

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

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

major works subCONTRACT (international)

(MASCI-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 subcontractor specified in the Subcontract Particulars (Subcontractor)

* + - * 1. The Commonwealth of Australia (**Commonwealth**) and the Contractor entered into the Managing Contractor Contract (International) for the design and construction of the MCCI Works.
        2. The Contractor wishes to subcontract certain obligations under the Managing Contractor Contract (International) to the Subcontractor under the Subcontract.
        3. The Contractor and the Subcontractor therefore promise to carry out and complete their respective obligations in accordance with the:
  1. attached Conditions of Subcontract; and
  2. 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 A CONTRACTOR INCORPORATED OVERSEAS, NOTING THAT LEGAL ADVICE SHOULD BE OBTAINED IN THESE CIRCUMSTANCES]*

*[S 127 OF CORPORATIONS ACT]*

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Subcontractor** 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 **Subcontractor** |  |  | 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 **Subcontractor** |

*[OR - AUTHORISED SIGNATORY OF COMPANY]*

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Subcontractor** 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 A SUBCONTRACTOR INCORPORATED OVERSEAS, NOTING THAT LEGAL ADVICE SHOULD BE OBTAINED IN THESE CIRCUMSTANCES]*

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:
      1. the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative or an Other Contractor engaged by the Commonwealth or the Contractor; or
      2. any personnel (other than any personnel engaged in connection with the carrying out of the Subcontractor’s Activities), or Other Contractor engaged by the Host Nation, authorised to be on Site by the Host Nation; or
   3. a Variation the subject of a direction by the Contractor’s Representative, except where the Variation is instructed in the circumstances described in clause 9.9(b),
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 Subcontractor or any of its officers, employees, subsubcontractors 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 Subcontractor’s Activities or the Subcontract Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Subcontractor’s Activities or the Subcontract Works; or
   2. occupy, use, maintain or operate the completed Subcontract Works.

Approved Security

1. An unconditional undertaking (duly stamped) in the form:
   1. set out in the Schedule of Collateral Documents; or
   2. required by the Contractor’s Representative,
2. and otherwise on terms, and given by a financial institution, approved by the Contractor.
3. **Asbestos**
4. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011 (Cth).
5. **Australian Privacy Principle**
6. 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 Subcontractor.

Change of Control

1. In relation to the Subcontractor, where a person who did not (directly or indirectly) effectively Control the Subcontractor at the Award Date, either alone or together with others, acquires Control of the Subcontractor 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 Subcontract Price, 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 Subcontractor’s Activities, the Subcontract 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.

Collateral Warranty

1. A warranty in the form set out in the Schedule of Collateral Documents.

Commonwealth

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

Completion

1. The point in time when, in respect of the Subcontract Works or a Stage:
   1. the Subcontract Works are, or the Stage is, complete except for minor Defects:
      1. which do not prevent the Subcontract Works or the Stage from being reasonably capable of being used for the intended purpose of the Subcontract Works or the Stage; and
      2. which can be corrected without prejudicing the convenient occupation, use, operation and maintenance of the Subcontract Works or the Stage;
   2. those inspections and tests which are required by the Subcontract to be carried out and passed before the Subcontract Works or the Stage reach Completion have been carried out and passed;
   3. all documents and other information required for the occupation, use, operation and maintenance of the Subcontract Works or the Stage (including the Subcontract Works Information described in Annexure 1 and otherwise described in the Subcontract) have been submitted to the Contractor’s Representative in accordance with the Subcontract; and
   4. without limiting the foregoing, the Subcontractor 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 Subcontractor 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 Subcontractor’s Activities, the Subcontract Works or the MCCI Works which:
        1. by its nature is confidential;
        2. the Subcontractor 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 Subcontractor 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 Subcontractor 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 21; or
     3. has been independently developed or acquired by the Subcontractor.

Confidential Information Incident

1. A single breach or a series of breaches of clause 21, 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.
2. **Consequential Loss**
3. Means any:
   1. 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 Subcontract Works, MCCI Works or other Commonwealth or Host Nation property) or loss of production; or
   2. financing costs,

whether present or future, fixed or unascertained, actual or contingent.

1. **Consolidated Group**
2. 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).

Construction Risks Insurance

1. A policy of insurance covering the respective rights, interests and liabilities of the Commonwealth, the Contractor, the Subcontractor and all subsubcontractors arising out of or in connection with the works in progress and insuring at minimum all the things referred to in clause 5.1 for which the Subcontractor bears the risk of loss or damage.

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.

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.

Contractor

1. The person specified in the Subcontract Particulars.

Contractor Risk

1. Any one of:
   1. war, invasion, terrorism, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
   2. the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
   3. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor or any subsubcontractor or any of their employees or agents.

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).

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).

Contractor’s Project Plans

1. 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.

Contractor’s Representative

1. The person specified in the Subcontract Particulars or any other person nominated by the Contractor from time to time under clause 3.2 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.

Criminal Code

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. In respect of:
   1. the Subcontract Works or a Stage, subject to paragraph (b), the date, or period of time, specified in the Subcontract Particulars; or
   2. any new Stage directed under clause 13.5(c), the date, or period of time, specified in the direction,

as adjusted under the Subcontract.

Date of Completion

1. The date of Completion set out in a Notice of Completion.

Deed of Guarantee, Undertaking and Substitution

1. A deed of guarantee, undertaking and substitution in the form set out in the Schedule of Collateral Documents.

Defect

1. Any defect, shrinkage, fault or omission in the Subcontract Works including any aspect of the Subcontract Works which is not in accordance with the requirements of the Subcontract.

Defects Liability Period

1. The period which commences on the Date of Completion of the Subcontract Works or a Stage and which continues for the period specified in the Subcontract Particulars, as may be extended by clause 9.11.

Defence

1. The Australian Department of Defence.

**DEQMS**

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

Design Documentation

1. All design documentation (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 forms necessary for the Subcontractor to complete any part of the Subcontract Works which is not fully designed and documented in the Subcontract Works Description.
2. **Design Objectives and Principles**

Means the design objectives and principles identified in or reasonably to be inferred from the Subcontract Works Description.

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

A policy of insurance covering the liability of the Subcontractor 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 Clearance Certificate

1. An Environmental Clearance Certificate issued by the Commonwealth relating to the Subcontractor’s Activities, the Subcontract Works or the MCCI Works and any conditions incorporated in that certificate.
2. **Environmental Harm**
3. 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 Subcontractor’s Activities or the Subcontract Works.

Environmental Management Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works from an environmental perspective to:
   1. ensure compliance with Statutory Requirements; and
   2. seek to 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 Subcontractor and subsubcontractor personnel (including the Subcontractor's key people under clause 3.6(a)) 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 Subcontractor’s Activities and the Subcontract Works;
  6. the training and awareness programmes provided to Subcontractor and subsubcontractor personnel regarding the Environment;
  7. the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 9.2;
  8. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Subcontractor’s Activities and the Subcontract 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 Subcontractor’s Activities and the Subcontract Works;
  9. the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 9.2 (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 Subcontractor’s Activities and the Subcontract Works);
  10. the procedure for ensuring subsubcontractor compliance with the Environmental Management Plan;
  11. the procedure for regular auditing or other monitoring of Subcontractor and subsubcontractor 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 Subcontractor’s Activities and the Subcontract Works;
  12. the additional matters specified in the Subcontract Particulars; and
  13. 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 Subcontractor’s Activities and the Subcontract Works;
   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.

Errors and Omissions Insurance

1. A policy of insurance to cover civil liabilities (not covered under Public Liability Insurance, products liability or umbrella liability insurance) whether arising in tort, contract or under statute, incurred by the Subcontractor or its subsubcontractors other than in a professional capacity or the capacity of a corporate director or officer, in carrying out the Subcontractor’s Activities.

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.

Financial Representative

1. Means:
   1. in relation to the Subcontractor, the Subcontractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Subcontractor; and
   2. in relation to a subsubcontractor, the subsubcontractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subsubcontractor.

**Force Majeure**

The occurrence of any of the following exceptional events or circumstances:

* 1. a Contractor Risk; and
  2. a natural catastrophe comprising an earthquake, hurricane, cyclone, typhoon, tsunami, volcanic activity, flood, fire, epidemic or pandemic (excluding a Pandemic Adjustment Event),

provided that it is an event or circumstance:

* 1. which is beyond a party's control;
  2. which such party could not reasonably have provided against before entering into the Subcontract;
  3. which, having arisen, such party could not reasonably have avoided or overcome;
  4. which is not substantially attributable to the other party; and
  5. of which such party did not have, or which a prudent contractor acting reasonably in the circumstances could not have been expected to have, knowledge prior to the submission of the Contractor's tender.

**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 Subcontractor and finalised under clause 9.2 which must set out in adequate detail the strategy and procedures the Subcontractor 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 Subcontractor’s Activities.

The Fraud and Corruption Control Plan must not be inconsistent with the Contractor’s Fraud and Corruption Control Plan and, and 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. cover all of the Subcontractor’s Activities, including any being performed by any subsubcontractor or other person or under any other arrangement established by the Subcontractor relating to the Subcontract;
  3. contain appropriate Fraud and corruption prevention, detection, investigation, reporting and audit processes and procedures including in respect of the procurement and payment of subsubcontractors;
  4. include a summary of Fraud and corruption risks and vulnerabilities associated with the Subcontract;
  5. propose treatment strategies and controls to manage each identified risk and vulnerability;
  6. provide information about how the Fraud and Corruption Control Plan will be implemented by the Subcontractor, its subsubcontractors and its supply chain;
  7. propose strategies to ensure the Subcontractor meets its obligations set out in the Fraud and Corruption Control Plan;
  8. include mechanisms and timeframes for collecting, analysing and reporting relevant incidents to the Contractor’s Representative;
  9. include protocols for detecting and handling incidents of known or suspected Fraud or breach of applicable Anti-Corruption Laws;
  10. include mechanisms on how the Subcontractor will ensure that its officers, employees, agents and subsubcontractors are made aware of what constitutes Fraud, bribery and corruption, including risks and arrangements for handling incidents relating to the Subcontract;
  11. outline key roles and responsibilities of all Subcontractor personnel regarding Fraud and corruption control; and
  12. address any:
      1. other relevant matters to ensure the Subcontractor complies with its obligations under clause 19 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 Subcontractor’s Activities or the Subcontract 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).

Host Nation

1. The country specified in the Subcontract Particulars.

HOTO Plan and Checklist

1. The 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 amended from time to time.

HOTO Process

1. The process for handover and takeover of the Subcontract Works or a Stage to enable the occupation, use, operation and maintenance of the Subcontract Works or the Stage including the:
   1. commissioning of the Subcontract Works or the Stage (including the inspection and testing process);
   2. handover of the Subcontract Works or the Stage 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 Subcontract Works or the Stage by the Commonwealth (or other intended occupants) and Other Contractors,
2. in accordance with the HOTO Plan and Checklist, the documents specified in the Subcontract Particulars and the other requirements of the Subcontract.

Infrastructure Directorate Dispensations Process

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

Information Security Requirements

1. 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.

Insolvency Event

1. Any one of the following:
   1. the Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor;
   4. where the Subcontractor is an individual person or a partnership including an individual person, the Subcontractor:
      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 Subcontractor 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.

IPACE Supplier Code of Conduct

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

Latent Condition

1. Any physical condition (including underground utility services, contamination or other sub-surface conditions) at the Site orimmediately adjacent to the Site, excluding a ground condition resulting from inclement weather wherever occurring, which differs materially from that which should have been anticipated at the Award Date by a prudent, competent and experienced contractor if it had:
   1. undertaken those site inspections which the Subcontractor had a reasonable opportunity to undertake; and
   2. examined all documents and other information reasonably available to the Subcontractor including by the making of reasonable enquiries.

Managing Contractor Contract (International)

1. The managing contractor contract between the Contractor and the Commonwealth specified in the Subcontract Particulars.
2. **Marine Transit Insurance**
3. A policy of insurance covering all materials, components and things of the Contractor, the Subcontractor and all subsubcontractors which are intended to be used or incorporated in connection with the Subcontractor’s Activities or the Subcontract Works, against loss or damage to such property whilst in transit anywhere (including by air, sea or otherwise) until arrival at the Site.

Material Change

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

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 Subcontractor.

MCCI Dispute Procedures

1. The dispute resolution procedures under the Managing Contractor Contract (International) referred to in the first paragraph of clause 15.15.

MCCI Works

1. The physical works, of which the Subcontract Works form part, 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).

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.

Notice of Completion

1. A notice under clause 13.2(b)(i) by the Contractor’s Representative stating that Completion of the Subcontract Works or a Stage has been achieved.

Other Contractor

1. Any contractor, consultant, artist, tradesperson or other person (including a facilities management or maintenance contractor) engaged to do work other than the Subcontractor and its subsubcontractors.
2. **Pandemic**
3. The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.
4. **Pandemic Adjustment Event**

Means any of the following events which arise as a direct result of the Pandemic and first occurs after the Award Date:

* 1. a change in:
     1. Statutory Requirements (including a change in Host Nation border requirements or Host Nation quarantine requirements);
     2. the availability of local Host Nation labour required for the Subcontract Works;
     3. the availability or scheduling of international shipping needed for the transport of unfixed goods or materials to the Site; or
     4. the ability to transport unfixed goods or materials stored by the Subcontractor within the Host Nation to the Site;
  2. closure (or reopening) of a subsubcontractor's factory, or any other location where subcontracted activities are being carried out, in respect of the supply of goods or materials required for the Subcontract Works; or
  3. such other events as may be specified in the Subcontract Particulars,

in each case which impacts the performance or progress of the Subcontractor’s Activities at the Site.

**Pandemic Management Plan**

The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Subcontractor will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Subcontractor’s Activities and the Subcontract Works.

The Pandemic Management Plan must address, at a minimum:

* 1. as at the date of the preparation (or update) of the plan, the circumstances (if any) in respect of the Pandemic around which the supply of labour, equipment, materials or services required for the carrying out of the Subcontractor’s Activities will be undertaken;
  2. the Subcontractor's approach to compliance with all Statutory Requirements in respect of the Pandemic;
  3. the specific steps that the Subcontractor will take in respect of the planning and execution of the Subcontractor’s Activities in response to the Pandemic including in respect of resourcing, programming and logistics;
  4. the risks that the Pandemic poses to the Subcontractor’s Activities, and identify the mitigation measures that have been, or will be, implemented to avoid, mitigate, resolve or otherwise manage those risks, together with possible alternative courses of action in the event that there is a Pandemic related disruption to the carrying out of the Subcontractor’s Activities;
  5. strategies for maximising ongoing workforce and subsubcontractor availability;
  6. the procedure for identifying, monitoring and reporting on any possible or actual impact of the Pandemic on the Subcontractor’s Activities and the Subcontract Works (including any Pandemic Adjustment Event);
  7. the procedure for regularly reviewing, updating and amending the Pandemic Management Plan under clause 9.2 (including as a result of any Pandemic Adjustment Event);
  8. the additional matters specified in the Subcontract Particulars; and
  9. any other matters required by the:
     1. Subcontract; or
     2. Contractor’s Representative.

Personal Information

1. Has the meaning given in the Privacy Act.

Plant, Equipment and Work

1. Those things used, or work undertaken, by the Subcontractor to construct the Subcontract Works but which will not form part of the Subcontract Works.

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,
2. by the Subcontractor or its subsubcontractors in carrying out the Subcontractor’s Activities.

Project Documents

All data, documents, drawings, records, programs and information (including Subcontract Works Information and information relating to the Subcontractor’s compliance with the WHS Legislation) and other material produced or provided, or required to be provided, to the Contractor under, for the purposes of, arising out of or in connection with, the Subcontract, the Subcontractor’s Activities or the Subcontract Works by, for or on behalf of the Subcontractor (including by subsubcontractors).

Project Lifecycle and HOTO Plan

1. The plan prepared by the Subcontractor in accordance with, and for the purposes of, the HOTO Process and finalised under clause 9.2, which 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. Pandemic Management Plan;
   4. Project Lifecycle and HOTO Plan;
   5. Site Management Plan;
   6. Work Health and Safety Plan; and
   7. additional plans specified in the Subcontract Particulars and finalised by the Subcontractor under clause 9.2(a)(ii),
2. as updated or amended under clause 9.2.

Provisional Sum Work

1. The work or goods so specified in the Subcontract Particulars for which the sum of money specified in the Subcontract Particulars is included in the Subcontract Price.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Subcontractor and all subsubcontractors for their respective 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 Subcontractor (or any subsubcontractor),
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 Subcontractor’s Activities or the Subcontract Works.
3. This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers' Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Recipient

1. Any person provided with Confidential Information and, if clause 22 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subsubcontractors, suppliers and material suppliers.

Related Body Corporate

1. Means a "Related Body Corporate" as defined in section 9 of the *Corporations Act 2001* (Cth) or equivalent entity under any other Statutory Requirement (including a subsidiary or holding company of the Subontractor).
2. **Retention Moneys**
3. The moneys retained by the Contractor in accordance with clause 12.5(a).

Schedule of Collateral Documents

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

Schedule of Rates

1. The schedule (if any) set out or specified in the Subcontract Particulars, containing rates and prices to be used for the purpose of calculating the Subcontract Price.

Security

Means either:

* 1. Approved Security; or
  2. Retention Moneys,

as 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 Subcontractor 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 Subcontractor 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 22, 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 Subcontractor:
   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 23.3),
2. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 21 and, if clause 22 applies, clause 22.

Shadow Economy Procurement Connected Policy

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

Site

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

Site Management Plan

The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works on and near the Site.

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 Subcontractor and subsubcontractor personnel (including the Subcontractor's Representative and the Subcontractor's key people under clause 3.6(a)) regarding management of the Subcontractor’s Activities and the Subcontract Works 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 Other Contractors 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 Subcontractor’s Activities and the Subcontract Works;
  4. procedures for access to:
     1. Commonwealth property (including any Defence location) or Host Nation property; and
     2. the Site,

by the Subcontractor and subsubcontractor 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, 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 the Subcontractor and subsubcontractor personnel in respect of Commonwealth property and the Site;
  2. procedures for:
     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 Subcontractor’s Activities and the Subcontract Works;
  3. if the Subcontractor’s Activities or the Subcontract Works 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 9.2;
  5. the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 9.2 (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 Subcontractor’s Activities and the Subcontract Works);
  6. the procedure for ensuring subsubcontractor compliance with the Site Management Plan;
  7. the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Subcontractor’s Activities and the Subcontract 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, near-misses and other situations or accidents on Commonwealth property and the Site during the Subcontractor’s Activities and the Subcontract Works;
  8. the procedure for regular auditing or other monitoring of Subcontractor and subsubcontractor 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 Subcontractor’s Activities and the Subcontract Works;
  9. to the extent that the Subcontractor’s Activities include any demolition, procedures for obtaining approval from the Contractor’s Representative prior to undertaking such demolition and otherwise complying with any applicable Statutory Requirements (and any relevant Subcontractor HOTO Obligation) in relation to such demolition;
  10. the additional matters specified in the Subcontract Particulars; and
  11. 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.

Stage

1. A stage of the Subcontract Works specified in:
   1. the Subcontract Particulars; or
   2. a direction under clause 13.5(c).

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 Subcontractor’s Activities or the Subcontract Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
   2. Approvals (including the Environmental Clearance Certificate and 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 Department of Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
   3. ensuringcompliance by the Subcontractor 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 Subcontract Works Description; 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".

Subcontract Price

1. The amount specified in the Subcontract Particulars as adjusted from time to time in accordance with the Subcontract.

Subcontract Works

1. The physical works, a brief description of which is specified in the Subcontract Particulars, which the Subcontractor must design (to the extent required by the Subcontract), construct, commission, complete and hand over to the Contractor in accordance with the Subcontract.
2. **Subcontract Works Information**
3. Information and data created in connection with and relating to the design and construction of the Subcontract Works or a Stage or otherwise relating to each element of the Subcontract Works or a Stage and the Site upon which they are constructed, including the requirements set out in Annexure 1 and clause 25.1(c).

Subcontract Works Description

The documents in Annexure 3.

Subcontractor

1. The person specified in the Subcontract Particulars.

Subcontractor Deed of Covenant

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

Subcontractor Design Certificate

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

Subcontractor HOTO Obligation

1. Any task, function, requirement or obligation relating to the HOTO Process required to be performed by the Subcontractor under this Subcontract or which the HOTO Plan and Checklist allocates, or would reasonably be inferred as allocating, to the Subcontractor.

Subcontractor’s Activities

1. All things or tasks which the Subcontractor is, or may be, required to do to comply with its Subcontract obligations.

Subcontractor's Representative

1. The person specified in the Subcontract Particulars or any other person from time to time appointed as the Subcontractor's Representative in accordance with clause 3.6.

Subsubcontractor Deed of Covenant

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

Subsubcontractor Design Certificate

A certificate set out in the Schedule of Collateral Documents.

Table of Variation Rates and Prices

1. The table specified in the Subcontract Particulars, containing rates and prices to be used for the purposes of valuing Variations under clause 11.3.
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.

Variation

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

WHS Legislation

1. Means the *Work Health and Safety Act 2011* (Cth) and the *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 Subcontract Works over the whole life of the Subcontract Works, including the costs of designing and constructing the Subcontract Works prior to Completion, decommissioning, remediation and disposal costs (including waste disposal) and occupying, using, operating and maintaining the Subcontract Works after Completion.

WOL Objectives

1. Means balancing the:
   1. WOL Cost;
   2. useful life of the Subcontract Works;
   3. reliability and availability of the Subcontract Works throughout their useful life;
   4. operability and maintainability of the Subcontract Works throughout their useful life;
   5. value for money achieved by the Commonwealth from the design, construction, use, occupation, operation and maintenance of the Subcontract Works;
   6. opportunity to reduce resource use during the occupation, use, operation and maintenance of the Subcontract 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 Subcontractor and finalised under clause 9.2 (which is either Subcontract specific or Site specific) and which must set out in adequate detail the procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works 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 Subcontractor’s Activities and the Subcontract Works;
   2. so far as it is reasonably practicable for the Subcontractor to do so, the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Subcontractor’s Activities and the Subcontract Works are being undertaken regarding consulting, cooperating and coordinating activities in relation to the compliance with the duties contained in the WHS Legislation, as if the WHS Legislation applied to the Subcontractor;
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures to the Contractor, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the MCCI Contract Administrator and the Contractor’s Representative with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
   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. the 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;
   6. the 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;
   7. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
   8. the arrangements for ensuring that work health and safety is a compulsory agenda item at Site meetings and/or monthly project meetings and ensuring that the outcomes of those agenda items are communicated to the Contractor’s Representative;
   9. if design forms part of the Subcontractor’s Activities, proposed design risk assessments, purchasing policies for substances, Plant, Equipment and Work, the process for meeting Statutory Requirements regarding design (as if the WHS Legislation applied to the Contractor) and the process for addressing design changes relevant to work health and safety considerations;
   10. the management of work health and safety generally, including any relevant work health and safety policy, details of any relevant work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication and information-sharing to the Contractor’s Representative pursuant to clause 8.17 and dispute resolution on work health and safety matters;
   11. the procedures the Subcontractor will adopt to verify its and its subcontractors compliance with its Work Health and Safety Plan, including details of the regularity, form and content of such verification activities;
   12. the provision of written assurances to the Contractor’s Representative under clause 8.17(f);
   13. emergency evacuation arrangements for all personnel including as a result of injury, Force Majeure or similar circumstance;
   14. the management of subsubcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation;
   15. address the Contractor's communications strategy for consulting, co-operating and co-ordinating matters concerning work health and safety, including:
       1. communicating Site hazards and risks and work health and safety issues to the Contractor, Other Contractors and subsubcontractors; and
       2. information sharing between the Subcontractor, the Contractor, Other Contractors and subsubcontractors in respect of Site hazards and risks and work health and safety issues;
   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 each State and Territory or international jurisdiction in which the Subcontractor’s Activities are performed or the Subcontractor's employees perform work, are employed or normally reside, to insure against or make provision for the liability of the Subcontractor to its employees for death or injuries arising out of or in connection with their employment.
   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 "$" is to Australian currency except where otherwise specified in the Subcontract;
    11. 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 12.5),

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 10.8, 10.9 and 10.10:
       1. any extension of time stated in days; or
       2. any reference to "day",

will exclude public holidays and include only those days which are stated in the Subcontractor's then current program under clause 10.2 as working days;

* + 1. references to "business days" are to days other than:
       1. a Saturday or Sunday;
       2. a public holiday in the Host Nation; or
       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. the word "subsubcontractor" will include subsubcontractors, suppliers and consultants and the word "subsubcontract" will include a contract with a subsubcontractor;
    5. where a clause contains two options, the option specified in the Subcontract Particulars will apply;
    6. 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;
    7. unless agreed or notified in writing by the Contractor’s Representative or the date of the standard or reference document is specified in the Subcontract Works Description, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Subcontract Works Description is a reference to the edition last published prior to:
       1. to the extent that the Subcontractor’s Activities include design, the submission of the relevant Design Documentation; and
       2. in any other case, the Award Date.

If requested by the Contractor’s Representative, the Subcontractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Subcontract Works Description and Design Documentation available to the Contractor’s Representative;

* + 1. for the purposes of clauses 2.4(a)(ii), 7.4(a)(ii), 8.4(b)(ii), 8.22(d)(ii), 8.30(d)(i)B, 9.5, 10.2(d)(ii) and 10.16(e)(ii), a reference to “extra costs” includes a reference to extra costs reasonably incurred by the Subcontractor as a direct result of the applicable event delaying the Subcontractor; and
    2. requirements contained in the Subcontract Works Description, whether or not they include the expression "the Subcontractor must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Subcontractor, unless stated otherwise.
  1. Miscellaneous
     1. The Subcontract (including clause 15) 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 Subcontractor must indemnify the Contractor against any liability to or claim by a third party including a subsubcontractor or Other Contractor caused by any breach by the Subcontractor of a term of the Subcontract.
     7. All obligations to indemnify under the Subcontract survive termination of the Subcontract on any basis.

1. COMMENCEMENT
   1. Nature of Subcontract

The Subcontractor must carry out the Subcontractor’s Activities in accordance with the Subcontract.

* 1. Subcontractor's Obligations

The Subcontractor must:

* + 1. without limiting the operation of clause 2.3(a) immediately commence to carry out the Subcontractor’s Activities in accordance with the Subcontract;
    2. unless otherwise stated, carry out the Subcontractor’s Activities at its cost; and
    3. if requested by the Contractor’s Representative, execute a Subcontractor Deed of Covenant (duly completed with all relevant particulars) within the period specified by the Contractor’s Representative in such a request and deliver the executed Subcontractor Deed of Covenant to the Contractor’s Representative.
  1. Contractor's Obligations

The Contractor must:

* + 1. give the Subcontractor sufficient access to the Site to allow it to commence work on the Site on the later of:
       1. satisfaction of the following conditions precedent to access:
          1. the Subcontractor having provided to the Contractor’s Representative:

the Approved Security required under clause 4.1 (where the Security comprises Approved Security); and

evidence satisfactory to the Contractor’s Representative under clause 5.5(d) that the Subcontractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.4;

* + - * 1. the Environmental Management Plan, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 9.2;
        2. the Environmental Clearance Certificate has been issued; and
        3. any other conditions specified in the Subcontract Particulars or elsewhere in the Subcontract; and
      1. the date specified in the Subcontract Particulars; and
    1. subject to other provisions of the Subcontract affecting access, continue to allow the Subcontractor sufficient access to the Site to enable it to carry out the Subcontractor’s Activities.
  1. Delayed Access
     1. Any failure by the Contractor to give access as required by clause 2.3(a) will not be a breach of the Subcontract but will entitle the Subcontractor to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly out of the Contractor's failure to give the Subcontractor access to the Site, as determined by the Contractor’s Representative.
     2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Contractor's failure to give the Subcontractor access to the Site, other than under paragraphs (a)(i) and (a)(ii).

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 Subcontractor 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 Subcontractor of that appointment.
      2. Any substitute Contractor’s Representative appointed under clause 3.2 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 Subcontractor under the Subcontract, the Contractor and Subcontractor must co-operate with each other in carrying out their obligations under the Subcontract.

* 1. Contractor’s Representative's Representative
     1. The Contractor’s Representative may:
        1. by written notice to the Subcontractor appoint persons to exercise any of the Contractor’s Representative’s functions under the Subcontract; and
        2. revoke any appointment under subparagraph (i) by notice in writing to the Subcontractor.
     2. As at the Award Date, the Contractor’s Representative is deemed to have appointed the persons specified in the Subcontract Particulars to carry out the functions specified in the Subcontract Particulars.
     3. All references in the Subcontract to the Contractor’s Representative include a reference to a representative appointed under clause 3.4.
  2. Subcontractor's Representative
     1. The Subcontractor must ensure that the Subcontractor's Representative is present on the Site at all times reasonably necessary to ensure that the Subcontractor is complying with its obligations under the Subcontract.
     2. A direction is deemed to be given to the Subcontractor if it is given to the Subcontractor's Representative.
  3. Key People for the Subcontractor’s Activities

The Subcontractor must:

* + 1. employ those people specified in the Subcontract Particulars, including the Subcontractor's Representative, in the jobs specified in the Subcontract Particulars;
    2. subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contractor’s Representative's prior written approval; and
    3. if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Subcontractor, replace them with persons approved by the Contractor’s Representative of at least equivalent experience, ability and expertise.
  1. Removal of Persons
     1. The Contractor’s Representative may by notice in writing instruct the Subcontractor to remove any person from the Site or the Subcontractor’s Activities who in the reasonable opinion of the Contractor’s Representative is guilty of misconduct or is incompetent, negligent or is otherwise not a fit and proper person to be engaged in connection with the Subcontractor’s Activities.
     2. The Subcontractor must ensure that the person referred to in the Contractor’s Representative’s notice under paragraph (a) is not again involved in the Subcontractor’s Activities.
  2. Industrial Relations

In carrying out the Subcontractor’s Activities, the Subcontractor must:

* + 1. assume sole responsibility for and manage all aspects of industrial relations;
    2. ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
    3. keep the Contractor’s Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Subcontractor’s Activities; and
    4. comply with all other requirements of the Subcontract relating to industrial relations.
  1. Monthly Meeting
     1. The Subcontractor 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 3.10 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.
  2. Subcontractor's Monthly Report

At least 7 days prior to each meeting under clause 3.9, the Subcontractor 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 Subcontractor’s Activities and the Subcontract Works including:
       1. key activities, meetings and other events in the previous month;
       2. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, the status of all Design Documentation (including any dispensations being pursued in accordance with the Infrastructure Directorate Dispensations Process);
       3. the status of all Approvals;
       4. photographs of the Subcontractor’s Activities and the Subcontract Works; and
       5. any deviations from the Subcontractor's program under clause 10.2;
    2. detailed particulars of all:
       1. payment claims, payment statements and payments;
       2. Variation Price Requests, responses, Variation Orders, Subcontractor requests for Variations under clause 11.7 and proposed adjustments to the Subcontract Price;
       3. written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Completion;
       4. other Claims made by the Contractor (including in respect of Latent Conditions, Statutory Requirements and the resolution of ambiguities under clause 6.11);
       5. calls, attendances, recommendations and actions taken in respect of all Defects (in accordance with clause 9.15);
       6. disputes under clause 15; and
       7. notices under clause 16.1 or 16.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

the Subcontractor’s Activities or the Subcontract 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 (as if it applied to the Subcontractor) and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.17, 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 9.2);
       2. details of all proactive risk management measures implemented by the Subcontractor to prevent systemic work health and safety issues, incidents or accidents during the Subcontractor’s Activities and the Subcontract Works;
       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;
       4. without limiting the Subcontractor's obligations to notify the MCCI Contract Administrator and the Contractor’s Representative under:
          1. clauses 8.17(a)and 8.17(c)(i), summary data regarding notifiable incidents; and
          2. clause 8.17(c)(ii) and (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. Site-related requirements, including the Site Management Plan;
       2. commissioning, training and handover requirements, including the Project Lifecycle and HOTO Plan and Annexure 1;
       3. environmental requirements, including the Environmental Management Plan;
       4. fraud and corruption control requirements, including the Fraud and Corruption Control Plan;
       5. information security requirements, including clause 21 and, if clause 22 applies, clause 22; and
       6. any other security requirements,

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

* + 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 3.9 and 3.10, the Subcontractor must comply with any additional meeting and reporting requirements specified in the Subcontract Particulars or notified by the Contractor’s Representative from time to time.

1. SECURITY
   1. Form

The Subcontractor must provide security to the Contractor:

* + 1. in the case of Approved Security:
       1. in the form of Approved Security;
       2. in the amounts specified in the Subcontract Particulars for the Subcontract Works or a Stage; and
       3. within 14 days of the Award Date; or
    2. in the case of Retention Moneys, in accordance with clause 12.5(a).
  1. Release of Security

Subject to any other rights or remedies of the Contractor under the Subcontract or otherwise at law or in equity (including the right of set-off in clause 12.17), the Contractor must:

* + 1. within 14 days of the later of:
       1. the issue of a Notice of Completion for the Subcontract Works or a Stage; and
       2. the non-rejection under clause 25 of the documents and other information required under clause 25.1(c) for the Subcontract Works or a Stage,

release from the Security then held under clause 4.1, 50% of the Security held for the Subcontract Works or the Stage under clause 4.1;

* + 1. within 14 days of the expiration of the Defects Liability Period for the Subcontract Works or a Stage (excluding any extensions under clause 9.11), release such amount of the Security then held for the Subcontract Works or the Stage, as the Contractor’s Representative determines to be reasonable, having regard to the work to which any remaining Defects Liability Period applies, to ensure the Contractor's interests are not prejudiced; and
    2. release the balance of the Security then held under clause 4.1 following the latest of:
       1. the expiry of the last Defects Liability Period; or
       2. the Subcontractor has complied with all its obligations under the Subcontract.
  1. Interest
     1. The Contractor:
        1. is not obliged to pay the Subcontractor interest on:
           1. the Security; or
           2. subject to paragraph (b), the proceeds of any Approved Security if it is converted into cash; and
        2. does not hold the proceeds or money referred to in subparagraph (i) on trust for the Subcontractor.
     2. If the Contractor makes a call upon any Security held under clause 4.1 and obtains cash as a consequence:
        1. the Contractor will pay simple interest, at the rate applying to damages for the purpose of clause 12.15, on the amount of any cash obtained in excess of the sum to which the Contractor is entitled at the time of such call; and
        2. the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Subcontractor to the Contractor at the time such amounts become payable.
  2. Deed of Guarantee, Undertaking and Substitution

Clause 4.4 applies unless the Subcontract Particulars state that it does not apply.

The Subcontractor must provide to the Contractor a Deed of Guarantee, Undertaking and Substitution duly executed by the Subcontractor and the Related Body Corporate of the Subcontractor specified in the Subcontract Particulars within 14 days of the Award Date.

1. RISKS AND INSURANCE
   1. Risk of Subcontract Works

Except to the extent that it arises from a Contractor Risk, the Subcontractor will bear the risk of and indemnify the Contractor against:

* + 1. any physical loss of or damage to:
       1. the Subcontract Works or a Stage;
       2. Plant, Equipment and Work; and
       3. unfixed goods and materials (whether on or off Site), including anything provided by the Contractor to the Subcontractor or brought onto Site by a subsubcontractor, used or to be used in carrying out the Subcontractor’s Activities,

until:

* + - 1. in the case of physical loss of or damage to the Subcontract Works or a Stage, a Notice of Completion is issued for the Subcontract Works or the Stage; and
      2. otherwise, a Notice of Completion is issued for the Subcontract Works or the last Stage to reach Completion; and
    1. after the issue of a Notice of Completion for the Subcontract Works or the Stage, any physical loss of or damage to the Subcontract Works or the Stage arising from any act or omission of the Subcontractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Subcontract Works or the Stage.
  1. Other Risks

Except to the extent that it arises from a Contractor Risk, the Subcontractor will bear the risk of and indemnify the Contractor against:

* + 1. any physical loss of or damage to property of the Contractor (other than property referred to in clause 5.1(a)); and
    2. any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by or arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works, provided that the Subcontractor's responsibility to indemnify the Contractor will be reduced to the extent that an act or omission of the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative or an Other Contractor contributed to the loss, damage, injury or death.

* 1. Reinstatement
     1. During the period during which the Subcontractor bears the risk of physical loss or damage under clause 5.1, the Subcontractor must:
        1. subject to subparagraph (ii), promptly replace or otherwise make good any physical loss of, or repair the damage to, the Subcontract Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Subcontractor’s Activities; and
        2. where the physical loss or damage arises from a Contractor Risk, only comply with subparagraph (i) to the extent directed by the Contractor’s Representative.
     2. If paragraph (a)(i) applies, the Subcontractor will bear the cost of such replacement, making good or repair. If paragraph (a)(ii) applies, the replacement, making good or repair directed by the Contractor’s Representative will be treated as if it were a Variation the subject of a direction by the Contractor’s Representative and clause 11.3 applied.
  2. Contractor Insurance Obligations
     1. The Contractor must:
        1. from the Award Date cause to be effected and maintained or otherwise have the benefit of Construction Risks Insurance, Public Liability Insurance and the other insurance (if any) specified in the Subcontract Particulars for the amounts specified in the Subcontract Particulars; and
        2. promptly provide the Subcontractor with evidence satisfactory to the Subcontractor that the insurances required under subparagraph (i) are current, as required by the Subcontractor from time to time.
     2. The insurances referred to in paragraph (a)(i) are subject to the exclusions, conditions and excesses noted on the policies and the Subcontractor must:
        1. satisfy itself of the nature and extent of the Contractor’s insurance;
        2. if required by the Subcontractor, 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 Subcontractor wants to insure against or cover; and

* + - 1. where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Contractor under clause 5.2, bear the cost of any excesses in the Contractor’s insurance.
  1. Subcontractor Insurance Obligations

The Subcontractor must:

* + 1. from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurances:
       1. Workers Compensation Insurance;
       2. Employers' Liability Insurance;
       3. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars; 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:
       1. to the extent permitted by law, the insurance extends to provide indemnity to the Contractor as the Subcontractor's principal in respect of any statutory and common law liability to the Subcontractor's employees; and
       2. each of its subsubcontractors has Workers Compensation Insurance, to the extent required by law, and Employers' Liability Insurance covering the subsubcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Subcontractor is required to do under subparagraph (i);
    2. in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Subcontractor’s Activities; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Subcontractor’s Activities 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 5.5; and
       2. each insurance required under clause 5.5 is current and complies with clause 5.5,

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

* + 1. ensure that:
       1. if the insurer gives the Subcontractor notice of expiry, cancellation or rescission of any required insurance policy, the Subcontractor 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 Subcontractor cancels, rescinds or fails to renew any required insurance policy, the Subcontractor 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 Subcontractor 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;
    3. ensure that any subsubcontractors that perform any design work forming part of the Subcontractor’s Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Subcontractor under clause 5.5 for the amounts specified in the Subcontract Particulars; and
    4. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Subcontractor under this clause 5.5. Any excess borne by the Contractor will be a debt due from the Subcontractor 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 Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.5.

The obtaining of insurance as required under clause 5.5 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Subcontractor under the Subcontract or otherwise at law or in equity.

* 1. Failure to Insure
     1. If the Subcontractor fails to comply with clause 5.5, 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 Subcontractor to the Contractor.
     2. The Subcontractor 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 Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.4 and the insurance which the Subcontractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.5 must be maintained:

* + 1. in the case of Construction Risks Insurance, until the Subcontractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
    2. in the case of Public Liability Insurance:
       1. written on an occurrence basis, until the completion of the Subcontractor’s Activities; 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;
          2. date upon which all Defects have been rectified in accordance with the Subcontract; and
          3. completion of the Subcontractor’s Activities;
    3. in the case of Workers Compensation Insurance and Employers' Liability Insurance, until the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities; and
    4. in the case of Professional Indemnity Insurance or Errors and Omissions 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;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities.
  1. Notice of Potential Claim

The Subcontractor 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 by clause 5.5 or any claim actually made against the Subcontractor or the Contractor which may be covered by an insurance policy required by clause 5.5;
    2. keep the Contractor informed of all significant developments concerning the claim, except in circumstances where the Contractor is making a claim against the Subcontractor; and
    3. ensure that its subsubcontractors similarly inform the Subcontractor and the Contractor in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Subcontract or any claim actually made against the Subcontractor, a subsubcontractor or the Contractor which may be covered by an insurance policy required by the Subcontract,

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

* + 1. subject to paragraph (e), 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 Subcontractor and claims which may arise from circumstances reported by the Subcontractor 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. Procedure upon Loss or Damage

If loss of or damage to any part of the Subcontract Works or a Stage occurs whilst the Subcontractor bears the risk of loss of or damage to the Subcontract Works or the Stage under clause 5.1:

* + 1. the Subcontractor must:
       1. make the Subcontract Works or the Stage and the Site safe and secure;
       2. notify the relevant insurers and comply with any reasonable instructions from the insurer(s); and
       3. promptly consult with the Contractor’s Representative to discuss the steps to be taken to:
          1. comply with its obligations under clause 5.3; and
          2. ensure that, to the greatest extent possible, the Subcontractor continues to comply with its other obligations under the Subcontract; and
    2. upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of the Contractor's consultants) will:
       1. be paid to the Subcontractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Subcontractor replaces, makes good or repairs the loss of or damage to the Subcontract Works or the Stage; and
       2. be the limit of the Subcontractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Subcontract Works or the Stage.
  1. Cross Liability
     1. Clause 5.10 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.
     2. Where the Subcontract requires insurance to provide cover to more than one insured, the Subcontractor 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 Subcontractor under this Subcontract before enforcing any of its rights or remedies under the indemnities referred to in this Subcontract or generally.
     2. The Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor:
        1. for any deliberate breach or repudiation of the Subcontract;
        2. under the indemnities in clauses 1.3(f), 5.1, 5.2, 6.10(b), 12.19, 13.8, 18.1(a)(xiv), 19.6(c), 21.5(c), 22.6(c), and 23.3(c);
        3. for Fraud or breach of clause 19;
        4. to the extent that payments are received by the Subcontractor or the Subcontractor is entitled to be indemnified under any insurance policy or policies required to be effected and maintained under the Subcontract in relation to that liability, or payments would have been received by the Subcontractor or the Subcontractor would have been entitled to be indemnified under such insurance policy or policies but for:
           1. the failure of the Subcontractor 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 Subcontractor (including a misrepresentation to the insurer or a failure to make proper disclosure or to comply with the requirements of the policy);
           3. the failure by the Subcontractor 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 5.12 to deny liability on the basis that the party has no liability to the Commonwealth;
        5. for fines or penalties incurred by the Contractor arising from the Subcontractor’s Activities; and
        6. in respect of paragraph (a)(i) only, for liquidated damages under clause 13.7.
     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 Subcontractor arising from an act or omission of the Contractor.

1. DESIGN AND DOCUMENTATION
   1. Subcontractor's Documentation Program

The Subcontractor must, as part of the program it is to prepare under clause 10.2, 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. Subcontractor's Design

The Subcontractor must:

* + 1. design the parts of the Subcontract Works which the Subcontract requires it to design in accordance with the Subcontract Works Description, 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 Subcontractor's other obligations under the Subcontract, prepare all such Design Documentation and perform all other Subcontractor’s Activities in respect of design (if any) so as to maximise achievement of the Design Objectives and Principles; and
    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:
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Subcontractor; and
        2. within the number of days specified in the Subcontract Particulars of the submission by the Subcontractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in the Contractor’s Representative's reasonable opinion the Design Documentation does not comply with the requirements of the Subcontract.
     2. If any Design Documentation is rejected:
        1. the Contractor’s Representative must notify the Subcontractor in writing and include details as to why the Design Documentation does not comply with the requirements of the Subcontract; and
        2. the Subcontractor must submit amended Design Documentation to the Contractor’s Representative.
     3. The Subcontractor must not commence construction of any part of the Subcontract Works to which any Design Documentation it has submitted to the Contractor’s Representative applies, unless the Contractor’s Representative has had the number ofdays specified in the Subcontract Particulars to review the Design Documentation and has not rejected the Design Documentation.
  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 Subcontractor to review, or in reviewing, the Design Documentation submitted by the Subcontractor 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 Subcontractor 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 Subcontractor from, or alter or affect, the Subcontractor's obligations under the Subcontract or otherwise at law or in equity; or
       2. prejudice the Contractor's rights against the Subcontractor 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 Subcontractor 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. Fitness for Purpose

The Subcontractor warrants that:

* + 1. the Design Documentation it prepares will be fit for the purposes as set out in, or reasonably to be inferred from, the Subcontract Works Description; and
    2. upon Completion, the Subcontract Works or the Stage will, to the extent that the Subcontract Works have or the Stage has been designed by the Subcontractor, be fit for the purposes as set out in, or reasonably to be inferred from, the Subcontract Works Description.
  1. Availability

The Subcontractor must keep available for the use of the Contractor’s Representative, the Contractor, the MCCI Contract Administrator, the Commonwealth or anyone else acting on behalf of the Contractor or the Commonwealth:

* + 1. on the Site, one complete set of the Subcontract Works Description, all Design Documentation (including all Design Documentation issued by the Contractor’s Representative under clause 8.8 if Option 1 of that clause applies), any documents provided by the Contractor under clause 6.1 and all other Project Documents directed in writing by the Contractor’s Representative; and
    2. at any area off-Site where the Subcontractor’s Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Subcontractor’s Activities being carried out in that area.
  1. Licence over Project Documents

The Subcontractor 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 when the Project Document is:
       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 Subcontractor’s Activities or the Subcontract Works by, for or on behalf of the Subcontractor;

* + 1. includes an unlimited right to sub-licence;
    2. without limitation, extends to:
       1. any subsequent occupation, use, operation and maintenanceof or additions, alterations or repairs to the Subcontract 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 Subcontractor warrants that:

* + 1. the Subcontractor 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 Subcontractor must:

* + 1. ensure that the Subcontractor’s Activities 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. 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 (which the Subcontractor is entitled to use for construction purposes under clause 6.3) 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 Subcontract Works Description and any other requirement of the Subcontract (including any other requirement of the Subcontract Works Description), 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 Subcontractor, then the Subcontractor must promptly give the Contractor’s Representative notice in writing. After receipt of a notice from the Subcontractor, the Contractor’s Representative must within 14 days of receipt of the notice instruct the Subcontractor as to the course it must adopt; or
       2. the Contractor, the Contractor’s Representative must promptly give the Subcontractor 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 Subcontractor must:

* + 1. at the request of the Contractor at any time during the Subcontractor’s Activities and the period of 10 years following the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities,

provide and make available:

* + - 1. access to its premises and make the Project Documents available for inspection by the Contractor’s Representative, the MCCI Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth;
      2. such copies of the Project Documents as the Contractor’s Representative, the MCCI Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth 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, the MCCI Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth; and
      4. any officers, employees, agents or subsubcontractors for interviews with the Contractor’s Representative, the MCCI Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth; and
    1. ensure that any subsubcontract made in connection with the Subcontract contains enforceable obligations requiring the subsubcontractor to comply with the Subcontractor's obligations arising under clause 6.12 as if the subsubcontractor were the Subcontractor.
  1. Design Certification

Without limiting the Contractor's obligations to the Commonwealth under the Managing Contractor Contract (International) and the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, the Subcontractor must, with each submission of Design Documentation under clause 6.2, payment claim under clause 12.2 and as a condition precedent to Completion, provide the Contractor’s Representative with:

* + 1. a certificate in the form of the Subcontractor Design Certificate which certifies that (to the extent then applicable):
       1. the Design Documentation complies with:
          1. subject to clause 8.3(b)(i), all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the Subcontract; and
       2. the Subcontract Works comply or the Stage complies with the Design Documentation which the Subcontractor is entitled to use for construction purposes under clause 6.3(c); and
    2. a corresponding certificate from each subsubcontractor that performs design work forming part of the Subcontractor’s Activities in the form of the Consultant Design Certificate or Subsubcontractor Design Certificate which certifies that (to the extent then applicable):
       1. all design carried out by that subsubcontractor complies with:
          1. subject to the subsubcontract, all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the subsubcontract; and
       2. the Subcontract Works comply or the Stage complies with the design carried out by that subsubcontractor,

except to the extent set out in such certificates.

* 1. Samples
     1. The Subcontractor 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 Subcontractor’s then current program under clause 10.2.
     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 Subcontractor; 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 Subcontractor must submit an amended or substituted sample or range of samples to the Contractor’s Representative.
     4. The Subcontractor must not commence construction of any part of the Subcontract Works to which the sample or range of samples which it has submitted to the Contractor’s Representative applies unless the Contractor’s Representative has had the number of days specified in the Subcontract Particulars to review the sample or range of samples and has not rejected the sample or range of samples.
     5. 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 Subcontractor to review, or in reviewing, the sample or range of samples submitted by the Subcontractor 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 Subcontractor 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 Subcontractor from, or alter or affect, the Subcontractor's obligations under the Subcontract or otherwise at law or in equity; or
           2. prejudice the Contractor's rights against the Subcontractor whether under the Subcontract or otherwise at law or in equity.

1. SITE
   1. Subcontractor to Inform Itself

The Subcontractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

* + 1. assessing the risks which it is assuming under the Subcontract; and
    2. ensuring that the Subcontract Price contains sufficient allowances to protect it against any of these risks eventuating.
  1. Site and Other Information

Without limiting clause 7.7 the:

* + 1. Contractor has made available to the Subcontractor before the Award Date, or may make available to the Subcontractor on or after the Award Date, certain information, data and documents obtained by the Contractor, either itself or from the Commonwealth for the purpose of the MCCI Works or the Subcontract Works, including from investigations either it or the Commonwealth carried out as to the conditions on, in, under or in the vicinity of the Site insofar as such information, data and documents are relevant to the Subcontract Works;
    2. Contractor does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Subcontractor;
    3. Subcontractor acknowledges that such information, data and documents do not form part of the Subcontract and that clause 7.7 applies to the information, data and documents; and
    4. Subcontractor acknowledges and agrees that, to the extent permitted by law, it will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with such information, data and documents.
  1. Notice of Latent Condition

Clauses 7.3 and 7.4 apply unless the Subcontract Particulars state that they do not apply.

* + 1. If the Subcontractor considers it has encountered or found a Latent Condition, it must immediately give the Contractor’s Representative notice in writing.
    2. The Contractor’s Representative must, within 14 days of receipt of the Subcontractor's notice under paragraph (a):
       1. notify the Subcontractor of its determination whether a Latent Condition has been encountered or found; and
       2. instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the Latent Condition.
  1. Subcontractor's Entitlement
     1. If the Contractor’s Representative determines that a Latent Condition has been encountered or found, the Subcontractor will be entitled to: 
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under clause 7.3(a) which arise directly from the Latent Condition and the Contractor’s Representative's instruction under clause 7.3(b)(ii), as determined by the Contractor’s Representative.
     2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a Latent Condition or the Contractor’s Representative's instruction under clause 7.3(b)(ii), other than under paragraphs (a)(i) and (a)(ii).
  2. Site Access
     1. In carrying out the Subcontractor’s Activities, the Subcontractor must, and must ensure that its officers, employees, subsubcontractors and agents comply with:
        1. the requirements for Site access and conduct at the Site as are applicable to the Site from time to time including any requirements set out in the Subcontract Works Description; and
        2. any direction of the Contractor’s Representative in relation to Site access or conduct at the Site.
     2. The Contractor:
        1. is not obliged to:
           1. provide the Subcontractor with sole access to the Site; or
           2. carry out any work or provide any facilities to the Subcontractor (other than as stated in the Subcontract) which may be necessary to enable the Subcontractor to obtain adequate access to carry out the Subcontractor’s Activities; and
        2. must use reasonable endeavours to ensure that any Other Contractors engaged by the Contractor or the Commonwealth comply with the reasonable requirements of the Subcontractor as to matters concerning industrial relations, insurance, site management and work health and safety.
     3. The Subcontractor acknowledges and agrees that the Commonwealth and the Contractor may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Subcontractor.
     4. The Contractor may from time to time impose such reasonable restrictions upon the Subcontractor’s right of access as may be reasonably necessary to facilitate the work being carried out by Other Contractors and the Subcontractor must observe, and carry out the Subcontractor’s Activities subject to, such reasonable restrictions.
  3. Subcontractor's Obligation to Provide Access

In carrying out the Subcontractor’s Activities, the Subcontractor must:

* + 1. minimise disruption or inconvenience to the Commonwealth, the Contractor, the Host Nation, Other Contractors and any person authorised by the Commonwealth, the MCCI Contract Administrator, the Contractor or the Contractor’s Representative to occupy, use, operate, maintain or access the Site in their occupation, use, operation or maintenance of or access to any part of the Site, including any occupation, use, operation or maintenance of or access to part of the Subcontract Works or a Stage under clause 13.5;
    2. at all reasonable times give the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative, Other Contractors and any person authorised by the Commonwealth, the MCCI Contract Administrator, the Contractor or the Contractor’s Representative access to the Subcontract Works, the Site or any areas off-Site where the Subcontractor’s Activities are being carried out; and
    3. provide the Commonwealth, the MCCI Contract Administrator, the Host Nation, the Contractor and the Contractor’s Representative with every reasonable facility necessary for the supervision, examination, inspection and testing of the Subcontractor’s Activities or the Subcontract Works.
  1. Non-Reliance

The Subcontractor:

* + 1. warrants that it did not in any way rely upon:
       1. any information, data, representation, statement or document made by or provided to the Subcontractor by the Contractor or anyone on behalf of the Contractor (including any information, data and documents provided under clause 7.2(a)); or
       2. the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,

for the purposes of entering into the Subcontract, except to the extent that any such information, data, representation, statement or document forms part of the Subcontract;

* + 1. warrants that it enters into the Subcontract and will carry out the Subcontractor’s Activities based on its own investigations, interpretations, deductions, information and determinations; and
    2. acknowledges and agrees that the Contractor has entered into the Subcontract relying upon the warranties in paragraphs (a) and (b).

1. CONSTRUCTION
   1. Description of Subcontract Works

Subject to clause 6.11, the Subcontractor must construct the Subcontract Works in accordance with:

* + 1. the Subcontract Works Description and any Design Documentation issued by the Contractor’s Representative under clause 8.8 (if Option 1 of that clause applies);
    2. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, any Design Documentation prepared by the Subcontractor in accordance with the requirements of the Subcontract and which the Subcontractor is entitled to use for construction purposes under clause 6.3;
    3. any direction of the Contractor’s Representative given or purported to be given under a provision of the Subcontract, including any Variation directed by the Contractor’s Representative by a document titled "Variation Order"; and
    4. the other requirements of the Subcontract.
  1. All Work Included
     1. The Subcontractor has allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Subcontractor’s Activities, whether or not expressly mentioned in the Subcontract Works Description or any Design Documentation.
     2. Any such Plant, Equipment and Work, materials and other work:
        1. must be undertaken and provided by the Subcontractor; and
        2. forms part of the Subcontractor’s Activities and will not entitle the Subcontractor to make a Claim except as otherwise provided for in the Subcontract.
  2. Statutory Requirements
     1. The Subcontract Particulars specify the Approvals which exist at the Award Date or which the Commonwealth or the Contractor will obtain after the Award Date.
     2. In carrying out the Subcontractor’s Activities, the Subcontractor 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 other than those 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 Subcontractor’s Activities or the Subcontract Works issues to the Subcontractor.
     3. Without limiting paragraph (b), the Subcontractor must:
        1. comply with the Additional Host Nation Requirements;
        2. not engage in any political or unlawful activity during the carrying out of the Subcontractor’s Activities in the Host Nation; and
        3. use its best endeavours to ensure that all its officers, employees, subsubcontractors and agents do not to engage in unlawful activity or misconduct during the carrying out of the Subcontractor’s Activities in the Host Nation.
     4. Without limiting paragraph (b), the Subcontractor must not commence to carry out any element of the Subcontract Works or a Stage unless an Environmental Clearance Certificate has been issued in respect of the relevant element.
  3. 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 Subcontractor, then the Subcontractor must promptly give the Contractor’s Representative notice in writing. After receipt of a notice from the Subcontractor, the Contractor’s Representative must within 14 days of receipt of the notice instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the change or variance; or
      2. the Contractor, then the Contractor’s Representative must promptly give the Subcontractor notice in writing together with an instruction as to the course it must adopt insofar as the Subcontractor's Activities are affected by the change or variance.
    1. Subject to paragraph (c), the Subcontractor will be entitled to: 
       1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
       2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor 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 Subcontract Price will be decreased by any saving made by the Subcontractor 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 Subcontractor 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)(i) and (ii).
  1. Subcontracting

The Subcontractor:

* + 1. must not, without the prior written approval of the Contractor’s Representative, subcontract any work specified in the Subcontract Particulars except to a subsubcontractor specified in the Subcontract Particulars;
    2. will:
       1. not be relieved of any of its liabilities or obligations under the Subcontract, including those under clause 2.1; and
       2. remain responsible for all subsubcontractors and for all work which is or may be subcontracted, as if it was itself executing the work, whether or not any subsubcontractors default or otherwise fail to observe any of the requirements of the relevant subsubcontract;
    3. will be vicariously liable to the Contractor for all acts, omissions and defaults of its subsubcontractors (and those of the employees and agents of its subsubcontractors) relating to, or in any way connected with, the Subcontractor’s Activities;
    4. must use its best endeavours to ensure that each subsubcontract contains provisions:
       1. which bind the subsubcontractor to participate in any novation required by the Contractor under clause 14.5(a)(ii); and
       2. as otherwise required by the Subcontract; and
    5. must, unless otherwise agreed in writing by the Contractor’s Representative:
       1. execute;
       2. procure the relevant subsubcontractors to execute; and
       3. deliver to the Contractor’s Representative,

a Subsubcontractor Deed of Covenant or Consultant Deed of Covenant, duly completed with all relevant particulars:

* + - 1. as a condition precedent to seeking the prior written approval of the Contractor’s Representative under paragraph (a); or
      2. when such approval is not required, within the time required by the Contractor’s Representative and in any event before commencement of work by the relevant subsubcontractors.

No Subsubcontractor Deed of Covenant or Consultant Deed of Covenant will be construed in any way to modify or limit any of the rights, powers or remedies of the Contractor against the Subcontractor under the Subcontract or otherwise at law or in equity.

* 1. Collateral Warranties
     1. The Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage specified in the Subcontract Particulars, procure and provide the Contractor with the warranties specified in the Subcontract Particulars:
        1. from the relevant subsubcontractor undertaking or supplying the work or item the subject of the warranty;
        2. in the form of the Collateral Warranty; and
        3. for the minimum warranty periods stated in the Subcontract Particulars.
     2. No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth or the Contractor (as the case may be) against the Contractor, the Subcontractor or the subsubcontractors (as the case may be) under the Subcontract or otherwise at law or in equity.
     3. If the Subcontractor is unable to or fails for any reason to provide any Collateral Warranty required by the Subcontract:
        1. the Subcontractor is deemed to have provided the Collateral Warranty itself on like terms;
        2. the Commonwealth or the Contractor (as the case may be) will be entitled to elect to take an assignment of all the right, title and interest in the Subcontractor's rights against the subsubcontractor in relation to the Subcontractor’s Activities; and
        3. for the purpose of subparagraph (ii), the Subcontractor irrevocably appoints the Commonwealth or the Contractor (as the case may be) as its lawful attorney to execute any instrument necessary to give effect to the assignment.
     4. No assignment under clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth or the Contractor against the Subcontractor or the subsubcontractor under the Subcontract or otherwise at law or in equity.
  2. Provisional Sum Work
     1. For each item of Provisional Sum Work, the Contractor’s Representative will give the Subcontractor an instruction either deleting the item of Provisional Sum Work from the Subcontract or requiring the Subcontractor to proceed with the item of Provisional Sum Work.
     2. If an item of Provisional Sum Work is deleted from the Subcontract:
        1. the Subcontract Price will be reduced by the amount allowed for the item of Provisional Sum Work specified in the Subcontract Particulars;
        2. the Contractor may engage an Other Contractor to carry out the item of Provisional Sum Work; and
        3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the deletion of the item of Provisional Sum Work.
  3. Design for Provisional Sum Work to be Prepared by Contractor - Option 1
     1. If the Subcontractor is instructed to proceed with an item of Provisional Sum Work, the Contractor's designers will progressively prepare the Design Documentation for the item of Provisional Sum Work.
     2. The Subcontractor must attend such design and other meetings as required by the Contractor’s Representative to assist these designers in preparing the Design Documentation for the Provisional Sum Work and to advise upon:
        1. buildability issues and the choice of materials to be incorporated in the Subcontract Works; and
        2. the sufficiency and completeness of the Design Documentation.

8.8 Design for Provisional Sum Work to be Prepared by Subcontractor - Option 2

* + 1. If the Subcontractor is instructed to proceed with an item of Provisional Sum Work, the Subcontractor will progressively prepare the Design Documentation for the item of Provisional Sum Work.
    2. The Subcontractor must inform the Contractor’s Representative when the Design Documentation is being discussed at design and other meetings and the Contractor’s Representative may attend all such meetings.
  1. Tendering Provisional Sum Work

Where the Subcontractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Contractor’s Representative, be carried out under subsubcontracts entered into by the Subcontractor as follows:

* + 1. after the Design Documentation for the item of Provisional Sum Work has been prepared (and, if prepared by the Subcontractor, is in accordance with the requirements of the Subcontract and the Subcontractor is entitled to use it for construction purposes under clause 6.3), or the Subcontractor is otherwise instructed to proceed with the item of Provisional Sum Work, the Subcontractor must invite tenders:
       1. from at least 3 persons as either specified in the Subcontract Particulars or proposed by the Subcontractor and approved by the Contractor’s Representative; and
       2. on the terms of a subsubcontract containing similar terms to the Subcontract and approved by the Contractor’s Representative (for that purpose, each form of subsubcontract specified in the Subcontract Particulars is approved);
    2. the Subcontractor must give the Contractor’s Representative such details of each tender as the Contractor’s Representative may require;
    3. the Subcontractor must recommend to the Contractor’s Representative which tender it believes should be accepted and, if the tender is not the lowest priced tender, it must give reasons why the lowest priced tender is not recommended; and
    4. the Subcontractor must then enter into a subsubcontract with a tenderer as instructed by the Contractor’s Representative.
  1. Subcontract Price Adjustment for Tendered Provisional Sum Work

After the Subcontractor is instructed to enter into a subsubcontract for an item of Provisional Sum Work under clause 8.9:

* + 1. the Subcontract Price will, if the amount tendered by the tenderer with whom the Subcontractor is instructed to enter into the subsubcontract is more or less than the amount specified in the Subcontract Particulars for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.12; and
    2. any Variation to that work will be dealt with under clause 11.
  1. Subcontract Price Adjustment for Other Provisional Sum Work

If the Contractor’s Representative directs that an item of Provisional Sum Work is not to be tendered under clause 8.9, the Subcontract Price will be adjusted for the item of Provisional Sum Work by the difference between:

* + 1. the amount specified in the Subcontract Particulars for that item of Provisional Sum Work; and
    2. either:
       1. an amount agreed by the parties; or
       2. failing agreement, an amount determined by the Contractor’s Representative under clause 11.3(b) or 11.3(c)(ii) as if the item of Provisional Sum Work were a Variation.
  1. Further Allowance for Provisional Sum Work

If, after each and every item of Provisional Sum Work has been deleted from the Subcontract under clause 8.7, tendered under clause 8.9 or priced under clause 8.11, the total net increase to the Subcontract Price after all adjustments under clauses 8.7, 8.10 and 8.11 exceeds the percentage specified in the Subcontract Particulars of the total amount specified for Provisional Sum Work, the Subcontract Price will be further increased by the percentage specified in the Subcontract Particulars of the amount by which the total net increase to the Subcontract Price exceeds the percentage specified in the Subcontract Particulars of the total amount specified in the Subcontract Particulars for Provisional Sum Work.

* 1. Co-operation with Other Contractors

Without limiting clause 8.17(a)(ii), the Subcontractor must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co-operate with Other Contractors;
    3. carefully co-ordinate and interface the Subcontractor’s Activities with the work carried out or to be carried out by Other Contractors; and
    4. carry out the Subcontractor’s Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.
  1. Setting Out

The Subcontractor must:

* + 1. set out the Subcontract Works in accordance with the requirements of the Subcontract; and
    2. carry out any survey which may be necessary for this purpose.
  1. Survey

The Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage specified in the Subcontract Particulars, submit to the Contractor’s Representative a certificate signed by a licensed surveyor stating that:

* + 1. the whole of the Subcontract Works or the Stage are within any particular boundaries stipulated in the Subcontract except to the extent that the Subcontract Works or Stage are specifically required by the Subcontract to be outside those boundaries; and
    2. if required by the Subcontract Works Description, structural elements of the Subcontract Works or the Stage are within the tolerances specified.
  1. Safety and First Aid
     1. The Subcontractor must carry out the Subcontractor’s Activities:
        1. safely and in a manner that does not put the health and safety of persons at risk; and
        2. in a manner that protects property.
     2. If the Contractor’s Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Subcontractor’s Activities or the Subcontract Works, the Contractor’s Representative may direct the Subcontractor to change its manner of working or to cease working.
     3. Without limiting clause 8.17, the Subcontractor must ensure that:
        1. it adopts a proactive commitment to the resourcing, quality and delivery of on Site first aid and emergency life support for all persons engaged in, or affected by, the carrying out of the Subcontractor’s Activities and the Subcontract Works;
        2. it complies with all Statutory Requirements (including the WHS Legislation and any Codes of Practice issued under the WHS Legislation as if they applied to the Subcontractor) and best practice procedures in respect of the availability, quality and delivery at the Site of first aid and emergency life support, including in respect of the:
           1. training and accreditation of any on Site personnel, which the Subcontractor must ensure is provided by an Australian registered training organisation or equivalent approved by the Contractor’s Representative; and
           2. provision of appropriate and adequate first aid equipment and facilities; and
        3. without limiting subparagraphs (i) and (ii):
           1. there are present on Site at all times during the carrying out of the Subcontractor’s Activities and the Subcontract Works on Site a sufficient number of adequately trained and accredited personnel so as to ensure compliance with its obligations under this paragraph (c), such number to be not less than the higher of:

the number of personnel prescribed by Statutory Requirements; and

10% of the personnel present on the Site and engaged in connection with the Subcontractor’s Activities on any given day; and

* + - * 1. it implements procedures and strategies for maximising the capability development, education and training of local Host Nation residents in respect of the provision of first aid and emergency life support training.
  1. Work Health and Safety

The Subcontractor must:

* + 1. ensure that in carrying out the Subcontractor’s Activities, so far as is reasonably practicable, it complies with:
       1. all Statutory Requirements and other requirements of the Subcontract in respect of work health and safety;
       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, where a notifiable incident has occurred, to ensure 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 it is to:
          1. assist an injured person or remove a deceased person;
          2. 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;

as if the WHS Legislation applied to the Subcontractor;

* + 1. comply with any Statutory Requirements of the Host Nation concerning work health and safety in delivering the Subcontract Works and performing the Subcontractor’s Activities, 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;
    2. without limiting the Contractor's obligations under the Subcontract or otherwise at law or in equity, notify the Contractor’s Representative in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident;
       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 Subcontractor’s Activities and the Subcontract 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 3.10;
    3. for the purposes of paragraphs (a)(iii) and (c) above, in respect of any notifiable incident:
       1. immediately provide the MCC Contract Administrator and Contractor's Representative with a copy of the notice required to be provided to the relevant Host Nation regulator;
       2. promptly provide the MCC Contract Administrator and the Contractor's Representative 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 Host Nation regulator; and
       3. within 10 days of the date of notification to the relevant Host Nation, provide the MCC Contract Administrator and Contractor's Representative with a summary of the related investigations, actions to be taken, and any impact on the Subcontract that may result from the notifiable incident;
    4. without limiting the Subcontractor's obligations under the Subcontract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contractor's Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth, provide all information or copies of documentation held by the Subcontractor or a subsubcontractor to the Contractor's Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth to enable the Contractor and the Commonwealth to comply with their respective obligations under the WHS Legislation;
    5. if requested by the Contractor’s Representative, use its best endeavours to institute systems to:
       1. obtain regular written assurances from each Other Contractor and subsubcontractor 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 Contractor's ongoing compliance with the WHS Legislation;
    6. use its best endeavours to provide the written assurances obtained under paragraph (f) to the Contractor’s Representative in accordance with paragraph (f);
    7. use its best endeavours to ensure that all subsubcontracts include provisions equivalent to the obligations of the Subcontractor in this clause 8.17;
    8. ensure that, if any Host Nation Statutory Requirement requires that:
       1. a person:
          1. be authorised or licensed 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, 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;
    9. not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (i) are met;
    10. if requested by the Contractor’s Representative 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 Subcontractor or any subsubcontractor commences such work;
    11. ensure that any design prepared by the Subcontractor under clause 6.2 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 Contractor’s Representative;
    12. not use Asbestos or ACM in carrying out the Subcontractor’s Activities;
    13. not use, install or incorporate Asbestos or ACM into the Subcontract Works; and
    14. upon request by the Contractor’s Representative, provide a certificate to the Contractor’s Representative 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) used, installed or incorporated into the Subcontract Works are entirely (meaning 100%) free of Asbestos and ACM; and
        2. the Subcontractor has otherwise complied with any applicable Statutory Requirements in relation to Asbestos and ACM in carrying out the Subcontractor’s Activities and the Subcontract Works.
  1. Plant, Equipment and Work

The Subcontractor must not remove from the Site any Plant, Equipment and Work without the Contractor’s Representative's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.19(b).

* 1. Cleaning Up

The Subcontractor must:

* + 1. in carrying out the Subcontractor’s Activities, keep the Site and the Subcontract Works clean and tidy and free of refuse; and
    2. as a condition precedent to Completion, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Subcontract Works or the Stage.
  1. The Environment

The Subcontractor must:

* + 1. ensure that in carrying out the Subcontractor’s Activities:
       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 subparagraph (ii), 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;
       4. it immediately notifies the Contractor’s Representative of:
          1. any non-compliance with the requirements of clause 8.20;
          2. any breach of a Statutory Requirement for the protection of the Environment;
          3. any Environmental Incident; or
          4. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
       5. its subsubcontractors comply with the requirements in clause 8.20; and
    2. clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works, whether or not it has complied with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment.
  1. Urgent Protection

The Contractor may take any action necessary to protect the Subcontract Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Subcontractor must take but does not take.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor in taking such action will be a debt due from the Subcontractor to the Contractor.

* 1. Valuable, Archaeological or Special Interest Items
     1. Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Contractor.
     2. Where such an item is found on or in the Site, the Subcontractor must:
        1. immediately give the Contractor’s Representative notice in writing;
        2. not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
        3. ensure that the item is protected until the nature of the item has been competently determined.
     3. The Contractor’s Representative must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the finding of the item.
     4. The Subcontractor will be entitled to: 
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contractor’s Representative's instruction under paragraph (c), as determined by the Contractor’s Representative.

To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the finding of the item or the Contractor’s Representative's instruction under paragraph (c), other than under paragraph (d).

* 1. The Contractor May Act

Provided that the Contractor’s Representative has given the Subcontractor prior reasonable written notice of the Contractor's intention to exercise its rights under this clause 8.23, the Contractor may, either itself or by a third party, carry out an obligation under the Subcontract which the Subcontractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Subcontract.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor in so carrying out such a Subcontractor obligation will be a debt due from the Subcontractor to the Contractor.

* 1. Access Hours

Unless otherwise agreed in writing by the Subcontractor and the Contractor’s Representative, the access hours applicable to the Subcontractor’s Activities to be carried out on Site are those specified in the Subcontract Particulars.

* 1. Salvaged Materials

Subject to and without limiting clause 8.22:

* + 1. unless expressly stated to the contrary in the Subcontract or directed by the Contractor’s Representative, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Subcontract Works are the property of the Subcontractor; and
    2. the Subcontractor must provide written notice to the Contractor’s Representative on each occasion that it salvages materials, plant, equipment, fixtures or other things from the Site or from the Subcontract Works.
  1. Project Signboards
     1. Clause 8.26 does not apply unless the Subcontract Particulars state that it applies.
     2. The Subcontractor must provide the number of project signboards specified in the Subcontract Particulars, each of which must:
        1. be in the dimensions specified in the Subcontract Particulars; and
        2. set out:
           1. the name of the project;
           2. the names of the parties to the Subcontract;
           3. the name of the Contractor’s Representative;
           4. a general description of the Subcontract Works;
           5. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
           6. a contact name and phone number for the Subcontractor;
           7. the Date for Completion;
           8. the location of the Site office (if any); and
           9. any additional information:

specified in the Subcontract Particulars; or

required by the Contractor’s Representative.

* + 1. The Subcontractor must, within 14 days of the commencement of the Subcontractor’s Activities on Site, submit the proposed location, layout and content of the project signboards to the Contractor’s Representative for approval.
    2. Once approved by the Contractor’s Representative, the Subcontractor must:
       1. fix the project signboards in the locations approved by the Contractor’s Representative;
       2. maintain the project signboards until the last Date of Completion; and
       3. dismantle and remove the project signboards within 7 days of the last Date of Completion.
  1. Measurements and Dimensions

Without limiting clause 8.14:

* + 1. the Subcontractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Subcontractor’s Activities;
    2. the layout of plant, equipment, ductwork, pipework and cabling shown in the Subcontract Works Description (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Subcontractor’s Activities must be obtained and checked by the Subcontractor; and
    3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Subcontractor's failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.27.
  1. Local Industry
     1. The Subcontractor must, without derogating from its obligations under clauses 9.2 and 19.2, use its best endeavours to maximise:
        1. the purchase of goods and services from Australian suppliers and suppliers resident in the Host Nation, provided such goods and services are available in a timely manner, at a suitable price, and are of the standard required by the Subcontract; and
        2. involvement of Australian industry and the Host Nation's local industry, including employment of local residents, where available and sufficiently qualified,

in carrying out the Subcontractor’s Activities.

* + 1. If the Contractor’s Representative considers, in its absolute discretion at any time during the carrying out of the Subcontractor’s Activities, that it has concerns in relation to the Contractor's compliance with its obligations under this clause 8.28 then the Contractor’s Representative may direct the Subcontractor to provide additional detail, at its cost, in relation to its compliance with this clause 8.28 and the steps that the Subcontractor will take to ensure such compliance.
    2. The Subcontractor:
       1. must comply with all directions issued by the Contractor’s Representative in relation to the Contractor's compliance with this clause 8.28; and
       2. will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any direction of the Contractor’s Representative under subparagraph (i).
  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 Subcontractor 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 Subcontractor 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 either party considers that there has been a Pandemic Adjustment Event, then the party discovering it must promptly give the Contractor’s Representative and the other party notice in writing together with detailed particulars of the relevant event and such other information as the Contractor’s Representative may require.
     2. The Contractor’s Representative must, within 14 days of receipt of a notice under paragraph (a), notify the Subcontractor of its determination whether a Pandemic Adjustment Event has occurred.
     3. 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 Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the Pandemic Adjustment Event.
     4. If a Pandemic Adjustment Event occurs:
        1. subject to paragraph (f), the Subcontractor will be entitled to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
           2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor 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), as determined by the Contractor’s Representative;
        2. subject to paragraph (f), the Subcontract Price will be decreased by any savings made (or which would have been made if the Subcontractor had taken all reasonable steps to maximise savings) by the Subcontractor which arise directly from the Pandemic Adjustment Event or any instruction of the Contractor’s Representative under paragraph (c), as determined by the Contractor’s Representative; and
        3. the Subcontractor must:
           1. comply with any direction of the Contractor’s Representative in relation to the Pandemic Adjustment Event; and
           2. update the Pandemic Management Plan on account of the Pandemic Adjustment Event in accordance with clause 9.2.
     5. 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 8.29; and
        2. without limiting subparagraph (i), the Subcontractor 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 or any instruction of the Contractor’s Representative under paragraph (c), other than under paragraph (d)(i).
     6. The Contractor’s Representative (acting reasonably):
        1. will reduce any entitlement the Subcontractor would have otherwise had under paragraph (d)(i)B to the extent that the Subcontractor has failed to take all reasonable steps to:
           1. avoid or overcome any adverse effects of the Pandemic Adjustment Event (including by implementing and complying with its Pandemic Management Plan and its other obligations under the Subcontract); or
           2. minimise any additional cost to the Contractor in respect of the Pandemic Adjustment Event;
        2. will take into account, for the purposes of paragraph (d)(ii), the extent that the Subcontractor has failed to take all reasonable steps to maximise any savings to the Contractor in respect of the Pandemic Adjustment Event; and
        3. may, for the purposes of assessing the Subcontractor's entitlement under paragraph (d)(i)B or the adjustment under paragraph (d)(ii), take into account:
           1. any breakdown of the Subcontract Price submitted by the Subcontractor in its tender for the Subcontractor’s Activities; and
           2. the Pandemic Management Plan as finalised under clause 9.2.

1. QUALITY
   1. Workmanship, Materials and Other Requirements

The Subcontractor must, in carrying out the Subcontractor’s Activities:

* + 1. use workmanship:
       1. of:
          1. the standard prescribed in the Subcontract; or
          2. to the extent it is not so prescribed, a high standard; and
       2. which is fit for its purpose;
    2. use materials:
       1. which:
          1. comply with the requirements of the Subcontract; or
          2. if not fully described in the Subcontract, are new and of a high standard; and
       2. of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Subcontract Works; and
    3. comply with the requirements of the Subcontract.
  1. Project Plans
     1. The Subcontractor:
        1. must carry out the Subcontractor’s Activities in accordance with, and otherwise implement, the Project Plans; and
        2. for the purposes of subparagraph (i), must:
           1. prepare Project Plans based, where applicable, on the draft Project Plans lodged by the Subcontractor in its tender for the Subcontractor’s Activities, 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 Subcontractor’s Activities and in any event no later than the number of days specified in the Subcontract Particulars after the Award Date for each Project Plan;
           2. not commence any of the Subcontractor’s Activities 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;
           3. if any Project Plan is rejected, submit an amended Project Plan to the Contractor’s Representative;
           4. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Subcontractor’s Activities and in any event in accordance with the requirements of the Subcontract to the satisfaction of the Contractor’s Representative;
           5. 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);

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 Subcontractor),

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

the Subcontractor 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 Subcontractor and subsubcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

* + 1. The Contractor must promptly provide the Subcontractor with a copy of amendments to any Contractor's Project Plan insofar as they are relevant to the Subcontractor's Activities or a Project Plan.
    2. The Subcontractor 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 Subcontractor'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 Subcontractor'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. Contractor’s Representative's Right to Inspect

The Contractor’s Representative may at any time inspect the Subcontractor’s Activities or the Subcontract Works.

The Subcontractor acknowledges and agrees that:

* + 1. the Contractor’s Representative owes no duty to the Subcontractor to:
       1. inspect the Subcontractor’s Activities or the Subcontract Works; or
       2. review construction for errors, omissions or compliance with the requirements of the Subcontract if it does so inspect; and
    2. no inspection of the Subcontractor’s Activities or the Subcontract Works or review of construction by the Contractor’s Representative will in any way lessen or otherwise affect:
       1. the Subcontractor's obligations under the Subcontract or otherwise at law or in equity; or
       2. the Contractor's rights against the Subcontractor whether under the Subcontract or otherwise at law or in equity.
  1. Inspections and Tests
     1. The Subcontractor must carry out all inspections and tests required by the Subcontract or directed by the Contractor’s Representative.
     2. All inspections and tests are to be carried out in accordance with the procedure:
        1. specified in the Subcontract; or
        2. if no procedure exists, as reasonably directed by the Contractor’s Representative.
  2. Costs of Inspections and Tests

If:

* + 1. the Contractor’s Representative directs the Subcontractor to carry out an inspection or test which:
       1. is not otherwise required by the Subcontract; or
       2. does not relate to a Defect in respect of which the Contractor’s Representative gave an instruction under clause 9.6; and
    2. the results of the inspection or test show the work is in accordance with the Subcontract,

the Subcontractor will be entitled to have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly from the inspection or test, as determined by the Contractor’s Representative.

To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the inspection or test, other than under clause 9.5.

* 1. Defects

Subject to paragraphs (b) and (c), the Subcontractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Subcontract Works or a Stage, the Contractor’s Representative discovers or believes there is a Defect, the Contractor’s Representative may give the Subcontractor an instruction specifying the Defect and doing one or more of the following:

* + 1. requiring the Subcontractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
    2. requiring the Subcontractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
    3. advising the Subcontractor that the Contractor will accept the work, or any part of it, despite the Defect.
  1. Correction of Defect or Variation
     1. If an instruction is given under clause 9.6(a) or (b), the Subcontractor must correct the Defect or carry out the Variation:
        1. within the time specified in the Contractor’s Representative's instruction; and
        2. if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Subcontract Works or the Stage as is reasonably possible.
     2. If the Subcontractor fails to comply with paragraph (a), the Contractor may (in its absolute discretion and without prejudice to any other rights it may have) itself correct, or engage an Other Contractor to correct the Defect and the cost of such correction will be a debt due from the Subcontractor to the Contractor.
  2. Claim for Correction of Defect

Where an instruction is given under clause 9.6(a) and clause 9.7(b) does not apply:

* + 1. the Subcontractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Subcontractor is not responsible; and
    2. where the Subcontractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a direction by the Contractor’s Representative and clause 11.3 applied.
  1. Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

* + 1. the Subcontractor is not responsible for the Defect (or the relevant part) the:
       1. Subcontract Price will be adjusted in accordance with clause 11.3; and
       2. Subcontractor will be entitled to an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; or
    2. the Subcontractor is responsible for the Defect (or the relevant part):
       1. the Contractor’s Representative will determine the:
          1. value of the Variation in accordance with clause 11.3; and
          2. cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied;
       2. the Subcontract Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
          1. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Subcontract Price will be increased by the excess; or
          2. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the Subcontract Price will be decreased by the difference and will be a debt due from the Subcontractor to the Contractor; and
       3. the Subcontractor will not be entitled to claim an extension of time to any Date for Completion.
  1. Acceptance of Work

If:

* + 1. an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and
    2. the Subcontractor is responsible for the Defect (or the relevant part),

the amount determined by the Contractor’s Representative which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Subcontractor to the Contractor.

* 1. Extension of Defects Liability Period

If:

* + 1. the Contractor’s Representative gives the Subcontractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and
    2. the Subcontractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Subcontract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

* 1. Common Law Rights not Affected

Neither the Contractor's rights, nor the Subcontractor's liability, whether under the Subcontract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor’s Representative by clause 9 or any other provision of the Subcontract;
    2. the failure by the Contractor or the Contractor’s Representative to exercise any such rights; or
    3. any instruction of the Contractor’s Representative under clause 9.6.
  1. Maintenance During Defects Liability Period

The Subcontractor must ensure that during the Defects Liability Period for the Subcontract Works or each Stage such planned and unplanned maintenance is carried out:

* + 1. as required by the Subcontract Works Description; and
    2. otherwise in accordance with the Project Lifecycle and HOTO Plan.
  1. Commissioning, Training and HOTO Process

Without limiting clause 8.17(a)(ii), the Subcontractor must:

* + 1. fully co-operate with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors 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 Subcontractor HOTO Obligations;
       2. ensure that all Subcontractor 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, training and handover requirements described in the Subcontract, including the requirements in Annexure 1;
       4. as and when required by the Contractor’s Representative, provide the Contractor and such other persons as nominated in writing by the Contractor’s Representative (including the Host Nation) with such other specific assistance as may be required by the Contractor’s Representative to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process, including providing the occupants with any training required to operate and maintain the Subcontract Works or the Stage;
       5. as a condition precedent to Completion, hand to the Contractor’s Representative or other persons nominated by the Contractor’s Representative all Project Documents which are required for the use, operation and maintenance of the Subcontract Works or the relevant Stage; and
       6. as and when required by the Contractor’s Representative, meet with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative and such other persons as are nominated by the Contractor’s Representative (including the Host Nation and Other Contractors) for the purpose of ensuring that the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative and the nominated persons have sufficient information to enable the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative and the nominated persons (as the case may be) to:
          1. occupy, use, operate and maintain the Subcontract Works or the Stage; and
          2. perform such other activities as may be required by the Contractor or the Commonwealth in respect of the Subcontract Works or the Stage.
  1. Defects Records and Reports
     1. Without limiting clause 9.6, the Subcontractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects.
     2. The Subcontractor must provide a report to the Contractor’s Representative in a form satisfactory to the Contractor’s Representative:
        1. before the Date of Completion:
           1. with its reports under clause 3.10; and
           2. as a condition precedent to Completion; and
        2. after the Date of Completion:
           1. with its reports under clause 3.10; and
           2. within 14 days after the end of the Defects Liability Period,

which sets out:

* + - 1. details of all calls, attendances, recommendations and actions taken in respect of each Defect;
      2. recommendations for the future maintenance of the Subcontract Works;
      3. any work health and safety matters; and
      4. any other matters specified in the Subcontract Particulars or required by the Contractor’s Representative.
  1. Quality Assurance

The Subcontractor:

* + 1. must implement a quality assurance process, system or framework consistent with best industry practice;
    2. without limiting clause 6.12, must allow the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative or anyone else acting on behalf of the Contractor or the Commonwealth access to the quality assurance process, system or framework of the Subcontractor and its subsubcontractors so as to enable auditing or other monitoring; and
    3. will not be relieved from compliance with 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 or the MCCI Contract Administrator concerning the Subcontractor'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 the MCCI Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth of the Subcontractor's compliance with the quality assurance process, system or framework; or
       4. any failure by the Contractor’s Representative or the MCCI Contract Administrator, or anyone else acting on behalf of the Contractor or the Commonwealth, to detect any Subcontractor’s Activities or aspects of the Subcontract Works 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, the MCCI Contract Administrator or other person.

1. TIME
   1. Progress and Time for Completion

The Subcontractor must:

* + 1. regularly and diligently progress the Subcontractor’s Activities; and
    2. achieve Completion of the Subcontract Works or each Stage by the relevant Date for Completion.
  1. Programming
     1. The Contractor must:
        1. on the Award Date, provide the Subcontractor with a copy of the Contractor’s Program insofar as it is relevant to the Subcontractor’s Activities; and
        2. thereafter, promptly provide the Subcontractor with a copy of amendments to the Contractor’s Program insofar as they are relevant to the Subcontractor’s Activities.
     2. The Subcontractor must:
        1. within 14 days of the Award Date prepare a program of the Subcontractor’s Activities 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 Subcontractor’s Activities to the date which is two working days prior to the date on which the update is provided;
           2. changes to the program and the Contractor’s Program; and
           3. delays which may have occurred, or which are likely to occur, including any for which the Subcontractor is granted an extension of time under clause 10.8;
        3. give the Contractor’s Representative copies of all programs; and
        4. provide all programs in a format compatible with the software and any methodology specified in the Subcontract Particulars.
     3. The Contractor’s Representative may review and comment on any program given under this clause 10.2.
     4. The Contractor’s Representative may instruct the Subcontractor to change the order in which the Subcontractor’s Activities are to be carried out. If such an instruction is issued, the Subcontractor will be entitled to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly from such instruction, as determined by the Contractor’s Representative.
  2. Subcontractor 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 Subcontractor from or alter its obligations under the Subcontract, especially (without limitation) the obligation to achieve Completion of the Subcontract Works or each Stage by the relevant 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 Subcontractor’s Activities; or
    3. affect the time for the carrying out of the Contractor's or Contractor’s Representative's Subcontract obligations.
  1. Acceleration by Subcontractor

If the Subcontractor chooses to accelerate progress then despite clause 3.3:

* + 1. neither the Contractor nor the Contractor’s Representative will be obliged to take any action to assist or enable the Subcontractor to achieve Completion of the Subcontract Works or each Stage before any Date for Completion; and
    2. the time for the carrying out of the Contractor's or the Contractor’s Representative's obligations will not be affected.
  1. Delays, Including Delays Entitling Claim for Extension of Time
     1. If the Subcontractor becomes aware of any occurrence that is likely to delay it in carrying out the Subcontractor’s Activities 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 Subcontractor has been delayed in carrying out the Subcontractor’s Activities:
        1. prior to the Date for Completion of the Subcontract Works or a Stage, by an Act of Prevention or a cause specified in the Subcontract Particulars in a manner which has delayed, or is likely to delay, the Subcontractor in achieving Completion of the Subcontract Works or the Stage; or
        2. after the Date for Completion of the Subcontract Works or a Stage, by an Act of Prevention in a manner which has delayed, or is likely to delay, the Subcontractor in achieving Completion of the Subcontract Works or the Stage,

the Subcontractor may claim an extension of time.

* 1. Claim for Extension of Time

To claim an extension of time the Subcontractor must:

* + 1. not later than 28 days after the commencement of the delay to the carrying out of the Subcontractor’s Activities, 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 10.5(b)(i) or 10.5(b)(ii); and
    2. if the delay to the carrying out of the Subcontractor’s Activities continues beyond 28 days from the commencement of that delay, and the Subcontractor 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 carrying out of the Subcontractor’s Activities; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

Subject to clause 10.13, it is a condition precedent to the Subcontractor's entitlement to an extension of time that the:

* + 1. Subcontractor gives the written claim required by clause 10.6 as required by that clause;
    2. cause of the delay to the Subcontractor’s Activities was beyond the reasonable control of the Subcontractor;
    3. Subcontractor must have actually been, or be likely to be, delayed in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii);
    4. Subcontractor must not have been given an instruction under clause 10.12; 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 10.7 have been satisfied, the relevant Date for Completion will be extended by (subject to paragraph (b)) a reasonable period determined by the Contractor’s Representative and notified to the Subcontractor within 21 days of the Subcontractor's written claim under clause 10.6.
     2. The period determined by the Contractor’s Representative under clause 10.8 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 Subcontractor:
        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
     1. Whether or not the Subcontractor has made, or is entitled to make, a claim for an extension of time under clause 10, the Contractor’s Representative may (in its absolute discretion, but subject to clause 10.9 of the Managing Contractor Contract (International)) at any time and from time to time by written notice to the Subcontractor and the Contractor, unilaterally extend any Date for Completion.
     2. The Subcontractor acknowledges that:
        1. the Contractor’s Representative is not required to exercise the Contractor's Representative’s discretion under clause 10.9 for the benefit of the Subcontractor;
        2. clause 10.9 does not give the Subcontractor any rights; and
        3. the exercise or failure to exercise the Contractor's Representative’s discretion under clause 10.9 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.
  3. Delay Damages
     1. Clause 10.10 applies unless the Subcontract Particulars state that it does not apply.
     2. The Subcontractor will be entitled to be paid the extra costs reasonably incurred by the Subcontractor up to the maximum daily amount specified in the Subcontract Particulars for each day by which the Date for Completion of the Subcontract Works or a Stage is extended due to:
        1. a breach of the Subcontract by the Contractor; or
        2. an event specified in the Subcontract Particulars.
     3. The amount determined under this clause 10.10 will be a limitation upon the Contractor's liability to the Subcontractor for any delay or disruption which:
        1. the Subcontractor encounters in carrying out the Subcontractor’s Activities; and
        2. arises out of or in connection with, the breach of the Subcontract by the Contractor or an event specified in the Subcontract Particulars,

and to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any such delay or disruption, other than under clause 10.8 or clause 10.10.

* 1. Suspension
     1. The Contractor’s Representative:
        1. may instruct the Subcontractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Subcontractor’s Activities; and
        2. is not required to exercise the Contractor’s Representative's power under subparagraph (i) for the benefit of the Subcontractor.
     2. If a suspension under clause 10.11 arises as a result of:
        1. the Subcontractor's failure to carry out its obligations in accordance with the Subcontract, to the extent permitted by law, the Subcontractor 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 Subcontractor's failure to carry out its obligations in accordance with the Subcontract, an instruction to suspend under clause 10.11 will entitle the Subcontractor to: 
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
           2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor as a direct result of the suspension, as determined by the Contractor’s Representative.

To the extent permitted by law, the Subcontractor 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 Subcontractor may only suspend the Subcontractor’s Activities when instructed to do so under clause 10.11.
  1. Instruction to Accelerate

If the Subcontractor gives the Contractor’s Representative a written claim under clause 10.6, the Contractor’s Representative may:

* + 1. instruct the Subcontractor to accelerate the Subcontractor’s Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Completion of the Subcontract Works or the Stage by the relevant Date for Completion; and
    2. give such an instruction whether or not the cause of delay for which the Subcontractor has given its written claim under clause 10.6 otherwise entitles the Subcontractor to an extension of time to any relevant Date for Completion.
  1. Partial Acceleration

If the Contractor’s Representative gives the Subcontractor an instruction to accelerate under clause 10.12 requiring it to accelerate the Subcontractor’s Activities and it only applies to part of the delay, the Subcontractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Subcontractor to accelerate to overcome the delay.

* 1. Acceleration

If the Contractor’s Representative gives an instruction to the Subcontractor under clause 10.12:

* + 1. the Subcontractor must accelerate the Subcontractor’s Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Subcontract Works or the Stage by the relevant Date for Completion;
    2. if the Subcontractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Subcontractor will be entitled to be paid:
       1. the extra costs reasonably incurred by the Subcontractor as a direct result of accelerating the Subcontractor’s Activities; and
       2. that percentage of the amount under subparagraph (i) specified in the Subcontract Particulars; and
    3. subject to clause 10.13, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.12, other than under paragraph (b).
  1. Contractor's Rights to Liquidated Damages Not Affected

The Contractor's rights to:

* + 1. liquidated damages under clause 13.7; or
    2. be indemnified under clause 13.8,

for a failure by the Subcontractor to achieve Completion of the Subcontract Works or a Stage by any relevant Date for Completion are not affected by the Contractor’s Representative giving the Subcontractor an instruction to accelerate under clause 10.12.

* 1. Force Majeure

This clause 10.16 only applies if the Subcontract Particulars state that it applies.

* + 1. If a party is or will be prevented from performing any of its obligations under the Subcontract by Force Majeure, then it must give written notice to the other party of the event or circumstance constituting the Force Majeure within 14 days after the party becomes aware, or should have become aware of the event or circumstance, and shall specify the obligations, the performance of which is or will be prevented.
    2. Each party must at all times take all reasonable steps to minimise delay in the performance of the Subcontract as a result of Force Majeure.
    3. A party must give notice to the other party when it ceases to be affected by the Force Majeure.
    4. If a Force Majeure of which notice has been given under paragraph (a), continues for a period of more than 2 months, the Contractor may by written notice to the Subcontractor immediately terminate the Subcontract whereupon clause 14.8 will apply.
    5. If the Subcontractor is prevented from performing any of its obligations under the Subcontract by Force Majeure, the Subcontractor will be entitled to: 
       1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
       2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under paragraph (a) which arise directly from the Force Majeure.
    6. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a Force Majeure, other than under paragraph (e).

1. VARIATIONS
   1. Variation Price Request
      1. At any time prior to the Date of Completion (but without limiting clauses 5.3 and 9.6), the Contractor’s Representative may issue a document titled "**Variation Price Request**" to the Subcontractor which will set out details of a proposed Variation which the Contractor is considering.
      2. The Subcontractor must immediately take all action required under any relevant subsubcontract in relation to each subsubcontractor that would be involved in carrying out the proposed Variation.
      3. 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 Subcontractor must provide the Contractor’s Representative with a written notice in which the Subcontractor sets out the:
         1. adjustment (if any) to the Subcontract Price 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 11.1, at any time prior to the Date of Completion (but without limiting clauses 5.3 and 9.6), the Contractor’s Representative may instruct the Subcontractor 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 Subcontract Price set out in the Subcontractor's notice under clause 11.1 (if any) is agreed and the Subcontract Price will be adjusted accordingly;
    2. any adjustment to the Subcontract Price will be determined under clauses 11.3(b) and 11.3(c); or
    3. the Variation is to be carried out as daywork and any adjustment to the Subcontract Price will be determined under clause 11.3(d).

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

Subject to clauses 9.9(b), 11.9 and 11.10, the Subcontract Price 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 11.2(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, to which will be added:
       1. the following percentage or percentages of the amount determined:
          1. where the adjustment to the Subcontract Price is to be an increase, the percentages specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
          2. where the adjustment to the Subcontract Price is to be a decrease, the percentage specified in the Subcontract Particulars for off-site overheads and profit; and
       2. any reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor;
    3. to the extent paragraph (b) does not apply, by a reasonable amount:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Contractor’s Representative,

to which will be added:

* + - 1. the following percentage or percentages of the amount determined:
         1. where the adjustment to the Subcontract Price is to be an increase, the percentages specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
         2. where the adjustment to the Subcontract Price is to be a decrease, the percentage specified in the Subcontract Particulars for off-site overheads and profit; and
      2. any reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor; or
    1. by the amount determined by the Contractor’s Representative under clause 11.6.
  1. Omissions

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

* 1. Daywork

If the Subcontractor is given an instruction under clause 11.2(c) or clause 12.24(d) to carry out work as daywork, the Subcontractor must:

* + 1. carry out the daywork in an efficient manner; and
    2. after the instruction, provide the Contractor’s Representative with a written report each day signed by the Subcontractor which:
       1. records particulars of all resources used by the Subcontractor for the execution of the daywork; and
       2. includes the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the daywork.

The Contractor’s Representative may direct the manner in which such matters are to be recorded.

* 1. Valuation of Daywork

In determining the value of work which the Contractor’s Representative instructed was to be carried out as daywork, the Contractor’s Representative will have regard to:

* + 1. the amount of wages and allowances paid or payable by the Subcontractor at:
       1. the rates pertaining at the Site at the time as established by the Subcontractor to the reasonable satisfaction of the Contractor’s Representative; or
       2. other reasonable rates approved by the Contractor’s Representative;
    2. the percentage specified in the Subcontract Particulars of the wages paid or payable under paragraph (a);
    3. the amount of hire charges in respect of plant approved by the Contractor’s Representative for use on the work in accordance with the hiring rates and conditions:
       1. agreed between the Contractor’s Representative and the Subcontractor; or
       2. failing agreement, reasonably determined by the Contractor’s Representative;
    4. the reasonable amounts paid for services, subcontracts and professional fees; and
    5. the actual cost to the Subcontractor at the Site of all materials supplied and required for the work,

to which will be added:

* + 1. the percentages of the amounts determined under paragraphs (a) - (e) specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; and
    2. the reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor.
  1. Subcontractor Variation Request

The Subcontractor may, for its convenience, request the Contractor’s Representative to direct a Variation. Any such request must be in writing and must contain the following details:

* + 1. a description of the Variation;
    2. the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Contractor including the amount;
    3. any benefits which will flow to the Commonwealth from the Variation; and
    4. the effect which the Variation will have upon the future cost of operating and maintaining the Subcontract Works.
  1. Contractor’s Representative's Determination
     1. After a request is made by the Subcontractor in accordance with clause 11.7, the Contractor’s Representative will, in the Contractor’s Representative's absolute discretion, give a written notice to the Subcontractor:
        1. rejecting the request; or
        2. approving the request either conditionally or unconditionally.
     2. The Contractor’s Representative will not be obliged to exercise the Contractor’s Representative's discretion for the benefit of the Subcontractor.
  2. Subcontractor Variation Request Approved by Contractor’s Representative

If the Contractor’s Representative issues a written notice under clause 11.8 approving the Subcontractor's request under clause 11.7:

* + 1. unless otherwise agreed, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Variation;
    2. if the Subcontractor's request offered to share savings in cost with the Contractor, the Subcontract Price will be reduced by or adjusted in accordance with the Subcontractor's offer; and
    3. the Subcontractor will be responsible for all parts of the Subcontract Works which are in any way affected by the Variation.
  1. Managing Contractor Contract (International) Variation

Where:

* + 1. a Variation the subject of a direction by the Contractor’s Representative arises out of or in connection with a Variation under the Managing Contractor Contract (International); or
    2. any work which is otherwise to be treated and valued as a Variation under clause 11.3 is work,

which the Contractor is required to carry out under the terms of the Managing Contractor Contract (International) (whether itself or through the Subcontractor) and for which the Contractor:

* + 1. is entitled to additional payment under the Managing Contractor Contract (International); or
    2. would otherwise have been entitled to additional payment under the Managing Contractor Contract (International) had it done everything required under the Managing Contractor Contract (International) to preserve its entitlement,

then any increase in the Subcontract Price under clause 11.3 will be limited to the extent to which (as the case may be) the amount of:

* + 1. the Contractor’s entitlement; or
    2. the entitlement the Contractor would otherwise have had,

to additional payment, is attributable to the Subcontractor’s Activities relevant to the Variation or work (as the case may be) less any amount attributable to (and payable directly to the Contractor under the Managing Contractor Contract (International) on account of) the Contractor’s non-time related on-site overheads and preliminaries, off‑site overheads and profit and delay costs relating to the Variation or work (as the case may be).

1. PAYMENT
   1. Payment Obligation

Subject to clause 12.17 and to any other right to set‑off which the Contractor may have, the Contractor will pay the Subcontractor:

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

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

* + 1. at the times specified in the Subcontract Particulars until Completion or termination of the Subcontract (whichever is earlier);
    2. unless terminated earlier, after Completion or the Defects Liability Period within the time required by clause 12.11 or 12.13;
    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 or the Schedule of Rates to the extent these are relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Subcontract Price; and
       2. all other amounts then payable by the Contractor to the Subcontractor 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 Subcontractor:
       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 Subcontractor 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 Subcontractor 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 Subcontractor must, with each payment claim under clause 12.2, certify to the Contractor’s Representative that it has complied with:

* + 1. clause 4.1;
    2. if applicable, clause 4.4;
    3. clause 5.5;
    4. if clause 6.13 applies, clause 6.13;
    5. clause 8.5(e);
    6. clause 8.17;
    7. clause 10.2; and
    8. clause 12.18.
  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 12.2; or
    2. may, if the Subcontractor fails to submit any such claim in accordance with clause 12.2, at any time,

give the Subcontractor (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 Subcontractor on account of the Subcontract Price 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 Subcontractor on account of the Subcontract Price and otherwise in accordance with the Subcontract and which the Contractor proposes to pay to the Subcontractor; 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 the Subcontractor’s Activities or the Subcontract Works, nor will it be taken as an admission or evidence that the part of the Subcontractor’s Activities or the Subcontract Works covered by the payment statement has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 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 Subcontractor’s Activities or the Subcontract Works or that the Subcontractor’s Activities or the Subcontract Works 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 Subcontractor's performance or compliance with the Subcontract.
  1. Payment
     1. If Security is by way of Retention Moneys, then the Contractor may deduct the percentage stated in the Subcontract Particulars of every payment until it has accrued the percentage of the Subcontract Price stated in the Subcontract Particulars.
     2. Within 3 business days of the Subcontractor receiving a payment statement under clause , the Subcontractor must give the Contractor’s Representative a tax invoice for the amount stated as then payable by the Contractor to the Subcontractor in the payment statement.
     3. Within the number of business days specified in the Subcontract Particulars of the Contractor’s Representative receiving a tax invoice from the Subcontractor under and in accordance with paragraph (b), the Contractor will pay the Subcontractor the amount stated as then payable by the Contractor to the Subcontractor in the relevant payment statement given under clause .
  2. Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

* + 1. approval of the Subcontractor’s Activities or the Subcontract Works, nor will it be taken as an admission or evidence that the part of the Subcontractor’s Activities or the Subcontract Works covered by the payment has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 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 Subcontractor’s Activities or the Subcontract Works or that the Subcontractor’s Activities or the Subcontract Works 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 Subcontractor's performance or compliance with the Subcontract,

but is only to be taken as payment on account.

* 1. Applicable Currencies

Where the Subcontract Price is comprised of more than one currency:

* + 1. subject to paragraph (b), where the Subcontract provides for an adjustment to the Subcontract Price, any agreement between the Contractor’s Representative and the Subcontractor 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 any breakdown of the Subcontract Price submitted by the Subcontractor in its tender for the Subcontractor’s Activities and, if relevant, the location from which the goods and services are or will be sourced or provided; and
    2. to the extent that an adjustment to the Subcontract Price 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 any breakdown of the Subcontract Price submitted by the Subcontractor in its tender for the Subcontractor’s Activities or the location from which the goods and services are or will be sourced or provided, the Contractor’s Representative shall determine the adjustment in Australian dollars.
  1. Long Lead Time and Specialised Items
     1. The Subcontractor may include in the value of work in a payment claim under clause 12.2 amounts up to a maximum cumulative amount specified in the Subcontract Particulars for:
        1. the procurement of long lead time, custom or specialised items; or
        2. the payment of deposits to subsubcontractors where such deposits are necessary to acquire the relevant goods or services,

where each of the following are satisfied:

* + - 1. the Contractor’s Representative has (in its absolute discretion) given its prior written approval to include the relevant amount in the payment claim; and
      2. the Subcontractor gives the Contractor’s Representative with (or prior to) the payment claim additional Approved Security equal to the relevant amount to be claimed.
    1. The Subcontractor must ensure that the amount claimed is used for the purpose for which it was approved by the Contractor’s Representative under paragraph (a) and, where required by the Contractor’s Representative, provide evidence satisfactory to the Contractor’s Representative of such use.
  1. Other Unfixed Goods and Materials
     1. Unfixed goods or materials which are not the subject of an approval under clause 12.8 must not be included in the value of work in a payment statement under clause 12.4 unless:
        1. the Contractor’s Representative is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Subcontractor to comply with its obligations under the Subcontract;
        2. the Subcontractor gives the Contractor’s Representative with a payment claim under clause 12.2:
           1. additional Approved Security equal to the percentage specified in the Subcontract Particulars of the amount claimed for the unfixed goods and materials; and
           2. such evidence as may be required by the Contractor’s Representative that title to the unfixed goods and materials will vest in the Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract (International) in respect of the unfixed goods and materials;
        3. the unfixed goods and materials are clearly marked as the property of the Commonwealth and are on the Site or available for immediate delivery to the Site; and
        4. the unfixed goods and materials are properly stored in a place approved by the Contractor’s Representative.
     2. Upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract (International) in respect of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.
  2. Release of Additional Approved Security

If the Subcontractor has given the Contractor additional Approved Security under clause 12.8 or clause 12.9, the Contractor must, when the relevant goods and materials are incorporated into the Subcontract Works on Site or the relevant services have been performed, release the additional Approved Security referable to such goods, materials or services.

* 1. Completion Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor’s Representative) after the issue of a Notice of Completion for the Subcontract Works or a Stage, the Subcontractor must give the Contractor’s Representative:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Subcontractor claims from the Contractor on account of the Subcontract Price and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Subcontractor claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + - 1. in the case of the Subcontract Works, occurred prior to the Date of Completion of the Subcontract Works; or
      2. in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.11 are in addition to the other notices which the Subcontractor must give to the Contractor’s Representative under the Subcontract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Subcontractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

* 1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Subcontractor releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + 1. in the case of the Subcontract Works, occurred prior to the Date of Completion of the Subcontract Works; or
    2. in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contractor’s Representative within the time required by, and in accordance with the terms of, clause 12.11.

* 1. Final Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor’s Representative) of the end of the Defects Liability Period, the Subcontractor must give the Contractor’s Representative:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Subcontractor claims from the Contractor on account of the Subcontract Price and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Subcontractor claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + - 1. in the case of the Subcontract Works, occurred during the Defects Liability Period for the Subcontract Works; or
      2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.13 are in addition to the other notices which the Subcontractor 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 Subcontractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.
  1. Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.13 has passed, the Subcontractor releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + 1. in the case of the Subcontract Works, occurred during the Defects Liability Period for the Subcontract Works; or
    2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.13 which is given to the Contractor’s Representative within the time required by, and in accordance with the terms of, clause 12.13.

* 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 in a payment statement under clause 12.4, but which is not paid by the Contractor within the time required by the Subcontract; and
        2. damages (excluding any delay damages payable under clause 10.10).
     2. This will be the Subcontractor'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 Subcontractor:
       1. any debt or other moneys due from the Subcontractor to the Contractor (including liquidated damages payable under clause 13.7); and
       2. any claim to money which the Contractor asserts in good faith against the Subcontractor whether for damages or otherwise, under the Subcontract or otherwise at law or in equity arising out of or in connection with the Subcontractor’s Activities or the Subcontract 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:
       1. any amount which may be or thereafter become payable to the Subcontractor by the Contractor in respect of any Variation the subject of a Variation Order under clause 11.2; or
       2. without limiting the unconditional nature of the Security held under clause 4.1, the Security held under clause 4.1.
  1. Payment of Workers and Subsubcontractors

The Subcontractor must with each payment claim submitted under clause 12.2 provide the Contractor’s Representative with:

* + 1. a declaration in a form approved by the Contractor’s Representative, together with any supporting evidence which may be reasonably required by the Contractor’s Representative, duly signed by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that, except to the extent disclosed in the declaration (such disclosure to specify all relevant amounts, workers and subsubcontractors):
       1. all workers who have at any time been employed by the Subcontractor in connection with the Subcontractor’s Activities or the Subcontract Works have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Subcontractor’s Activities or the Subcontract Works; and
       2. all subsubcontractors have been paid all moneys due and payable to them in respect of the Subcontractor’s Activities or the Subcontract Works; and
    2. documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subsubcontractor have been paid all moneys due and payable to them in respect of their employment in connection with the Subcontractor’s Activities or the Subcontract Works.

The Contractor is entitled to withhold from any amount stated as then payable by the Contractor in a payment statement under clause 12.4 the amount disclosed as unpaid under clause 12.18.

* 1. General Liability for Taxes

Subject to clause 12.20, unless otherwise stated in the Subcontract Particulars, as between the Contractor and the Subcontractor, the Subcontractor bears the risk of, and must pay, all Taxes incurred or imposed in connection with the:

* + 1. Subcontract Works;
    2. Subcontractor’s Activities;
    3. Subcontract; or
    4. Site,

and the Subcontract Price is not subject to adjustment or gross up on account of any Tax.

The Subcontractor must indemnify the Contractor against any loss, damage or liability arising out of or in connection with Taxes which the Subcontractor is required to pay under this clause 12.19.

* 1. GST
     1. Subject to paragraph (b), where any supply arises out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works 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, the Subcontractor’s Activities or the Subcontract Works 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 12.20, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Accounting Records

The Subcontractor 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 Subcontractor on account of the Subcontract Price and otherwise in accordance with the Subcontract.
  1. Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Subcontractor must, with each payment claim under clause 12.2, provide the Contractor’s Representative with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all work completed since the Contractor's previous payment to the Subcontractor.

* 1. Quantities in Schedule of Rates

If a Schedule of Rates exists, the items of work and quantities in the Schedule of Rates are estimated and not guaranteed. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the items of work or the quantities being incorrect in that they:

* + 1. contain an incorrect quantity;
    2. contain an item which should not have been included; or
    3. omit an item which should have been included.
  1. Limits of Accuracy in Schedule of Rates

If a Schedule of Rates exists and the:

* + 1. actual quantity of an item required to carry out the Subcontractor’s Activities is greater or less than the quantity shown in the Schedule of Rates;
    2. Contractor has accepted a rate for the item referred to in paragraph (a); and
    3. actual quantity of the item referred to in paragraph (a) is outside the limits of accuracy specified in the Subcontract Particulars,

the rate will only apply to the quantities within those limits of accuracy and quantities outside those limits of accuracy will:

* + 1. if so instructed by the Contractor’s Representative, be carried out by the Subcontractor as daywork; or
    2. otherwise, have their value:
       1. agreed between the parties; or
       2. failing agreement, determined by the Contractor’s Representative using reasonable rates.

1. COMPLETION
   1. Subcontractor to Notify
      1. Nothing in clause 13 limits the Subcontractor's obligations, or the Contractor's or the Contractor’s Representative's rights, under clause 9.14.
      2. The Subcontractor must give the Contractor’s Representative written notice 28 days, and then again 14 days, before it anticipates achieving Completion.
   2. Contractor’s Representative to Inspect

The Contractor’s Representative must:

* + 1. promptly, and in any event no later than 14 days after receiving the Subcontractor's second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Subcontract Works or the Stage; and
    2. if:
       1. satisfied that Completion has been achieved, issue a notice to the Contractor and the Subcontractor:
          1. stating the date upon which the Contractor’s Representative determines Completion was achieved; and
          2. containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Completion" in clause 1.1; or
       2. not satisfied that Completion has been achieved, issue a notice so advising the Subcontractor and the Contractor.

If the Contractor’s Representative issues a notice under paragraph (b)(ii), the Subcontractor must:

* + 1. proceed to bring the Subcontract Works or the Stage to Completion; and
    2. when it considers it has achieved Completion, give the Contractor’s Representative written notice to that effect (after which clause 13.2 will reapply).
  1. Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Subcontractor to the Contractor’s Representative under clause 13.1(b) or 13.2 is not given by the Subcontractor yet the Contractor’s Representative is of the opinion that Completion has been achieved, the Contractor’s Representative may issue a Notice of Completion under clause 13.2(b)(i).

* 1. Take Over Upon Completion

Upon the issue of a Notice of Completion, the Subcontractor must:

* + 1. handover the Subcontract Works or the Stage to the Contractor, or such other persons as may be nominated in writing by the Contractor’s Representative (including the Host Nation); and
    2. correct all Defects listed in the Notice of Completion as soon as possible.
  1. Part of the Subcontract Works or a Stage
     1. The Subcontractor must, if written notice is given to the Subcontractor by the Contractor’s Representative, allow the Commonwealth, the Contractor or such other persons as may be nominated in writing by the Contractor’s Representative (including the Host Nation), to occupy, use, operate or maintain (or arrange for Other Contractors to occupy, use, operate or maintain) any part of the Subcontract Works or a Stage although the whole of the Subcontract Works or the Stage has not reached Completion.
     2. If any such notice is given by the Contractor’s Representative, the Contractor must allow the Subcontractor, or procure for the Subcontractor, reasonable access to the part of the Subcontract Works or the Stage referred to in the notice and being occupied, used, operated or maintained to enable the Subcontractor to bring the Subcontract Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part to Completion.
     3. Without limiting paragraph (a), the Contractor’s Representative may, at any time by written notice to the Subcontractor, direct:
        1. that any part of the Subcontract Works or any part of a Stage is to be a new Stage notwithstanding the whole of the Subcontract Works or a Stage has not reached Completion; and
        2. the Date for Completion for any new Stage or Stages.
     4. A notice under paragraph (a) or (c) will not limit or affect the obligations of the Subcontractor under the Subcontract, including the obligation of the Subcontractor to achieve Completion of the Subcontract Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part by the relevant Date for Completion.
  2. Effect of Notice of Completion

A Notice of Completion will not:

* + 1. constitute approval of the Subcontractor’s Activities, the Subcontract Works or the Stage, nor will it be taken as an admission or evidence that the Subcontractor’s Activities, the Subcontract Works or the Stage have or has been satisfactorily carried out in accordance with the Subcontract;
    2. constitute an admission or evidence that the Subcontractor’s Activities, the Subcontract Works or the Stage comply or complies with the Subcontract;
    3. otherwise, constitute any approval, admission or evidence by the Contractor or the Contractor’s Representative of the Subcontractor's performance or compliance with the Subcontract; or
    4. prejudice any rights or remedies of the Contractor or the Contractor’s Representative under the Subcontract or otherwise at law or in equity.
  1. Liquidated Damages
     1. If the Date of Completion of the Subcontract Works or a Stage has not occurred by the relevant Date for Completion for the Subcontract Works or the Stage, the Subcontractor must pay liquidated damages at the rate specified in the Subcontract Particulars for every day after the Date for Completion until the Date of Completion or the Subcontract is terminated, whichever is first.
     2. This amount is an agreed genuine pre-estimate of the Contractor's damages if the Date of Completion does not occur by the relevant Date for Completion, but is exclusive of damages which the Contractor will suffer if the Contractor incurs a liability to the Commonwealth as contemplated by clause 13.8.
     3. The amount payable under clause 13.7 will be a debt due from the Subcontractor to the Contractor.
  2. Liability to the Commonwealth

In addition to any other liability under the Subcontract (including the liability under clause 13.7), the Subcontractor must indemnify the Contractor against any costs, losses, expenses or damages (whether liquidated or unliquidated) which the Contractor pays or is liable to pay the Commonwealth under the Managing Contractor Contract (International) or otherwise, to the extent that such payment or liability arises out of or in connection with the Date of Completion not occurring by the relevant Date for Completion.

1. TERMINATION
   1. Preservation of Rights

Subject to clause 14.6, nothing in clause 14 or that the Contractor does or fails to do pursuant to clause 14 will prejudice any right or remedy of the Contractor (including the recovery of damages) where the Subcontractor breaches (including repudiates) the Subcontract.

* 1. Subcontractor Default

The Contractor may give a written notice under clause 14.3 to the Subcontractor if the Subcontractor is in breach of the Subcontract.

* 1. Contents of Notice of Default

A notice under clause 14.3 must state:

* + 1. that it is a notice under clause 14.3;
    2. the failure or breach relied upon; and
    3. that the Contractor requires the Subcontractor 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 Subcontractor, or where the Subcontractor comprises two or more persons, to any one of those persons;
    2. the Subcontractor does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Subcontract Particulars of receiving the notice under clause 14.3;
    3. an instruction has been given under clause 9.6(a) or (b), the Subcontractor fails to comply with clause 9.7; or
    4. the Subcontractor fails to comply with:
       1. clause 19;
       2. clause 21; or
       3. if clause 22 applies, clause 22,

then the Contractor may by written notice to the Subcontractor immediately (and without having to first give a notice under clause 14.3, except in the case of paragraph (b)) terminate the Subcontract.

* 1. Contractor's Entitlements after Termination by Contractor

Subject to clause 14.1, if the Contractor terminates the Subcontract under clause 14.4, or if the Subcontractor repudiates the Subcontract and the Contractor otherwise terminates the Subcontract:

* + 1. the Contractor will:
       1. be entitled to take over and use, or require the Subcontractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Subcontract Works;
       2. be entitled to require the Subcontractor to novate to the Contractor or the Contractor's nominee, any or all subsubcontracts between the Subcontractor and its subsubcontractors as required by the Contractor;
       3. not be obliged to make any further payments to the Subcontractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
       4. be entitled to recover from the Subcontractor 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 Subcontractor must comply with clause 21.3 and, if clause 22 applies, clause 22.4 (including by handing over to the Contractor’s Representative copies of all Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Subcontract.

* 1. Subcontractor's Entitlements after Termination by Subcontractor
     1. If the Contractor repudiates the Subcontract and the Subcontractor terminates the Subcontract, the Subcontractor will:
        1. be entitled to payment of an amount determined in accordance with clause 14.8 as if the Contractor had terminated the Subcontract under clause 14.7; and
        2. not be entitled to a quantum meruit.
     2. Clause 14.6 will survive the termination of the Subcontract.
  2. Termination for Convenience

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

* + 1. at any time for its sole convenience, and for any reason, by written notice to the Subcontractor terminate the Subcontract effective from the time stated in the Contractor's notice or if no such time is stated, at the time the notice is given to the Subcontractor; and
    2. thereafter (at its absolute discretion) complete the uncompleted part of the Subcontractor’s Activities and the Subcontract Works either itself or by engaging Other Contractors.
  1. Subcontractor's Entitlements after Termination for Force Majeure or Convenience by Contractor

If the Contractor terminates the Subcontract under clause 10.16 or clause 14.7, the Subcontractor:

* + 1. will be entitled to payment of the following amounts, as determined by the Contractor’s Representative:
       1. for work carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Subcontractor submitted a payment claim for work carried out to the date of termination;
       2. the cost of goods or materials reasonably ordered by the Subcontractor for the Subcontract Works for which the Subcontractor is legally bound to pay provided that:
          1. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
          2. title in the goods and materials will vest in the Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract (International) in respect of those goods and materials; and
       3. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Subcontractor’s Activities; and
    2. must:
       1. take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
       2. comply with clause 21.3 and, if clause 22 applies, clause 22.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).

The amounts to which the Subcontractor is entitled under clause 14.8 will be a limitation upon the Contractor's liability to the Subcontractor arising out of or in connection with the termination of the Subcontract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)(i)) and to the extent permitted by law, the Subcontractor 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 14.8.

Clause 14.8 will survive the termination of the Subcontract by the Contractor under clause 10.16 or clause 14.7 or by the Subcontractor following repudiation by the Contractor.

* 1. Termination of Managing Contractor Contract (International)
     1. Nothing in clause 14.9 limits the Contractor’s rights or the Subcontractor’s obligations under any Subcontractor Deed of Covenant entered into by the Subcontractor under clause 2.2(c).
     2. 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 Subcontractor; or
        2. without the consent of the Subcontractor, novate the Subcontract by assigning the Contractor’s rights and obligations under the Subcontract to the Commonwealth or a person nominated by the Commonwealth.
     3. If the Subcontract is novated under paragraph (b)(ii), the Subcontractor 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 14.9(b)(i) or in accordance with any Subcontractor Deed of Covenant entered into by the Subcontractor under clause 2.2(c), then the Subcontractor:
        1. will be entitled to the payment of the following amounts as determined by the Contractor’s Representative:
           1. for work carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Subcontractor submitted a payment claim for work carried out to the date of termination;
           2. the cost of goods or materials reasonably ordered by the Subcontractor for the Subcontract Works for which the Subcontractor 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 Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract (International) in respect of those goods and materials; and

* + - * 1. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Subcontractor’s Activities; and
      1. must:
         1. take all steps possible to mitigate the costs referred to in subparagraphs (i)B and (i)C; and
         2. comply with clause 21.3 and, if clause 22 applies, clause 22.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).
    1. The amount to which the Subcontractor is entitled under clause 14.10 will be a limitation upon the Contractor’s liability to the Subcontractor arising out of or in connection with the termination of the Subcontract under clause 14.9 and the Subcontractor 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 14.10.
    2. Clauses 14.9 and 14.10 will survive termination of the Subcontract by the Contractor under clause 14.9.

1. DISPUTES
   1. Notice of Dispute
      1. If a dispute or difference arises between the Subcontractor and the Contractor (or the Contractor’s Representative) in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract 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 15.
      2. Where such a dispute or difference arises, either party may give a notice in writing to 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 15.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 15.2 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 15.3:
        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 15.9(b) within 14 days of his or her appointment under clause 15.3; or
        5. does not make a determination within the time required by clause 15.8,

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 15 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 15 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 15.11 and 15.12, 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 15.2 applies, and a notice of appeal is given under clause 15.10; or
        2. clause 15.2 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 15.2, the notice of dispute given under clause 15.1; or
          2. otherwise, the notice of appeal given under clause 15.10; 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 15.2, the notice of dispute given under clause 15.1; or
       2. otherwise, the notice of appeal given under clause 15.10; 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 15.13 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 15.13.
     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 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to clause 15.13 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. 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 any 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 15.

* 1. MCCI Dispute Procedures
     1. 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.
     2. Within 7 days of the Award Date, the Contractor must provide the Subcontractor with a copy of the provisions in the Managing Contractor Contract (International) setting out the MCCI Dispute Procedures.
     3. The Subcontractor agrees that certain disputes and differences of the kind referred to in clause 15.1 will be determined under the MCCI Dispute Procedures as set out in clauses 15.16 - 15.18 in lieu of the procedures set out in clauses 15.2 - 15.14.
  2. Managing Contractor Contract (International) Disputes

If:

* + 1. the Subcontractor gives a notice under clause 15.1;
    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, or otherwise relates, in whole or in part, to any other fact, matter or circumstance arising out of or in connection with the Managing Contractor Contract (International); 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 Subcontractor stating that clause 15.17 applies in relation to the dispute or difference.

* 1. Procedure for Managing Contractor Contract (International) Disputes

If a notice is given under clause 15.16 stating that clause 15.17 applies:

* + 1. subject to clause 15.18, the Contractor must:
       1. take such steps as are reasonably necessary to progress the Subcontractor’s dispute or difference under the MCCI Dispute Procedures;
       2. regularly consult with the Subcontractor to ascertain its views as to the progression of the Subcontractor’s dispute or difference; and
       3. use its best endeavours to ensure that the Subcontractor’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 Subcontractor’s dispute or difference as between the Contractor and the Commonwealth; and
    2. the Subcontractor 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 Subcontractor’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 subparagraph (b)(ii).
  1. Further Procedures

Where clause 15.17 applies, the following provisions also apply:

* + 1. the Contractor must not without the prior consent of the Subcontractor (acting reasonably) agree to a settlement with the Commonwealth or any other relevant person of the Subcontractor’s dispute or difference; and
    2. where a determination is made by an expert, an arbitrator or a court in relation to the Subcontractor’s dispute or difference as between the Commonwealth and the 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 Subcontractor 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 Subcontractor’s dispute or difference insofar as the determination relates to the dispute or difference.
  1. Continuation of Subcontractor’s Activities

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

* + 1. continue to carry out the Subcontractor’s Activities and the Subcontract Works; 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 15, 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 11.2, constitutes or involves a Variation, the Subcontractor 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 work on 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 16.3(b); and
    3. continue to carry out the Subcontractor’s Activities and the Subcontract Works 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 16.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 10.6;
    2. payment under clause 12.2 of the original Subcontract Price specified in the Subcontract Particulars; or
    3. a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Subcontractor must give the Contractor’s Representative the notices required by clause 16.3 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 Subcontractor’s Activities, the Subcontract Works 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 Subcontract Price; or
       2. otherwise, the Subcontract Price will be increased or adjusted,

as determined by the Contractor’s Representative.

* 1. Prescribed Notices

The notices referred to in clause 16.2 are:

* + 1. a written notice within 21 days of the earlier of the Subcontractor becoming aware or when the Subcontractor should reasonably have become aware of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
       1. that the Subcontractor 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 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Subcontractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(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 Subcontractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

* + 1. the Contractor will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Subcontractor; and
    2. the Subcontractor 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 16.1 or 16.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Subcontract which requires the Subcontractor 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 14 and 15 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 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 16.7 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 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.7(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:
        1. the date the notice sent by email is taken to be received; or
        2. the 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
   1. Design and Construction

Without limiting the Subcontractor's obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must:

* + 1. design the parts of the Subcontract Works which the Subcontract requires it to design; and
    2. construct the Subcontract Works,

in a manner which maximises the achievement of the ESD Principles and the WOL Objectives.

* 1. Consultation

The Subcontractor must meet with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative 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 and construction of the Subcontract Works against the ESD Principles and the WOL Objectives; and
    2. consult with the Commonwealth, the MCCI Contract Administrator, the Contractor, the Contractor’s Representative 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 Subcontractor's obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must at all times in carrying out the Subcontractor’s Activities:

* + 1. use its best endeavours to identify and recommend to the Contractor’s Representative, all reasonably available proposals for maximising the achievement of the ESD Principles and the WOL Objectives; and
    2. consult with the MCCI Contract Administrator, the Contractor, Contractor’s Representative 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 Subcontract Works; and
    2. without limiting paragraph (a):
       1. inspect the Subcontract Works to review the extent to which the Subcontractor has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the Subcontract Works; and
       2. issue a report to the Commonwealth, the Contractor and the Subcontractor:
          1. stating the extent to which the Subcontractor has maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the Subcontract Works; and
          2. containing a list ofany aspects of the Subcontract Works which do not conform with the requirements of the Subcontract.

The Subcontractor:

* + 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 reasonably 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 results of the post occupancy evaluation may be taken 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 Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor’s Representative by clause 17 or the failure by the Contractor or the Contractor’s Representative to exercise any such rights;
    2. the obligations imposed upon the Subcontractor by clause 17 or the Subcontractor'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 Subcontractor under clause 17; or
       2. any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.4.

1. GENERAL
   1. Privacy
      1. The Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor allows to access Personal Information which is received, created or held by the Subcontractor 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 Subcontractor 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 Subcontractor in reports by the Federal Privacy Commissioner;
         11. ensure that any subsubcontract made in connection with the Subcontract contains enforceable obligations requiring the subsubcontractor to comply with the Subcontractor's obligations arising out of clause 18.1, as if the subsubcontractor were the Subcontractor;
         12. enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contractor’s Representative may give;
         13. not use Personal Information collected by the Subcontractor 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
         14. 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 Subcontractor under clause 18.1;
             2. a breach of a subsubcontractor's obligations under a subsubcontract as contemplated by subparagraph (xi);
             3. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Subcontractor or a subsubcontractor; or
             4. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Subcontractor or a subsubcontractor in breach of an obligation of confidence.
      2. For the purposes of paragraph (a)(xiv), **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 18.1.
      3. The Subcontractor must immediately notify the Contractor’s Representative in writing if the Subcontractor:
         1. becomes aware of a breach of the obligations under clause 18.1 by itself or by a subsubcontractor;
         2. becomes aware of a breach of a subsubcontractor's obligations under a subsubcontract as contemplated by paragraph (a)(xi);
         3. becomes aware that a disclosure of Personal Information may be required by law; or
         4. is approached or contacted by, or becomes aware that a subsubcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
      4. The Subcontractor acknowledges that, in addition to the requirements of clause 18.1, the Subcontractor must also comply with any other Statutory Requirement in relation to the handling of Personal Information.
      5. Nothing in clause 18.1 limits any of the Subcontractor's obligations under the Subcontract or otherwise at law or in equity.
      6. In clause 18.1, **received** includes collected.
   2. Moral Rights
      1. To the extent permitted by law, the Subcontractor:
         1. must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subsubcontractors 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 Subcontract 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 Subcontract Works (**Sub-Licensee**);
            3. any third party to whom the Contractor assigns any Intellectual Property Rights in the Project Documents or the Subcontract Works (**Assignee**); or
            4. any Other Contractors;
         2. without limiting subparagraph (i), consents to any of the Commonwealth, the Contractor, Other Contractors, Sub-Licensees and Assignees:
            1. failing to acknowledge or attribute the Subcontractor's or any other person's authorship of the Project Documents or the Subcontract Works;
            2. falsely attributing authorship of the Project Documents or the Subcontract Works; and
            3. making any modification, variation or amendment of any nature whatsoever to the Project Documents or the Subcontract Works, whether or not:

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

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

* + - 1. without limiting subparagraphs (i) and (ii), consents to any of the Commonwealth, the Contractor, Other Contractors, Sub-Licensees and Assignees:
         1. using the Project Documents or the Subcontract Works other than for the purpose for which it was intended at the time the Project Document was or the Subcontract Works were created;
         2. altering the Project Documents or the Subcontract Works by adding to or removing elements from, or rearranging elements of, the Project Documents or the Subcontract Works, including by combining elements of the Project Documents or the Subcontract 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 Subcontract Works), whether or not it incorporates, is based on, or is constructed in accordance with, the Project Documents.
    1. The Subcontractor 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 Subcontract Works, obtain from that person, before he or she creates a Project Document or the relevant part of the Subcontract Works, a duly completed and executed Moral Rights Consent;
       2. ensure that no person creates a Project Document or any part of the Subcontract 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 18.2 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 18.2, 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 a Project Document or any part of the Subcontract Works, and the Project Document or any part of the Subcontract 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

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.

The Subcontractor acknowledges that Commonwealth requirements and policies will require certain identifying details of the Subcontract to be made available to the public via the internet.

* 1. Assignment
     1. The Subcontractor 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 21 and, if clause 22 applies, clause 22, the Subcontractor must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Subcontractor’s Activities, the MCCI Works or the Subcontract Works for publication in the media without the prior written approval of the Contractor’s Representative; and
    2. refer any enquiries from the media concerning the Subcontractor’s Activities, the MCCI Works or the Subcontract Works to the Contractor’s Representative.
  1. Shadow Economy Procurement Connected Policy
     1. Clause 18.6 does apply unless the Subcontract Particulars state that it does not apply.
     2. The Subcontractor:
        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 Subcontractor's Activities and the Subcontract Works and, on request by the Contractor’s Representative, provide to the Contractor’s Representative a copy of any such STR.
     3. The Subcontractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Subcontractor becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Subcontractor 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:   * + - 1. any new participant in the joint venture; and       2. 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 Subcontractor 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. The Subcontractor must:
         1. comply, and use all reasonable endeavours to ensure that its officers, employees, subsubcontractors and agents comply, with all Anti-Corruption Laws;
         2. not, and must use all reasonable endeavours to ensure that its officers, employees, subsubcontractors 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 Subcontractor’s Activities (including all measures directed by the Contractor’s Representative);

* + - 1. ensure that its officers, employees, subsubcontractors and agents are responsible and accountable to the Subcontractor for preventing and reporting Fraud and any breaches of Anti-Corruption Laws as part of their routine responsibilities, including by ensuring that any known or suspected Fraud and any breach is reported to the Subcontractor promptly (and in any case within 5 business days) after becoming aware of such Fraud;
      2. maintain, and procure that its subsubcontractors maintain, Adequate Procedures to ensure the prevention and detection of Fraud and compliance with Anti-Corruption Laws;
      3. 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 Subcontractor or any of its officers, employees, subsubcontractors 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
      4. without limiting the foregoing, comply with the IPACE Supplier Code of Conduct.
    1. Without limiting the foregoing, the Subcontractor 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 Subcontractor’s Activities.
    2. In this clause 19.1, **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 19.1):
       1. internal policies clearly setting out employees' obligations for ensuring compliance with Anti-Corruption Laws;
       2. due diligence procedures for agents, subsubcontractors 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
     1. The Subcontractor:
        1. must not, and must use all reasonable endeavours to ensure that its officers, employees, agents and subsubcontractors do not:
           1. engage in any conduct that would constitute Modern Slavery; and
           2. do anything to put the Contractor or the Commonwealth in breach of any Modern Slavery Law; and
        2. must comply, and must use all reasonable endeavours to ensure that its officers, employees, agents and subsubcontractors at all times comply with all Modern Slavery Laws,

including by:

* + - 1. implementing and maintaining, and procuring that its subsubcontractors implement and maintain, Adequate Procedures to ensure prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws; and
      2. using reasonable endeavours to obtain and exercise audit rights with respect to its suppliers and subsubcontractorsand their supply chains.
    1. In this clause 19.2, **Adequate Procedures** means policies, procedures, processes and systems designed to ensure, and which are reasonably capable of ensuring, the prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws including (without limiting the requirements of this clause 19.2):
       1. internal policies clearly setting out employees' obligations with regards to Modern Slavery prevention, record keeping, detection and remediation and for ensuring compliance with Modern Slavery Laws;
       2. due diligence procedures for agents, subsubcontractors and business partners;
       3. adequate training of officers, directors and employees in relation to preventing, identifying and responding to Modern Slavery and compliance with Modern Slavery Laws;
       4. undertaking regular risk assessments in relation to susceptibility to Modern Slavery and breaches of the Modern Slavery Laws; and
       5. ensuring access to appropriate grievance mechanisms to allow for employees and subsubcontractors to safely report instances of Modern Slavery.
  1. Breach or Suspected Breach of Fraud, Anti-Bribery and Corruption or Modern Slavery Obligations
     1. If the Subcontractor knows or suspects that:
        1. Fraud in connection with this Subcontract or the Subcontractor’s Activities (including by any officers, employees, subsubcontractors and agents); or
        2. any breach (including by any officers, employees, subsubcontractors and agents) of:
           1. the Anti-Corruption Laws;
           2. the Modern Slavery Laws; or
           3. the other obligations set out in this clause 19,

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 names of any officers, employees, subsubcontractors and agents involved;
      4. copies of relevant documents;
      5. references to any relevant Statutory Requirements;
      6. the current status of any inquiries commenced by the Subcontractor;
      7. the proactive corrective action the Subcontractor will take under clause 19.1(a) (if applicable);
      8. the proactive measures which the Subcontractor will take to ensure that the Fraud or breach does not occur again; and
      9. any other relevant information.
    1. Subject to paragraph (c)(i), the Subcontractor 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 Contractor’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 Subcontractor 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 Subcontractor’s compliance with this clause 19, irrespective of whether there has been a breach or suspected breach of this clause.
    4. Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must:
       1. do all things reasonably necessary to assist the Contractor’s Representative and its nominees with any audit or investigation under this clause 19; 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 Subcontractor’s compliance with, or any audit or investigation under, this clause 19.
    5. The Subcontractor must undertake appropriate remediation actions to address any breaches, issues or failures arising in connection with this clause 19 (including any identified by an audit or investigation carried out under this clause 19.3) at the Subcontractor’s own cost and in accordance with any directions of or standards required by the Contractor’s Representative.
  1. Subcontractor’s Warranty

The Subcontractor warrants that on the [[Award Date](#AwardDate)](#AwardDate) and on the date of submitting each payment claim under clause 12.2 that, except to the extent disclosed in writing to the Contractor’s Representative, neither it, nor (having made reasonable enquiries, to the best of its knowledge) any of its officers, employees, subsubcontractors and agents, have been convicted of any offence, nor have it or they been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body:

* + 1. regarding any Fraud offence, or alleged offence; or
    2. under any applicable:
       1. Anti-Corruption Laws; or
       2. Modern Slavery Laws.
  1. Subsubcontracts
     1. The Subcontractor must:
        1. ensure that all subsubcontracts contain provisions equivalent to the obligations of the Subcontractor in this clause 19, including rights for the Contractor, the Contractor’s Representative and its nominees to audit and investigate the subsubcontractor’s compliance on equivalent terms to clause 19.3;
        2. when required by the Contractor’s Representative, procure access to the subsubcontractor’s premises and records for the purpose of investigating any known or suspected Fraud or breach of the Anti-Corruption Laws or Modern Slavery Laws; and
        3. provide written notice to the Contractor’s Representative in accordance with clause 19.3(a) where it suspects or knows a subsubcontractor (or any of its officers or employees) have breached such equivalent obligations.
     2. The Contractor’s Representative may by notice in writing instruct the Subcontractor to terminate any subsubcontract where in the reasonable opinion of the Contractor’s Representative a subsubcontractor (or any of its officers or employees) has been fraudulent or breached the applicable Anti-Corruption Laws or Modern Slavery Laws.
  2. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Contractor has entered into the Subcontract and, if applicable, has made payments to the Subcontractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 19;
       2. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity), if the Subcontractor:
          1. notifies the Contractor’s Representative under clause 19.3(a); or
          2. has failed to strictly comply with clause 19,

the Contractor may (in its absolute discretion) terminate the Subcontract under clause 14.4; 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 15.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor 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. Fraud or a breach of the applicable Anti-Corruption Laws or Modern Slavery Laws, to the extent caused or contributed to by the Subcontractor or any officer, employee, subsubcontractor or agent of the Subcontractor;
       2. the Subcontractor’s failure to strictly comply with clause 19; or
       3. the exercise of any of the Contractor's absolute discretions under clause 19.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Subcontractor 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 Commonwealth 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 20.2 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 Subcontractor 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 Subcontractor 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 Subcontractor 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. Subcontractor's Warranty
      1. The Subcontractor acknowledges and agrees that the Confidential Information is confidential.
      2. The Subcontractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 21 by the Subcontractor or any Recipient.
   2. Confidential Information Requirements

(a) The Subcontractor must:

* + - 1. strictly comply with:
         1. clause 21; 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 21; 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).
    1. Subject to, if clause 22 applies, clause 22, the Subcontractor 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 Subcontractor’s Activities and achieving Completion of the Subcontract Works.

* + 1. The Subcontractor must ensure that all Recipients of Confidential Information:
       1. strictly comply with:
          1. clause 21; 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 21; 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 Subcontractor, would be a breach of:
          1. clause 21; 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 Subcontractor 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 MCC 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 14 or otherwise at law; or
        3. the expiry of the last Defects Liability Period,

the Subcontractor 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 Subcontractor 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 Subcontractor knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Subcontractor and all Recipients; and
         2. is beyond the Subcontractor'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 Subcontractor's quality assurance procedure, system or framework, the Subcontractor may keep one copy of the Confidential Information for its records subject to the Subcontractor:
       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 21.
    2. The Subcontractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Subcontractor's obligations under clause 21.
  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 Subcontractor must:

* + 1. provide the Contractor’s Representative with:
       1. evidence of the Subcontractor's and all Recipients' compliance with clause 21 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Subcontractor 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 Subcontractor's and all Recipients' compliance with clause 21 (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 Subcontractor'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 Subcontractor's and all Recipients' compliance with clause 21 (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 Subcontractor:

* + 1. acknowledges and agrees that:
       1. the Contractor has entered into the Subcontract and, if applicable, has made payments to the Subcontractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 21;
       2. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity), if the Subcontractor:
          1. notifies the MCCI Contract Administrator and the Contractor’s Representative under clause 21.2(d)(ii)B; or
          2. has failed to strictly comply with:

clause 21; 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:

* + - * 1. the Contractor may (in its absolute discretion) terminate the Subcontract under clause 14.4; 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 21 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor 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 Confidential Information Incident;
       2. the Subcontractor's failure to strictly comply with clause 21 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 21.

1. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 22 does not apply unless the Subcontract Particulars state that it applies.

* 1. Sensitive and Classified Information, generally
     1. Nothing in clause 22 limits the Subcontractor's obligations under clause 21.
     2. The Subcontractor acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.
  2. Subcontractor's Warranties
     1. The Subcontractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 22 by the Subcontractor or any Recipient.
     2. The Subcontractor warrants that, except as otherwise approved in writing by the MCCI Contract Administrator and the Contractor’s Representative, each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Subcontractor’s Activities and the Subcontract Works 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 22.3(d)(i)B.1) (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 Subcontractor must:
        1. strictly comply with:
           1. clause 22; 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 22; 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 Subcontractor 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 Subcontractor’s Activities and the Subcontract Works.

* + 1. If the Subcontractor wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Subcontractor’s Activities and the Subcontract Works, 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 notify the Subcontractor that the Contractor (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 Subcontractor must strictly comply with any conditions notified under paragraph (d)(i).
    2. The Subcontractor must ensure that all Recipients of Sensitive and Classified Information:
       1. strictly comply with:
          1. clause 22; 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 22; 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 Subcontractor, would be a breach of:
          1. clause 22; 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 Subcontractor 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 Subcontractor (or any Recipient) was issued with the Sensitive and Classified Information; and

at all times during the Subcontractor'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 14 or otherwise at law; or
        3. the expiry of the last Defects Liability Period,

the Subcontractor 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 Subcontractor 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 Subcontractor knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Subcontractor and all Recipients; and
         2. is beyond the Subcontractor'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 Subcontractor may keep one copy of the Sensitive and Classified Information for its records subject to the Subcontractor:
       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 22.
    2. The Subcontractor acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Subcontractor's obligations under clause 22.
  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 Subcontractor must:

* + 1. provide the Contractor’s Representative with:
       1. evidence of the Subcontractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Subcontractor 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 Subcontractor's and all Recipients' compliance with clause 22 (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 Subcontractor'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 Subcontractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and Sensitive and Classified Information Requirements).
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Contractor has entered into the Subcontract and, if applicable, has made payments to the Subcontractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 22;
       2. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity), if the Subcontractor:
          1. notifies the MCCI Contract Administrator and the Contractor’s Representative under clause 22.3(g)(ii)B; or
          2. has failed to strictly comply with:

clause 22; 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 14.4; or
        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 22 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor or any other person or entity arising out of or in connection with the exercise of any absolute discretion under clause 22; 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 Subcontractor's failure to strictly comply with clause 22 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 22.

1. MATERIAL CHANGE OR STRATEGIC INTEREST ISSUE
   1. Subcontractor's Warranty

Subject to clause 23.2, the Subcontractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any:

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

in relation to the Subcontractor.

* 1. Notice of Material Change or Strategic Interest Issue

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

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

the Subcontractor 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 Subcontractor 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 Subcontractor:

* + 1. acknowledges and agrees that:
       1. the Contractor has entered into the Subcontract and, if applicable, has made payments to the Subcontractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 23;
       2. without limiting any other right or remedy of the Contractor (under the Subcontract or otherwise at law or in equity), if:
          1. the Subcontractor:

notifies the MCCI Contract Administrator and the Contractor’s Representative under clause 23.2; or

has failed to strictly comply with clause 23; 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 Subcontractor,

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

* + - * 1. notify the Subcontractor 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 Subcontractor 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; and

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 Subcontractor 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; and

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

the Subcontractor may continue to perform the Subcontractor’s Activities, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Subcontractor 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 14.4 and terminate the Subcontract under clause 14.4,

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 23 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor 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 23; 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 Subcontractor's failure to strictly comply with clause 23; or
       3. the exercise of any of the Contractor's absolute discretions under clause 23.

1. financial viability
   * 1. The Subcontractor:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2:
           1. it has the financial viability necessary to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage and otherwise meet its obligations under the Subcontract (including the payment of all subsubcontractors (in accordance with paragraph (b)); and
           2. each subsubcontractor engaged in the Subcontractor’s Activities, the Subcontract Works or each Stage has the financial viability necessary to perform its activities in accordance with the relevant subsubcontract; and
        2. acknowledges and agrees that the Contractor has entered into the Subcontract and, if applicable, has made payments to the Subcontractor under clause 12.5, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 24.
     2. The Subcontractor must pay all subsubcontractors in accordance with the payments terms in all subsubcontracts.
     3. The Subcontractor must keep the Contractor’s Representative fully and regularly informed as to all financial viability matters which could adversely affect:
        1. the Subcontractor's ability to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage or otherwise meet its obligations under the Subcontract; and
        2. a subsubcontractor's ability to perform its activities in accordance with the relevant subsubcontract,

including any potential or actual change in:

* + - 1. the Subcontractor's financial viability; or
      2. a subsubcontractor's financial viability.
    1. The Contractor’s Representative may (in its absolute discretion) at any time request the Subcontractor to:
       1. provide the Contractor’s Representative with a solvency statement in the form required by the Contractor with respect to:
          1. the Subcontractor, properly completed and duly executed by the Subcontractor; or
          2. a subsubcontractor, properly completed and duly executed by the subsubcontractor; and
       2. ensure:
          1. its Financial Representative is available; and
          2. each subsubcontractor makes its Financial Representative 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:

* + - * 1. the Subcontractor has the financial viability necessary to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage and otherwise meet its obligations under the Subcontract (including the payment of all subsubcontractors in accordance with paragraph (b)); or
        2. a subsubcontractor has the financial viability necessary to perform its activities in accordance with the relevant subsubcontract.
    1. If the Contractor considers (in its absolute discretion) that there could be or has been a change in:
       1. the Subcontractor's financial viability; or
       2. a subsubcontractor's financial viability,

which could adversely affect:

* + - 1. the Subcontractor's ability to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage or otherwise meet its obligations under the Subcontract; or
      2. a subsubcontractor's ability to perform its activities in accordance with the relevant subsubcontract,

the Contractor’s Representative may (in its absolute discretion) direct the Subcontractor to take such steps as the Contractor considers necessary to secure the performance of the Subcontractor’s Activities, the Completion of the Subcontract Works or each Stage and the meeting of its obligations under the Subcontract, including requiring the Subcontractor to:

* + - 1. provide additional Approved Security in the form and for an amount required by the Contractor;
      2. provide a Deed of Guarantee, Undertaking and Substitution in the form required by the Contractor;
      3. establish a trust account for the payment of subsubcontractors on the terms (including any trust deed) required by the Contractor;
      4. provide a Subcontractor Deed of Covenant; or
      5. provide Collateral Warranties.
    1. If the Contractor’s Representative gives a direction under paragraph (e), then the Subcontractor must take such steps as the Contractor considers necessary to better secure a subsubcontractor's ability to perform its activities in accordance with the relevant subsubcontract, including any of the steps notified by the Contractor.
    2. The Subcontractor acknowledges and agrees that:
       1. nothing in clause 24 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 24 for the benefit of the Subcontractor (or any subsubcontractor);
       3. clause 24 does not give the Subcontractor (or any subsubcontractor) any rights; and
       4. the exercise or failure to exercise a discretion under clause 24 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

Unless otherwise approved by the Contractor’s Representative, the Subcontractor must ensure that each subsubcontract includes provisions equivalent to the obligations of the Subcontractor in clause 24.

1. SUBCONTRACT WORKS INFORMATION
   1. General

Without limiting clauses 8.13 and 9.14, the Subcontractor must:

* + 1. do all things necessary to assist the Contractor, the Commonwealth, the Host Nation and Other Contractors to occupy, use, operate and maintain the Subcontract Works or a Stage;
    2. provide all Subcontract Works Information required for the occupation, use, operation and maintenance of the Subcontract Works or a Stage to the Contractor’s Representative in accordance with Annexure 1; and
    3. within 28 days (or such longer period agreed in writing by the Contractor’s Representative) after the issue of a Notice of Completion for the Subcontract Works or a Stage, give the Contractor’s Representative final versions of all documents and other information in respect of which drafts were provided in accordance with clause 1 of Annexure 1 (in the same number and format specified in Annexure 1 as applying to the draft versions).
  1. Subcontractor Review of Subcontract Works Information

The Subcontractor must:

* + 1. ensure that all relevant subsubcontractors (including all design subsubcontractors) have reviewed the Subcontract Works Information prior to submission to the Contractor’s Representative; and
    2. at the time of submitting Subcontract Works Information, submit a comprehensive list of all prior reviews carried out by subsubcontractors of that Subcontract Works Information in accordance with paragraph (a).
  1. Contractor’s Representative May Review Subcontract Works Information
     1. The Contractor’s Representative may:
        1. review any Subcontract Works Information, or any resubmitted Subcontract Works Information, prepared and submitted by the Subcontractor; and
        2. within 7 days of the submission by the Subcontractor of such Subcontract Works Information or resubmitted Subcontract Works Information, reject the Subcontract Works Information if in the Contractor’s Representative's reasonable opinion the Subcontract Works Information does not comply with the requirements of the Subcontract.
     2. If any Subcontract Works Information is rejected, the Subcontractor must submit amended Subcontract Works Information to the Contractor’s Representative, in which case clause 25.3(a) will reapply.
  2. No Obligation to Review
     1. The Contractor’s Representative does not assume or owe any duty of care to the Subcontractor to review, or in reviewing, any Subcontract Works Information submitted by the Subcontractor for errors, omissions or compliance with the Subcontract.
     2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Subcontract Works Information prepared by the Subcontractor 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 Commonwealth in relation to, any Subcontract Works Information will:
        1. relieve the Subcontractor from, or alter or affect, the Subcontractor's liabilities or responsibilities whether under the Subcontract or otherwise at law or in equity; or
        2. prejudice the Contractor's rights against the Subcontractor whether under the Subcontract or otherwise at law or in equity.
  3. Submission of Subcontract Works Information

For the purposes of this clause 25, the Subcontractor must submit or resubmit to the Contractor’s Representative the Subcontract Works Information in the number and format specified in Annexure 1.

* 1. Subcontractor's Warranty

The Subcontractor warrants that all Subcontract Works Information it provides will be:

* + 1. in accordance with the Subcontract;
    2. fit for its intended purpose; and
    3. complete and free from errors and omissions.

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) | | |  | | | | |
| **Contractor:** (Clause 1.1) | | |  | | | | |
| **Contractor’s Environmental Management 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:** (Clause1.1) | | | Where there are no Stages, for the Subcontract Works is: | | | | |
| Where there are Stages, for each Stage is: | | | | |
| **Stage** | | **Date for Completion** | | |
|  | |  | | |
|  | |  | | |
|  | |  | | |
| **Defects Liability Period:** (Clause 1.1) | | |  | | | | |
| **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**:  **Subcontractor**: [To be inserted following selection of the successful Tenderer] | | | | |
| **Host Nation:**  (Clause 1.1) | | |  | | | | |
| **HOTO Process (additional):** (Clause 1.1) | | | The following documents, available on DEQMS or such other location notified by the Contractor’s Representative:  1. "Instructions for Operations and Maintenance Manuals (O&MM) for IPACE Infrastructure Directorate";  2. "Asset Management Directive: Infrastructure Sustainment and Maintenance Program"; and  3. "Strategic Asset Management Plan: Infrastructure Sustainment and Maintenance Program",  each as amended from time to time. | | | | |
| **Managing Contractor Contract (International)**: (Clause 1.1) | | |  | | | | |
| **MCCI Contract Administrator**: (Clause 1.1) | | |  | | | | |
| **MCCI Works**:(Clause 1.1) | | |  | | | | |
| **Pandemic Adjustment Event (additional):** (Clause 1.1) | | |  | | | | |
| **Pandemic Management Plan (additional):** (Clause 1.1) | | |  | | | | |
| **Preliminary Design Solution (if any):** (Clause 1.1) | | |  | | | | |
| **Project Plans (additional):** (Clause 1.1) | | | If clause [10] of the Special Conditions applies, Method of Work Plan for Airfield Activities.  [***CONTRACTOR TO INSERT ANY ADDITIONAL PLANS REQUIRED***] | | | | |
| **Provisional Sum Work:** (Clauses 1.1, 8.7, 8.9, 8.10, 8.11 and 8.12) | | | **Work or Goods** | **Amount** | | | |
|  | $ | | | |
|  | $ | | | |
|  | $ | | | |
| **Total:** | $ | | | |
| **Schedule of Collateral Documents:** (Clause 1.1) | | | 1. Approved Security (Unconditional Undertaking)  2. Collateral Warranty  3. Moral Rights Consent  4. Consultant Deed of Covenant  5. Consultant Design Certificate  6. Subcontractor Deed of Covenant  7. Subcontractor Design Certificate  8. Subsubcontractor Deed of Covenant  9. Subsubcontractor Design Certificate  10. Deed of Guarantee, Undertaking and Substitution  11. Payment Claim  12. Payment Statement  13. Expert Determination Agreement | | | | |
| **Schedule of Rates:** (Clause 1.1) | | |  | | | | |
| **Site:** (Clause 1.1) | | |  | | | | |
| **Site Management Plan (additional):** (Clause 1.1) | | |  | | | | |
| **Stages of the Subcontract Works:** (Clause 1.1) | | |  | | | | |
| Statutory Requirements (additional):  (Clause 1.1) | | | (IPACE Supplier Code of Conduct and Infrastructure Directorate Dispensations Process, unless otherwise stated) | | | | |
| Subcontract - other documents forming part of the Subcontract: (Clause 1.1) | | |  | | | | |
| Subcontract Price: (Clauses 1.1 and 16.2(b)) | | | (a) a lump sum of $ ; and  (b) where a Schedule of Rates exists, the amount calculated by multiplying the quantity of work carried out which is covered by the Schedule of Rates by the rate or price in the Schedule of Rates for that work,  neither of which is, unless elsewhere stated, subject to rise and fall in costs. | | | | |
| Subcontract Works: (Clause 1.1) | | |  | | | | |
| Subcontractor: (Clause 1.1) | | |  | | | | |
| Subcontractor’s Representative: (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | |
| **Table of Variation Rates and Prices:** (Clause 1.1) | | | [To be inserted following selection of the successful Tenderer] | | | | |
| **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 - COMMENCEMENT | | | | | | | |
| **Other conditions precedent to Site access:** (Clause 2.3(a)(i)D) | | |  | | | | |
| **Date for commencement on Site:** (Clause 2.3(a)(ii)) | | |  | | | | |
| CLAUSE 3 - PERSONNEL | | | | | | | |
| **Contractor’s Representative's representatives and their functions:** (Clause 3.4) | | | **Representative** | **Function(s)** | | | |
|  |  | | | |
|  |  | | | |
| **Subcontractor's key people:** (Clause 3.6(a)) | | | **Person** | **Position** | | | |
| [To be inserted following selection of the successful Tenderer] | [To be inserted following selection of the successful Tenderer] | | | |
|  |  | | | |
|  |  | | | |
|  |  | | | |
| **Meeting and reporting requirements (additional):** (Clause 3.11) | | | 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 4 - SECURITY | | | | | | | |
| **Security to be provided by the Subcontractor:** (Clauses 1.1 and 4.1) | | | ***[NOTE THAT THE FORM OF SECURITY MUST BE SPECIFIED. DELETE WHICHEVER OPTION DOES NOT APPLY]***  **Approved Security**  Where there are no Stages, for the Subcontract Works is:  $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | | | | |
| Where there are Stages, for each Stage is: | | | | |
| **Stage** | **Amount** | | | |
|  | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | | | |
|  | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | | | |
|  | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | | | |
|  | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | | | |
| ***[OR]***  **Retention Moneys**, which (if there are Stages) is held in respect of the Subcontract Works only and not in respect of each Stage. | | | | |
| **Deed of Guarantee, Undertaking and Substitution:**  (Clause 4.4) | | | Clause 4.4 [does/does not] apply. [To be inserted following selection of successful Tenderer and subject to completion of financial viability assessment] (Clause 4.4 applies unless otherwise stated)  If clause 4.4 applies, the Related Body Corporate of the Subcontractor is: [To be inserted following selection of the successful Tenderer] | | | | |
| CLAUSE 5 - RISKS AND INSURANCE | | | | | | | |
| **Insurance policies required to be obtained by the Contractor:** (Clause 5.4) | | | ***[LEVELS OF INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)]***  **Construction Risks Insurance**  Amount of Cover:  (a) $ (the Subcontract Price if no amount is specified);  (b) $ or % of the Subcontract Price to cover the costs of demolition and removal of debris;  (c) $ or % of the Subcontract Price to cover the Contractor’s consultant fees;  (d) $ for the value of materials or things to be supplied by the Contractor; and  (e) % of the total of the amounts in (a) to (d) to cover escalation costs.  **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. | | | | |
| **Other Insurances:**  ***[OTHER SPECIFIED INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)]*** | | | | |
| **Insurance policies required to be effected by the Subcontractor**:(Clauses 5.5(a) and 5.5(c)) | | | ***[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 Subcontractor’s Activities are performed or the Subcontractor’s employees perform work, are employed or normally reside.  **Employers’ Liability Insurance**  Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Subcontractor’s Activities would purchase which must not be less than $ .  **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate  **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate.  **Other Insurances:**  ***[CONTRACTOR AND CONTRACTOR’S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED E.G. MARINE TRANSIT INSURANCE FOR KEY ITEMS TRANSPORTED TO THE SITE, PRODUCT LIABILITY INSURANCE, MOTOR VEHICLE INSURANCE, INDUSTRIAL SPECIAL RISKS INSURANCE ETC]*** | | | | |
| **Minimum amount of subsubcontractors' Professional Indemnity Insurance or Errors and Omissions Insurance:** (Clause 5.5(g)) | | | **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | |
| **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | |
| **Run-off period for Public Liability Insurance (if written on a claims made basis):** (Clause 5.7(b)) | | | 7 years. | | | | |
| **Run-off period for Professional Indemnity Insurance or Errors and Omissions Insurance:** (Clause 5.7(d)) | | | 7 years. | | | | |
| **Maximum aggregate liability of the Subcontractor to the Contractor:**  (Clause 5.12(a)(ii)) | | | $ | | | | |
| CLAUSE 6 - DESIGN AND DOCUMENTATION | | | | | | | |
| **Number of days for review:** (Clause 6.3(a)(ii) and 6.3(c)) | | days | | | | | |
| **Number of copies of Design Documentation to be submitted by the Subcontractor to the Contractor’s Representative:** (Clause 6.5) | |  | | | | | |
| **Design Documentation hard copy requirements:** (Clause 6.5(a)) | | Compatible with Autocad 14 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 6.11(a)) | | 1. Formal Agreement  2. Conditions of Subcontract  3. Special Conditions  4. Subcontract Particulars  5. Subcontract Works Description  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 the Subcontractor is entitled to use under clause 6.3(c))  8. Project Plans | | | | | |
| **Number of days for sample review:** (Clause 6.14(b)(ii) and 6.14(d)) | | days | | | | | |
| CLAUSE 7 - SITE | | | | | | | |
| **Applicability of Latent Condition clauses:** (Clauses 7.3 and 7.4) | | Clauses 7.3 - 7.4 ***[DO/DO NOT]*** apply. (Clauses 7.3 and 7.4 apply unless otherwise stated) | | | | | |
| CLAUSE 8 - CONSTRUCTION | | | | | | | |
| **Existing Approvals and other Approvals which the Contractor and the Commonwealth are to obtain:** (Clause 8.3) | |  | | | | | |
| **Statutory Requirements with which the Subcontractor does not need to comply:** (Clause 8.3(b)(i)) | |  | | | | | |
| **Work which requires approval to subcontract or which must be let to one of the named subsubcontractors:** (Clause 8.5(a)) | | **Work or Goods** | | **Subsubcontractors** | | | |
|  | |  | | | |
|  | |  | | | |
| **Stages for which Collateral Warranties required:** (Clause 8.6) | |  | | | | | |
| **Collateral Warranties required to be procured by the Subcontractor from subsubcontractors and provided to the Contractor:** (Clause 8.6) | | As set out in Annexure 1 | | | | | |
| **Option for responsibility for preparation of design for Provisional Sum Work:** (Clause 8.8) | | ***[OPTION 1/OPTION 2]*** applies. (Option 1 applies unless otherwise stated) | | | | | |
| **Subcontractor to invite tenders for Provisional Sum Work from the following tenderers:** (Clause 8.9(a)(i)) | | **Work** | | **Tenderers** | | | |
|  | |  | | | |
| **Form of subsubcontract approved for Provisional Sum Work:** (Clause 8.9(a)(ii)) | |  | | | | | |
| **Percentage excess entitling additional profit and attendance:** (Clause 8.12) | | [To be inserted following selection of the successful Tenderer] (20% unless otherwise stated) | | | | | |
| **Percentage for additional profit and attendance for Provisional Sum Work exceeding provisional sum allowance by stated percentage:** (Clause 8.12) | | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Stages for which a certificate signed by a licensed surveyor is required as condition precedent to Completion:** (Clause 8.15) | |  | | | | | |
| **Access hours for Subcontractor’s Activities on Site:** (Clause 8.24) | |  | | | | | |
| **Project signboards:** (Clause 8.26) | | Clause 8.26 ***[DOES/DOES NOT]*** apply.  (Clause 8.26 does not apply unless otherwise stated) | | | | | |
| **Number of project signboards:** (Clause 8.26(b)) | |  | | | | | |
| **Project signboard dimensions:** (Clause 8.26(b)(i)) | |  | | | | | |
| **Project signboard information (additional):** (Clause 8.26(b)(ii)I) | |  | | | | | |
| CLAUSE 9 – QUALITY | | | | | | | |
| **Number of days for submission of Project Plans:** (Clause 9.2(a)(ii)A) | | Environmental Management Plan: | | | | days | |
| Fraud and Corruption Control Plan: | | | | days | |
| Pandemic Management 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 9.2(a)(ii)B) | | Environmental Management Plan: | | | | days | |
| Fraud and Corruption Control Plan: | | | | days | |
| Pandemic Management Plan: | | | | days | |
| Project Lifecycle and HOTO Plan: | | | | days | |
| Site Management Plan: | | | | days | |
| Work Health and Safety Plan: | | | | days | |
| Other: ***[SPECIFY]*** | | | | days | |
| **Period by which Defects Liability Period will be extended following rectification of a Defect or Completion of a Variation to overcome a Defect:** (Clause 9.11) | |  | | | | | |
| **Defects records and reports (additional):** (Clause 9.15(b)(vi)) | |  | | | | | |
| CLAUSE 10 - TIME | | | | | | | |
| **Maximum intervals between program updates by Subcontractor:** (Clause 10.2(b)(ii)) | |  | | | | | |
| **Program methodology and format:** (Clause 10.2(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) | | | | | |
| **Additional causes of delay entitling Subcontractor to claim an extension of time:** (Clause 10.5(b)(i)) | | 1. A change or variance in respect of a Statutory Requirement after the Award Date.  2. A Contractor Risk.  3. If clauses 7.3 and 7.4 apply, a Latent Condition.  4. Valuable, archaeological or special interest items found on or in the Site.  5. If clause 1 of the Special Conditions applies, Latent Hazardous Substances, Asbestos, ACM or GHS Material.  6. A Pandemic Adjustment Event.  7. A Force Majeure Event.  8. ***[CONTRACTOR AND CONTRACTOR’S REPRESENTATIVE TO CONSIDER AND INSERT ANY ADDITIONAL PROJECT-SPECIFIC CAUSES OF DELAY ENTITLING THE SUBCONTRACTOR TO CLAIM AN EXTENSION OF TIME]*** | | | | | |
| **Delay damages:** (Clause 10.10) | | Clause 10.10 ***[DOES/DOES NOT]*** apply. (Clause 10.10 applies unless otherwise stated)  If clause 10.10 applies:  Where there are no Stages, the daily cap on the extra costs reasonably incurred for the Subcontract Works is:  [Amount and currency to be inserted following selection of successful Tenderer] per working day | | | | | |
| If there are Stages, the daily cap on the extra costs reasonably incurred for each Stage is: | | | | | |
| **Stage** | | **Maximum delay damages** | | | |
|  | | per working day | | | |
|  | | per working day | | | |
|  | | per working day | | | |
|  | | per working day | | | |
| **Additional events entitling the Subcontractor to claim delay damages:**  (Clause 10.10(b)(ii)) | |  | | | | | |
| **Percentage of extra costs reasonably incurred due to acceleration:** (Clause 10.14(b)(ii)) | | [To be inserted following selection of the successful Tenderer] % (5% unless otherwise stated) | | | | | |
| **Force Majeure:**  (Clause 10.16) | | Clause 10.16 ***[DOES/DOES NOT]*** apply. (Clause 10.16 does not apply unless otherwise stated) | | | | | |
| CLAUSE 11 - VARIATIONS | | | | | | | |
| **Percentage adjustments for valuing a Variation:** (Clauses 11.3(b)(i), 11.3(c)(iii) and 11.6(f)) | | [To be inserted following selection of the successful Tenderer]% of amount determined for off-site overheads and profit  [To be inserted following selection of the successful Tenderer]% of amount determined for non-time related on-site overheads and preliminaries | | | | | |
| **Percentage of wages:** (Clause 11.6(b)) | | [To be inserted following selection of the successful Tenderer]% | | | | | |
| CLAUSE 12 – PAYMENT | | | | | | | |
| **Times for submission of payment claims by the Subcontractor to the Contractor’s Representative:** (Clause 12.2(a)) | | Monthly on the day of each month | | | | | |
| **Percentage of Retention Moneys**: (Clause 12.5(a)) | | | (unless otherwise stated the following retention percentages apply: the Contractor may deduct 10% from each payment until 5% of the Subcontract Price is retained as retention moneys) | | | | |
| **Number of business days for payment:** (Clause 12.5(c)) | | | 10 | | | | |
| **Maximum cumulative amount for long lead time and specialised items:** (Clause 12.8(a)) | | |  | | | | |
| **Percentage amount for additional Approved Security:** (Clause 12.9(a)(ii)A) | | | (100% of the amount claimed for the unfixed goods and materials, unless otherwise stated) | | | | |
| **Interest rate:** (Clause 12.15) | | | In the case of damages or late payments, 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 12.19) | | |  | | | | |
| **Limits of accuracy for quantities in Schedule of Rates:** (Clause 12.24(c)) | | | Upper Limit:  (115% unless otherwise stated)  Lower Limit:  (85% unless otherwise stated) | | | | |
| CLAUSE 13 - COMPLETION | | | | | | | |
| **Liquidated damages payable by Subcontractor when Date of Completion occurs after Date for Completion:** (Clause 13.7) | | | If there are no Stages, for the Subcontract Works is: | | | | |
| $ per day | | | | |
| If there are Stages, for each Stage is: | | | | |
| **Stage** | | **Liquidated Damages** | | |
|  | | $ per day | | |
|  | | $ per day | | |
| CLAUSE 14 - TERMINATION | | | | | | | |
| **Number of days to remedy breach:** (Clauses 14.3(c) and 14.4(b)) | | | days | | | | |
| CLAUSE 15 - DISPUTES | | | | | | | |
| **Directions to be subject of an expert determination if disputed:** (Clause 15.2) | | | Directions under clauses: 2.4(a)(ii), 4.2, 7.3(b)(i), 7.4(a)(ii), 8.4(b)(ii), 8.4(c), 8.22(d)(ii), 8.29, 9.5, 9.9(b)(i), 9.10, 10.8, 10.11(b)(ii), 11.3(b), 11.3(c)(ii), 11.3(d), 11.6, 12.4, 12.24(e)(ii), 13.2(b)(ii) and 14.8(a) and if clause 1 of the Special Conditions applies, clause 1.1(b)(i) of the Special Conditions and clause 1.2(b) of the Special Conditions. | | | | |
| **Industry expert who will conduct expert determinations:** (Clause 15.3(a)(i)) | | |  | | | | |
| **Nominating authority for industry expert:** (Clause 15.3(a)(ii)) | | | (The President for the time being of the Resolution Institute unless otherwise specified) | | | | |
| CLAUSE 16 - NOTICES | | | | | | | |
| **Address and email address, for the giving or serving of notices, upon:** (Clause 16.7(b)(i)) | **Contractor:**  Address (not PO Box):  Email address:  Attention: | | | | | | |
| **Contractor’s Representative:**  Address (not PO Box):  Email address:  Attention: | | | | | | |
| **Subcontractor:**  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 18 - GENERAL |  | | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 18.6) | Clause 18.6 ***[DOES/DOES NOT]*** apply. (Clause 18.6 does apply unless otherwise stated) | | | | | | |
| **CLAUSE 20 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 20.2) | Clause 20.2 [does/does not] apply. [To be inserted following selection of the successful Tenderer] (Clause 20.2 does not apply unless otherwise stated) | | | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 20.2) | **Specific Information** | | | **Justification** | | | **Period of Confidentiality** |
| [To be inserted following selection of the successful Tenderer] | | | [To be inserted following selection of the successful Tenderer] | | | [To be inserted following selection of the successful Tenderer] |
| **CLAUSE 22 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION** | | | | | | | |
| **Sensitive and Classified Information:** (Clause 22) | Clause 22 ***[DOES/DOES NOT]*** apply. (Clause 22 does not apply unless otherwise stated) | | | | | | |
| **Current security clearance level/s:** (Clause 22.2(b)) |  | | | | | | |
| **Information technology environment accreditation or certification level/s:** (Clause 22.3(g)(i)D) |  | | | | | | |
| Annexure 1 - SUBCONTRACT WORKS INFORMATION | | | | | | | |
| **Number of copies of Final Operation and Maintenance Manuals:** (Clause 3(e)) |  | | | | | | |
| **Content of manuals (additional):** (Clause 3(h)(xii)) |  | | | | | | |
| **Number of persons to be trained:** (Clause 4(a)) |  | | | | | | |
| **Categories of persons:** (Clause 4(a)) |  | | | | | | |

Annexure 1 - Subcontract Works Information

1. "As-Constructed" Drawings and Documents

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, the Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage:

* + 1. provide to the Contractor’s Representative the number of complete sets of the draft drawings and documents as follows:

| **Description** | **Hard copy format** | **No of hard copies** | **Electronic copy format** | **No of electronic copies** |
| --- | --- | --- | --- | --- |
| (i) Wiring diagrams |  |  |  |  |
| (ii) Functional diagrams |  |  |  |  |
| (iii) "As-Constructed" drawings |  |  |  |  |
| (iv) "As-Constructed" lighting and power layout |  |  |  |  |
| (v) "As-Constructed" main switchboard layout |  |  |  |  |
| (vi) "As-Constructed" main switchboard schematic drawings |  |  |  |  |
| (vii) "As-Constructed" main switchboard circuit index |  |  |  |  |
| (viii) "As-Constructed" fire detector layout |  |  |  |  |
| (ix) Wiring diagram for the fire alarm control panel |  |  |  |  |
| (x) "As-Constructed" underground cabling layout |  |  |  |  |
| (xi) "As-Constructed" distribution board layout |  |  |  |  |
| (xii) "As-Constructed" distribution board circuit index |  |  |  |  |
| (xiii) "As-Constructed" sub mains cabling layout |  |  |  |  |
| (xiv) "As-Constructed" Site survey |  |  |  |  |
| (xv) ***[INSERT OTHER "AS-CONSTRUCTED" DOCUMENTS REQUIRED. THE ABOVE LIST IS BY WAY OF EXAMPLE ONLY.]*** |  |  |  |  |

* + 1. without limiting paragraph (a), ensure that the draft "As-Constructed" drawings and documents:
       1. are prepared generally in accordance with the requirements of the Subcontract; and
       2. have the words "As-Constructed" printed in the following locations:
          1. if a document, immediately above the title and reference; and
          2. if a drawing, immediately above the title and drawing number block at the bottom right hand corner of the drawing and immediately to the left of the drawing number block at the top left hand corner of the drawing, parallel to and outside the left hand border of the drawing; and
    2. provide to the Contractor’s Representative a comprehensive draft document and drawing index setting out all documents and drawings prepared by the Subcontractor and by its subsubcontractors.

1. Warranties
   * 1. Without limiting the definition of "Completion" in clause 1.1 and clause 8.6 of the Conditions of Subcontract the Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage, provide the Contractor’s Representative with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

| **Description** | **Minimum Warranty Period** |
| --- | --- |
| Mechanical Services | [To be inserted following selection of the successful Tenderer] |
| Electrical Services | [To be inserted following selection of the successful Tenderer] |
| Fire Services | [To be inserted following selection of the successful Tenderer] |
| Security | [To be inserted following selection of the successful Tenderer] |
| Plumbing | [To be inserted following selection of the successful Tenderer] |
| Drainage | [To be inserted following selection of the successful Tenderer] |
| Hardware | [To be inserted following selection of the successful Tenderer] |
| Tiling | [To be inserted following selection of the successful Tenderer] |
| Painting | [To be inserted following selection of the successful Tenderer] |
| Carpet | [To be inserted following selection of the successful Tenderer] |
| Access Floor | [To be inserted following selection of the successful Tenderer] |
| Lifts | [To be inserted following selection of the successful Tenderer] |
| Benches & Cupboards | [To be inserted following selection of the successful Tenderer] |
| Windows & Glazing | [To be inserted following selection of the successful Tenderer] |
| Metal Roof & Walling | [To be inserted following selection of the successful Tenderer] |
| Membrane Roofing & Tanking | [To be inserted following selection of the successful Tenderer] |
| External Coating Systems | [To be inserted following selection of the successful Tenderer] |
| Sun Control Louvres | [To be inserted following selection of the successful Tenderer] |
| Toilet Partitions | [To be inserted following selection of the successful Tenderer] |
| Partitions | [To be inserted following selection of the successful Tenderer] |
| Resilient finishes, e.g. Vinyl | [To be inserted following selection of the successful Tenderer] |
| Suspended Ceilings | [To be inserted following selection of the successful Tenderer] |
| Doors | [To be inserted following selection of the successful Tenderer] |
| Internal Signage | [To be inserted following selection of the successful Tenderer] |
| External Signage (signwriting and lettering) | [To be inserted following selection of the successful Tenderer] |
| External Signage (excluding signwriting and lettering) | [To be inserted following selection of the successful Tenderer] |
| Façade | [To be inserted following selection of the successful Tenderer] |
| ***[INSERT OTHER WARRANTIES. THE WARRANTIES REFERRED TO ABOVE ARE EXAMPLES ONLY]*** | [To be inserted following selection of the successful Tenderer] |

1. Operation and Maintenance Manuals

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, the Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage:

* + 1. compile specific operation and maintenance manuals for each aspect of the Subcontract Works or the Stage including obtaining and coordinating information provided by the Subcontractor and its subsubcontractors;
    2. prior to the commencement of commissioning of the Subcontract Works or the Stage, provide one copy of draft operation and maintenance manuals in respect of each aspect of the Subcontract Works or the Stage (**Draft Operation and Maintenance Manuals**) to the Contractor’s Representative for approval;
    3. within 14 days of the completion of the commissioning of the Subcontract Works or the Stage, provide one copy of all operation and maintenance manuals in respect of the Subcontract Works or the Stage which have been amended during commissioning (**Draft Amended Operation and Maintenance Manuals**) (such amendments being clearly indicated in each Draft Amended Operation and Maintenance Manual) to the Contractor’s Representative for approval;
    4. resubmit the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals to the Contractor’s Representative as necessary; and
    5. once approved by the Contractor’s Representative, submit the number of copies of the final, approved versions of the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) specified in the Contract Particulars to the Contractor’s Representative.

For the purposes of this clause 3:

* + 1. catalogues, sales brochures and other documents giving general information in respect of aspects of the Subcontract Works or the Stage will not be acceptable;
    2. all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Subcontract Works or the Stage; and
    3. all manuals must be prepared in accordance with the "Operations & Maintenance Manual Checklist" available on DEQMS or such other location notified by the Contractor’s Representative, as amended from time to time and include:
       1. a comprehensive list of contents including illustrations and drawings;
       2. function, application, specification and comprehensive technical data of all equipment including sub-assemblies, proprietary items, and system circuit and schematic diagrams where applicable;
       3. a description of the equipment and its principles of operation;
       4. a comprehensive asset management plan which describes in detail a proposed approach to maintenance for the five year period commencing on the Date of Completion;
       5. dismantling and re-assembly procedures;
       6. trouble-shooting suggestions;
       7. a complete lists of parts;
       8. a list of spare parts recommended to be held in stock;
       9. the procedure for ordering spare parts;
       10. clear and comprehensive illustrations and/or drawings with parts readily identifiable;
       11. text which is clearly printed on good quality A4 size matt paper, not less than 95 gsm;
       12. the matters specified in the Subcontract Particulars; and
       13. any other matter required by the Contractor’s Representative.

1. Training

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, the Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage:

* + 1. during commissioning of the Subcontract Works or the Stage, plan, manage and deliver a comprehensive training program in respect of all operational and maintenance aspects of the Subcontract Works or the Stage for the number of and each category of persons set out in the Subcontract Particulars; and
    2. carry out such training using:
       1. trained instructors, fully experienced in respect of all operational and maintenance aspects of the Subcontract Works or the Stage; and
       2. the Final Operation and Maintenance Manuals produced by the Subcontractor, with copies of such manuals to be made available during the training to all trainees.

Annexure 2 – Special Conditions

***[THE CONTRACTOR AND THE CONTRACTOR’S REPRESENTATIVE ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE SUBCONTRACT (TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT (INTERNATIONAL)). THE CONTRACTOR AND THE CONTRACTOR’S REPRESENTATIVE ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED]***

1. LATENT HAZARDOUS SUBSTANCE, ASBESTOS, ACM OR GHS MATERIAL
   1. Notice of Latent Hazardous Substances, Asbestos, ACM or GHS Material
      1. If in carrying out the Subcontractor's Activities the Subcontractor considers that it has encountered or found Latent Hazardous Substances, Asbestos, ACM or GHS Material, it must:
         1. immediately give the Contractor’s Representative notice in writing;
         2. not disturb the substance or the material under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
         3. ensure that all persons are protected from exposure to the substance or material (including in accordance with the WHS Legislation, as if the WHS Legislation applied to the Subcontractor) until the nature of the substance or material has been competently determined.
      2. The Contractor’s Representative must within 14 days of receipt of the Subcontractor's notice under paragraph (a)(i):
         1. notify the Subcontractor of its determination of whether Latent Hazardous Substances, Asbestos, ACM or GHS Material has been encountered or found; and
         2. instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the Latent Hazardous Substances, Asbestos, ACM or GHS Material.
   2. Subcontractor's Entitlement

If the Contractor’s Representative determines that Latent Hazardous Substances, Asbestos, ACM or GHS Material have been encountered or found, the Subcontractor will be entitled to:

* + 1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Subcontract; and
    2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under clause 1.1(a) which arise directly from the Latent Hazardous Substances, Asbestos, ACM or GHS Material and the Contractor’s Representative's instruction under clause 1.1(b)(ii), valued as a Variation in accordance with clause 11.3 of the Conditions of Subcontract.

To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any Latent Hazardous Substances, Asbestos, ACM or GHS Material or the Contractor’s Representative's instruction under clause 1.1(b)(ii), other than under paragraphs (a) and (b).

* 1. Subcontractor's Obligations

Without limiting the Subcontractor's obligations under the Subcontract or otherwise at law or in equity, if:

* + 1. the Subcontractor’s Activities include identifying, surveying, treating, removing, monitoring or doing any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material; or
    2. the Contractor’s Representative has otherwise instructed the Subcontractor under clause 1.1(b)(ii) to identify, survey, treat, remove, monitor or do any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material,

the Subcontractor must comply with the requirements of the WHS Legislation, any applicable Code of Practice and any other Statutory Requirements applicable in the location in which the Subcontract Works are situated relating to such substances and materials.

* 1. Definitions and interpretation
     1. If clauses 7.3 and 7.4 of the Conditions of Subcontract apply, this clause 1 takes precedence over clauses 7.3 and 7.4 of the Conditions of Subcontract.
     2. For the purposes of clause 1:
        1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
        2. **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.
        3. **GHS** means the Globally Harmonised System of Classification and Labelling of Chemicals published by the United Nations, as amended from time to time and as modified by the relevant WHS Legislation.
        4. **GHS Material** means material suspected of containing or likely to contain a substance defined or listed in the GHS.
        5. **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 Chemicals; and
           7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        6. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
        7. **Latent Hazardous Substances, Asbestos, ACM** **or** **GHS Material** means Hazardous Substances, Asbestos, ACM or GHS Material in, on or in the vicinity of the Site which differ materially from the Hazardous Substances, Asbestos, ACM or GHS Material which should have been anticipated by a prudent, competent and experienced contractor if it had done the things that the Subcontractor is:
           1. deemed to have done under clause 7.1 of the Conditions of Subcontract; or
           2. required to do by the Subcontract.
        8. **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.
        9. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        10. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        11. **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. USE OF HAZARDOUS SUBSTANCES (INCLUDING HAZARDOUS CHEMICALS)
   1. The Subcontractor
      1. The Subcontractor acknowledges and agrees that there may be Hazardous Substances present at the Site.
      2. The Subcontractor must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Subcontractor’s Activities or incorporated into the Subcontract 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 Subcontractor’s Activities or incorporated into the Subcontract Works).
      3. Without limiting clause 8.17 of the Conditions of Subcontract or any other provision of the Subcontract, the Subcontractor must:
         1. ensure its Work Health and Safety Plan provides for the management of work involving Hazardous Substances;
         2. implement a work health and safety management system which complies with all Statutory Requirements concerning Hazardous Substances;
         3. comply with any applicable Code of Practice (as if it applied to the Subcontractor);
         4. ensure that all documentation (including all Design Documentation and other Project Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) is endorsed to identify the nature of the hazard and risk arising from the Hazardous Substance (including those risks which may remain after Completion and after the end of the last Defects Liability Period);
         5. ensure that all goods for incorporation in the Subcontract Works comply with WHS Legislation and any Statutory Requirements relating to Hazardous Substances, as if they applied to the Subcontractor. The goods must not emit fumes, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to persons, the Environment or the operation of other equipment, except to the extent that this is consistent with the end-use and nature of the goods and has been notified to the Contractor’s Representative in writing;
         6. ensure that all Hazardous Substances used in connection with the Subcontractor’s Activities or incorporated into the Subcontract Works are correctly labelled and/or packaged (including to clearly identify the nature of the substance and its associated hazards), in accordance with WHS Legislation and Statutory Requirements, as if they applied to the Subcontractor;
         7. 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 Subcontractor’s Activities or the Subcontract Works; and
         8. be able to demonstrate compliance with this paragraph (c) at the request of the Contractor’s Representative.
      4. Without limiting clause 8.17 of the Conditions of Subcontract, the Subcontractor is responsible for all Hazardous Substances used or incorporated into the Subcontract Works by subsubcontractors.
   2. Definitions

For the purposes of clause 2:

* + 1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
    2. **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.
    3. **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).
    4. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
    5. **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.
    6. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    7. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    8. **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. UNEXPLODED ORDNANCE (UXO)
   1. Notice of UXO
      1. If the Subcontractor in the course of carrying out the Subcontractor’s Activities considers it has encountered or found UXO, it must: 
         1. immediately give the [Contractor’s Representative](#ContractAdministrator) and the [[Contractor](#Commonwealth)](#Commonwealth) notice in writing;
         2. not touch or disturb the item under any circumstances;
         3. clearly mark and protect the location of the item;
         4. ensure all persons and Plant, Equipment and Work are kept clear of the item;
         5. ensure all persons and Plant, Equipment and Work are protected from exposure to the item;
         6. comply with all instructions of the [Contractor’s Representative](#ContractAdministrator) in relation to the item; and
         7. comply with clause 8.17 of the Conditions of Subcontract.
      2. The Contractor’s Representative must, within 14 days of the receipt of the Subcontractor's notice under paragraph (a)(i): 
         1. notify the Subcontractor and the Contractor of its determination of whether UXO has been encountered or found; and
         2. instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the UXO.
   2. Subcontractor's Entitlement
      1. If the Contractor’s Representative determines that UXO has been encountered or found following receipt of a notice from the Subcontractor under clause 3.1 and the Subcontractor has complied with clause 3.1(a) the Subcontractor will be entitled to:
         1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Subcontract; and
         2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after either the giving of the notice under clause 3.1(a) which arise directly from the UXO and the Contractor’s Representative's instruction under clause 3.1(b)(ii), as determined by the Contractor’s Representative.
      2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any UXO, the Contractor’s Representative's instruction under clause 3.1(b)(ii), other than under paragraph (a).
   3. Definitions and interpretation

For the purposes of this clause 3, **UXO** means any sort of military ammunition or explosive on or under the Site which has failed to explode including, sea mines or shells used by a navy, mortar bombs, mines, artillery shells or hand grenades used by the army, bombs, rockets or missiles used by an air force, and other types of ammunition and explosives including training munitions and any explosive remnants of war.

1. DRAWINGS

Without limiting the Subcontractor's obligations under the Subcontract or otherwise at law or in equity, all drawings which the Subcontractor 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 Subcontract 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. DILAPIDATION SURVEY
   * 1. Prior to commencing the Subcontractor’s Activities on the Site, the Subcontractor must carry out a comprehensive survey of the location and condition of existing structures, roads, carparks, access paths, footpaths, trees, services, ***[and]*** other civil works ***[and INSERT ANY OTHER AREAS/FEATURES TO BE INCLUDED IN THE SURVEY]*** on and around the Site. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Subcontractor, the Contractor’s Representative may attend for the carrying out of the survey.
     2. The survey must include a comprehensive photographic record of existing conditions prior to the Subcontractor having access to the Site.
     3. A copy of the survey and the photographic record is to be provided to the Contractor’s Representative by no later than ***[INSERT]*** days after the Contractor gives the Subcontractor access to the Site.
2. PRIOR WORK
   * 1. Where the proper execution of the Subcontractor’s Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**), the Subcontractor must:
        1. inspect the Prior Work as soon as is practicable after the Contractor gives the Subcontractor access to the Site under clause 2.3(a)of the Conditions of Subcontract;
        2. if it discovers any defect or matter in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Subcontractor’s Activities, immediately notify the Contractor’s Representative in writing providing:
           1. full particulars of the defect or matter identified; and
           2. the reasons for the opinion formed by it in respect to the defect or matter identified; and
        3. not commence or continue with the execution of any part of the Subcontractor’s Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
     2. On receipt of the Subcontractor's notice, the Contractor’s Representative will investigate the Prior Work the subject of the notice and:
        1. if the Contractor’s Representative agrees with the Subcontractor - issue a direction to the Subcontractor and value any work carried out by the Subcontractor by reason of that direction as a Variation under clause 11.3 of the Conditions of Subcontract; or
        2. if the Contractor’s Representative disagrees with the Subcontractor - issue an instruction to the Subcontractor to commence or continue with the Subcontractor’s Activities.
     3. If the Subcontractor fails to:
        1. inspect the Prior Work as required by clause 6(a)(i); or
        2. notify the Contractor’s Representative of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Subcontractor’s Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Subcontractor’s Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Subcontractor’s Activities will be performed by the Subcontractor at its own expense.

1. JOINING UP

Where the method of joining up of old and new work is not specified in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract, the cutting away and joining up must be carried out by the Subcontractor in a manner approved by the Contractor’s Representative and made good in all trades to match existing adjacent work.

1. EXISTING SERVICES AND STRUCTURES
   * 1. The Subcontractor may only modify or remove existing structures or services within the Site in accordance with the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract.
     2. The Subcontractor must obtain the prior written approval from the Contractor’s Representative in relation to the timing of any connection, disconnection or interference with existing structures and services.
     3. Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Subcontractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract or should have been shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract, is evident on the Site or has been notified in writing by the Contractor’s Representative to the Subcontractor, the Subcontractor is responsible for the cost of any necessary repair or relocation in the event of damage.
     4. The Subcontractor must notify the Contractor’s Representative immediately upon the discovery of services or obstructions not shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract or identified by inspection.
     5. The Subcontractor must immediately notify the Contractor’s Representative in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Subcontractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
     6. The Subcontractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Subcontract Works and must comply with the requirements of the Commonwealth, the Contractor, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during construction or maintenance of the Subcontract Works.
2. ITEMS TO BE SUPPLIED BY THE CONTRACTOR

The items specified in the Schedule to clause 9 will be supplied by the Contractor without charge to the Subcontractor for use in the execution of the Subcontractor’s Activities subject to the following conditions:

* + 1. the Subcontractor must submit a written request for any such items and, on receiving the Contractor’s Representative's written authority, must take delivery of the items at ***[INSERT TIME AND PLACE]***;
    2. before taking delivery of any such items, the Subcontractor must ensure that they are in a satisfactory condition and in the quantities specified and the Subcontractor has all relevant information in respect of the installation, construction or commissioning of such items;
    3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the replacement of any items that the Subcontractor claims to be defective or deficient in quantity;
    4. the Subcontractor is responsible for the safety of all such items until they are incorporated in the Subcontract Works; and
    5. the Contractor does not represent or warrant that the quantities specified in clause 9 are adequate for the Subcontractor’s Activities and the supply of any additional quantities must be arranged by the Subcontractor at its cost.

Schedule of Items

Item Quantity

[INSERT] [INSERT]

1. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES
   * 1. Without limiting clause 9.2 of the Conditions of Subcontract, the Subcontractor must prepare and implement by no later than ***[INSERT E.G. 14 days]*** after the Award Date and as a condition precedent to the Subcontractor being given access to the Site, a Method of Work Plan for Airfield Activities for all aspects of the Subcontractor’s Activities and the Subcontract Works (**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 Subcontractor will implement to manage the Subcontractor’s Activities on and near the Site, including:
        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 Subcontractor;
        7. liaison with the Contractor, the Commonwealth and Other Contractors;
        8. Approvals prior to carrying out Subcontract Works;
        9. rubbish, dust and debris control;
        10. Foreign Object Damage (**FOD**) control;
        11. noise management;
        12. fencing;
        13. security of the Subcontract Works;
        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.
2. OPERATING AIRFIELD
   * 1. The Subcontractor must ensure that the Subcontractor’s Activities and the Subcontract Works do not compromise aircraft operations or the safety of aircraft.
     2. Without limiting clause 8.17(a)(ii)of the Conditions of Subcontract and as part of the Subcontractor’s Activities, the Subcontractor must liaise with the Contractor and the Contractor’s Representative as required to co-ordinate the Subcontractor’s Activities and the Subcontract Works with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.
3. PRELIMINARY DESIGN SOLUTION

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

* + 1. prior to the Award Date, [***IT HAS/THE CONTRACTOR’S/COMMONWEALTH’S 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 Subcontractor 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 Subcontract Works are designed and constructed in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), the Subcontract Works will comply with the requirements of the Subcontract Works Description and satisfy all other requirements of the Subcontract; and
    5. it must design and construct the Subcontract Works in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), except to the extent where a Variation necessitates a consequential change to the Preliminary Design Solution in which case the Subcontractor must notify the Contractor’s Representative of such change.

1. FACILITIES AND INFRASTRUCTURE ACCOUNTING

Without limiting clause 12.2 of the Conditions of Subcontract, for the purposes of assisting the Commonwealth to bring all completed facilities and infrastructure to account, as a condition precedent to Completion, the Subcontractor must provide a cost report to the Contractor’s Representative which sets out:

* + 1. details of the Subcontract Price and all other amounts payable under the Subcontract paid by the Contractor to the Subcontractor in respect of the Subcontract Works or the Stage;
    2. ***[INSERT ANY ADDITIONAL MATTERS]***; and
    3. any other matters required by the Contractor’s Representative.

Annexure 3 – Subcontract Works Description