11.11 and to any other right to set‑off which the Contractor may have, the Contractor will pay the Consultant:

* + 1. the Fee; and
    2. any other amounts which are payable by the Contractor to the Consultant under the Subcontract.
  1. Payment Claims

The Consultant must give the Contractor's Representative claims for payment on account of the Fee and all other amounts then payable by the Contractor to the Consultant under the Subcontract:

* + 1. at the times specified in the Subcontract Particulars until completion of the Services or termination of the Subcontract (whichever is earlier);
    2. unless terminated earlier, after completion of the Services, within the time required by clause 11.7;
    3. in the format set out in the Schedule of Collateral Documents or in any other format which the Contractor's Representative reasonably requires;
    4. which are based on the Table of Variation Rates and Prices to the extent it is relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Fee, including the currency or currencies (as applicable) in which it is claimed (which currencies must be in accordance with the breakdown in Annexure 3 (if any)); and
       2. all other amounts then payable by the Contractor to the Consultant under the Subcontract; and
    6. which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
       1. to enable the Contractor's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Contractor to the Consultant under the Subcontract; and
       2. including any such documentation or information which the Contractor's Representative may by written notice from time to time require the Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
  1. Certification to Accompany Submission of Payment Claim

The Consultant must, with each payment claim submitted under clause 11.2, certify to the Contractor's Representative that it has complied with:

* + 1. if a request has been made under clause 2.12, clause 2.12;
    2. clause 5.1;
    3. clause 6.13;
    4. clause 6.15;
    5. clause 11.12; and
    6. clause 11.16.
  1. Payment Statement

The Contractor's Representative:

* + 1. must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 11.2; or
    2. may, if the Consultant fails to submit any such claim in accordance with clause 11.2, at any time,

give the Consultant (with a copy to the Contractor), on behalf of the Contractor, a payment statement which is in the form set out in the Schedule of Collateral Documents and which states:

* + 1. the payment claim to which it relates (if any);
    2. the amount previously paid to the Consultant on account of the Fee and otherwise in accordance with the Subcontract;
    3. the amount (if any) which the Contractor's Representative believes to be then payable by the Contractor to the Consultant on account of the Fee and otherwise in accordance with the Subcontract and which the Contractor proposes to pay to the Consultant; and
    4. if the amount in paragraph (e) is less than the amount claimed in the payment claim:
       1. the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
       2. if the reason for the difference is that the Contractor has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contractor's Representative will not constitute:

* + 1. approval of any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 11.2 and 11.3 in relation to any payment claim other than to the extent (if any) to which the Contractor expressly waives such requirements in respect of the payment claim the subject of the payment statement;
    3. an admission or evidence of the value of the Services or that the Services comply with the Subcontract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Contractor or the Contractor's Representative of the Consultant's performance or compliance with the Subcontract.
  1. Payment
     1. Within 3 business days of the Consultant receiving a payment statement under clause 11.4, the Consultant must give the Contractor's Representative a tax invoice for the amount stated as then payable by the Contractor to the Consultant in the payment statement.
     2. Subject to clause 11.14(c), within the number of business days specified in the Subcontract Particulars of the Contractor’s Representative receiving a tax invoice from the Consultant under and in accordance with paragraph (a), the Contractor will pay the Consultant the amount stated as then payable by the Contractor to the Consultant in the relevant payment statement given under clause 11.4.
  2. Payment on Account

Any payment of moneys under clause 11.5 will not constitute:

* + 1. approval of the Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 11.2 and 11.3 in relation to any payment claim other than to the extent (if any) to which the Contractor expressly waives such requirements in respect of the payment claim the subject of the payment;
    3. an admission or evidence of the value of the Services or that the Services comply with the Subcontract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Contractor or the Contractor's Representative of the Consultant's performance or compliance with the Subcontract,

but is only to be taken as payment on account.

* 1. Completion Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor's Representative) of completion of the Services, the Consultant must give the Contractor's Representative:
        1. a payment claim which complies with clause 11.2 and which must include all amounts which the Consultant claims from the Contractor on account of the Fee and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Consultant claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Services or the Subcontract which occurred prior to completion of the Services.

* + 1. The payment claim and notice required under paragraph (a) are in addition to the other notices which the Consultant must give to the Contractor's Representative under the Subcontract in order to preserve its entitlements to make any such Claims.
    2. Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by clause 14.5.
  1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 11.7 has passed, the Consultant releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Services or the Subcontract which occurred prior to completion of the Services, except any Claim:

* + 1. included in a payment claim or notice under clause 11.7 which is given to the Contractor's Representative within the time required by, and in accordance with the terms of, clause 11.7; or
    2. directly arising as a result of a Claim made by a third party against the Consultant which could not have been reasonably foreseen by the Consultant at the time of submitting the payment claim and notice under clause 11.7.
  1. Interest
     1. The Contractor will pay simple interest at the rate specified in the Subcontract Particulars on any:
        1. amount stated as then payable by the Contractor by the Contractor's Representative in a payment statement under clause 11.4, but which is not paid by the Contractor within the time required by the Subcontract; and
        2. damages.
     2. This will be the Consultant's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
  2. Correction of Payment Statements

The Contractor's Representative may, in any payment statement:

* + 1. correct any error in any previous payment statement; and
    2. modify any previous payment statement,

given by the Contractor's Representative.

* 1. Right of Set-Off

The Contractor may:

* + 1. deduct from moneys otherwise due to the Consultant:
       1. any debt or other moneys due from the Consultant to the Contractor; and
       2. any claim to money which the Contractor asserts in good faith against the Consultant whether for damages or otherwise under the Subcontract or otherwise at law or in equity arising out of or in connection with the Services or the MCCI Works; and
    2. without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any amount which may be or thereafter become payable to the Consultant by the Contractor in respect of any Variation the subject of a Variation Order under clause 10.2.
  1. Payment of Workers

The Consultant must with each payment claim submitted under clause 11.2 provide the Contractor's Representative with a duly completed declaration in the form set out in the payment claim (in the format set out in the Schedule of Collateral Documents) for each applicable jurisdiction in which the Services were carried out during the relevant period.

* 1. General Liability for Taxes

Subject to clause 11.14, unless otherwise stated in the Subcontract Particulars, as between the Contractor and the Consultant, the Consultant bears the risk of, and must pay, all Taxes incurred or imposed in connection with the Services and this Subcontract, and the Subcontract Price is not subject to adjustment or gross up on account of any Tax.

The Consultant must indemnify the Contractor against any loss, damage or liability arising out of or in connection with Taxes which the Consultant is required to pay under this clause 11.13.

* 1. GST
     1. Subject to paragraph (b), where any supply arises out of or in connection with the Subcontract or the Services for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
     2. Where an amount is payable to the Supplier for a supply arising out of or in connection with the Subcontract or the Services which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
     3. As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
     4. If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
        1. is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
        2. is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
     5. In clause 11.13, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Accounting Records

The Consultant must keep accurate and up to date accounting records including books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or papers which show all details in relation to:

* + 1. all Variations; and
    2. without limiting paragraph (a), all amounts paid to the Consultant on account of the Fee and otherwise in accordance with the Subcontract.
  1. Cost Allocation Advice

Without limiting clause 11.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Consultant must with each payment claim under clause 11.2, provide the Contractor's Representative with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all Services completed since the Contractor's previous payment to the Consultant.

* 1. Applicable Currencies

Where the Fee is comprised of more than one currency:

* + 1. subject to paragraph (b), where the Subcontract provides for an adjustment to the Fee, any agreement between the Contractor's Representative and the Consultant or determination by the Contractor's Representative in respect of that adjustment must be made to the extent reasonably practicable in the relevant currency or currencies having regard to Annexure 3 and, if relevant, the location from which the Services are or will be provided; and
    2. to the extent that an adjustment to the Fee is to be determined by the Contractor's Representative, and the Contractor's Representative considers that it is not reasonably practicable to determine the adjustment having regard to Annexure 3 or the location from which the Services are or will be provided, the Contractor's Representative shall determine the adjustment in Australian dollars.
  1. Milestone Fee Payment Schedule

If the Fee is adjusted under the Subcontract and a Milestone Fee Payment Schedule applies, the Milestone Fee Payment Schedule will be adjusted:

* + 1. as agreed between the parties; or
    2. failing agreement, as determined by the Contractor's Representative.

1. Termination
   1. Preservation of Rights

Subject to clause 12.6, nothing in clause 12 or that the Contractor does or fails to do pursuant to clause 12 will prejudice any right or remedy of the Contractor (including the recovery of damages) where the Consultant breaches (including repudiates) the Subcontract.

* 1. Consultant Default

The Contractor may give a written notice under clause 12.3 to the Consultant if the Consultant is in breach of the Subcontract.

* 1. Contents of Notice of Default

A notice under clause 12.3 must state:

* + 1. that it is a notice under clause 12.3;
    2. the failure or breach relied upon; and
    3. that the Contractor requires the Consultant to remedy the failure or breach within the number of days specified in the Subcontract Particulars of receiving the notice.
  1. Termination for Insolvency or Breach

If:

* + 1. an Insolvency Event occurs to the Consultant or, where the Consultant comprises two or more persons, to any one of those persons;
    2. the Consultant does not remedy a failure or breach the subject of a notice under clause 12.3 within the number of days specified in the Subcontract Particulars of receiving the notice under clause 12.3;
    3. a direction has been given under clause 7.2, the Consultant fails to comply with clause 7.3; or
    4. the Consultant fails to comply with:
       1. clause 19; or
       2. if clause 20 applies, clause 20,

then the Contractor may by written notice to the Consultant immediately (and without having to first give a notice under clause 12.3 (except in the case of paragraph (b)) terminate the Subcontract.

* 1. Contractor's Entitlements after Termination by Contractor

Subject to clause 12.1, if the Contractor terminates the Subcontract under clause 12.4 or if the Consultant repudiates the Subcontract and the Contractor otherwise terminates the Subcontract:

* + 1. the Contractor will:
       1. not be obliged to make any further payments to the Consultant, including any amount the subject of a payment claim under clause 11.2 or a payment statement under clause 11.4; and
       2. be entitled to recover from the Consultant all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with such termination; and
    2. the Consultant must comply with clause 19.3, and if clause 20 applies, clause 20.4 (including by handing over to the Contractor's Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

Clause 12.5 will survive the termination of the Subcontract.

* 1. Consultant's Entitlements after Termination by Consultant

If the Contractor repudiates the Subcontract and the Consultant terminates the Subcontract, the Consultant will:

* + 1. be entitled to payment of an amount determined in accordance with clause 12.8 as if the Contractor had terminated the Subcontract under clause 12.7; and
    2. not be entitled to a quantum meruit.

Clause 12.6 will survive the termination of the Subcontract.

* 1. Termination for Convenience

Without prejudice to any right or remedy of the Contractor under the Subcontract or otherwise at law or in equity, the Commonwealth may:

* + 1. at any time for its sole convenience, and for any reason, by written notice to the Consultant terminate the Subcontract effective from the time stated in the Commonwealth's notice or if no such time is stated, at the time the notice is given to the Consultant; and
    2. thereafter (at its absolute discretion), complete the uncompleted part of the Services either itself or by engaging Other Contractors.
  1. Consultant's Entitlements after Termination for Convenience by Contractor
     1. If the Contractor terminates the Subcontract under clause 12.7, the Consultant:
        1. will be entitled to payment of the following amounts, as determined by the Contractor's Representative:
           1. for Services carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
           2. the cost of goods or materials reasonably ordered by the Consultant for the Services for which the Consultant is legally bound to pay provided that:

the value of the goods or materials is not included in the amount payable under subsubparagraph A; and

title in the goods and materials will vest in the Contractor upon payment; and

* + - 1. must:
         1. take all steps possible to mitigate the costs referred to in subparagraph (i)B; and
         2. comply with clause 19.3 and, if clause 20 applies, clause 20.4 (including by handing over to the Contractor's Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).
    1. The amounts to which the Consultant is entitled under paragraph (a)(i) will be a limitation upon the Contractor's liability to the Consultant arising out of or in connection with the termination of the Subcontract (whether under clause 12.7 or deemed to be under clause 12.7 through the operation of clause 12.6(a)) and, to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the termination of the Subcontract, other than for the amount payable under clause 12.8.
    2. Clause 12.8 will survive the termination of the Subcontract by the Contractor under clause 12.7 or by the Consultant following repudiation by the Contractor.
  1. Termination of Managing Contractor Contract (International)
     1. If the Managing Contractor Contract (International) is terminated at any time for any reason, the Contractor may:
        1. terminate the Subcontract by notice in writing to the Consultant; or
        2. without the consent of the Consultant, novate the Subcontract to the Commonwealth or a person nominated by the Commonwealth.
     2. If the Subcontract is novated under paragraph (a)(ii), the Consultant must upon demand by the Contractor execute any instrument required by the Contractor to give effect to the novation.
  2. Consequences Following Managing Contractor Contract (International) Termination
     1. If the Subcontract is terminated under clause 12.9(a)(i), then the Consultant:
        1. will be entitled to the payment for work carried out prior to the date of termination in the amount (as determined by the Contractor's Representative) which would have been payable if the Subcontract had not been terminated and the Consultant submitted a payment claim for work carried out to the date of termination; and
        2. must comply with clause 19.3 and, if clause 20 applies, clause 20.4 (including by handing over to the Contractor's Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).
     2. The amounts to which the Consultant is entitled under clause 12.10 will be a limitation upon the Contractor's liability to the Consultant arising out of or in connection with the termination of the Subcontract under clause 12.9 and the Consultant will not be entitled to make a Claim against the Contractor arising out of or in connection with the termination of the Subcontract other than for the amount payable under paragraph (a)(i).
     3. Clauses 12.9 and 12.10 will survive termination of the Subcontract by the Contractor under clause 12.9.

1. DisputeS
   1. Notice of Dispute
      1. If a dispute or difference arises between the Consultant and the Contractor or between the Consultant and the Contractor's Representative in respect of any fact, matter or thing arising out of or in connection with the Services, the MCCI Works or the Subcontract, or either party's conduct before the Subcontract, the dispute or difference must be determined in accordance with the procedure in clause 13.
      2. Where such a dispute or difference arises, either party may give a notice in writing to the Contractor's Representative and the other party specifying:
         1. the dispute or difference;
         2. particulars of the party's reasons for being dissatisfied; and
         3. the position which the party believes is correct.
   2. Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contractor's Representative under one of the clauses specified in the Subcontract Particulars and is not resolved within 14 days after a notice is given under clause 13.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 13.2 is to be conducted by:
        1. the independent industry expert specified in the Subcontract Particulars; or
        2. where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Subcontract Particulars.
     2. If the expert appointed under clause 13.3:
        1. is unavailable;
        2. declines to act;
        3. does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
        4. does not enter into the Expert Determination Agreement or other agreement in accordance with clause 13.9(b) within 14 days of his or her appointment under paragraph (a); or
        5. does not make a determination within the time required by clause 13.8,

the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).

* + 1. If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.
  1. Not Arbitration

An expert determination conducted under clause 13 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

* 1. Procedure for Determination

The expert will:

* + 1. act as an expert and not as an arbitrator;
    2. proceed in any manner he or she thinks fit;
    3. conduct any investigation which he or she considers necessary to resolve the dispute or difference;
    4. examine such documents, and interview such persons, as he or she may require; and
    5. make such directions for the conduct of the determination as he or she considers necessary.
  1. Disclosure of Interest

The expert must:

* + 1. disclose to the parties any:
       1. interest he or she has in the outcome of the determination;
       2. conflict of interest;
       3. conflict of duty;
       4. personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
       5. other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
    2. not communicate with one party to the determination without the knowledge of the other.
  1. Costs

Each party will:

* + 1. bear its own costs in respect of any expert determination; and
    2. pay one‑half of the expert's costs.
  1. Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 13 within 28 days from the acceptance by the expert of his or her appointment.

* 1. Expert Determination Agreement
     1. The expert will not be liable to the parties arising out of or in connection with the expert determination process, except in the case of fraud.
     2. The parties must enter into the Expert Determination Agreement with the appointed expert or an agreement with the appointed expert on such other terms as the parties and the expert may agree.
  2. Determination of Expert

The determination of the expert:

* + 1. must be in writing;
    2. will be substituted for the relevant direction of the Contractor's Representative unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 13.11 and 13.12, any such appeal will be by way of a hearing de novo; and
    3. will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.
  1. Executive Negotiation
     1. If:
        1. clause 13.2 applies, and a notice of appeal is given under clause 13.10; or
        2. clause 13.2 does not apply,

the dispute or difference is to be referred to the Executive Negotiators.

* + 1. The Executive Negotiators must within:
       1. 21 days of:
          1. if the dispute or difference is not one which is to be referred to expert determination under clause 13.2, the notice of dispute given under clause 13.1; or
          2. otherwise, the notice of appeal given under clause 13.10; or
       2. such longer period of time as the Executive Negotiators may agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

* 1. Arbitration Agreement

If, within:

* + 1. 21 days of:
       1. if the dispute or difference is not one which is to be referred to expert determination under clause 13.2, the notice of dispute given under clause 13.1; or
       2. otherwise, the notice of appeal given under clause 13.10; or
    2. such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

* + 1. or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
    2. cannot resolve the dispute or difference; or
    3. have not reached agreement upon a procedure to resolve the dispute or difference,

the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

* 1. Arbitration
     1. Arbitration pursuant to clause 13.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 13.13.
     2. The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
     3. The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
     4. The parties agree that:
        1. they have entered into the arbitration agreement under clause 13 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to clause 13.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
        3. in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
     5. One arbitrator will be appointed.
     6. All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
     7. Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
     8. The oral hearing will be conducted as follows:
        1. the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
        2. the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
        3. oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
        4. the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
        5. not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
        6. in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
     9. Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.
  2. MCCI Dispute Procedures

Under the Managing Contractor Contract (International), disputes and differences between the Contractor and the Commonwealth and the Contractor and the MCCI Contract Administrator are required to be determined in accordance with certain procedures which include expert determination, executive negotiation and arbitration.

Within 7 days of the Award Date, the Contractor must provide the Consultant with a copy of the provisions in the Managing Contractor Contract (International) setting out the MCCI Dispute Procedures.

The Consultant agrees that certain disputes and differences of the kind referred to in clause 13.1 will be determined under the MCCI Dispute Procedures as set out in clauses 13.15 to 13.17 in lieu of the procedures set out in clauses 13.2 to 13.13.

* 1. MCCI Disputes

If:

* + 1. the Consultant gives a notice under clause 13.1;
    2. the dispute or difference relates, in whole or in part, to either:
       1. an alleged breach of the Subcontract by the Contractor, which, assuming the breach has actually occurred, has been caused, or contributed to, by an act or omission (including breach of the Managing Contractor Contract (International)) of the Commonwealth; or
       2. a direction given by the Contractor's Representative relating to a particular subject matter, in circumstances where a direction has been given by the MCCI Contract Administrator to the Contractor relating, in whole or in part, to that subject matter; and
    3. the Contractor is not barred from making, or has not waived its entitlement to make, a Claim against the Commonwealth in respect of the act, omission or direction,

the Contractor may within 7 days of receipt of the notice give a notice to the Consultant stating that clause 13.16 applies in relation to the dispute or difference.

* 1. Procedure for MCCI Disputes

If a notice is given under clause 13.15 stating that clause 13.16 applies:

* + 1. subject to clause 13.17, the Contractor must:
       1. take such steps as are reasonably necessary to progress the Consultant's dispute or difference under the MCCI Dispute Procedures;
       2. regularly consult with the Consultant to ascertain its views as to the progression of the Consultant's dispute or difference; and
       3. use its best endeavours to ensure that the Consultant's views, where relevant, are put to any expert or arbitrator appointed under the MCCI Dispute Procedures or any court which may hear any matter relating to the Consultant's dispute or difference as between the Contractor and the Commonwealth; and
    2. the Consultant must:
       1. comply with the Contractor's reasonable requirements relating to the conduct of the MCCI Dispute Procedures or any relevant court proceedings insofar as they relate to the Consultant's dispute or difference;
       2. indemnify the Contractor against all costs and expenses incurred by the Contractor in complying with paragraph (a); and
       3. from time to time as required by the Contractor, lodge with the Contractor reasonable cash or other security against the costs and expenses referred to in paragraph (b)(ii).
  1. Further Procedures

Where clause 13.16 applies, the following provisions also apply:

* + 1. the Contractor must not without the prior consent of the Consultant agree to a settlement with the Commonwealth or any other relevant person of the Consultant's dispute or difference; and
    2. where a determination is made by an expert, an arbitrator or a court in relation to the Consultant's dispute or difference as between the Commonwealth and Contractor:
       1. if the determination is not final and binding upon the Contractor:
          1. the Contractor is not obliged to appeal against that determination unless the Consultant gives a notice to the Contractor requiring such an appeal:

within such time as to reasonably enable the Contractor to comply with any relevant requirements relating to the time for commencement of such appeals; and

which contains any particulars required to reasonably enable the Contractor to progress the appeal in accordance with any relevant requirements; and

* + - * 1. the parties will be bound by and are to give effect to the determination including any findings as to law or fact unless and until it is reversed, overturned or otherwise changed on appeal as between the Commonwealth and the Contractor; and
      1. if the determination is final and binding upon the Contractor, the parties:
         1. will be bound by and are to give effect to the determination including any findings as to law or fact; and
         2. release each other from any Claim which they may have arising out of or in connection with the subject matter of the Consultant's dispute or difference insofar as the determination relates to the dispute or difference.
  1. Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 13.18.

* 1. Continuation of Services

Despite the existence of a dispute or difference between the parties the Consultant must:

* + 1. continue to carry out the Services; and
    2. otherwise comply with its obligations under the Subcontract.
  1. Submission to Jurisdiction

Subject to and without derogating from the other provisions of clause 13, the parties submit to the non-exclusive jurisdiction of the courts of Australia (including the courts of any State, Territory or the Commonwealth) and waive the right to object to the hearing of any proceedings before such courts on the grounds of absence of jurisdiction.

1. Notices
   1. Notice of Variation

If a direction by the Contractor's Representative, other than a Variation Order under clause 10.2, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Contractor arising out of or in connection with the direction:

* + 1. within 7 days of receiving the direction and before commencing any services relating to the subject matter of the direction, give notice to the Contractor's Representative that it considers the direction constitutes or involves a Variation;
    2. within 21 days after giving the notice under paragraph (a), submit a written claim to the Contractor's Representative which includes the details required by clause 14.3(b); and
    3. continue to carry out the Services in accordance with the Subcontract and all directions of the Contractor's Representative, including any direction in respect of which notice has been given under clause 14.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 8.6;
    2. payment under clause 11 of the original Fee specified in the Subcontract Particulars;
    3. a Variation instructed in accordance with clause 10.2 or to which clause 14.1 applies; or
    4. contribution or indemnity for loss or damage caused or contributed to by the negligence of the Contractor where a third party (other than a party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

the Consultant must give the Contractor's Representative the notices required by clause 14.3 if it wishes to make a Claim against the Contractor in respect of any direction by the Contractor's Representative or any other fact, matter or thing (including a breach of the Subcontract by the Contractor) under, arising out of or in connection with the Services or the Subcontract, including anything in respect of which:

* + 1. it is otherwise given an express entitlement under the Subcontract; or
    2. the Subcontract expressly provides that:
       1. amounts are to be added to the Fee; or
       2. otherwise the Fee will be increased or adjusted,

as determined by the Contractor's Representative.

* 1. Prescribed Notices

The notices referred to in clause 14.2 are:

* + 1. a written notice within 21 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
       1. that the Consultant proposes to make a Claim; and
       2. the direction or other fact, matter or thing upon which the Claim will be based; and
    2. a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
       1. detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
       2. the legal basis for the Claim, whether based on a term of the Subcontract or otherwise, and if based on a term of the Subcontract, clearly identifying the specific term;
       3. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
       4. details of the amount claimed and how it has been calculated in sufficient detail to permit verification.
  1. Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 14.1(b) or clause 14.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by clause 14.3(b) every 28 days after the written claim under clause 14.1(b) or 14.3(b)(as the case may be) was submitted or given to the Contractor's Representative, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

* 1. Time Bar

If the Consultant fails to comply with clause 14.1, 14.2, 14.3 or 14.4:

* + 1. the Contractor will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Consultant; and
    2. the Consultant will be absolutely barred from making any Claim against the Contractor,

arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 14.1 or 14.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 14.1 ‑ 14.5 will limit the operation or effect of any other provision of the Subcontract which requires the Consultant to give notice to the Contractor's Representative in order to preserve an entitlement to make a Claim against the Contractor.

* 1. Address for Service

Any notice to be given or served under or arising out of a provision of the Subcontract must:

* + 1. be in writing;
    2. be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 12 and 13 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
       1. specified in the Subcontract Particulars; or
       2. last notified in writing to the party giving or serving the notice,

for the party to whom or upon which the notice is to be given or served;

* + 1. be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
    2. in the case of notices sent by email:
       1. be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
       2. include the words "This is a notice under clause 14.7 of the Subcontract" in the subject field of the email.
  1. Receipt of Notices
     1. Subject to paragraph (b), a notice given or served in accordance with clause 14.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
        1. delivery by hand, on delivery;
        2. prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
        3. prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
        4. email, the earlier of:
           1. delivery to the email address to which it was sent; or
           2. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
     2. In the case of notices under clauses 12 and 13, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 14.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of the:
        1. date the notice sent by email is taken to be received; or
        2. date the notice delivered by hand or sent by prepaid express post is taken to be received,

as determined in accordance with paragraph (a).

1. ESD aND WOL and the HOTO Process
   1. General

Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must prepare the Design Documentation and carry out the Services in a manner which maximises the achievement of the ESD Principles and the WOL Objectives.

* 1. Consultation

The Consultant must meet with the Contractor's Representative, the Contractor, the MCCI Contract Administrator, the Commonwealth and Other Contractors at such times as the Contractor's Representative may require from time to time to:

* + 1. review the progress of the Design Documentation and the Services against the ESD Principles and the WOL Objectives; and
    2. consult with the Contractor's Representative, the Contractor, the MCCI Contract Administrator, the Commonwealth and Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the ESD Principles and the WOL Objectives.
  1. ESD and WOL Proposals

Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must at all times in preparing the Design Documentation and otherwise carrying out the Services:

* + 1. use its best endeavours to identify and recommend to the Contractor's Representative, reasonably available proposals for maximising the achievement of the ESD Principles and the WOL Objectives; and
    2. consult with the Contractor's Representative, the Contractor, the MCCI Contract Administrator, the Commonwealth and Other Contractors as to:
       1. proposals which it is considering making under paragraph (a); and
       2. possible proposals under paragraph (a) identified by the Contractor.
  1. Post Occupancy Evaluation

The Contractor's Representative may:

* + 1. at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the MCCI Works; and
    2. without limiting paragraph (a):
       1. inspect the MCCI Works to review the extent to which the Consultant has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the MCCI Works; and
       2. issue a report to the Commonwealth, the Contractor and the Consultant:
          1. stating the extent to which the Consultant has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the MCCI Works; and
          2. containing a list of any aspects of the MCCI Works which do not conform with the requirements of the Managing Contractor Contract (International), comparing the actual resource intensity performance to the predicted design performance target.

The Consultant:

* + 1. must consult with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor's Representative and Other Contractors, and must provide such other assistance as is necessary, for the purposes of the Contractor's Representative carrying out the requirements in paragraphs (a) and (b); and
    2. acknowledges and agrees that the Commonwealth and the Contractor may take the results of the post occupancy evaluation into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
  1. Rights and Obligations Not Affected

Neither the Contractor's rights or remedies, nor the Consultant's obligations under the Subcontract or otherwise at law or in equity, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor's Representative by clause 15 or the failure by the Contractor or the Contractor's Representative to exercise any such rights;
    2. the obligations imposed upon the Consultant by clause 15 or the Consultant's compliance with those obligations; or
    3. any direction of the Contractor's Representative under or purported to be given under the Subcontract, including any comment or direction upon or review, acceptance or rejection of:
       1. any advice, recommendation or other assistance provided by the Consultant under clause 15; or
       2. any post occupancy evaluation carried out (including any report prepared and finalised) under clause 15.4.

1. General
   1. Workplace Gender Equality

The Consultant must comply with its obligations (if any) under the *Workplace Gender Equality Act 2012* (Cth).

* 1. Privacy
     1. The Consultant must:
        1. comply with its obligations under the Privacy Act;
        2. comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Subcontract, as if it were an agency as defined in the Privacy Act;
        3. use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract only for the purposes of fulfilling its obligations under the Subcontract;
        4. not disclose Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract without the prior written approval of the Contractor's Representative;
        5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contractor's Representative;
        6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contractor's Representative in relation to the management of Personal Information in connection with the Subcontract;
        7. ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
        8. comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
        9. ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract are, at the expiration or earlier termination of the Subcontract, at the Contractor's Representative's election, to be either returned to the Contractor or deleted or destroyed in the presence of a person duly authorised by the Contractor's Representative to oversee such deletion or destruction;
        10. agree to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
        11. not use Personal Information collected by the Consultant for the purposes of, under, arising out of or in connection with the Subcontract for, or in any way relating to, any direct marketing purpose; and
        12. indemnify the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
            1. a breach of the obligations of the Consultant under clause 16.2;
            2. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Consultant; or
            3. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Consultant in breach of an obligation of confidence.
     2. For the purposes of paragraph (a)(xii), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Contractor to settle a complaint arising out of or in connection with a breach of clause 16.2.
     3. The Consultant must immediately notify the Contractor in writing if the Consultant:
        1. becomes aware of a breach of the obligations under paragraph (a);
        2. becomes aware that a disclosure of Personal Information may be required by law; or
        3. is approached or contacted by the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     4. The Consultant acknowledges that, in addition to the requirements of clause 16.2, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
     5. Nothing in clause 16.2 limits any of the Consultant's obligations under the Subcontract or otherwise at law or in equity.
     6. In clause 16.2, **received** includes collected.
  2. Moral Rights
     1. To the extent permitted by law, the Consultant:
        1. must not, and must take all reasonable steps to ensure that its directors, other officers and employees do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of the Project Documents or the MCCI Works by:
           1. the Contractor;
           2. any third party to whom the Contractor sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Project Documents or the MCCI Works (Sub‑Licensee);
           3. any third party to whom the Contractor assigns any Intellectual Property Rights in the Project Documents or the MCCI Works (Assignee); or
           4. any Other Contractors;
        2. without limiting subparagraph (i), consents to any of the Contractor, Other Contractors, Sub-Licensees and Assignees:
           1. failing to acknowledge or attribute the Consultant's or any other person's authorship of the Project Documents or the MCCI Works;
           2. falsely attributing authorship of the Project Documents or the MCCI Works; and
           3. making any modification, variation or amendment of any nature whatsoever to the Project Documents or the MCCI Works, whether or not:

it results in a material distortion of or destruction or mutilation of the Project Documents or the MCCI Works; or

it is prejudicial to the honour or reputation of the Consultant or any other author of the Project Documents or the MCCI Works; and

* + - 1. without limiting subparagraphs (i) and (ii), consents to any of the Contractor or Other Contractors, Sub-Licensees and Assignees:
         1. using the Project Documents or the MCCI Works other than for the purpose for which it was intended at the time the Project Document was or the MCCI Works were created;
         2. altering the Project Documents or the MCCI Works by adding to or removing elements from, or rearranging elements of, the Project Documents or the MCCI Works, including by combining elements of the Project Documents or the MCCI Works with any other material; or
         3. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including the MCCI Works) whether or not it incorporates, is based on, or is constructed in accordance with, the Project Documents.
    1. The Consultant must:
       1. in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of a Project Document or any part of the MCCI Works, obtain from that person, before he or she creates a Project Document or any part of the MCCI Works, a duly completed and executed Moral Rights Consent;
       2. ensure that no person creates a Project Document or any part of the MCCI Works before that person has duly completed and executed a Moral Rights Consent;
       3. not coerce any person to complete or execute a Moral Rights Consent;
       4. pay to each person who executes a Moral Rights Consent in accordance with clause 16.3 the sum of $1 on behalf of the Contractor;
       5. within 7 days of a Moral Rights Consent having been executed in accordance with clause 16.3, provide the Moral Rights Consent to the Contractor's Representative; and
       6. maintain an up-to-date record of the names and addresses of each person who is an author of Project Documents or any part of the MCCI Works and the Project Documents or any part of the MCCI Works of which each such person is an author, and provide a copy of the record to the Contractor's Representative whenever it is updated.
  1. Freedom of Information
     1. The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
     2. The Consultant acknowledges that Commonwealth requirements and policies will require certain identifying details of the Subcontract to be made available to the public via the internet.
  2. Long Service Leave

Clause 16.5 only applies if the Long Service Leave Legislation applies to the Services.

* + 1. Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must comply with its obligations under the Long Service Leave Legislation.
    2. If required by the Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
    3. Any amount paid by the Consultant under paragraph (b) is deemed to be included in the Fee and the Consultant will have no Claim against the Contractor arising out of or in connection with its obligations under clause 16.5 or the Long Service Leave Legislation.
  1. Assignment
     1. The Consultant must not, without the prior written approval of the Contractor and except on such terms and conditions notified by the Contractor, assign, mortgage, charge or encumber the Subcontract or any part or any benefit or moneys or interest under the Subcontract.
     2. For the purpose of but without limiting paragraph (a), an assignment of the Subcontract will be deemed to have occurred where there has been a Change of Control.
  2. Publicity

Without limiting clause 19 and, if clause 20 applies, clause 20, the Consultant must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Services or the MCCI Works for publication in the media without the prior written approval of the MCCI Contract Administrator; and
    2. refer any enquiries from the media concerning the Services or the MCCI Works to the Contractor's Representative.
  1. Shadow Economy Procurement Connected Policy
     1. Clause 16.8 does apply unless the Subcontract Particulars state that it does not apply.
     2. The Consultant:
        1. warrants that at the Award Date it holds a valid and satisfactory STR; and
        2. must hold a valid and satisfactory STR at all times during the Services and, on request by the Contractor's Representative, provide to the Contractor's Representative a copy of any such STR.
     3. The Consultant must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Consultant becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Consultant is:** | **Additional STRs required:** |
| * + 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Subcontract. |
| * + 1. a trustee acting in its capacity as trustee of a trust | a satisfactory and valid STR in respect of any new trustee appointed to the trust. |
| * + 1. a joint venture participant | a satisfactory and valid STR in respect of:  (i) any new participant in the joint venture; and  (ii) any new joint venture operator if the new operator is not already a participant in the joint venture. |
| * + 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of any new head company of the Consolidated Group. |
| * + 1. a member of a GST Group | a satisfactory and valid STR in respect of any new representative for the GST Group. |

* + 1. The Consultant must provide the Contractor with copies of the STRs referred to in paragraph (c) within 5 business days after a written request by the Contractor.
    2. For the purposes of the Subcontract, an STR is taken to be:
       1. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
       2. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

1. Fraud Control, Anti-Corruption and Modern Slavery
   1. Fraud Control and Anti-Bribery and Corruption
      1. Without limiting the Consultant's other obligations under the Subcontract, the Consultant must:
         1. comply, and use all reasonable endeavours to ensure that its officers, employees and agents comply, with all Anti-Corruption Laws;
         2. not, and must use all reasonable endeavours to ensure that its officers, employees and agents do not, engage in Fraud;
         3. proactively take all necessary measures to prevent, detect and investigate any:
            1. Fraud; and
            2. breach of any Anti-Corruption Laws,

in connection with the Subcontract or the Services (including all measures directed by the Contractor's Representative);

* + - 1. maintain Adequate Procedures to ensure the prevention and detection of Fraud and compliance with Anti-Corruption Laws;
      2. proactively take all necessary corrective action to mitigate any loss or damage to the Commonwealth and the Contractor resulting from Fraud or breach of Anti-Corruption Laws to the extent that the Fraud or breach was caused or contributed to by the Consultant or any of its officers, employees or agents and put each of the Commonwealth and the Contractor (as applicable) in the position it would have been in if the Fraud or breach had not occurred (including all corrective action directed by the Contractor's Representative); and
      3. without limiting the foregoing, comply with the IPACE Supplier Code of Conduct.
    1. The Consultant warrants that it will not, either directly or indirectly, offer, make, cause to be made or accept any form of bribe, kickback, political donation, gift or other benefit which would or could be construed as an impropriety or that creates the appearance of an impropriety in connection with the Subcontract and the Services.
    2. In this clause 17.1, **Adequate Procedures** means policies, procedures, processes and systems designed to ensure, and which are reasonably capable of ensuring, the prevention and detection of Fraud and compliance with Anti-Corruption Laws, including (without limiting the requirements of this clause 17.1):
       1. internal policies clearly setting out employees' obligations for ensuring compliance with Anti-Corruption Laws;
       2. due diligence procedures for agents and business partners;
       3. adequate training of officers, directors and employees in relation to Fraud prevention and anti-corruption compliance;
       4. undertaking regular risk assessments in relation to susceptibility to Fraud and breaches of the Anti-Corruption Laws; and
       5. maintaining:
          1. books, records and accounts which, in reasonable detail, accurately and fairly reflect activities in sufficient detail to identify potential Fraud and breaches of any Anti-Corruption Laws; and
          2. an internal account controls system that is sufficient to ensure the proper authorisation, recording, and reporting of all transactions and to provide reasonable assurance that Fraud and violations of any Anti-Corruption Laws will be prevented, detected and deterred.
  1. Modern Slavery

The Consultant:

* + 1. must not, and must use all reasonable endeavours to ensure that its officers, employees and agents do not:
       1. engage in any conduct that would constitute Modern Slavery; and
       2. do anything to put the Consultant, the Commonwealth or the in breach of any Modern Slavery Law; and
    2. must comply, and must use all reasonable endeavours to ensure that its officers, employees and agents at all times comply with all Modern Slavery Laws,

including by implementing and maintaining adequate procedures to ensure prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws.

* 1. Breach or Suspected Breach of Fraud, Anti-Bribery and Corruption or Modern Slavery Obligations
     1. If the Consultant knows or suspects that:
        1. Fraud in connection with this Subcontract or the Services (including by any officers, employees and agents); or
        2. any breach (including by any officers, employees and agents) of:
           1. the Anti-Corruption Laws;
           2. the Modern Slavery Laws; or
           3. the other obligations set out in this clause 17,

is occurring or has occurred it must promptly (and in any case within 5 business days or such longer period as the Contractor's Representative may agree, acting reasonably) provide a detailed written notice to the Contractor's Representative including details of:

* + - 1. the known or suspected Fraud or breach;
      2. how the known or suspected Fraud or breach occurred;
      3. the proactive corrective action the Consultant will take under clause 17.1(a)(v) (if applicable);
      4. the proactive measures which the Consultant will take to ensure that the Fraud or breach does not occur again; and
      5. any other relevant information required by the Contractor's Representative.
    1. Subject to paragraph (c)(i), the Consultant must, in consultation with the Contractor's Representative, develop and implement a strategy to investigate the known or suspected Fraud or breach described in paragraph (a) and undertake such investigation at the Consultant's own cost and in accordance with any directions of or standards required by the Contractor's Representative.
    2. The Contractor reserves the right to:
       1. appoint its own investigator and conduct its own audit or investigation in accordance with paragraph (d); and
       2. report any Fraud or breach of any Anti-Corruption Law or Modern Slavery Law (as applicable) to the appropriate law enforcement agencies or any other person or entity the Contractor’s Representative, MCCI Contract Administrator or Commonwealth deems appropriate in Australia or the Host Nation for further investigation.
    3. At any time during the Subcontract, the Consultant must permit the Contractor, the Contractor's Representative and such other persons as may be nominated in writing by the Contractor's Representative to conduct an audit and investigation:
       1. in relation to actual or suspected Fraud or a breach as described in paragraph (a); and
       2. to otherwise verify the Consultant's compliance with this clause 17 irrespective of whether there has been a breach or suspected breach of this clause.
    4. Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must:
       1. do all things reasonably necessary to assist the Contractor's Representative and its nominees with any audit or investigation under this clause 17; and
       2. within 7 days of a request by the Contractor's Representative, provide the Contractor's Representative with all information reasonably required by the Contractor's Representative in connection with the Consultant's compliance with, or any audit or investigation under, this clause 17.
    5. The Consultant must undertake appropriate remediation actions to address any breaches, issues or failures arising in connection with this clause 17 (including any identified by an audit or investigation carried out under this clause 17.3) at the Consultant's own cost and in accordance with any directions of or standards required by the Contractor's Representative.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Consultant acknowledges that the Commonwealth and the Contractor are and will be subject to a number of Commonwealth requirements and policies, which support internal and external scrutiny of tendering and contracting processes and the objectives of transparency, accountability and value for money including requirements to:

* + 1. publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of $10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);
    2. report and post on the internet a list of contracts valued at $100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
    3. report and post on the internet information about contracts in other ways pursuant to other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.
  1. Commercial-in-Confidence Information

Clause 18.2 does not apply unless the Subcontract Particulars state that it applies.

* + 1. Subject to paragraph (b), the Contractor must keep confidential any information provided to the Contractor by the Consultant before or after the Award Date when:
       1. a written request to keep specific information confidential and the justification for keeping such information confidential has been expressly made by the Consultant to the Contractor in its tender;
       2. the Contractor agrees (in its absolute discretion) that such information is commercial-in-confidence information;
       3. the Contractor's Representative notifies the Consultant in writing that the Contractor (in its absolute discretion) agrees, including the terms of any agreement, under subparagraph (ii); and
       4. such information and the terms of any agreement are expressly specified in the Subcontract Particulars,

(**Commercial-in-Confidence Information**).

* + 1. The Contractor's obligation in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
       1. disclosed by the Contractor to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with the Subcontract;
       2. disclosed by the Contractor to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Contractor's management, reporting or auditing requirements under the Managing Contractor Contract (International);
       3. disclosed by the Contractor to any responsible Minister or any Ministerial adviser or assistant;
       4. disclosed by the Contractor to any House or Committee of the Parliament of the Commonwealth of Australia;
       5. disclosed to any Commonwealth department, agency or authority by virtue of or in connection with:
          1. its functions, or statutory or portfolio responsibilities; or
          2. the Managing Contractor Contract (International);
       6. authorised or required by law to be disclosed; or
       7. in the public domain otherwise than due to a breach of paragraph (a).

1. INFORMATION SECURITY - CONFIDENTIAL INFORMATION
   1. Consultant's Warranty
      1. The Consultant acknowledges and agrees that the Confidential Information is confidential.
      2. The Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it is not aware of any breach of clause 19 by the Consultant or any Recipient.
   2. Confidential Information Requirements
      1. The Consultant must:
         1. strictly comply with:
            1. clause 19; and
            2. all other Confidential Information and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); and
         2. immediately put in place arrangements to ensure that it strictly complies with:
            1. clause 19; and
            2. all other Confidential Information and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements).
      2. Subject to, if clause 20 applies, clause 20, the Consultant must not:
         1. copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
         2. disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than performing the Services.

* + 1. The Consultant must ensure that all Recipients of Confidential Information:
       1. strictly comply with:
          1. clause 19; and
          2. all other Confidential Information and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 19; and
          2. all other Confidential Information and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
          1. clause 19; or
          2. any other Confidential Information or information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements).
    2. The Consultant must:
       1. ensure:
          1. the Confidential Information (or any part of it); and
          2. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar); and
        2. otherwise in accordance with all Separation Arrangements; and
      1. immediately:
         1. detect all actual or potential Confidential Information Incidents;
         2. notify the MCCI Contract Administrator and the Contractor's Representative if it becomes aware of any actual or potential Confidential Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
         4. strictly comply with all other Confidential Information and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements),

(together the **Confidential Information Requirements**).

* 1. Return, Destruction and Erasure of Confidential Information
     1. Within 7 days of:
        1. a request from the MCCI Contract Administrator or the Contractor's Representative, at any time;
        2. the termination of the Subcontract under clause 12 or otherwise at law; or
        3. the completion of the Services,

the Consultant must:

* + - 1. subject to paragraph (b), as directed by the MCCI Contract Administrator or the Contractor's Representative in the notice or request (if any) promptly:
         1. where the Confidential Information is in a tangible form, securely and appropriately return all copies of that Confidential Information to the Contractor's Representative;
         2. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
         3. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
         4. provide the Contractor's Representative with a statutory declaration (or equivalent) in a form approved by the Contractor's Representative from an authorised officer approved by the Contractor's Representative (acting reasonably) confirming that the Confidential Information has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
      2. promptly notify the MCCI Contract Administrator and the Contractor's Representative of all Confidential Information (or any part of it) which the Consultant knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
         2. is beyond the Consultant's (or a Recipient's) possession, power, custody or control,

giving full particulars (including the nature and extent of the Confidential Information, precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).

* + 1. To the extent required by a Statutory Requirement or to maintain compliance with the Consultant's quality assurance procedure, system or framework, the Consultant may keep one copy of the Confidential Information for its records subject to the Consultant:
       1. promptly notifying the MCCI Contract Administrator and the Contractor's Representative of all Confidential Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Confidential Information in accordance with clause 19.
    2. The Consultant acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Consultant's obligations under clause 19.
  1. Compliance

Within 24 hours (or such other period notified by the MCCI Contract Administrator or the Contractor's Representative in its request) of receipt of a request by the MCCI Contract Administrator or the Contractor's Representative, at any time, the Consultant must:

* + 1. provide the Contractor's Representative with:
       1. evidence of the Consultant's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Consultant and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Contractor's Representative from an authorised officer whose identity and position is approved by the Contractor's Representative (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Confidential Information Requirements),

by the time and date specified in the request; and

* + 1. as directed by the MCCI Contract Administrator or the Contractor's Representative in the request, provide the Commonwealth, the MCCI Contract Administrator, the Contractor and the Contractor's Representative with access to the Consultant's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth, the MCCI Contract Administrator, the Contractor and the Contractor's Representative to monitor and assess the Consultant's and all Recipients' compliance with clause 19 (including any Separation Arrangements and Confidential Information Requirements) by the time and date specified in the request.
  1. Acknowledgement, Release and Indemnity

Without limiting any other provision of the Subcontract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Contractor has:
          1. entered into the Subcontract;
          2. if applicable, made payments to the Consultant under clause 11.5; and
          3. if applicable, elected to proceed to the Delivery Phase,

strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 19;

* + - 1. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity), if the Consultant:
         1. notifies the MCCI Contract Administrator or the Contractor's Representative under clause 19.2(d)(ii)B; or
         2. has failed to strictly comply with:

clause 19; or

any other Confidential Information or information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements),

then the Contractor may (in its absolute discretion):

* + - * 1. terminate the Subcontract under clause 12.4; and
        2. such Confidential Information Incident or failure may be taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Contractor's absolute discretions under clause 19 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Contractor's absolute discretions under clause 19; and
    2. indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
       1. a Confidential Information Incident;
       2. the Consultant's failure to strictly comply with clause 19 or any other Confidential Information or information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); or
       3. the exercise of any of the Contractor's absolute discretions under clause 19.

1. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 20 does not apply unless the Subcontract Particulars state that it applies.

* 1. Sensitive and Classified Information, generally
     1. Nothing in clause 20 limits the Consultant's obligations under clause 19.
     2. The Consultant acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.
  2. Consultant's Warranties
     1. The Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it is not aware of any breach of clause 20 by the Consultant or any Recipient.
     2. The Consultant warrants that, except as otherwise approved in writing by the MCCI Contract Administrator and the Contractor's Representative, that each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Services properly applied for, obtained and held a current security clearance at or above the level/s specified in the Subcontract Particulars or in accordance with clause 20.3(d)(i)B (as applicable):
        1. before the Recipient was issued with the Sensitive and Classified Information; and
        2. at all times during the Recipient's access to the Sensitive and Classified Information.
  3. Sensitive and Classified Information Requirements
     1. The Consultant must:
        1. strictly comply with:
           1. clause 20; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); and
        2. immediately put in place arrangements to ensure that it strictly complies with:
           1. clause 20; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements).
     2. Subject to paragraphs (c) and (d), the Consultant must not:
        1. copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
        2. disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including carrying out the Services.

* + 1. If the Consultant wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Services, it must notify the MCCI Contract Administrator and the Contractor's Representative, providing details of the proposed copying, reproduction, disclosure, use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of all proposed Recipients, and a justification as to why those Recipients have a need to know such information).
    2. Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (c), the Contractor's Representative will (in its absolute discretion) notify the Consultant that the Contactor (in its absolute discretion) either:
       1. grants permission, whether with or without such conditions as the Contractor thinks fit, including any conditions:
          1. with respect to the level/s of accreditation or certification required for the physical and information technology environments (as applicable) in which the Sensitive and Classified Information is to be kept; or
          2. requiring the Recipient of Sensitive and Classified Information (or any part of it) to:

properly apply for, obtain and hold a current security clearance level at or above the level/s specified in the notice before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient's access to the Sensitive and Classified Information; or

enter into a deed in a form approved by the Contractor and the Commonwealth; or

* + - 1. refuses permission.
    1. If the Contractor grants permission under paragraph (d)(i), the Consultant must strictly comply with any conditions notified under paragraph (d)(i).
    2. The Consultant must ensure that all Recipients of Sensitive and Classified Information:
       1. strictly comply with:
          1. clause 20; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 20; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
          1. clause 20; or
          2. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements).
    3. The Consultant must:
       1. ensure:
          1. the Sensitive and Classified Information (or any part of it); and
          2. all containers, devices or systems on or in which the Sensitive and Classified Information (or any part of it) may be contained, stored, transferred, transmitted or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. at locations in Australia only (unless otherwise approved in writing by the MCCI Contract Administrator and the Contractor's Representative (in their absolute discretion));
        2. in physical and information technology environments (as applicable) which are accredited or certified by the Commonwealth and the Contractor (in their absolute discretion) at or above the level/s specified in the Subcontract Particulars or in accordance with paragraph (d)(i)A (as applicable):

before the Consultant (or any Recipient) was issued with the Sensitive and Classified Information; and

at all times during the Consultant's (or any Recipient's) access to or storage of the Sensitive and Classified Information,

and are not introduced into or kept in any physical or information technology environment that is accredited or certified at a lower level;

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);
        2. without limiting subsubparagraph E, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia (unless otherwise approved in writing by the MCCI Contract Administrator and the Contractor's Representative (in their absolute discretion));
        3. in accordance with all Statutory Requirements of Australia (including the Information Security Requirements) including in respect of caveats; and
        4. in accordance with all Separation Arrangements; and
      1. immediately:
         1. to the maximum extent possible, detect all actual or potential Sensitive and Classified Information Incidents;
         2. notify the MCCI Contract Administrator and the Contractor's Representative if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
         4. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements),

(together the **Sensitive and Classified Information Requirements**).

* 1. Return, Destruction and Erasure of Sensitive and Classified Information
     1. Within 7 days of:
        1. a request from the MCCI Contract Administrator or the Contractor's Representative, at any time;
        2. the termination of the Subcontract under clause 12 or otherwise at law; or
        3. the completion of the Services,

the Consultant must:

* + - 1. subject to paragraph (b), as directed by the MCCI Contract Administrator or the Contractor's Representative in the notice or request (if any) and in accordance with all Statutory Requirements of Australia (including the Information Security Requirements), promptly:
         1. where the Sensitive and Classified Information is in a tangible form, securely and appropriately return all copies of that Sensitive and Classified Information to the Contractor's Representative;
         2. securely and appropriately destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
         3. ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
         4. provide the Contractor's Representative with a statutory declaration (or equivalent) in a form approved by the Contractor's Representative from an authorised officer approved by the Contractor's Representative (acting reasonably) confirming that the Sensitive and Classified Information has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
      2. promptly notify the MCCI Contract Administrator and the Contractor's Representative of all Sensitive and Classified Information (or any part of it) which the Consultant knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
         2. is beyond the Consultant's (or a Recipient's) possession, power, custody or control,

giving full particulars (including the nature and extent of the Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).

* + 1. To the extent required by a Statutory Requirement, the Consultant may keep one copy of the Sensitive and Classified Information for its records subject to the Consultant:
       1. promptly notifying the MCCI Contract Administrator and the Contractor's Representative of all Sensitive and Classified Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Sensitive and Classified Information in accordance with clause 20.
    2. The Consultant acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Consultant's obligations under clause 20.
  1. Compliance

Within 12 hours (or such other period notified by the MCCI Contract Administrator or the Contractor's Representative in its request) of receipt of a request by the MCCI Contract Administrator or the Contractor's Representative, at any time, the Consultant must:

* + 1. provide the Contractor's Representative with:
       1. evidence of the Consultant's and all Recipients' compliance with clause 20 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Consultant and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Contractor's Representative from an authorised officer whose identity and position is approved by the Contractor's Representative (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 20 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
    2. as directed by the MCCI Contract Administrator or the Contractor's Representative in the request, provide the Commonwealth, the MCCI Contract Administrator, the Contractor and the Contractor's Representative with access to the Consultant's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth, the MCCI Contract Administrator, the Contractor and the Contractor's Representative to monitor and assess the Consultant's and all Recipients' compliance with clause 20 (including any Separation Arrangements and Sensitive and Classified Information Requirements).
  1. Acknowledgement, Release and Indemnity

Without limiting any other provision of the Subcontract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Contractor has:
          1. entered into the Subcontract;
          2. if applicable, made payments to the Consultant under clause 11.5; and
          3. if applicable, elected to proceed to the Delivery Phase,

strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 20;

* + - 1. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity) if the Consultant:
         1. notifies the MCCI Contract Administrator or the Contractor's Representative under clause 20.3(g)(ii)B; or
         2. has failed to strictly comply with:

clause 20; or

any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements),

then:

* + - * 1. the Contractor may (in its absolute discretion) terminate the Subcontract under clause 12.4; and
        2. such Sensitive and Classified Information Incident or failure may be taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any absolute discretion under clause 20 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any absolute discretion under clause 20; and
    2. indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
       1. a Sensitive and Classified Information Incident;
       2. the Consultant's failure to strictly comply with clause 19 or any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the MCCI Contract Administrator or the Contractor's Representative (including any Separation Arrangements); or
       3. the exercise of any absolute discretion under clause 20.

1. MATERIAL CHANGE or STRATEGIC INTEREST ISSUE
   1. Consultant's Warranty

Subject to clause 21.2, the Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it is not aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

in relation to the Consultant.

* 1. Notice of Material Change or Strategic Interest Issue

If, at any time, the Consultant becomes aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

the Consultant must immediately notify the MCCI Contract Administrator and the Contractor's Representative, providing details of:

* + 1. the Material Change or Strategic Interest Issue; and
    2. the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Contractor or the Commonwealth.
  1. Acknowledgement, Release and Indemnity

Without limiting any other provision of the Subcontract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Contractor has:
          1. entered into the Subcontract;
          2. if applicable, made payments to the Consultant under clause 11.5; and
          3. if applicable, elected to proceed to the Delivery Phase,

strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 21;

* + - 1. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity) if:
         1. the Consultant:

notifies the MCCI Contract Administrator and the Contractor's Representative under clause 21.2; or

has failed to strictly comply with clause 21.2; or

* + - * 1. the Contractor otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Material Change or Strategic Interest Issue in relation to the Consultant,

then the Contractor may (in its absolute discretion) do any one or more of the following:

* + - * 1. notify the Consultant that it is required to:

meet with the Commonwealth and the Contractor to provide further information, documents or evidence in relation to, and otherwise clarify, the:

nature and extent of the Material Change or Strategic Interest Issue; and

steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Contractor and the Commonwealth,

by the time and date specified in the notice; or

provide the Commonwealth and the Contractor with further information, documents or evidence in relation to, and otherwise clarify, the:

nature and extent of the Material Change or Strategic Interest Issue; and

steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Contractor and the Commonwealth,

by the time and date specified in the notice; or

* + - * 1. regardless of whether or not the Contractor has notified the Consultant under subsubparagraph C, notify the Consultant that:

the Consultant may continue to perform the Services, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Consultant immediately:

implementing Separation Arrangements; or

completing, duly executing and returning a deed in a form acceptable to the Contractor,

by the time and date specified in the notice; or

the Contractor has elected to treat the Material Change or Strategic Interest Issue as an Insolvency Event for the purposes of clause 12.4 and terminate the Subcontract under clause 12.4,

and such Material Change or Strategic Interest Issue or failure may be taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and

* + - 1. the exercise of any of the Contractor's absolute discretions under clause 21 is not capable of being the subject of a dispute or difference under the Subcontract for the purposes of clause 13.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Contractor's absolute discretions under clause 21; and
    2. indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
       1. a Material Change or Strategic Interest Issue;
       2. the Consultant's failure to strictly comply with clause 21; or
       3. the exercise of any of the Contractor's absolute discretions under clause 21.

1. FINANCIAL VIABILITY
   * 1. The Consultant:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Subcontract ; and
        2. acknowledges and agrees that the Contractor has:
           1. entered into the Subcontract;
           2. if applicable, made payments to the Consultant under clause 11.5; and
           3. if applicable, elected to proceed to the Delivery Phase,

strictly on the basis of, and in reliance upon, the obligations and warranties set out in clause 22.

* + 1. The Consultant must keep the Contractor's Representative fully and regularly informed as to all financial viability matters which could adversely affect the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Subcontract, including any potential or actual change in the Consultant's financial viability.
    2. The Contractor's Representative may (in its absolute discretion) at any time request the Consultant to:
       1. provide the Contractor's Representative with a solvency statement in the form required by the Contractor with respect to the Consultant, properly completed and duly executed by the Consultant; and
       2. ensure its Financial Representative is available to provide the Contractor's Representative and any independent financial adviser engaged by the Contractor with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Contractor, the Contractor's Representative and the independent financial adviser engaged by the Contractor for the purpose of demonstrating that the Consultant has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Subcontract.
    3. If the Contractor considers (in its absolute discretion) that there could be or has been a change in the Consultant's financial viability which could adversely affect the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Subcontract, the Contractor's Representative may (in its absolute discretion) direct the Consultant to take such steps as the Contractor considers necessary to secure the performance of the Services, Completion and the meeting of its obligations under the Subcontract, including requiring the Consultant to:
       1. provide a deed of guarantee, undertaking and substitution in the form required by the Contractor;
       2. provide the Consultant Deeds of Covenant; or
       3. provide collateral warranties in the form required by the Contractor.
    4. The Consultant acknowledges and agrees that:
       1. nothing in clause 22 will limit, reduce, or otherwise affect any of the rights of the Contractor under the Subcontract or otherwise at law or in equity;
       2. neither the Contractor nor the Contractor's Representative is required to exercise any discretion under clause 22 for the benefit of the Consultant;
       3. clause 22 does not give the Consultant any rights; and
       4. the exercise or failure to exercise a discretion under clause 22 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review.

1. Works Information

The Consultant must:

* + 1. fully co-operate with, provide information to and do all other things to assist, the Other Contractors to comply with their Works Information obligations under the Managing Contractor Contract (International) (including as they relate to the WHS Legislation); and
    2. without limiting paragraph (a), if requested by the Contractor's Representative, provide Project Documents and such other documents, drawings, recordings or other information required for the occupation, use, operation and maintenance of the Works or each Stage (as defined in the Managing Contractor Contract (International)) within the period specified by the Contractor's Representative in such request.

SUBCONTRACT PARTICULARS

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS** | | | | | | | | |
| 1. **Additional Host Nation Requirements:**   (Clause 1.1) |  | | | | | | | |
| **Completion - additional conditions precedent to Completion:**  (Clause 1.1) |  | | | | | | | |
| **Consultant:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Consultant's Representative:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Contractor:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Environmental Management Plan:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Fraud and Corruption Control Plan:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Project Lifecycle and HOTO Plan:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Project Plans (additional):**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Representative:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Site Management Plan:**  (Clause 1.1) |  | | | | | | | |
| **Contractor's Work Health and Safety Plan:**  (Clause 1.1) |  | | | | | | | |
| **Date for Completion (of a Milestone):**  (Clause 1.1) | **Milestones** | | | | | | **Date for Completion** | |
| ***[IF NO PHASES]*** | | | | | |  | |
|  | | | | | |  | |
| ***[IF TWO PHASES INSERT:]*** | | | | | |  | |
| **Planning Phase:** | | | | | | | |
|  | | | | |  | | |
|  | | | | |  | | |
| **Delivery Phase:** | | | | | | | |
|  | | | | |  | | |
| **Date for Delivery Phase Agreement:** (Clause 1.1) | ***[IF CLAUSE 9 APPLIES, INSERT DATE FOR DELIVERY PHASE AGREEMENT. OTHERWISE, INSERT "NOT APPLICABLE"]*** | | | | | | | |
| **Delivery Phase Fee Proposal:** (Clause 1.1) | ***[IF CLAUSE 9 APPLIES, INSERT: "AS SET OUT IN ATTACHMENT 1 TO THESE CONTRACT PARTICULARS". OTHERWISE INSERT "NOT APPLICABLE"]*** | | | | | | | |
| **Environmental Management Plan (additional):** (Clause 1.1) |  | | | | | | | |
| **Environmental Objectives (additional):** (Clause 1.1) |  | | | | | | | |
| **ESD Principles (additional):**  (Clause 1.1) |  | | | | | | | |
| **Executive Negotiators:**  (Clause 1.1) | **Contractor:**  **Consultant:** [To be inserted following selection of the successful Tenderer] | | | | | | | |
| **Fee:**  (Clause 1.1) | ***[IF NO PHASES]*** | | | |  | | | |
| **Fee:** | | | | As set out in Annexure 3 | | | |
| ***[IF TWO PHASES]*** | | | |  | | | |
| **Planning Phase Fee:** | | | | As set out in Annexure 3 | | | |
| **Delivery Phase Fee:** | | | | As defined in clause 1.1 of the Conditions of Contract. | | | |
| **Host Nation:**  (Clause 1.1) |  | | | | | | | |
| **Indicative Delivery Phase Fee:**  (Clause 1.1) | ***[IF NO PHASES]***  Not applicable  ***[IF TWO PHASES]***  As set out in Annexure 3 | | | | | | | |
| **Managing Contractor Contract (International):**  (Clause 1.1) |  | | | | | | | |
| **MCCI Contract Administrator:**  (Clause 1.1) |  | | | | | | | |
| **MCCI Works:**  (Clause 1.1) |  | | | | | | | |
| **Milestones:**  (Clause 1.1) | ***[WHERE THERE IS NO MILESTONE FEE PAYMENT SCHEDULE, INSERT]***  ***[WHERE THERE IS A MILESTONE FEE PAYMENT SCHEDULE INSERT:***  ***As set out in the Milestone Fee Payment Schedule]*** | | | | | | | |
| **Preliminary Design Solution (if any):** (Clause 1.1) | |
| **Project Plans (additional):**  (Clause 1.1) | If clause [4] of the Special Conditions applies, Method of Work Plan for Airfield Activities.  ***[CONTRACTOR TO INSERT ANY ADDITIONAL PLANS REQUIRED]*** | | | | | | | |
| **Schedule of Collateral Documents:**  (Clause 1.1) | 1. Moral Rights Consent  2. Payment Claim  3. Payment Statement  4. Expert Determination Agreement  5. Consultant Deed of Covenant  6. Consultant Design Certificate  7. Delivery Phase Agreement Minutes | | | | | | | |
| **Site:**  (Clause 1.1) |  | | | | | | | |
| **Site Management Plan (additional):** (Clause 1.1) |  | | | | | | | |
| **Statutory Requirements (additional):** (Clause 1.1) | (IPACE Supplier Code of Conduct and Infrastructure Directorate Dispensations Process (each as provided by the Contractor's Representative, as may be amended by the Commonwealth from time to time), unless otherwise stated) | | | | | | | |
| **Subcontract - other documents forming part of the Subcontract:**  (Clause 1.1) |  | | | | | | | |
| **WOL** **Objectives (additional):**  (Clause 1.1) |  | | | | | | | |
| **Work Health and Safety Plan (additional):**  (Clause 1.1) |  | | | | | | | |
| **Days which are not a "business day" (additional):**  (Clause 1.2(m)(iii)) | (27, 28, 29, 30 and 31 December, unless otherwise stated) | | | | | | | |
| **Governing law:**  (Clause 1.3(a)) | (The law in the State of New South Wales, Australia applies unless otherwise stated) | | | | | | | |
| **CLAUSE 2 - ROLE OF THE CONSULTANT** | | | | | | | | |
| **Statutory Requirements with which the Consultant does not need to comply:** (Clause 2.10(a)(i)) | |  | | | | | | |
| **Approvals which the Consultant is to obtain:**  (Clause 2.10(a)(ii)A) | |  | | | | | | |
| **CLAUSE 3 - ROLE OF THE CONTRACTOR** | | | | | | | | |
| **Other conditions precedent to Site access:** (Clause 3.3(e)) |  | | | | | | | |
| **CLAUSE 4 - PERSONNEL** | | | | | | | | |
| **Consultant's Key People:**  (Clause 4.4(a)(i)) | | **Person** | | | | | **Position** | |
| [To be inserted following selection of the successful Tenderer] | | | | |  | |
| **Meeting and reporting requirements (additional):** (Clause 4.8) | | IPACE Infrastructure Program Plan dated March 2023 and the documents referred to therein as amended from time to time, available on DEQMS or such other location notified by the Contract Administrator | | | | | | |
| **CLAUSE 5 - INSURANCE** | | | | | | | | |
| **Insurance policies required to be obtained by the Consultant:**  (Clause 5.1) | | ***[CONTRACTOR AND CONTRACTOR'S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM THE CONTRACTOR'S INSURANCE BROKER.***  ***WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT]***  **Workers Compensation Insurance**  Amount of Cover: Amount of Cover prescribed by Statutory Requirement in the State or Territory in which the Services are performed or the Consultant's employees perform work, are employed or normally reside.  **Employers' Liability Insurance**  Amount of Cover: The amount that an expert professional provider of the Services would purchase, which must not be less than $ .  **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate  **Other Insurances:** (Clause 5.1(a)(iv))  ***[CONTRACTOR AND CONTRACTOR'S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED]*** | | | | | | |
| **Insurance policies required to be effected by the Contractor:**  (Clause 5.2) | | ***[LEVELS OF INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)]***  **Public Liability Insurance**  If written on an occurrence basis:  Amount of Cover: $ for each and every occurrence for public liability claims  If written on a claims made basis:  Amount of Cover $ per claim and $ in the aggregate  ***[INSERT OTHERS]*** | | | | | | |
| **Run-off period for Public Liability Insurance (if written on a claims made basis):** (Clause 5.4(a)(ii)) | | Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years | | | | | | |
| **Run-off period for Professional Indemnity Insurance:**  (Clause 5.4(c)) | | Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years | | | | | | |
| **Maximum aggregate liability of the Consultant to the Contractor:**  (Clause 5.8) | |  | | | | | | |
| **CLAUSE 6 - DESIGN AND DOCUMENTATION** | | | | | | | | |
| **Number of days for review:** (Clause 6.3(a)(ii)) | | days | | | | | | |
| **Number of copies of Design Documentation to be submitted by the Consultant to the Contractor's Representative:** (Clause 6.5) | |  | | | | | | |
| **Design Documentation hard copy requirements:** (Clause 6.5(a)) | | To scale Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contractor's Representative) | | | | | | |
| **Design Documentation electronic copy requirements:** (Clause 6.5(b)) | | Compatible with Autocad 14 CD-ROM or as determined by the Contractor's Representative | | | | | | |
| **Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:** (Clause 6.10(a)) | | 1. Formal Agreement  2. Conditions of Subcontract  3. Special Conditions  4. Subcontract Particulars  5. Brief  6. Any other documents forming part of the Subcontract (as specified in the relevant item under clause 1.1 in these Subcontract Particulars)  7. Design Documentation (which has not been rejected under clause 6.3)  8. Project Plans | | | | | | |
| **Number of days for sample review:** (Clause 6.14(b)(ii)) | | days | | | | | | |
| **CLAUSE 7 - QUALITY** | | | | | | | | |
| **Number of days for submission of Project Plans:** (Clause 7.4(a)(ii)A) | | Environmental Management Plan: | | | | | days | |
| Fraud and Corruption Control Plan: | | | | | days | |
| Project Lifecycle and HOTO Plan: | | | | | days | |
| Site Management Plan: | | | | | days | |
| Work Health and Safety Plan: | | | | | days | |
| Other ***[SPECIFY]***: | | | | | days | |
| **Number of days for review of Project Plans:** (Clause 7.4(a)(ii)B) | | Environmental Management Plan: | | | | | days | |
| Fraud and Corruption Control Plan: | | | | | days | |
| Project Lifecycle and HOTO Plan: | | | | | days | |
| Site Management Plan: | | | | | days | |
| Work Health and Safety Plan: | | | | | days | |
| Other ***[SPECIFY]***: | | | | | days | |
| **CLAUSE 8 - TIME** | | | | | | | | |
| **Maximum intervals between program updates by Consultant:**  (Clause 8.2(b)(ii)) | |  | | | | | | |
| **Program format to be compatible with:**  (Clause 8.2(b)(iv)) | | Prepared as a computerised "Critical Path Method" network precedence diagram, and compatible with Microsoft Project (or equivalent format approved by the Contractor's Representative) | | | | | | |
| **CLAUSE 9 - PLANNING PHASE AND DELIVERY PHASE** | | | | | | | | |
| **Planning Phase and Delivery Phase:**  (Clause 9) | | Clause 9 ***[DOES/DOES NOT]*** apply.  (Clause 9 applies unless otherwise stated) | | | | | | |
| **CLAUSE 11 - PAYMENT** | | | | | | | | |
| **Times for submission of payment claims by the Consultant to Contractor's Representative:**  (Clause 11.2(a)) | | Monthly on the day of each month  ***[OR, IF A MILESTONE FEE PAYMENT SCHEDULE APPLIES]***  In accordance with the Milestone Fee Payment Schedule | | | | | | |
| **Number of business days for payment:**  (Clause 11.5(b)) | | To the extent that the relevant part of the Services is carried out in:  1. Queensland or New South Wales: 5; or  2. any other State or Territory or the Host Nation: 10 | | | | | | |
| **Interest Rate:**  (Clause 11.9) | | The Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contractor's Representative. | | | | | | |
| **Taxes for which the Contractor bears the risk:**  (Clause 11.13) | |  | | | | | | |
| **clause 12 ‑ Termination** | | | | | | | | |
| **Number of days to remedy breach:** (Clauses 12.3(c) and 12.4(b)) | | days | | | | | | |
| **CLAUSE 13 - DISPUTE RESOLUTION** | | | | | | | | |
| **Directions to be subject of an expert determination:**  (Clause 13.2) | | Directions under clauses 2.11(b), 2.11(c), 2.13(a)(ii), 2.15, 8.4(b)(ii)B, 8.8, 10.3(b), 10.3(c)(ii), 11.4, 11.18(b) and 12.8(a)(i) | | | | | | |
| **Industry expert who will conduct expert determinations:**  (Clause 13.3(a)(i)) | |  | | | | | | |
| **Nominating authority for industry expert:**  (Clause 13.3(a)(ii)) | | (The President for the time being of the Resolution Institute unless otherwise specified) | | | | | | |
| **CLAUSE 14 - NOTICES** | | | | | | | | |
| **Address and email address for the giving or serving of notices upon:**  (Clause 14.7(b)(i)) | | **Commonwealth:**  Address (not PO Box):  Email address:  Attention: | | | | | | |
| **MCCI Contract Administrator:**  Address (not PO Box):  Email address:  Attention: | | | | | | |
| **Contractor:**  Address (not PO Box):  Email address:  Attention: | | | | | | |
| **Consultant:**  Address (not PO Box): [To be inserted following selection of the successful Tenderer]  Email address: [To be inserted following selection of the successful Tenderer]  Attention: [To be inserted following selection of the successful Tenderer] | | | | | | |
| **CLAUSE 16 - GENERAL** | | | | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 16.8) | | | Clause 16.8 ***[DOES/DOES NOT]*** apply. (Clause 16.8 applies unless otherwise stated) | | | | | |
| **CLAUSE 18 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 18.2) | | | Clause 18.2 ***[DOES/DOES NOT]*** apply.  [To be inserted following selection of the successful Tenderer]  (Clause 18.2 does not apply unless otherwise stated) | | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 18.2) | | | **Specific Information** | **Justification** | | | | **Period of confidentiality** |
|  |  | | | |  |
| **CLAUSE 20 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION** | | | | | | | | |
| **Sensitive and Classified Information:** (Clause 20) | | | Clause 20 ***[DOES/DOES NOT]*** apply.  (Clause 20 does not apply unless otherwise stated) | | | | | |
| **Current security clearance level/s:** (Clause 20.2(b)) | | |  | | | | | |
| **Information technology environment accreditation or certification level:** (Clause 20.3(g)(i)D) | | |  | | | | | |

**Attachment 1 to the Contract Particulars - Delivery Phase Fee Proposal**

***[INSERT IF CLAUSE 9 OF THE CONDITIONS OF CONTRACT APPLIES AND THERE ARE TWO PHASES. OTHERWISE, INSERT "NOT USED"]***

1. - BRIEF
2. - SPECIAL CONDITIONS

*[THE TENDER ADMINISTRATOR/CONTRACTOR'S REPRESENTATIVE ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE SUBCONTRACT. THE TENDER ADMINISTRATOR/CONTRACTOR'S REPRESENTATIVE ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED. NOTE THAT THERE ARE MORE EXTENSIVE SPECIAL CONDITIONS IN THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL) WHICH MAY ALSO BE OF RELEVANCE (WITH AMENDMENT) TO THE SUBCONTRACT]*

1. USE OF HAZARDOUS SUBSTANCES (INCLUDING HAZARDOUS CHEMICALS)
   1. The Contractor
      1. The Commonwealth and the Contractor seek to ensure that:
         1. workers and other persons are not exposed to Hazardous Substances as a consequence of activities conducted on Commonwealth Premises and from work carried out as part of its business or undertaking, unless the Hazardous Substances are managed in accordance with subparagraph (ii); and
         2. risks to health and safety concerning Hazardous Substances are managed in accordance with the WHS Legislation.
      2. To the extent that the Contractor is legally required to do so, the Contractor will notify the Consultant of Hazardous Substances known to it to be within:
         1. Commonwealth Premises relevant to the Services; and
         2. any other Commonwealth property (including plant and equipment) provided to the Consultant for the purposes of the Services.
   2. The Consultant
      1. The Consultant acknowledges Hazardous Substances may be present within:
         1. Commonwealth Premises relevant to the Services; or
         2. any other Commonwealth property (including plant and equipment) provided to the Consultant for the purposes of the Services.
      2. Without limiting paragraph (d), the Consultant must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Services or incorporated into the MCCI Works to the Contractor's Representative as soon as possible after the Award Date (and in any event no later than 30 days prior to the proposed Hazardous Substance being used in the Services or incorporated into the MCCI Works).
      3. Without limiting paragraph (b), the Consultant must:
         1. prepare a register of each Hazardous Substance to be:
            1. used in the Services; or
            2. incorporated into the MCCI Works,

(**Hazardous Substance Register**);

* + - 1. provide the Hazardous Substance Register to the Contractor's Representative prior to the Hazardous Substance being used in the Services or incorporated into the MCCI Works;
      2. provide the Contractor's Representative with an updated Hazardous Substance Register:
         1. on each occasion that it is updated by the Consultant; and
         2. otherwise as requested by the Contractor's Representative;
      3. without limiting subparagraph (i), where the Services are carried out in Australia, provide a Safety Data Sheet (**SDS)** in the form required by the Contractor for entry into the ChemAlert database for each Hazardous Substance to be:
         1. used in the Services; or
         2. incorporated into the MCCI Works;
      4. provide the SDS under subparagraph (iv) and any other information concerning the risks and hazards associated with the Hazardous Substance to the Contractor's Representative prior to the Hazardous Substance being used in the Services or incorporated into the MCCI Works;
      5. provide the Contractor's Representative any updated SDS from the manufacturer, importer or supplier of each relevant Hazardous Substance:
         1. on each occasion an updated SDS is provided by the manufacturer, importer or supplier of the relevant Hazardous Substance; and
         2. otherwise as requested by the Contractor's Representative;
      6. without limiting subparagraphs (i) - (iv) prepare information in the form required by the Contractor in accordance with the WHS Legislation (including, but not limiting, any applicable information regarding use, handling, storage, locations, maximum storage quantities and volumes) for entry into the ChemAlert database for each Hazardous Substance to be:
         1. used in the Services; or
         2. incorporated into the MCCI Works,

(**ChemAlert Information**);

* + - 1. provide the ChemAlert Information prepared under subparagraph (vii) to the Contractor's Representative:
         1. in its reports under clause 4.7 of the Conditions of Subcontract; and
         2. otherwise as requested by the Contractor's Representative;
      2. update the ChemAlert Information and provide the updated ChemAlert Information to the Contractor's Representative:
         1. in its reports under clause 4.7 of the Conditions of Subcontract; and
         2. otherwise as requested by the Contractor's Representative; and
      3. do all things necessary to assist the Contractor's Representative to enter the SDS, ChemAlert Information and all other information into the ChemAlert database.
    1. The Consultant must not use, handle or store a Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 1.3(d) in connection with the Services or the MCCI Works, without the prior written consent of the Contractor's Representative.
    2. Without limiting paragraph (b), in its request for consent under paragraph (d), the Consultant must provide:
       1. details of the Hazardous Substance and the relevant category under clause 1.3(d);
       2. details of the purpose, use, handling or storage of each Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 1.3(d); and
       3. for each Hazardous Substance which falls within one or more of the following categories:
          1. clause 1.3(d)(i) or 1.3(d)(ii), a copy of all Approvals for use, handling or storage;
          2. clause 1.3(d)(v) or 1.3(d)(vii), details of how the health of workers using, handling or storing such Hazardous Chemical will be monitored in accordance with WHS Legislation; and
          3. clause 1.3(d)(vi), a copy of:

all notices given to a relevant regulator; and

all licences required to be held by the Consultant,

in relation to use, storage or handling.

* + 1. Without limiting clause 6.15 of the Conditions of Subcontract or any other provision of the Subcontract, the Consultant must, irrespective of where the Services are carried out:
       1. comply with any applicable Code of Practice;
       2. ensure that all documentation (including all Design Documentation and other Project Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) identifies the nature of the hazard and risk (including those risks which may remain after Completion (as defined in the Managing Contractor Contract (International)) and after the end of the last Defects Liability Period (as defined in the Managing Contractor Contract (International));
       3. ensure that all goods incorporated into the MCCI Works comply with the WHS Legislation (as if it applied to the Consultant) and any other Australian Statutory Requirements or Host Nation Statutory Requirements relating to Hazardous Substances;
       4. ensure that all Hazardous Substances used in the Services or used in (or incorporated into) the MCCI Works are correctly labelled and packaged in accordance with the WHS Legislation (as if it applied to the Consultant) and any other Australian Statutory Requirements or Host Nation Statutory Requirements;
       5. notify the Contractor's Representative within 14 days of becoming aware of any non-hazardous substance which could be substituted for the Hazardous Substance without significant detriment to the performance of the Services or the MCCI Works; and
       6. be able to demonstrate compliance with this paragraph (f) at the request of the Contractor's Representative.
  1. Definitions

For the purposes of clause 1:

* + 1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
    2. **Commonwealth Premises** means any of the following that is owned or occupied by the Commonwealth:
       1. an area of land or any other place (whether or not it is enclosed or built on); or
       2. a building or other structure.
    3. **Dangerous Goods** has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
    4. **Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) and includes:
       1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
       4. Schedule 11 Hazardous Chemicals;
       5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
       6. Schedule 15 Chemical; and
       7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    5. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
    6. **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.
    7. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    8. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    9. **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

1. SITE RESTRICTIONS

The Site based Services must be executed subject to the following restrictions:

***[INSERT DESCRIPTION OF RESTRICTIONS]***

1. REQUESTS FOR INFORMATION
   * 1. Without limiting the Conditions of Subcontract, the Services include responding to Requests for Information **(Request for Information Services)**. All documentation provided as part of the Request for Information Services will be deemed to form part of the Design Documentation.
     2. Without limiting the Conditions of Subcontract, the Consultant must:
        1. perform the Request for Information Services so as to ensure that the Request for Information Services fully address each Request for Information, reduce the need for further Requests for Information and minimise the Commonwealth's exposure to delay and extra costs under the Managing Contractor Contract (International) to the maximum extent possible;
        2. submit (or resubmit) the Design Documentation prepared as Request for Information Services to the Contractor's Representative in accordance with clause 6 of the Conditions of Subcontract;
        3. perform the Request for Information Services within the time required by the Contractor's Representative, including so as to ensure that the Contractor's Representative can issue the Design Documentation prepared by the Consultant in response to each Request for Information so as to minimise the Commonwealth's exposure to delay and extra costs under the Managing Contractor Contract (International); and
        4. for the purposes of performing the Request for Information Services, ensure that its personnel and other resources have appropriate availability, qualifications, experience, ability and expertise.
     3. For the purposes of clause 3 of the Special Conditions, **Request for Information** means any request made by a consultant or contractor to the Commonwealth or the Contractor requesting further information, instruction, guidance, advice or opinion (including in respect of the resolution of ambiguities, discrepancies or inconsistencies in the Design Documentation) or otherwise in respect of the Design Documentation.
2. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES
   * 1. Without limiting clause 7.4 of the Conditions of Subcontract, the Consultant must prepare and implement by no later than ***[INSERT E.G. 14 days]*** after the Award Date, and as a condition precedent to the Consultant being given access to the Site, a "Method of Work Plan for Airfield Activities" for all aspects of the Services (**Method of Work Plan for Airfield Activities**).
     2. The Method of Work Plan for Airfield Activities must incorporate Site specific management and control procedures and must set out in adequate detail all procedures the Consultant will implement to manage the Services on and near the Site, including (as applicable):
        1. submission of the Method of Work Plan for Airfield Activities to the Contractor's Representative;
        2. the establishment of the Site;
        3. access to the Site;
        4. security passes for the Site;
        5. personnel and vehicle identification and control on the Site;
        6. control of personnel including a point of contact from the Consultant;
        7. liaison with the Contractor, the Commonwealth and Other Contractors;
        8. Approvals prior to carrying out Services;
        9. rubbish, dust and debris control;
        10. Foreign Object Damage (**FOD**) control;
        11. noise management;
        12. fencing;
        13. security;
        14. hours of work;
        15. traffic management;
        16. safety procedures;
        17. fuel and hazardous material storage;
        18. issues associated with military exercises and military expeditions; and
        19. issues associated with aircraft movements.
3. OPERATING AIRFIELD
   * 1. The Consultant must ensure that the Services do not compromise aircraft operations or the safety of aircraft.
     2. Without limiting clause 6.15 of the Conditions of Subcontract and as part of the Services, the Consultant must liaise with the Contractor and the Contractor's Representative as required to co‑ordinate the Services with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.
4. CIVIL LIABILITY ACT (WESTERN AUSTRALIA)

In clause 13.18 of the Conditions of Subcontract, insert the following sentence at the end of the paragraph:

Further, all of the provisions comprising Part 1F of the *Civil Liability Act* *2002* (WA) are hereby expressly excluded from application to the Subcontract.

1. ADJUSTMENT OF TABLE OF VARIATION RATES AND PRICES
   * 1. The Fee is not subject to rise and fall.
     2. All rates and prices in the Table of Variation Rates and Prices are to be adjusted (using the formula set out below) annually on the anniversary of the Award Date.
     3. The following formula shall be used to calculate the rise and fall of the Table of Variation Rates and Prices:

|  |  |
| --- | --- |
| Pn = Po x | In |
| Io |

Where:

Pn = the revised rate or price applying from the most recent annual anniversary of the Award Date.

Po = the rate or price applying at the Award Date.

In - the latest of the preceding March, June, September of December Price Revision Index published prior to the annual anniversary of the Award Date.

Io - the latest of the preceding March, June, September of December Price Revision Index published prior to the Award Date.

* + 1. **Price Revision Index** = is the index set out below

|  |  |  |
| --- | --- | --- |
| **Description** | **Table** | **Group** |
| ABS Publication 6345.0 Labour Price Index | Table 5 | Private - Construction Index |

* + 1. If clause 9 of the Conditions of Subcontract applies, the Indicative Delivery Phase Fee and the Delivery Phase Fee Proposal will not be adjusted on the basis that the Consultant used the Table of Variation Rates and Prices to calculate the Indicative Delivery Phase Fee and that the Table of Variation Rates and Prices has been adjusted or is subject to adjustment under clause 7, except to the extent expressly set out in the Delivery Phase Fee Proposal.

1. CHILD SAFETY

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE CONSULTANT AND ITS OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE SUBCONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONSULTANT IS CARRYING OUT ACTIVITIES THAT MAY BE PROVIDED ON A SCHOOL'S PREMISES EVEN WHERE INTERACTING WITH CHILDREN IS NOT A PART OF THE SUBCONTRACTED SERVICES]***

If any part of the activities carried out by the Consultant under the Subcontract (including any Services) involves the Consultant employing or engaging a person (whether as an officer, employee, agent, consultant, or volunteer) that is required by State or Territory law to have a working with children check to undertake such activities or any part of such activities, the Consultant agrees:

* + 1. without limiting its other obligations under the Subcontract, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to such activities, including mandatory reporting and working with children checks however described; and
    2. if requested, provide the Commonwealth at the Consultant's cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.

1. PRELIMINARY DESIGN SOLUTION

Without limiting the Consultant's obligations elsewhere in the Subcontract, the Consultant acknowledges and agrees that:

* + 1. prior to the Award Date, ***[IT HAS/THE CONTRACTOR'S OTHER DESIGN CONSULTANTS HAVE]*** prepared the Preliminary Design Solution;
    2. it bears all risks howsoever they may arise as a result of the use by it of the Preliminary Design Solution;
    3. the use of the Preliminary Design Solution by the Consultant does not affect any of its warranties or other obligations under the Subcontract or entitle it to make any Claim against the Contractor, arising out of, or in any way in connection with, such use;
    4. if the MCCI Works are designed in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), the MCCI Works will comply with the requirements of the Brief and satisfy all other requirements of the Subcontract; and
    5. it must design the MCCI Works in accordance with the Preliminary Design Solution (as may be developed in accordance with the Contract), except to the extent where a Variation necessitates a consequential change to the Preliminary Design Solution in which case the Consultant must notify the Contractor's Representative of such change.

1. FACILITIES AND INFRASTRUCTURE ACCOUNTING

Without limiting clause 11.2 of the Conditions of Subcontract, for the purposes of assisting the Contractor to bring all completed facilities and infrastructure to account prior to Completion (as defined in the Managing Contractor Contract (International)), the Consultant must provide a cost report to the Contractor's Representative which sets out:

* + 1. details of the Fee and all other amounts payable under the Subcontract paid by the Contractor to the Consultant in respect of the MCCI Works or a Stage (as defined in the Managing Contractor Contract (International));
    2. ***[INSERT ANY ADDITIONAL MATTERS]***; and
    3. any other matters required by the Contractor's Representative.

1. INDIGENOUS PROCUREMENT POLICY

***[NOTE: THIS TEMPLATE HAS BEEN PREPARED ON THE ASSUMPTION THAT THE MANDATORY MINIMUM REQUIREMENTS OF THE INDIGENOUS PROCUREMENT POLICY DO NOT APPLY AS EITHER THE PROCUREMENT WILL BE VALUED UNDER $7.5 MILLION OR, IF ABOVE THIS THRESHOLD, WILL BE DELIVERED OUTSIDE OF AUSTRALIA (IN WHOLE OR IN PART).]***

* + 1. The Consultant must use its reasonable endeavours to increase its:
       1. purchasing from Indigenous Enterprises; and
       2. employment of Indigenous Australians,

in carrying out the Services, in accordance with the Indigenous Procurement Policy.

* + 1. In this clause 11:
       1. **Indigenous Enterprise** means an organisation that is 50% or more Indigenous Australian owned that is operating a business; and
       2. **Indigenous Procurement Policy** means the Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp.

1. REIMBURSABLE TRAVEL COSTS
   * 1. Subject to this clause 12, unless otherwise expressly stated elsewhere in the Subcontract, all disbursements and costs relating to or incurred in connection with the Services (including those to be provided at the Site or otherwise in the Host Nation) are included within the Fee and the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with such disbursements and costs.
     2. The Contractor will reimburse the Consultant for Reimbursable Travel Costs up to the Reimbursable Travel Costs Cap provided that the Consultant:
        1. has obtained the written approval of the Contractor's Representative prior to incurring the relevant costs; and
        2. in respect of each person travelling and prior to their travel, obtains and maintains such travel insurance (at its cost) as a prudent, competent and experienced contractor undertaking the Services would purchase (including coverage for all Pandemic related risks).
     3. The Consultant will not be entitled to make any Claim for Reimbursable Travel Costs in excess of the Reimbursable Travel Costs Cap unless the Consultant has obtained the prior written approval of the Contractor's Representative (which approval may be granted or withheld at the absolute discretion of the Contractor's Representative).
     4. If the Consultant wishes to seek an increase in the Reimbursable Travel Costs Cap, the Consultant must prepare, and submit to the Contractor's Representative for approval, an estimate of the proposed increase, together with any relevant assumptions and other supporting details to justify such an increase.
     5. In this clause 12:
        1. **Reimbursable Travel Costs** means the following costs in respect of any international travel from ***[Australia]*** to the Host Nation (including any connection within the Host Nation) in the carrying out of the Services:
           1. travel costs (to be reimbursed in accordance with non-SES rates with no administrative on-cost), with airfares to be reimbursed at 'economy' fare rates for travel within ***[Australia]*** or within the Host Nation and 'business class' fare rates for international travel); and
           2. the cost of taxis and/or hire cars (reimbursed at cost only),

to the extent such costs are reasonably and properly incurred in connection with the Services; and

* + - 1. ***[CONTRACTOR AND TENDER ADMINISTRATOR/CONTRACTOR'S REPRESENTATIVE TO SELECT, BASED ON WHETHER CLAUSE 9 OF THE CONDITIONS OF SUBCONTRACT APPLIES, OPTION 1 (SINGLE PHASE):*** **Reimbursable Travel Costs Cap** means $[To be inserted following selection of successful Tenderer] (GST exclusive).

***OR OPTION 2 (TWO PHASES):* Reimbursable Travel Costs Cap** means:

* + - * 1. in respect of the Planning Phase, $[To be inserted following selection of successful Tenderer](GST exclusive); and
        2. in respect of the Delivery Phase, as set out in the Delivery Phase Fee Proposal*.****]***

1. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

***[IF THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY APPLIES TO THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL), THE CONTRACTOR SHOULD OBTAIN ITS OWN ADVICE IN RELATION TO THIS SPECIAL CONDITION AND ENSURE THAT IT IS SUITABLE FOR COMPLIANCE WITH ITS RELEVANT OBLIGATIONS]***

* 1. This PT PCP Subcontract

*[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE SUBCONTRACT IS A PT PCP SUBCONTRACT (AS DEFINED IN THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)) AND THE CONTRACTOR SHOULD ADAPT IT AS REQUIRED TO COMPLY WITH THE REQUIREMENTS SET OUT IN THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL) AND BE OTHERWISE CONSISTENT WITH THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY. IF THIS SUBCONTRACT IS A REPORTING ENTITY SUBCONTRACT, THIS CLAUSE SHOULD BE PRESERVED, AND THE ADDITIONAL TEXT IN PARAGRAPH (A) SHOULD BE INCLUDED]*

* + 1. The Payment Times Procurement Connected Policy ***[applies/does not apply]*** to this Subcontract. ***[IF THIS SUBCONTRACT IS NOT A PT PCP SUBCONTRACT, INCLUDE - Paragraphs (b) to (f) of this clause 13.1 of the Special Conditions will not apply when the Payment Times Procurement Connected Policy does not apply to this Subcontract.]***
    2. Notwithstanding clause 11.5of the Conditions of Subcontract (and the corresponding Subcontract Particular), the Contractor will pay the Consultant:
       1. subject to paragraph (c), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
       2. subject paragraph (d), for payments made by the Contractor after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (d) and (e);
    3. Paragraph (b)(i) does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in paragraph (b)(i).
    4. The Contractor is not required to pay any interest in accordance with paragraph (b)(ii) if either:
       1. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under the Managing Contractor Contract (International); or
       2. the amount of interest payable is less than $100 (GST inclusive).
    5. Interest payable under paragraph (b)(ii):
       1. will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Contractor effects payment; and
       2. will be paid at the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment.
    6. The Consultant may make a complaint to the PT PCP Policy Team or to the Commonwealth in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of paragraph (b).
  1. Downstream Reporting Entity Subcontract

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE SUBCONTRACT IS A REPORTING ENTITY SUBCONTRACT (AS DEFINED IN THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)) AND THE CONTRACTOR SHOULD ADAPT IT AS REQUIRED TO COMPLY WITH THE REQUIREMENTS SET OUT IN THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL) AND BE OTHERWISE CONSISTENT WITH THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY]***

* + 1. If the Consultant enters into a PT PCP Subcontract, it must include provisions equivalent to those in clause 13.1(a) to (f) of the Special Conditions and state that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract.
    2. If the Consultant enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract must include:
       1. provisions equivalent to those in clause 13.1(a) to (f) of the Special Conditions and state that the Payment Times Procurement Connected Policy applies to that Reporting Entity Subcontract; and
       2. obligations equivalent to this paragraph (b) (such that the obligations in this paragraph (b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
  1. Definitions
     1. For the purposes of clause 13 of the Special Conditions:
        1. **Correctly Rendered Invoice** means an invoice which is:
           1. rendered in accordance with all of the requirements of the Subcontract; and
           2. for amounts that are correctly calculated and due for payment and payable under the Subcontract.
        2. **Payment Times Procurement Connected Policy** means the Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended from time to time.
        3. **PT PCP Policy Team** means the relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.
        4. **PT PCP Subcontract** means a subcontract between a Reporting Entity (having the meaning in the *Payment Times Reporting Act 2020* (Cth), as updated from time to time), and another party (**Other Party**) where:
           1. the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Subcontract;
           2. both parties are carrying on business in Australia; and
           3. the component of the subcontract for the provision of goods or services for the purposes of the Subcontract has a total value of less than, or is reasonably estimated to not exceed, $1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to $1,000,000 (GST inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

* + - * 1. subcontracts entered into prior to the Reporting Entities' tender response for the Services;
        2. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
        3. subcontracts for the purposes of:

procuring and consuming goods or services overseas; or

procuring real property, including leases and licences.

* + - 1. **Reporting Entity Subcontract** means a subcontract between the Consultant and another party to provide goods or services directly or indirectly to the Consultant for the purposes of the Subcontract where the value of such goods or services are estimated to exceed $4,000,000 (GST inclusive), and **Reporting Entity Subcontractor** has a corresponding meaning.

1. - FEE

***[OPTION 1 - CONTRACTOR AND TENDER ADMINISTRATOR/CONTRACTOR'S REPRESENTATIVE TO INCLUDE THE BELOW IF CLAUSE 9 IS NOT APPLICABLE AND THERE ARE NO PHASES]***

**[TO BE COMPLETED FOLLOWING SELECTION OF THE TENDERER AS FOLLOWS:]**

**WHERE THE SUCCESSFUL TENDERER'S FEE IS PRICED IN A SINGLE CURRENCY:**

|  |  |
| --- | --- |
| **Fee:** | [Insert lump sum amount and currency] (GST exclusive) |

**OR**

**WHERE THE SUCCESSFUL TENDERER'S FEE IS PRICED IN MORE THAN ONE CURRENCY:**

|  |  |
| --- | --- |
| **Fee:** | The sum of the following (GST exclusive):   1. [Insert lump sum amount and currency e.g. AUD] 2. [Insert lump sum amount and currency e.g. local currency of the Host Nation] |

**THE FOLLOWING, ALONG WITH THE RELEVANT BREAKDOWN, IS TO BE INSERTED FOLLOWING SELECTION OF THE TENDERER WHERE THE SUCCESSFUL TENDERER'S FEE IS IN MORE THAN ONE CURRENCY:**

The Consultant and the Contractor acknowledge and agree that the breakdown of the lump sum Fee set out below:

1. is solely for the purpose of informing the applicable currencies for any payment of, or adjustment to, the Fee or any amount payable under the Subcontract; and
2. will not limit or affect the scope of the Services or the Subcontract.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Description** | **Price - AUD** | **Price - [CURRENCY TO BE INSERTED FOLLOWING SELECTION OF SUCCESSFUL TENDERER]** |
|  | [To be inserted following selection of the successful Tenderer] | [To be inserted following selection of the successful Tenderer, to the extent any component of the Fee is to be paid in AUD] | [To be inserted following selection of the successful Tenderer, to the extent any component of the Fee is to be paid in a currency other than AUD. Additional columns and rows to be inserted, as required] |
|  |  |  |  |
|  |  |  |  |

***[OPTION 2 - CONTRACTOR AND TENDER ADMINISTRATOR/CONTRACTOR'S REPRESENTATIVE TO INCLUDE THE BELOW IF CLAUSE 9 IS APPLICABLE AND THERE ARE TWO PHASES, AND NOTING THAT THE BREAKDOWN OF THE INDICATIVE DELIVERY PHASE FEE WILL FORM PART OF THE DELIVERY PHASE FEE PROPOSAL ATTACHED TO THE SUBCONTRACT PARTICULARS]***

**[TO BE COMPLETED FOLLOWING SELECTION OF THE TENDERER AS FOLLOWS:]**

**WHERE THE SUCCESSFUL TENDERER'S FEE IS PRICED IN A SINGLE CURRENCY:**

|  |  |
| --- | --- |
| **Planning Phase Fee:** | [Insert lump sum amount and currency] (GST exclusive) |
| **Indicative Delivery Phase Fee:** | [Insert lump sum amount and currency] (GST exclusive) |

**OR**

**WHERE THE SUCCESSFUL TENDERER'S FEE IS PRICED IN MORE THAN ONE CURRENCY:**

|  |  |
| --- | --- |
| **Planning Phase Fee:** | The sum of the following (GST exclusive):   1. [Insert lump sum amount and currency e.g. AUD] 2. [Insert lump sum amount and currency e.g. local currency of the Host Nation] |
| **Indicative Delivery Phase Fee:** | The sum of the following (GST exclusive):   1. [Insert lump sum amount and currency e.g. AUD] 2. [Insert lump sum amount and currency e.g. local currency of the Host Nation] |

**THE FOLLOWING, ALONG WITH THE RELEVANT BREAKDOWN, IS TO BE INSERTED FOLLOWING SELECTION OF THE TENDERER WHERE THE SUCCESSFUL TENDERER'S FEE IS IN MORE THAN ONE CURRENCY:**

The Consultant and the Contractor acknowledge and agree that the breakdown of the lump sum Planning Phase Fee set out below:

1. is solely for the purpose of informing the applicable currencies for any payment of, or adjustment to, the Fee or any amount payable under the Subcontract; and
2. will not limit or affect the scope of the Services or the Subcontract.**]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Description** | **Price - AUD** | **Price - [CURRENCY TO BE INSERTED FOLLOWING SELECTION OF SUCCESSFUL TENDERER]** |
|  | [To be inserted following selection of the successful Tenderer] | [To be inserted following selection of the successful Tenderer, to the extent any component of the Fee is to be paid in AUD] | [To be inserted following selection of the successful Tenderer, to the extent any component of the Fee is to be paid in a currency other than AUD. Additional columns and rows to be inserted, as required] |
|  |  |  |  |
|  |  |  |  |

1. - MILESTONE FEE PAYMENT SCHEDULE

| **Payment milestone name** | **Payment milestone description** | **Amount (GST exclusive) and currency** |
| --- | --- | --- |
| **Planning Phase:** | | |
| ***[E.G. 50% Schematic Design Report]*** | ***[E.G. Each of the following has been achieved by the Consultant:***   * + 1. ***Design Documentation comprising the 50% Schematic Design Report (the required content of which is set out in section [INSERT] of the Brief) has been submitted to, and not rejected by, the Contractor's Representative in accordance with clause 6.3 of the Conditions of Subcontract; and***     2. ***each of the other activities to be undertaken as described in section [INSERT] of the Brief has been completed in accordance with the requirements set out in the Brief]*** | [To be inserted following selection of successful Tenderer] |
| ***[INSERT]*** | ***[INSERT]*** | [To be inserted following selection of successful Tenderer] |
| ***[INSERT]*** | ***[INSERT]*** | [To be inserted following selection of successful Tenderer] |
| **Delivery Phase:** |  |  |
| ***[INSERT]*** | ***[INSERT]*** | [To be inserted following selection of successful Tenderer] |
| ***[E.G. Performance of the Services in respect of the Project in each relevant month in accordance with the Subcontract]*** | ***[E.G. Completion of all the Services the Consultant is required to perform in the relevant month in accordance with the Subcontract]*** | ***[E.G. The Subcontract value of the Services performed by the Consultant in accordance with the Subcontract in each relevant month, provided that the balance of the Fee remaining once the Consultant has achieved all payment milestones up to and including the payment milestone [E.G. "COMPLETION UNDER THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)"] is not less than [INSERT RELEVANT PERCENTAGE I.E. 20% OF THE CONSULTANT'S DELIVERY PHASE FEE]*** |
| ***[E.G. Completion under the Managing Contractor Contract (International)]*** | ***[E.G. A notice of completion has been issued in respect of the last Stage of the MCCI Works under the Managing Contractor Contract (International)]*** | ***[E.G. $[To be inserted following selection of successful Tenderer]]*** |
| ***[INSERT]*** | ***[INSERT]*** | $[To be inserted following selection of successful Tenderer] |

1. - TABLE OF VARIATION RATES AND PRICES
2. - METHODOLOGY STATEMENT