

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME and description of THE WORKS AND SERVICES, as applicable]*

Project Management / Contract Administration Services COntract (INTERNATIONAL)

(PMCAI-2023)

TERMS OF ENGAGEMENT

*[LAST AMENDED: 26 June 2023 - PLEASE REMOVE PRIOR TO PUBLICATION OF TENDER DOCUMENTS]*

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FORMAL AGREEMENT

The Contract is made on day of

Parties Commonwealth of Australia (Commonwealth)

The consultant specified in the Contract Particulars (Consultant)

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

(a) the attached Terms of Engagement; and

(b) the other documents referred to in the definition of "Contract" in clause 1.1 of the Terms of Engagement.

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**

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the**Commonwealth of Australia** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Officer |
|  |  |  |  |
| Name of Witness in full |  |  | Name of Authorised Officer in full |

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

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

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

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

*[OR - PARTNERSHIP]*

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** as authorised representative for and on behalf of all the partners trading as the **Consultant** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised representative  By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Consultant |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised representative |

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

TERMS OF ENGAGEMENT

1. Glossary of terms, interpretation and miscellaneous
   1. Glossary of Terms
2. Unless the context otherwise indicates, whenever used in the Contract, each word or phrase in the headings in this 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 act or omission (including breach of contract) of the Commonwealth or those for whom it is responsible.
2. **Additional Host Nation Requirements**
3. Means those requirements set out in the Contract Particulars.

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any national or local authority, body or other organisation having any jurisdiction in connection with the Site, the Project or the Services or under any other applicable Statutory Requirement, which must be obtained or satisfied in connection with the Project or Services.
2. **Asbestos**
3. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* *2011* (Cth).

Australian Privacy Principle

1. Has the meaning given in the Privacy Act.

Award Date

1. The date on which the Formal Agreement, to which these Terms of Engagement are attached, has been completed and signed by the Commonwealth and the Consultant.

Brief

The brief attached at Annexure 1, which describes the Commonwealth's minimum requirements, which must be met or exceeded by the Consultant in performing the Services. Nothing contained in the Brief will operate to limit or exclude the Consultant's obligations under the Contract.

Change of Control

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

Claim

1. Includes any claim for an increase in the Fee, for payment of money (including damages) or for any other compensation or relief:
   1. under, arising out of, or in any way in connection with, the Contract, including any direction of the Commonwealth's Representative;
   2. arising out of, or in any way in connection with, the Project, the Services or either party’s conduct before the Contract; or
   3. otherwise at law or in equity including:
      1. by statute;
      2. in tort for negligence or otherwise, including negligent misrepresentation; or
      3. for restitution.

Commonwealth

1. Commonwealth of Australia as represented by the Australian Department of Defence.
2. **Commonwealth Entity**
3. Has the meaning given in the *Public Governance, Performance and Accountability Act 2013* (Cth).

Commonwealth Material

1. All material provided to the Consultant by the Commonwealth, including documents provided in accordance with clause 5 and any other documents, equipment, machinery and data (stored by any means).

Commonwealth Procurement Rules

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

Commonwealth's Program

1. Any program, as amended from time to time, prepared by or on behalf of the Commonwealth setting out the times for the Completion of the whole or any part of the Services and the Project, including the Milestones.

Commonwealth's Representative

1. The person specified in the Contract Particulars or any other person nominated by the Commonwealth from time to time under clause 4.2 to replace that person.

Completion

1. The point in time when, in respect of a Milestone, everything required by the Contract or a Project Contract to have been completed as a condition precedent to Completion of the Milestone has been completed in accordance with the Contract or the Project Contract.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Contract;
     2. the Project Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which is in any way connected with the Project which:
        1. by its nature is confidential;
        2. the Consultant knows or ought to know is confidential; or
        3. is the subject of a Separation Arrangement; and
     4. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
  2. **Confidential Information** does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which:
     1. is in the possession of the Consultant without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf;
     2. is in the public domain otherwise than due to a breach of clause 16; or
     3. has been independently developed or acquired by the Consultant.

Confidential Information Incident

1. A single breach or a series of breaches of clause 16, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

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

Consolidated Group

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

Consultant

1. The person specified in the Contract Particulars.

Consultant Material

1. All material brought, or required to be brought, into existence by the Consultant as part of, or for the purpose of, carrying out the Services including documents, equipment, reports, technical information, plans, charts, drawings, specifications, calculations, tables, schedules, data (stored by any means), photographs and finishes boards.

Consultant's Representative

1. The person specified in the Contract Particulars or any other person from time to time appointed as the Consultant's Representative in accordance with clause 4.5.

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.

Contract

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

Contract Particulars

1. The particulars annexed to these Terms of Engagement and entitled "Contract Particulars".

Control

1. Includes:
   1. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
   2. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
   3. the ability to appoint or remove all or a majority of the directors of a corporation;
   4. the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
   5. any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.
2. **Correctly Rendered Invoice**
3. An invoice which is:
   1. rendered in accordance with all of the requirements of the PT PCP Subcontract; and
   2. for amounts that are correctly calculated and due for payment and payable under the PT PCP Subcontract.

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 Delivery Phase Agreement

1. The date set out in the Contract Particulars, as adjusted (if at all)in accordance with clause 8.

Date for Delivery Phase Approval

1. The dateset out in the Contract Particulars, as adjusted (if at all**)** in accordance with clause 8.
2. **day**
3. Has the meaning set out in clause 1.2.

DCAP Workshop

1. Means a workshop conducted in accordance with clause 5.8(b) (if it applies) to consider the Project DCAP and any amendments that may be required to the Project DCAP including to ensure consistency with the Contract, the Brief and the Commonwealth's requirements for the Services.

Defence

1. The Australian Department of Defence.

**Defence Strategic Interest Issue**

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

Delivery Phase

1. Means the Delivery Phase (if any) described in the Brief.

Delivery Phase Agreement

1. Means:
   1. the resource plan is approved in writing under clause 8.2(d); and
   2. the Commonwealth's Representative has issued written certification under clause 8.3(c)(ii) that the Commonwealth is satisfied with the performance of the Consultant under the Contract up to the Date for Delivery Phase Agreement.

Delivery Phase Approval

1. Means:
   1. Delivery Phase Agreement and Delivery Phase Approval under the Project Contract (if any) have been achieved;
   2. the Consultant has achieved Delivery Phase Agreement under the Contract;
   3. all relevant departmental, government and parliamentary approvals required for the Project have been obtained; and
   4. the Consultant has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date for Delivery Phase Approval.
2. **Delivery Phase Fee**
3. The Indicative Delivery Phase Fee adjusted under clause 8.3(a)(i) (if at all) and set out in the written minutes prepared under clause 8.3(b)(i), as adjusted in accordance with the Contract.

DEQMS

1. The Defence Estate Quality Management System website available at www.defence.gov.au/estatemanagement.
2. **Development Phase**
3. Means the Development Phase (if any) described in the Brief.
4. **Development Phase Fee**
5. The amount specified in the Fee Schedule, as adjusted in accordance with the Contract.

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.
2. **DISP**
3. The Defence Industry Security Program more particularly described at http://www.defence.gov.au/dsvs/industry.

Employers' Liability Insurance

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

Environment

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

Environmental Harm

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

Environmental Incident

1. Any Environmental Harm or Contamination caused by or in relation to the Services.

Environmental Management Plan

1. The environmental management plan (if any)prepared by the Consultant and finalised under clause 5.13 which sets out in adequate detail the procedures the Consultant will implement to manage the Services from an environmental perspective and which must describe how the Consultant proposes to ensure the Services will be performed consistently with and so as to:
   1. ensure compliance with the Statutory Requirements; and
   2. maximise the achievement of the ESD Principles and the Environmental Objectives.

Environmental Objectives

1. Means to:
   1. encourage best practice environmental management through planning, commitment and continuous improvement;
   2. prevent and minimise adverse impacts on the Environment;
   3. identify the potential for and respond to Environmental Incidents, accidents and emergency situations and take corrective action;
   4. identify and control possible environmental hazards associated with the Project and the Services;
   5. establish procedures to ensure that no hazardous substance is stored on Commonwealth land without approval;
   6. recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
   7. define roles and responsibilities for personnel;
   8. ensure environmental training and awareness programmes are provided to employees and subconsultants;
   9. define how the management of the Environment during the Services is reported and performance evaluated;
   10. describe all monitoring procedures required to identify impacts on the Environment as a result of the Project and the Services;
   11. implement complaint reporting procedures and maintain records of complaints and response to complaints; and
   12. establish and maintain programs and procedures for periodic Environmental Management Plan (if any) audits to be carried out.

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 Contract Particulars.

Executive Negotiators

1. The representatives of the parties specified in the Contract 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.

Fee

1. The amount set out in or determined in accordance with the Fee Schedule, as adjusted, subject to clause 14.5 (if applicable), under the Contract, which is not, unless elsewhere stated, subject to rise and fall in costs.

Fee Schedule

1. The Fee Schedule attached at Annexure 3.

Financial Representative

1. Means:
   1. in relation to the Consultant, the Consultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Consultant; and
   2. in relation to a subconsultant, the subconsultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subconsultant.
2. **Governmental Requirements**
3. Includes all policies, plans, manuals, guidelines, codes of conduct and instructions published by the Commonwealth or the Host Nation which are, or may become, applicable to the Site, the Services or the 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.

Host Nation

1. The country specified in the Contract Particulars.

Indicative Delivery Phase Fee

1. The Indicative Delivery Phase Fee (if any) as set out in the Fee Schedule.

Indicative Delivery Phase Fee Proposal

The Indicative Delivery Phase Fee Proposal (if any) as set out in the Fee Schedule.

Indicative Delivery Phase Resource Plan

The Indicative Delivery Phase Resource Plan (if any) set out in the Fee Schedule.

Indicative Project End Date

The date specified in the Contract Particulars.

Indigenous Enterprise

1. An organisation that is 50% or more Indigenous owned that is operating a business.

Indigenous Procurement Policy

1. The Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp.
2. **Information Security Requirements**
3. Means the:
   1. Australian Government's Protective Security Policy 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,

each as amended from time to time.

Infrastructure Directorate Dispensations Process

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

Insolvency Event

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

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

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

Intellectual Property Rights

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

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

1. **Material Adverse Effect**
2. In respect of a Prolongation Event, means a material increase in the resources required for, and the costs of, performing the Services, which a prudent, competent and experienced consultant would not have anticipated as at:
   1. if clause 8 does not apply, the Award Date; or
   2. if clause 8 does apply, the date that Delivery Phase Agreement is achieved under clause 8.4(a)(i).

Material Change

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

Method of Work Plan for Airfield Activities

1. The method of work plan for airfield activities (if any) prepared in accordance with the applicable provision in clause 5.13, which must incorporate Site specific management and control procedures and must set out in adequate detail all procedures the Consultant will implement to manage the Services on and near the airfield, including as those matters are directed by the Commonwealth's Representative.

Milestone

1. A milestone described in the Fee Schedule.

Milestone Fee Payment Schedule

1. Means the Milestone Fee Payment Schedule (if any) in the Fee Schedule, otherwise as adjusted in accordance with the Contract, setting out:
   1. the instalments in which the Fee is to be payable; and
   2. the Milestones which must be achieved by the Consultant for each instalment to become payable (failing which the Consultant's entitlement to be paid the relevant instalment of the Fee will not arise until such time as the applicable milestone is achieved).

Moral Rights

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

Other Contractor

1. Any contractor, supplier, subconsultant, subcontractor, consultant, artist, tradesperson or other person engaged or to be engaged to do work other than the Consultant and its subconsultants and a Project Contractor.
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**
5. A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services provided that the:
   1. disruption:
      1. arises from a change in circumstances relating to the Pandemic first occurring after the Award Date; and
      2. is a direct result of the Pandemic; and
   2. adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).
6. **Payment Times Procurement Connected Policy** or **PT PCP**
7. The Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended from time to time.

Personal Information

1. Has the meaning given in the Privacy Act.

Privacy Act

1. Means the *Privacy Act* *1988* (Cth).

Professional Indemnity Insurance

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

by the Consultant or its subconsultants in carrying out the Services.

Project

1. The project (if any) described in the Brief.
2. **Project Construction Contract**
3. Means a Project Contract under which a Project Contractor is engaged by the Commonwealth for construction of any Works.

Project Contractor

1. Any person who is engaged by the Commonwealth to deliver any aspect of the Project under a Project Contract.

Project Contractor Documentation

1. Means:
   1. all material brought or required to be brought into existence by a Project Contractor as part of, or for the purpose of, carrying out any part of the Project Contract including documents, notices, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards; and
   2. without limiting paragraph (a), includes:
      1. Design Documentation (or similar term used in the relevant Project Contract);
      2. programs and cost plans issued under a Project Contract;
      3. if required by the Project Contract, subcontract documentation;
      4. all notices purporting to be issued under a Project Contract, including those seeking additional time or money;
      5. all "variations" under a Project Contract;
      6. payment claims purporting to be issued under a Project Contract; and
      7. all other Claims (as defined in each Project Contract).

Project Contracts

1. The project contracts specified in the Contract Particulars.

Project DCAP

1. The “Detailed Consultant's Activities Proposal” in Annexure 2, as amended in accordance with clause 5.8 from time to time.

Project Documents

1. Includes:
   1. Consultant Material;
   2. Commonwealth Material;
   3. Project Plans;
   4. Approvals;
   5. Project DCAP;
   6. the documents which the Consultant is obliged to maintain under clause 10.15; and
   7. without limiting paragraphs (a) - (f), any other data, documents, drawings, records, programs and information and material:
      1. produced; or
      2. provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative,

under, for the purposes of, arising out of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant (including by subconsultants), including any material relating to the Consultant's compliance with the WHS Legislation or the Host Nation's work health and safety Statutory Requirements (as applicable).

Project End Date

The date either:

* 1. as agreed under clause 7.2(e); or
  2. agreed or determined under clause 8.5(d)(ii).

Project Plans

1. The plans (if any) specified in the Contract Particulars (which may include the Environmental Management Plan, the Method of Work Plan for Airfield Activities, the Site Management Plan and/or the Work Health and Safety Plan) and prepared and finalised by the Consultant under clause 5.13, as amended (if at all) with the written consent of the Commonwealth's Representative.
2. **Prolongation Event**
3. Means:
   1. a suspension instructed by the Commonwealth under a Project Construction Contract;
   2. a variation directed by the Commonwealth under a Project Construction Contract; or
   3. an Act of Prevention (as defined in the Project Construction Contract) under a Project Construction Contract,

which has the effect of extending the Project End Date.

PT PCP Evaluation Questionnaire

A questionnaire substantially in the form set out in Appendix C of the Payment Times Procurement Connected Policy.

PT PCP Policy Team

The relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.

PT PCP Purpose

Means:

* 1. the review, evaluation, monitoring, assessment and reporting on the Payment Times Procurement Connected Policy, including the compliance by those Commonwealth suppliers and their subcontractors that are Reporting Entities; or
  2. improving payment times to PT PCP Subcontractors.

PT PCP Remediation Plan

A written remediation plan substantially in the form set out in Appendix D of the Payment Times Procurement Connected Policy.

PT PCP Subcontract

A subcontract between a Reporting Entity and another party (Other Party) where:

* 1. the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Contract;
  2. both parties are carrying on business in Australia; and
  3. the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than, or is reasonably estimated to not exceed, $1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to $1,000,000 (GST inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

* 1. subcontracts entered into prior to the Reporting Entities' tender response for the Services;
  2. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
  3. subcontracts for the purposes of:
     1. procuring and consuming goods or services overseas; or
     2. procuring real property, including leases and licences.

PT PCP Subcontractor

The party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

PTR Act

The *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Consultant and all subconsultants for their respective liabilities; and
   2. Commonwealth for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Consultant (or any subconsultant),
2. to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with, the Services.
3. This policy is not required to cover liabilities or losses insured under Workers Compensation Insurance, Employers' Liability Insurance or Professional Indemnity Insurance.
4. **Recipient**
5. Any person provided with Confidential Information, and if clause 17 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subconsultants, subcontractors, suppliers and material suppliers.

Reporting Entity

Has the meaning given in the PTR Act.

Reporting Entity Subcontractor

Any person that:

* 1. is a Reporting Entity; and
  2. provides goods or services directly or indirectly to the Consultant for the purposes of the Contract where the value of such goods or services are estimated to exceed $4,000,000 (GST inclusive),

1. and **Reporting Entity Subcontract** has a corresponding meaning.

Request for Information

1. Any request made by a Project Contractor to the Consultant (whether under a Project Contract or otherwise) requesting further information, instruction, guidance, advice or opinion (including in respect of the resolution of ambiguities, discrepancies or inconsistencies in the Consultant Material) or otherwise.

Schedule of Rates

1. The schedule of rates set out in Annexure 4.

Sensitive and Classified Information

1. Means:
   1. any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:
      1. marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive";
      2. identified at the time of issue or communication as "Sensitive Information";
      3. marked with a national security classification or as "Classified Information";
      4. identified at the time of issue or communication as "Classified Information"; or
      5. the Consultant knows or ought to know is subject to, or ought to be treated as sensitive and 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), 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 17, any Separation Arrangements (in respect of Sensitive and Classified Information), any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

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

Separation Arrangement

1. Any arrangement that the Consultant:
   1. has in place;
   2. will put in place; or
   3. is required to put in place in accordance with a Statutory Requirement or the Contract (including under clause 21.3),
2. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Defence Strategic Interest Issue or complying with clause 16 and, if clause 17 applies, clause 17.

Services

1. Means:
   1. the services outlined in, or reasonably to be inferred from, the Brief; and
   2. all other services, of a type generally consistent with the services referred to in paragraph (a), which may be required by the Commonwealth in connection with the Contract.

Services for the Delivery Phase

The services for the Delivery Phase described in the Brief.

Shadow Economy Procurement Connected Policy

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

Site

1. The site (if any) described in the Contract Particulars.

Site Management Plan

1. The site management plan (if any)prepared by the Consultant and finalised under clause 5.13, which must set out in adequate detail all procedures the Consultant will implement to manage the carrying out of the Services on and near the Site, including:
   1. the matters specified in the Contract Particulars;
   2. if the Services are to be carried out on a Site that may contain Contamination, the approach to the management of work health and safety hazards and risks;
   3. if the Services are to be carried out on or in the vicinity of an airfield, a Method of Work Plan for Airfield Activities; and
   4. any other matters required by the Commonwealth's Representative.
2. **Special Conditions**
3. The special conditions as set out in Annexure 5 (if any).
4. **Statement of Tax Record or STR**
5. Has the meaning given in the Shadow Economy Procurement Connected Policy.

Statutory Requirements

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

Subconsultant Deed of Covenant

1. The subconsultant deed of covenant in a form determined by the Commonwealth.
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 Contract means any change to the Services, including any addition, increase, decrease, omission, deletion or removal to or from the Services.

WHS Legislation

1. Means any of the following:
   1. *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth); and
   2. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).
2. **Work Health and Safety Plan**
3. The plan prepared by the Consultant and finalised under clause 5.13 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Consultant will implement to manage the Services from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation). The Work Health and Safety Plan must address, at a minimum:
   1. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Services and the Works;
   2. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Services and the Works are being undertaken regarding consulting, cooperating and coordinating activities where the PCBU(s) at the workplace and the Consultant owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Services and the Works are carried out, including:
      1. incident (including notifiable incident) reporting procedures;
      2. preventative and corrective action procedures; and
      3. record-keeping and reporting requirements, including reporting to the Commonwealth's Representative with respect to incidents and accidents under 5.9(e);
   4. any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
   5. in relation to where any of the Services or the Works are carried out in the Host Nation, the:
      1. procedures and strategies for maximising the capability development, education and training of local Host Nation residents in the context of work health and safety, including in respect of the provision of first aid and emergency life support training at the workplace; and
      2. proposed risk assessment process that will be implemented to ensure the provision of adequate first aid and emergency life support personnel and associated first aid equipment at the Site;
   6. the arrangements for the collection and recording, and any assessment, monitoring and review of any applicable safe work method statements;
   7. to the extent that design forms part of the Services and the Works (whether as a designer or where the Consultant must review a design produced by an Other Contractor or Project Contractor), the:
      1. procedures for:
         1. conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
         2. carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with [WHS Legislation](#WHSLegislation); and
         3. ensuring the results of such calculations, analysis, testing or examinations are provided to the [Commonwealth](#Commonwealth) promptly upon completion of the relevant Services and the Works; and
      2. purchasing policies for substances, Plant, Equipment and Work;
   8. the procedures and arrangements for the management of work health and safety generally, including:
      1. details of the [Consultant's](#Contractor) work health and safety policy;
      2. details of any work health and safety management system (whether certified or uncertified);
      3. inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
      4. emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
   9. the procedures for ensuring the provision of written assurances to the Commonwealth's Representative under clause 5.9(h) regarding compliance with the WHS Legislation by the Consultant, subconsultants and Other Contractors;
   10. the procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 5.13 (including as a consequence of any review of hazards, risks and control measures regarding the Services and any notifiable incident or systemic risk management failure);
   11. the procedures for the management of subconsultants, including:
       1. inductions, training and other awareness programmes (in addition to those referred to in paragraph (h)(iii);
       2. the subconsultant's development and provision of safe work method statements, job safety assessments or equivalent documentation;
       3. ensuring subconsultants comply with their obligation to consult, cooperate and coordinate activities (including information-sharing and communication of information); and
       4. ensuring subconsultant compliance with the Consultant's [Work Health and Safety Plan](#WorkHealthandSafetyPlan);
   12. details of the Project, Services and Works specific hazards and risks identified by the Consultant and the Consultant's approach to the management of these hazards and risks including how the Consultant will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
       1. prior to commencing the [Services](#ContractorsActivities) and the Works; and
       2. during the delivery of the [Services](#ContractorsActivities) and the Works;
   13. the approach the Consultant will adopt in identifying, controlling and managing work health and safety hazards and risks concerning hazardous substances, including, where they are used or handled in the delivery of the Services, incorporated into the Works, stored by the Consultant at the workplace or transported by the Consultant to or from the workplace;
   14. the actions the Consultant will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Services and the Works;
   15. the procedures the Consultant will adopt to audit or otherwise monitor and verify its (and its subconsultants') compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
   16. the procedures the Consultant will adopt to ensure it provides to the Commonwealth, when conducting any handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 5.9(q));
   17. any additional matters specified in the Contract Particulars; and
   18. any other matters required by the:
       1. Contract; or
       2. Commonwealth's Representative.
4. **Workers Compensation Insurance**
5. A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Services are performed or the Consultant's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Consultant to its employees for death or injuries arising out of or in connection with their employment.

Works

The works (if any) described in the Brief.

* 1. Interpretation

In the Contract, 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 Contract;
    4. references to any party to the Contract 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 Contract;
    6. references to the Contract and any deed, agreement or instrument are deemed to include references to the Contract 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 Contract or any part;
    10. a reference to
        1. "$" is to Australian currency; and
        2. any amount is exclusive of GST,

except where otherwise specified in the Contract;

* + 1. where under the Contract:
       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 10.5),

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

* + 1. for the purposes of clauses 10.4 and 10.5, references to "business day" are to days other than:
       1. a Saturday or Sunday;
       2. a public holiday in the place where the Services are being carried out; and;
       3. any other day specified in the Contract Particulars;
    2. other than as set out in paragraphs (k) and (l) references to "day" are references to calendar days;
    3. the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
    4. where a clause contains two options, the option specified in the Contract Particulars will apply;
    5. the word "subconsultant" will include subconsultants, subcontractors and suppliers and the word "subcontract" will include a contract with a subconsultant;
    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 Commonwealth's Representative, or the date of the standard or reference document is specified in the Brief, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to:
       1. the submission of the relevant Consultant Material; and
       2. the Award Date.

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

* + 1. unless the context otherwise requires, capitalised terms in the Brief have the meaning given to them by these Terms of Engagement or the Special Conditions (if any), or the meaning given to them by the Commonwealth as published on the DEQMS website as amended from time to time;
    2. for the purposes of clauses 2.11(e)(i), 2.14(b), 2.17(d)(i), 7.4(b)(ii)A and 7.5(c)(i) a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Consultant as a direct result of the applicable event delaying the Consultant; and
    3. requirements contained in the Brief, whether or not they include the expression "the Consultant must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise.
  1. Miscellaneous
     1. The Contract (including clause 13) is subject to and is to be construed in accordance with the laws of the State or Territory of Australia specified in the Contract Particulars.
     2. None of the terms of the Contract 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 Contract 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 Contract; or
        2. any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
     4. Where a party comprises two or more persons, each person will be jointly and severally bound by the party’s obligations under the Contract.
     5. Any provision in the Contract 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 Contract.
     6. The Consultant must indemnify the Commonwealth against:
        1. any liability to or claim by a third party, including a subconsultant, Project Contractor or an Other Contractor; and
        2. all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,

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

* + 1. All obligations to indemnify under the Contract survive termination of the Contract.
    2. Unless expressly stated to the contrary in the Contract, the Consultant must perform the Services at its cost.
    3. Where under the Contract the Commonwealth (or the Commonwealth's Representative) has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Commonwealth (or other person on its behalf) will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

1. Role of the Consultant
   1. Engagement

The Consultant must carry out the Services in accordance with:

* + 1. the Contract; and
    2. the Project Contracts.
  1. Standard of Care

The Consultant must:

* + 1. exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
    2. warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of the service being provided by the subconsultant;
    3. ensure that the Consultant Material complies with the requirements of the Contract;
    4. use its best endeavours to ensure that the Consultant Material will be fit for the purposes as set out in, or reasonably to be inferred from, the Brief;
    5. ensure that the Services are provided economically and in accordance with any budgetary requirements of the Commonwealth notified to the Consultant;
    6. exercise the utmost good faith in the best interests of the Commonwealth and keep the Commonwealth fully and regularly informed as to all matters affecting or relating to the scope or cost of the Services and the Project or otherwise; and
    7. ensure that any person involved in the performance of the Services, who is required to be licensed or registered with an industry or governmental body, is so licensed or registered.
  1. Authority to Act

Other than as expressly authorised, the Consultant has no authority to, and must not:

* + 1. enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Commonwealth; or
    2. take any act or step to bind or commit the Commonwealth in any manner, whether as a disclosed agent of the Commonwealth or otherwise.

The Consultant is an independent consultant and is not and must not purport to be a partner or joint venturer of the Commonwealth.

* 1. Knowledge of the Commonwealth's Requirements

The Consultant must:

* + 1. inform itself of the Commonwealth’s requirements for the Services and the Project;
    2. refer to the Commonwealth Material and the Commonwealth's Program; and
    3. consult the Commonwealth throughout the carrying out of the Services.
  1. Notice of Matters Impacting on the Services or the Project

Without limiting clauses 14.1 to 14.5 (if applicable), if the Consultant becomes aware of any matter which:

* + 1. is likely to change or which has changed the scope, timing or cost of the Services or the Project;
    2. affects or may affect the Commonwealth's Program or the Consultant's then current program under clause 7.2; or
    3. involves any error, omission or defect in any continuing or completed aspect of the Project or the Services,

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

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

The Consultant must:

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

The Consultant must at all reasonable times:

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

The Consultant warrants that:

* + 1. at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract;
    2. it will ensure that no conflict of interest arises or is likely to arise in the performance of its obligations under the Contract;
    3. it will ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subconsultants; and
    4. if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
       1. notify the Commonwealth's Representative immediately in writing of that conflict or risk;
       2. include in the notice provided to the Commonwealth's Representative under subparagraph (i) details of the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and
       3. take all steps required by the Commonwealth's Representative to avoid or minimise the conflict of interest or risk of conflict of interest.
  1. Subcontracting
     1. The Consultant:
        1. must not, without the prior written approval of the Commonwealth's Representative, which will not be unreasonably withheld, subcontract any Services, except to a subconsultant named in the Contract Particulars;
        2. will:
           1. not be relieved of any of its liabilities or obligations under the Contract, including those under clause 2.1; and
           2. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
        3. will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with, the Services;
        4. must ensure that each subcontract contains provisions:
           1. which bind the subconsultants to participate in any novation required by the Commonwealth under clause 12.5(a);
           2. as required under the Contract; and
           3. equivalent to the obligations under clause 5.9; and
        5. must, unless otherwise agreed in writing by the Commonwealth's Representative:
           1. execute;
           2. procure the relevant subconsultant to execute; and
           3. deliver to the Commonwealth's Representative,

a Subconsultant Deed of Covenant duly completed with all relevant particulars:

* + - * 1. as a condition precedent to seeking the prior written approval of the Commonwealth's Representative under paragraph (a); or
        2. where such approval is not required, within the time required by the Commonwealth's Representative and in any event before commencement of any work by the relevant subconsultant.
    1. No Subconsultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Commonwealth against the Consultant whether under the Contract or otherwise.
    2. The Consultant must obtain and hold satisfactory and valid STRs of any subconsultant referred to under paragraph (a)(i) where the subcontract price is valued (or estimated) to be over $4 million (inclusive of GST). For the purposes of this paragraph (c), a reference to "satisfactory" and "valid" has the meaning given in clause 19.10(f).
  1. Statutory Requirements
     1. In the carrying out of the Services, the Consultant must:
        1. unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
        2. without limiting subparagraph (i):
           1. assist the Commonwealth in applying for and obtaining all Approvals referred to in the Contract 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 Contract obligations;
        3. promptly give the Commonwealth's Representative copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Project issues to the Consultant; and
        4. regularly and diligently monitor and report to the Commonwealth on whether the Project Contractors comply with all Statutory Requirements applicable to the Project.
     2. Without limiting paragraph (a), the Consultant must:
        1. comply with the Additional Host Nation Requirements;
        2. not engage in any political or unlawful activity during the carrying out of the Services in the Host Nation; and
        3. use its best endeavours to ensure that all its officers, employees, subconsultants and agents do not to engage in unlawful activity or misconduct during the carrying out of the Services in the Host Nation.
  2. Change in Statutory Requirements or Variance with Contract

If:

* + 1. there is any change in a Statutory Requirement after the Award Date; or
    2. a Statutory Requirement is at variance with the Contract,

then:

* + 1. the party discovering the change or variance must promptly notify the other;
    2. the Commonwealth's Representative will instruct the Consultant as to the course it must adopt insofar as the Services are affected by the change or variance;
    3. the [Fee](#Fee) will be:
       1. increased by any extra costs reasonably incurred by the Consultant; or
       2. decreased by any saving made by the Consultant,

in carrying out the Services after the giving of the notice under paragraph (c) and arising directly from the change or variance (as the case may be) or the Commonwealth's Representative's instruction, in either case as determined by the Commonwealth's Representative; and

* + 1. if the Fee is adjusted under paragraph (e) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Commonwealth's Representative.
  1. No Authority to Give Directions or Waive Requirements

The Consultant has no authority to:

* + 1. give directions to the Project Contractors, other than as expressly set out in the Contract or the Project Contracts;
    2. waive or vary any requirements of a Project Contract; or
    3. discharge or release a party from any of its obligations under a Project Contract.
  1. Co-ordination with other Projects/Programs

This clause 2.13 does not apply unless the Contract Particulars states it applies.

The Consultant:

* + 1. acknowledges that the Project is part of the project or programspecified in the Contract Particulars;
    2. must perform the Services in a manner which ensures that the way in which the Project is delivered maximises the Commonwealth's objectives for the delivery of the Project and the project or program specified in the Contract Particulars, including the delivery of the maximum scope of work within budget and on time; and
    3. without limiting paragraph (b), must attend such meetings, provide such documents and information, consider and respond to such proposals and do all such other things as the Commonwealth's Representative may require for the purposes of paragraph (b).
  1. Environment

This clause 2.14 does not apply unless the Contract Particulars states it applies.

Without limiting the Consultant's other obligations under the Contract, the Consultant must:

* + 1. ensure that in carrying out the Services:
       1. it complies with the Environmental Management Plan (if any);
       2. other than to the extent identified in writing by the Commonwealth's Representative, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
       3. it does not cause or contribute to any Environmental Incident;
       4. without limiting subparagraph (iii), it does not cause or contribute to any Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
       5. it immediately notifies the Commonwealth's Representative of any non-compliance with the requirements of this clause 2.14, a breach of any Statutory Requirement for the protection of the Environment, any Environmental Incident or the receipt of any notice, order or communication received from an authority for the protection of the Environment (as the case may be); and
       6. its subconsultants comply with the requirements in clause 2.14; and
    2. clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in any way in connection with the Services, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment. To the extent that the requirement to clean up and restore the Environment arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with all Statutory Requirements and other requirements of the Contract, the Fee will be increased by the extra costs reasonably incurred by the Consultant which arise directly from the cleaning up and restoration of the Environment under clause 2.14, as determined by the Commonwealth's Representative.
  1. Services Not Included

The services specified in the Contract Particulars to be carried out in relation to the Project are not included in the Services and will be carried out by the Commonwealth or by other persons (including Other Contractors).

* 1. Site Restrictions

The Site based Services must be performed subject to the restrictions specified in the Contract Particulars.

* 1. Pandemic Adjustment Event
     1. If the Consultant considers that there has been a Pandemic Adjustment Event, it must promptly give the Commonwealth's Representative notice in writing, together with detailed particulars of the following:
        1. the relevant change in circumstances and the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic and full details of the adverse effect;
        2. the likely duration of the Pandemic Adjustment Event;
        3. the Consultant’s plan to deal with the consequences of the Pandemic Adjustment Event which must as a minimum include details of the steps that the Consultant will take to:
           1. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Adjustment Event; and
           2. minimise any additional cost to the Commonwealth in respect of the Pandemic Adjustment Event,

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

* + - 1. such other details or information as the Commonwealth's Representative may require.
    1. The Commonwealth's Representative must, within 14 days of receipt of the Consultant’s notice under paragraph (a) notify the Consultant and the Commonwealth of its determination whether a Pandemic Adjustment Event has occurred.
    2. Where the Commonwealth's Representative has determined a Pandemic Adjustment Event has occurred, the Commonwealth's Representative may, without being under any obligation to do so, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the Pandemic Adjustment Event.
    3. If a Pandemic Adjustment Event occurs:
       1. subject to paragraph (f), the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant:
          1. after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Commonwealth's Representative under paragraph (c); and
          2. to the extent such costs were exclusively incurred for the purposes of performing the Services,

as determined by the Commonwealth's Representative; and

* + - 1. the Consultant must:
         1. comply with any direction of the Commonwealth's Representative in relation to the Pandemic Adjustment Event; and
         2. subject to any amendments required by the Commonwealth's Representative, implement the Consultant’s Pandemic Adjustment Plan.
    1. To the extent permitted by law:
       1. the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 2.17; and
       2. without limiting subparagraph (i), the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event, any instruction of the Commonwealth's Representative under paragraph (c) or any amendment required by the Commonwealth's Representative under paragraph (d)(ii)B, other than under paragraph (d)(i).
    2. The Commonwealth's Representative:
       1. will reduce any entitlement the Consultant would have otherwise had under paragraph (d)(i) to the extent that the Consultant has failed to take all reasonable steps to minimise any additional cost to the Commonwealth in respect of the Pandemic Adjustment Event; and
       2. may, for the purposes of assessing the Consultant’s entitlement under paragraph (d)(i), take into account any breakdown of the Fee submitted by the Consultant in its proposal for the Services.
    3. If the Fee is adjusted under paragraph (d)(i) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Commonwealth's Representative.
  1. Cost Control
     1. Without limiting clause 2.2(d), the Consultant must:
        1. use its best endeavours to ensure that the Project is completed in accordance with the Commonwealth's requirements for the lowest possible cost;
        2. review the cost plan(s) for the Project with the Commonwealth's Representative on a regular basis (including at all times required by the Commonwealth's Representative) to:
           1. ensure that the cost of the Project is in accordance with any cost plans for the Project approved by the Commonwealth; and
           2. advise the Commonwealth's Representative how the design or any other aspect of the Project could be modified to ensure that the cost of the Project is in accordance with approved cost plans; and
        3. initiate a system of cost control (to the satisfaction of the Commonwealth's Representative) throughout design and construction of the Project for the purposes of subparagraph (i)and (without limitation) advise the Commonwealth's Representative as to all alternative steps available where:
           1. the tenders for any package of work forming part of the Project exceed the amount included for that work in the relevant approved cost plan; or
           2. the out-turn cost incurred under any Project Contract exceeds (or appears likely to exceed) the amount included for that contract in the relevant approved cost plan.
     2. Without limiting paragraph (a), in performing the Services during the Development Phase (if any), the Consultant must identify all project structuring, packaging, scoping, choice of delivery method, risk allocation, procurement, programming, costing and other issues which could have an effect on the out-turn cost of the Project.
  2. Administration of Project Contracts

The Consultant must ensure that all issues in relation to payment by Project Contractors to subcontractors are administered strictly in accordance with the terms of the relevant Project Contract including all:

* + 1. payment to subcontractors;
    2. variations;
    3. suspensions; and
    4. if a Project Contract involves managing contractor delivery, all trust account administration.
  1. Consultant Insurance Obligations

The Consultant must:

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

each of which must be:

* + - 1. for the amounts specified in the Contract 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 Commonwealth's Representative (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to the Public Liability Insurance, ensure the insurance:
       1. names the Commonwealth as a party (within the definition of 'Insured') to whom the benefit of the insurance cover extends; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services are being carried out;
    2. 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 Commonwealth as the Consultant's principal in respect of any statutory and common law liability to the Consultant's employees; and
       2. each of its subconsultants has Workers Compensation Insurance, to the extent required by law, and Employers' Liability Insurance covering the subconsultant in respect of its statutory and common law liability to its employees, in the same manner as the Consultant is required to do under subparagraph (i);
    3. in relation to the Professional Indemnity Insurance, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Services; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services are being carried out;
    4. promptly provide the Commonwealth's Representative with evidence satisfactory to the Commonwealth's Representative that:
       1. it has complied with clause 2.20; and
       2. each insurance required under clause 2.20 is current and complies with clause 2.20,

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

* + 1. ensure that:
       1. if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Commonwealth's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and
       2. if the Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Commonwealth's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
    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 Commonwealth's Representative copies of receipts for payment of premiums upon request by the Commonwealth'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 Commonwealth Representative (in writing) if the Consultant fails to renew any required insurance policy or pay a premium;
       7. does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Commonwealth's Representative;
       8. immediately notifies the Commonwealth'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 Commonwealth's Representative to enable the Commonwealth to claim and to collect or recover money due under any of the insurances in respect of which it is required to have the benefit of coverage under the Contract; 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 all subconsultants:
       1. also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Consultant under this clause 2.20 for the amounts specified in the Contract Particulars; and
       2. are required to have in place such insurances as are required by Statutory Requirements and, in addition, those insurances which a reasonable and prudent subconsultant would obtain in performing services of a similar nature and risk to those of the subcontracted services; and
    4. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Consultant under this clause 2.20. Any excess borne by the Commonwealth will be a debt due from the Consultant to the Commonwealth.

For the purpose of paragraph (e), 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 2.20.

The obtaining of insurance as required under clause 2.20 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Consultant under the Contract or otherwise at law or in equity.

* 1. Failure to Insure
     1. If the Consultant fails to comply with clause 2.20, the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Consultant to the Commonwealth.
     2. The Consultant must take all necessary steps to assist the Commonwealth 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 Commonwealth's Representative or anyone else acting on behalf of the Commonwealth.
  2. Period of Insurance

The insurance which the Consultant is required to cause to be effected and maintained or otherwise have the benefit of under clause 2.20 must be maintained:

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

The Consultant must:

* + 1. as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 2.20 or any claim actually made against the Consultant or the Commonwealth which may be covered by an insurance policy required by clause 2.20;
    2. keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Consultant; and
    3. ensure that its subconsultants similarly inform the Consultant and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Consultant, the subconsultant or the Commonwealth which may be covered by an insurance policy required by the Contract,

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

* + 1. subject to paragraph (e), is not required to provide details of individual claims; and
    2. must notify the Commonwealth if the estimated total combined value of claims made against the Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.
  1. Cross Liability

Clause 2.24 does not apply to Professional Indemnity Insurance or Workers Compensation Insurance.

Where the Contract requires insurance to provide cover to more than one insured, the Consultant must ensure that, to the extent permitted by law, the insurance policy provides that:

* + 1. the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;
    2. the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
    3. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
    4. a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
    5. the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
       1. liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction or the Host Nation; or
       2. proportionate liability legislation of any Australian jurisdiction or the Host Nation is lawfully excluded by the contract.
  1. Insurances Secondary
     1. The Commonwealth is not obliged to make a claim or institute proceedings against any insurer under the insurances before enforcing any of its rights or remedies under the indemnities referred to in the Contract or generally.
     2. The Consultant is not relieved from and remains fully responsible for its obligations and liabilities in accordance with the Contract 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.

1. Role of the Commonwealth
   1. Information and Services

The Commonwealth must as soon as practicable make available to the Consultant all relevant information, documents and particulars relating to the Project and to the Commonwealth’s requirements for the Project, including the Commonwealth's Program.

* 1. Requests for Additional Information by the Consultant

If:

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

then:

* + 1. the Consultant must give notice in writing to the Commonwealth's Representative of the details of the additional information, documents or particulars and the reasons why they are required; and
    2. the Commonwealth must, if the Commonwealth's Representative believes that the additional information, documents or particulars are needed by the Consultant, use its best endeavours to arrange the provision of the additional information, documents or particulars.
  1. Access
     1. Subject to:
        1. the Project Contracts;
        2. any other agreement or arrangement with any party other than the Consultant; and
        3. if required by the Contract Particulars, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 5.13,

the Commonwealth must:

* + - 1. as soon as practicable provide the Consultant with access to the Site; and
      2. arrange access to any other property which may be necessary for the Consultant to carry out the Services.
    1. The Consultant must, in exercising its rights of access, comply with all requirements notified by the Commonwealth.
  1. Request for Commonwealth Decision by the Consultant

If:

* + 1. the Consultant requests the Commonwealth to consider the selection of alternative courses of action; and
    2. all information required to enable a decision to be made is provided by the Consultant or is otherwise available,

the Commonwealth must, in such reasonable time as not to delay or disrupt the carrying out of the Services, give a decision on the required course of action.

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

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

* 1. Assistant Commonwealth's Representative
     1. The Commonwealth's Representative may:
        1. by written notice to the Consultant appoint persons to exercise any of the Commonwealth's Representative's functions under the Contract; and
        2. revoke any appointment under paragraph (a) by notice in writing to the Consultant.
     2. As at the Award Date, the Commonwealth's Representative is deemed to have appointed the persons specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.
     3. All references in the Contract to the Commonwealth's Representative include a reference to a representative appointed under this clause 4.4.
  2. Key People

The Consultant must:

* + 1. employ those people specified in the Contract Particulars, including the Consultant's Representative, in the jobs as specified in the Contract Particulars;
    2. subject to paragraph (c), not replace the people referred to in paragraph (a) without the Commonwealth's Representative's prior written approval;
    3. if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Commonwealth's Representative of at least equivalent experience, ability and expertise;
    4. put in place sufficient succession planning and training, to the satisfaction of the Commonwealth, to ensure that the Consultant is able to replace key people under paragraph (c) without any disruption to the Services or the Project; and
    5. pending any approval of the Commonwealth's Representative under paragraph (c), take all possible steps to ensure the timely and compliant performance of the Services in accordance with the Contract.
  1. Removal of Persons
     1. The Commonwealth's Representative may by notice in writing instruct the Consultant to remove any person from the performance of the Services who in the reasonable opinion of the Commonwealth's Representative is guilty of misconduct or is incompetent or negligent.
     2. The Consultant must ensure that the person referred to in paragraph (a) is not again employed in the Services.

1. Documentation
   1. Commonwealth's Documents

The Commonwealth must provide to the Consultant the Commonwealth Material.

* 1. Consultant's Documents
     1. The Consultant must, within the time set out in the program prepared under clause 7.2, submit to the Commonwealth's Representative for approval the Consultant Material.
     2. The Commonwealth's Representative may review any Consultant Material, or any resubmitted Consultant Material, prepared and submitted by the Consultant and reject any Consultant Material.
     3. If any Consultant Material is rejected, the Consultant must re-submit amended Consultant Material to the Commonwealth's Representative within the time frame specified by the Commonwealth's Representative.
     4. The Consultant must keep the Consultant Material free from any corporate brand, trademark, logo, trade name, stamp, symbol or similar identifying material other than that of the Commonwealth or the Department of Defence.
  2. No Obligation to Review
     1. The Commonwealth's Representative does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Consultant Material submitted by the Consultant for errors, omissions or compliance with the Contract.
     2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Consultant Material prepared by the Consultant or any other direction by the Commonwealth's Representative about, or any other act or omission by the Commonwealth's Representative or otherwise by or on behalf of the Commonwealth in relation to, the Consultant Material will:
        1. relieve the Consultant from, or alter or affect, the Consultant's obligations under the Contract or at law or equity; or
        2. prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise at law or in equity.
  3. Licence over Consultant Material

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

This licence:

* + 1. arises, for any Consultant Material, immediately the Consultant Material is:
       1. produced; or
       2. provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative,

under, for the purposes of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant;

* + 1. includes an unlimited right to sublicence;
    2. without limitation, extends to:
       1. any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the Project; and
       2. use in any way for any other Commonwealth project; and
    3. survives the termination of the Contract on any basis.
  1. Intellectual Property Warranties

The Consultant warrants that:

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

The Consultant must:

* + 1. ensure that the Services do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
    2. indemnify the Commonwealth in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of, or in any way 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. Commonwealth Material
     1. The Commonwealth Material will remain the property of the Commonwealth.
     2. The Commonwealth must inform the Consultant of any Commonwealth Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
     3. Without limiting clause 16, and if clause 17 applies, clause 17, the Consultant will be responsible for the protection, maintenance and return of the Commonwealth Material in its possession.
  2. Project DCAP
     1. The Consultant:
        1. must, without limiting its other Contract obligations and to the extent not inconsistent with the Contract, at all times in the performance of the Services comply with the Project DCAP;
        2. warrants that:
           1. the Project DCAP complies with the requirements of the Contract; and
           2. preparation of the Consultant Material in accordance with the Project DCAP will ensure that the Consultant Material complies with the requirements of the Contract and that the Consultant otherwise discharges its obligations under the Contract;
        3. acknowledges that the Project DCAP:
           1. does not limit the Consultant's obligations under the Contract or otherwise at law or in equity; and
           2. may require updating and refining throughout the performance of the Services:

to the extent that it does not reflect the tasks or other things to be done or provided to perform the Services in accordance with the Contract; and

without limiting paragraph (a)(iii)B1), on account of Variations;

* + - 1. must update and refine the Project DCAP as required by subparagraph (iii)B with the written approval of the Commonwealth's Representative;
      2. to the extent permitted by law, will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any work which the Consultant is required to do under subparagraphs (iii) or (iv); and
      3. acknowledges that the Commonwealth has not made and does not make any representation or give any warranty as to any of the matters referred to in subparagraphs (ii)A and (ii)B.
    1. If the Contract Particulars specify that a DCAP Workshop is required, following the Award Date, the Consultant must:
       1. schedule a DCAP Workshop with the Commonwealth's Representative, to be held within 6 weeks of the Award Date at a time and place approved by the Commonwealth's Representative; and
       2. prepare for, attend and participate in such DCAP Workshop, including in accordance with any other requirements notified to the Consultant by the Commonwealth's Representative in writing.
    2. The Consultant acknowledges that the Project DCAP as applicable at the Award Date:
       1. without limiting the Consultant's obligations under the Contract, is intended to set out as a minimum the Consultant's proposed approach to performing the Services; and
       2. must be refined by the Consultant following the DCAP Workshop (if applicable) in accordance with the requirements of the Commonwealth's Representative, including finalisation of the following matters to the satisfaction of the Commonwealth:
          1. to reflect the outcomes of the DCAP Workshop;
          2. the insertion of wording identified by the Commonwealth as clarifying or otherwise improving the Project DCAP; and
          3. any other amendments required to ensure consistency with the Contract and the requirements for the Services set out in the Contract, including the Brief.
    3. The Consultant must prepare a revised Project DCAP incorporating the matters set out in paragraph (c)(ii), to the satisfaction of the Commonwealth's Representative within 7 days of the DCAP Workshop or such later date as directed by the Commonwealth's Representative in writing.
    4. The Consultant will not be entitled to reimbursement of any costs, or to bring any other Claim against the Commonwealth, arising out of or in connection with:
       1. preparing for, attending or participating in any DCAP Workshop in accordance with paragraph (b); or
       2. any work which the Consultant is required to carry out arising out of or in connection with paragraph (c).
  1. Work Health and Safety

The Consultant must:

* + 1. ensure that in carrying out the Services in Australia it complies with:
       1. all Statutory Requirements and other requirements of the Contract in respect of work health and safety, including the applicable WHS Legislation;
       2. the duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
       3. the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
       4. the duty under the WHS Legislation, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
          1. it is to assist an injured person or remove a deceased person;
          2. it is to make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site;
    2. ensure that in carrying out the Services in the Host Nation, so far as is reasonably practicable, it complies with the obligations set out in paragraph (a), as if the WHS Legislation applied to the Consultant;
    3. comply with any Statutory Requirements of the Host Nation concerning work health and safety in carrying out the Services, provided in the event there is a conflict between the standard prescribed by Statutory Requirements of the Host Nation concerning work health and safety and any Statutory Requirements of Australia concerning work health and safety, the Statutory Requirements of Australia shall prevail;
    4. carry out the [Services](#Services) to ensure the health and safety of persons is not put at risk;
    5. without limiting the Consultant's obligations under the Contract or otherwise at law or in equity, notify the Commonwealth's Representative in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident (irrespective of whether they occur in Australia or in the Host Nation);
       2. work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
       3. all other work health and safety matters arising out of or in connection with the Services, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), within 30 days of such incident occurring;
    6. for the purposes of paragraphs (a)(iii) and (e) above, in respect of any notifiable incident:
       1. immediately provide the Commonwealth's Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator or Host Nation regulator;
       2. promptly provide the Commonwealth'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 Commonwealth, State or Territory regulator or Host Nation regulator; and
       3. within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator or Host Nation regulator, provide the Commonwealth's Representative with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident;
    7. for Services that are carried out in:
       1. Australia, institute systems to:
          1. obtain regular written assurances from each Other Contractor and subconsultant about their ongoing compliance with the WHS Legislation; and
          2. provide, in a format specified by the Commonwealth's Representative, the written assurances regarding the Consultant's ongoing compliance with the WHS Legislation:

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

as otherwise directed by the Commonwealth's Representative; or

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

arising out of or in connection with the Services and the Works by the Consultant;

* + 1. exercise a duty of the utmost good faith to the Commonwealth in carrying out the [Services](#ContractorsActivities) to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;
    2. for Services that are carried out in:
       1. Australia, ensure all subcontracts include provisions equivalent to the obligations of the Consultant in clause 5.9; or
       2. the Host Nation, use its best endeavours to ensure all subcontracts include provisions equivalent to the obligations set out in clause 5.9;
    3. ensure that if any Statutory Requirement (whether in Australia or the Host Nation) requires that:
       1. a person:
          1. be authorised or licensed (in accordance with the [WHS Legislation](#WHSLegislation) or a Statutory Requirement of the Host Nation (as applicable)) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (in accordance with the [WHS Legislation](#WHSLegislation) or any Statutory Requirement of the Host Nation (as applicable)), that person has the required qualifications or experience or is so supervised; or
       2. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    4. not direct or allow a person to carry out work, or use plant or a substance (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement (whether in Australia or the Host Nation) and paragraph (l) are met;
    5. immediately notify the Commonwealth's Representative giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of an Australian or Host Nation regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
    6. without limiting the Consultant's obligations under the Contract (including paragraph (f) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Commonwealth's Representative or anyone else acting on behalf of the Commonwealth, provide all information or copies of documentation held by the Consultant or a subconsultant to the Commonwealth's Representative or anyone else acting on behalf of the Commonwealth to enable the Commonwealth to comply with its obligations under the [WHS Legislation](#WHSLegislation);
    7. if requested by the Commonwealth's Representative or required by the [WHS Legislation](#WHSLegislation) or any Statutory Requirements of the Host Nation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Commonwealth's Representative before the Consultant or any subconsultant commences such work; and
    8. where the Consultant is a supplier, manufacturer, designer or importer for the purposes of the HS Legislation, promptly provide to the Commonwealth's Representative prior to Completion (as defined in the Project Construction Contract) and before the expiry of the Defects Liability Period (as defined in the Project Construction Contract) information concerning:
       1. the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
       2. the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
       3. any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured.
  1. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Project Documents:

* + 1. subject to paragraphs (b) and (c), the order of precedence in the Contract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Brief and any other requirement of the Contract (including any other requirement of the Brief), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
    3. where the ambiguity, discrepancy or inconsistency is between the Contract and any Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, paragraph (a) will prevail;
    4. if it is discovered by the Consultant or the Commonwealth's Representative, then the party discovering it must promptly give notice to the other party; and
    5. the Commonwealth's Representative must instruct the Consultant as to the course it must adopt, including, where applicable, by applying the principles in paragraphs (a) to (c) above, within 14 days of the notice under paragraph (d).
  1. Proactive Review Of All Project Contractor Documentation

The Consultant must:

* + 1. promptly and fully review all Project Contractor Documentation for compliance with the relevant Project Contract before submitting that Project Contractor Documentation to the Commonwealth;
    2. not submit Project Contractor Documentation to the Commonwealth unless it has been fully reviewed and complies with the relevant Project Contract;
    3. if any Project Contractor Documentation does not fully comply with the relevant Project Contract, provide the Project Contractor with all comments and other assistance necessary and appropriate to enable the Project Contractor to amend and finalise the Project Contractor Documentation so that it complies with the relevant Project Contract;
    4. in any event, provide the review of the Project Contractor Documentation to the Commonwealth advising of the actions required to finalise the documentation;
    5. for the purposes of this clause, be responsible for co-ordinating the finalisation of all Project Contractor Documentation, including by providing and directing all necessary personnel to administer, supervise, review, co-ordinate and control finalisation of all Project Contractor Documentation at a rate of progress so that the relevant Project Contractor complies with his obligations under the relevant Project Contract;
    6. if the Consultant requires any information, guidance, or other direction from the Commonwealth for the purpose of finalising its review of, or enabling the Project Contractor to finalise, any Project Contractor Documentation - promptly request the information, guidance or direction from the Commonwealth;
    7. proactively program and manage the development, review and finalisation of all Project Contractor Documentation with the relevant Project Contractor so as to ensure that there are no delays to the completion of the project and that value for money for the Commonwealth is otherwise maximised;
    8. when Project Contractor Documentation is submitted to the Commonwealth, provide recommendations and advice in respect of such Project Contractor Documentation to the Commonwealth; and
    9. otherwise do all things necessary to ensure that the Commonwealth is able to efficiently and effectively review all Project Contractor Documentation.
  1. Drawings

Without limiting its other obligations under the Contract, all drawings which the Consultant is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

* + 1. the standard prescribed in the Contract (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 Services);
    2. all Statutory Requirements;
    3. the directions of the Commonwealth's Representative; and
    4. to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.
  1. Project Plans
     1. The Consultant must:
        1. carry out the Services in accordance with, and otherwise implement, the Project Plans; and
        2. for the purposes of subparagraph (i):
           1. prepare Project Plans based, where applicable, on the draft Project Plans lodged by the Consultant in its tender for the Services, and otherwise in accordance with the requirements of the Contract and submit them to the Commonwealth's Representative so as to ensure that there is no delay or disruption to the Services and in any event no later than the number of days specified in the Contract Particulars after the Award Date for each Project Plan;
           2. not commence any of the Services to which any Project Plan applies, unless the Commonwealth's Representative has had the number of days specified in the Contract Particulars 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 Commonwealth's Representative;
           4. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Services and in any event in accordance with the requirements of the Contract to the satisfaction of the Commonwealth's Representative;
           5. after each Project Plan has been finalised, continue to regularly review its Project Plans, including in accordance with any obligations imposed by the definition of each Project Plan and to correct any defects in or omissions from a Project Plan (whether identified by the Commonwealth's Representative or the Consultant) and submit an amended draft of the Project Plan to the Commonwealth's Representative, after which subsubparagraphs A - D will apply (to the extent applicable); and
           6. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
     2. The Consultant will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
        1. the implementation of and compliance with the requirements of any Project Plan;
        2. any direction by the Commonwealth's Representative concerning a Project Plan or the Consultant's compliance or non-compliance with a Project Plan;
        3. any audit or other monitoring by the Commonwealth's Representative of the Consultant's compliance with a Project Plan; or
        4. any failure by the Commonwealth's Representative, or anyone else acting on behalf of the Commonwealth, 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 Commonwealth's Representative or other person.
  2. Not used
  3. Requests For Information

Without limiting the Contract, the Services may include responding to Requests for Information (**Request for Information Services**). All documentation provided as part of the Request for Information Services will be deemed to form part of the Consultant Material.

Without limiting the Contract or any Project Contract, the Consultant must:

* + 1. perform the Request for Information Services so as to ensure that the Request for Information Services fully address each Request for Information, reduce the need for further Requests for Information and minimise the Commonwealth’s exposure to delay and extra costs under Project Contracts to the maximum extent possible;
    2. submit (or resubmit) the Consultant Material prepared as Request for Information Services to the Commonwealth's Representative in accordance with clause 5.2;
    3. perform the Request for Information Services within the time required by the Project Contract, or if no time is specified in the Project Contract, by the time required by the Commonwealth's Representative including so as to minimise the Commonwealth’s exposure to delay and extra costs under Project Contracts to the maximum extent possible; and
    4. for the purposes of performing the Request for Information Services, ensure that its personnel, subconsultants and other resources have appropriate availability, qualifications, experience, ability and expertise.
  1. Access to Project Documents

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

* + 1. make the Project Documents available for inspection and copying by the Commonwealth's Representative or any other person nominated by the Commonwealth's Representative;
    2. provide to the Commonwealth's Representative such copies of the Project Documents as the Commonwealth's Representative may require;
    3. provide all such facilities and assistance and answer all such questions which may be required to enable the Commonwealth's Representative or any nominated persons to identify the amounts being (or proposed to be) incurred or expended by the Consultant in performing the Services; and
    4. make available any officers, employees, agents or subconsultants for interviews with the Commonwealth's Representative or any nominated persons.
  1. Certification

This clause 5.17 applies if the Services include any design services by the Consultant.

Without limiting the Consultant's other obligations, the Consultant must, with each payment claim under clause ‎10.2 and, if requested by the Commonwealth's Representative, prior to Completion (as defined in the Project Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Project Contract), provide the Commonwealth's Representative:

* + 1. a certificate in the form of the consultant design certificate published on the DEQMS website as amended from time to time (**Consultant Design Certificate**) which certifies that (to the extent then applicable):
       1. theConsultant Material complies with:
          1. subject to clause 2.10(a)(i), all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the Contract; and
       2. the Works comply or the Stage or Section (as the case may be and both as defined in the Project Contract) complies (as the case may be) with the Consultant Material which has not been rejected by the Commonwealth's Representative under clause ‎5.2; and
    2. a corresponding certificate from each subconsultant that performs design work forming part of the Services in the form of the subconsultant design certificate published on the DEQMS website as amended from time to time (**Subconsultant Design Certification**) which certifies that (to the extent then applicable):
       1. all design carried out by that subconsultant complies with:
          1. subject to the subcontract, all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the subcontract; and
       2. the Works comply or the Stage or Section (as the case may be and both as defined in the Project Contract) complies (as the case may be) with the design carried out by that subconsultant,

except to the extent set out in such certificates.

1. Quality
   1. Quality Assurance

The Consultant:

* + 1. must implement the quality assurance process, system or framework consistent with best industry practice;
    2. must allow the Commonwealth's Representative access to the quality assurance process, system or framework of the Consultant so as to enable monitoring and quality auditing;
    3. if it receives an instruction under clause 6.2 in relation to a non-complying Service, use its quality assurance process, system or framework to address the relevant non-complying Service and to prevent any reoccurrence of that non-complying Service; and
    4. will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise at law or in equity as a result of:
       1. the implementation of and compliance with the quality assurance requirements of the Contract;
       2. any direction by the Commonwealth's Representative concerning the Consultant’s quality assurance process, system or framework or its compliance or non‑compliance with that system;
       3. any audit or other monitoring by the Commonwealth's Representative of the Consultant’s compliance with the quality assurance process, system or framework; or
       4. any failure by the Commonwealth's Representative, or anyone else acting on behalf of the Commonwealth, to detect any defect in the Services including where any such failure arises from any negligence on the part of the Commonwealth's Representative or other person.
  1. Non-Complying Services
     1. If the Commonwealth's Representative discovers or believes that any Services have not been performed in accordance with the Contract, the Commonwealth's Representative may give the Consultant a direction specifying the non-complying Services and doing one or more of the following:
        1. requiring the Consultant to:
           1. re-perform the non-complying Services and specifying the time within which this must occur; and
           2. to take all such steps as are reasonably necessary to:

mitigate the effect on the Commonwealth of the failure to carry out the Services in accordance with the Contract; and

put the Commonwealth (as closely as possible) in the position in which it would have been if the Consultant had carried out the Services in accordance with the Contract; or

* + - 1. advising the Consultant that the Commonwealth will not require re-performance of the non-complying Services, despite the non-compliance.
    1. Without limiting any other provision of the Contract, the Commonwealth may give a written notice under clause 12.3 to the Consultant if the Commonwealth's Representative discovers or believes that any Services have not been performed in accordance with the Contract.
  1. Re-performance of the Non-complying Services
     1. If a direction is given under clause 6.2(a)(i), the Consultant must re-perform the non-complying Services:
        1. within the time specified in the Commonwealth's Representative's instruction;
        2. so as to minimise any delay and disruption to the Services; and
        3. so as to minimise the delay and disruption to the Project.
     2. If the Consultant fails to comply with paragraph (a), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) itself engage an Other Contractor to correct the non-complying Services and the cost of such correction will be a debt due from the Consultant to the Commonwealth.
  2. Acceptance of the Non-complying Services

If the Commonwealth does not require re-performance of the non-complying Services despite the non-compliance under clause 6.2(a)(ii), such acceptance will not:

* + 1. relieve the Consultant from or alter its liabilities or obligations under the Contract; and
    2. prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise according to law.
  1. Update of Quality Assurance Process, System or Framework

If the Consultant receives a notice under clause 6.2, then the Consultant must:

* + 1. update the quality assurance process, system or framework specified in the Project DCAP to ensure that it is adequate to prevent a reoccurrence of the relevant non-complying Service or a similar non-compliance;
    2. take any other steps necessary to avoid a reoccurrence of the relevant non-complying Service or a similar non-compliance; and
    3. upon request provide evidence of its compliance with paragraphs (a) and (b) to the Commonwealth's Representative.

1. Time
   1. Progress

The Consultant must:

* + 1. perform the Services in a timely manner;
    2. use its best endeavours to achieve Completion of each Milestone within the time set out in the program prepared under clause 7.2; and
    3. without being limited by paragraph (b), perform the Services within any time limits specified in the Project Contracts.
  1. Programming
     1. The Consultant must:
        1. within 14 days of the Award Date, prepare a program of the Services which must:
           1. be based upon the Commonwealth's Program; and
           2. contain the details required by the Contract (including the Milestones) and which the Commonwealth's Representative otherwise reasonably directs;
        2. update the program periodically at least at intervals of no less than that specified in the Contract Particulars to take account of:
           1. changes to the program;
           2. changes to the Commonwealth's Program; or
           3. delays which may have occurred;
        3. give the Commonwealth's Representative copies of all programs for approval; and
        4. provide all programs in a format compatible with the software and any methodology specified in the Contract Particulars.
     2. If clause 8 applies, without limiting paragraph (a)(ii), prior to the Date for Delivery Phase Agreement, the Consultant must:
        1. update the program for any changes in the Services for the Delivery Phase; and
        2. submit the updated program to the Commonwealth's Representative for approval no later than the date notified in writing by the Commonwealth's Representative.
     3. The updated program prepared under paragraph (b) (if any) must include a detailed recommendation as to the Project End Date having regard to:
        1. the Indicative Project End Date; and
        2. any changes to the Project that have been directed or agreed by the Commonwealth during the Development Phase.
     4. If a program submitted by the Consultant under paragraph (b) is rejected by the Commonwealth's Representative (in its absolute discretion), the Consultant must submit an amended program (within the time required by the Commonwealth's Representative).
     5. If the Commonwealth's Representative (in its absolute discretion) approves an updated program and proposed Project End Date submitted by the Consultant under paragraph (b) (or a revised program under paragraph (d)) (if any), then the Commonwealth's Representative will issue a written notice to the Consultant.
     6. If the Commonwealth's Representative (in its absolute discretion) does not approve an updated program submitted by the Consultant under paragraph (b) (or a revised program under paragraph (d)) (if any) before the Date for Delivery Phase Agreement (if any), then the Commonwealth may (in its absolute discretion) elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.
     7. To assist the Commonwealth's Representative in determining whether or not to approve a program submitted under paragraph (b) (or a revised updated program under paragraph (d)):
        1. the Commonwealth's Representative may engage a third party to perform an external review of the program; and
        2. the Consultant must:
           1. co-operate with the Commonwealth's Representative and that third party; and
           2. without limiting clause 2.7, comply with its obligations under clause 2.7.
  2. Consultant Not Relieved

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

* + 1. relieve the Consultant from or alter its obligations under the Contract; or
    2. affect the time for the carrying out of the Commonwealth's or Commonwealth's Representative's Contract obligations.
  1. Suspension
     1. The Commonwealth's Representative:
        1. may instruct the Consultant to suspend and, after a suspension has been instructed, to re‑commence, the carrying out of all or a part of the Services; and
        2. is not required to exercise the Commonwealth's Representative's power under subparagraph (i) for the benefit of the Consultant.
     2. If a suspension under this clause 7.4 arises as a result of:
        1. the Consultant's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Consultant will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the suspension; or
        2. a cause other than the Consultant's failure to carry out its obligations in accordance with the Contract:
           1. an instruction to suspend under this clause 7.4 will entitle the Consultant to be have the Fee increased by the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Commonwealth's Representative;
           2. the Consultant must take all steps possible to mitigate any extra costs incurred by it as a result of the suspension; and
           3. to the extent permitted by law, the Consultant will not be entitled to make any other Claim against the Commonwealth arising out of, or in any way in connection with, the suspension other than under this subparagraph (ii).
     3. The Consultant may only suspend the Services when instructed to do so under this clause 7.4.
  2. Acceleration
     1. The Commonwealth's Representative may at any time and from time to time, by written notice to the Consultant, require the Consultant to use its best endeavours to achieve Completion of a Milestone by a date earlier than the date in the program prepared under clause 7.2 (**Accelerated Milestone Date**).
     2. If a direction is given by the Commonwealth's Representative under paragraph (a), the Consultant must:
        1. use its best endeavours to:
           1. accelerate the performance of the Services; and
           2. otherwise do all things necessary,

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

* + - 1. keep the Commonwealth's Representative fully and regularly informed of the progress of the Services against the Accelerated Milestone Date.
    1. The Consultant will:
       1. be entitled to its extra costs properly and reasonably incurred in complying with paragraph (a); and
       2. not be entitled to make any Claim, other than for payment of an amount in accordance with subparagraph (i), arising out of or in connection with a direction by the Commonwealth's Representative under paragraph (a).
  1. Prolongation
     1. If a Prolongation Event occurs:
        1. either:
           1. if clause 8 applies, after the date Delivery Phase Agreement is achieved under clause 8.4(a)(i); or
           2. if clause 8 does not apply, after the Award Date;
        2. which causes, or is likely to cause, a Material Adverse Effect;
        3. which is not caused or contributed to by an act or omission of the Consultant (including any failure by the Consultant to perform the Services in accordance with the Contract); and
        4. in circumstances where the Consultant has done everything it is required to do under the Contract to prevent or mitigate the effect of the Prolongation Event,

the Consultant may submit a "Prolongation Proposal" to the Commonwealth's Representative within 14 days of the date the Consultant became aware, or should reasonably have become aware, of the Prolongation Event, which sets out:

* + - 1. full details of the Prolongation Event;
      2. the Material Adverse Effect directly caused by the Prolongation Event, which must be demonstrated by the Consultant on a fully open book cost transparent basis; and
      3. the Consultant's proposal to address the Prolongation Event, including all possible steps to mitigate the cost and other effects of the Prolongation Event and provide the Commonwealth with value for money.
    1. If the Consultant issues a Prolongation Proposal which:
       1. demonstrates that a Prolongation Event has occurred which has caused a Material Adverse Effect, and otherwise complies with paragraph (a), then the Commonwealth's Representative must give the Consultant a written response within 20 days of the Prolongation Proposal, stating that the Commonwealth:
          1. accepts the Prolongation Proposal;
          2. requires the Consultant to submit an amended Prolongation Proposal having regard to the matters stated in the Commonwealth's response to the Prolongation Proposal, after which this paragraph (b) will reapply; or
          3. requires a meeting with the Consultant to negotiate the Prolongation Proposal having regard to the matters stated in the Commonwealth's response; or
       2. does not demonstrate that a Prolongation Event has occurred which has caused a Material Adverse Effect, or does not otherwise comply with paragraph (a), then:
          1. the Commonwealth's Representative may give the Consultant a written notice rejecting the Prolongation Proposal; and
          2. the Consultant will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with the Prolongation Proposal.
    2. If the Commonwealth's Representative requires a meeting to negotiate the Prolongation Proposal, then:
       1. the parties must undertake good faith negotiations (and exchange such documents and information and make available such people as may be necessary) to agree the costs payable to the Consultant as a result of the Material Adverse Effect; and
       2. if the parties are unable to agree an amount under subparagraph (i) within 40 days of the Prolongation Proposal being received by the Commonwealth (or such longer period as the Commonwealth and the Consultant may agree), the Consultant will be entitled to the reasonable extra costs incurred by the Consultant as a result of the Material Adverse Effect as determined by the Commonwealth's Representative.
    3. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Prolongation Event, other than under this clause 7.6.
    4. Notwithstanding the existence of a Prolongation Event, the Consultant must:
       1. continue to carry out the Services; and
       2. otherwise comply with its obligations under the Contract.

1. PHASES - DEVELOPMENT PHASE AND DELIVERY PHASE

This clause 8 applies unless the Contract Particulars state that it does not apply.

* 1. General
     1. The Services are divided into two distinct phases, being the Development Phase and the Delivery Phase.
     2. The Consultant acknowledges and agrees that the purpose of this division is to:
        1. enable the Commonwealth to ascertain (in its absolute discretion) whether it will maximise value for money by having the Consultant proceed with the Services for the Delivery Phase;
        2. allow for various departmental, government and parliamentary approvals required for the Works; and
        3. give the Commonwealth an opportunity to establish whether it is satisfied (in its absolute discretion) with the performance of the Consultant before proceeding from the Development Phase to the Delivery Phase.
     3. The Consultant acknowledges and agrees that as a result of the matters described in paragraph (b):
        1. there may not be a Delivery Phase;
        2. if there is a Delivery Phase, the Consultant may not be engaged to carry out the Services for the Delivery Phase; and
        3. there may be periods of inactivity of various durations in and between the Development Phase and the Delivery Phase (if any), whether as a result of a delay in any direction under clause 8.3(b) or 8.3(c) or otherwise. Such periods of inactivity will not amount to a suspension under clause 7.4 or entitle the Consultant to any Claim against the Commonwealth.
     4. Notwithstanding paragraph (c), the Consultant must ensure that, in and between the Development Phase and the Delivery Phase (if any), it retains appropriate, suitably qualified personnel available to perform the Services.
  2. Resources for Delivery Phase
     1. Prior to the Date for Delivery Phase Agreement, the Consultant must:
        1. prepare a resource plan, based on the Indicative Delivery Phase Resource Plan, for the Services for the Delivery Phase; and
        2. submit the resource plan to the Commonwealth's Representative for approval.
     2. The resource plan to be prepared under paragraph (a) must:
        1. identify in detail all services required for completion of the Project, which a competent and experienced Consultant would anticipate and provide for in its resource plan;
        2. include a detailed breakdown of cost in respect of each part of the Services for the Delivery Phase;
        3. include the proposed Fee for the Services for the Delivery Phase;
        4. if a Milestone Fee Payment Schedule applies, include a proposed Milestone Fee Payment Schedule for the Services for the Delivery Phase;
        5. include all such other matters as the Commonwealth's Representative may require in writing; and
        6. be prepared having regard to all relevant considerations including:
           1. the Indicative Delivery Phase Resource Plan and the Indicative Delivery Phase Fee Proposal;
           2. the paramount importance to the Commonwealth of balancing between minimising the cost of the Services for the Delivery Phase and achieving completion of the Project (on the one hand) and optimising the level of resources provided by the Consultant for the performance of the Services for the Delivery Phase (on the other hand);
           3. demonstrably maximising value for money for the Commonwealth and complying with the Commonwealth Procurement Rules; and
           4. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subsubparagraphs A - C, which the Commonwealth's Representative may from time to time notify to the Consultant in writing.
     3. The Consultant must:
        1. if any resource plan submitted by the Consultant is rejected by the Commonwealth's Representative, submit a revised resource plan;
        2. in the process of preparing the resource plan or a revised resource plan, co-operate with the Commonwealth, the Commonwealth's Representative and all other people nominated by the Commonwealth's Representative for the purpose of furthering the considerations referred to in paragraph (b)(vi); and
        3. take all possible steps necessary to ensure that the proposed Delivery Phase Fee does not exceed the Indicative Delivery Phase Fee, including all such reasonable steps directed by the Commonwealth's Representative.
     4. If the resource plan is approved by the Commonwealth's Representative, then the Commonwealth's Representative will issue a written notice to the Consultant.
     5. If the Consultant does not prepare a resource plan (or a revised resource plan) which is approved by the Commonwealth's Representative under paragraph (d) before the Date for Delivery Phase Agreement, then the Commonwealth may elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.
     6. To assist the Commonwealth's Representative in determining whether or not to approve a resource plan (or a revised resource plan):
        1. the Commonwealth's Representative may engage a third party to perform an external audit of the resource plan; and
        2. the Consultant must co-operate with the Commonwealth's Representative and that third party.
  3. Adjustment of Indicative Delivery Phase Fee and any Milestone Fee Payment Schedule
     1. As part of the process of preparing the resource plan for the approval of the Commonwealth's Representative under clause 8.2 and in any event by no later than the Date for Delivery Phase Agreement, the Consultant must undertake genuine and good faith negotiations with the Commonwealth's Representative to reach agreement as to:
        1. the adjustment (if any) required to the Indicative Delivery Phase Fee as a result of any design development, resource planning and programming carried out by the Consultant or by the Project Contractor under the Project Contract in the Development Phase; and
        2. if a Milestone Fee Payment Schedule applies, the adjustment (if any) required to the Milestone Fee Payment Schedule,

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

* + 1. If agreement on all of the matters in paragraph (a) is reached by the Date for Delivery Phase Agreement:
       1. the Commonwealth's Representative will prepare written minutes recording the agreement; and
       2. the parties' rights and obligations under the Contract will be subject to the matters agreed, as recorded in the minutes.
    2. If:
       1. agreement on all the matters in paragraph (a) is not reached; or
       2. the Commonwealth's Representative does not issue written certification that the Commonwealth is satisfied with the performance of the Consultant under the Contract up to the Date for Delivery Phase Agreement,

by the Date for Delivery Phase Agreement, then the Commonwealth may elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.

* 1. Delivery Phase Agreement and Delivery Phase Approval
     1. The Commonwealth must:
        1. if Delivery Phase Agreement is achieved, issue a written notice to the Consultant stating the date upon which Delivery Phase Agreement was achieved;
        2. if Delivery Phase Agreement has not been achieved (whether because of the circumstances referred to in clause 8.2(e) or 8.3(c) or otherwise), issue a written notice so advising the Consultant; and:
           1. stating that clause 8.5(d) does not apply; or
           2. stating the date from which and to the extent to which clause 8.5(d) is to apply; and
        3. after a notice has been issued under subparagraph (i):
           1. if Delivery Phase Approval is obtained, issue a written notice to the Consultant stating the date upon which Delivery Phase Approval was obtained; and
           2. if Delivery Phase Approval has not been obtained, issue a written notice so advising the Consultant.
     2. If the Commonwealth issues a notice under clause 8.4(a)(ii)B or 8.4(a)(iii)A, then the parties must comply with their respective obligations in accordance with the Contract, subject to clause 8.3(b)(ii).
     3. The Consultant acknowledges that:
        1. it will have no entitlement to perform the Services for the Delivery Phase unless the Commonwealth issues a notice under clause 8.4(a)(ii)B or 8.4(a)(iii)A; and
        2. without limiting clause 8.1, the splitting of the Services as between the Development Phase and the Delivery Phase is solely for the benefit of the Commonwealth, to enable the Commonwealth to ascertain whether it will maximise value for money for the Commonwealth and otherwise further the considerations referred to in clause 8.2(b)(vi) in engaging the Consultant to perform the Services for the Delivery Phase and the rights and obligations of the parties and the functions of the Commonwealth's Representative are to be construed accordingly.
     4. The Commonwealth may at any time and from time to time, by written notice to the Consultant unilaterally extend the Date for Delivery Phase Agreement or the Date for Delivery Phase Approval.
     5. Neither an extension of the Date for Delivery Phase Agreement or the Date for Delivery Phase Approval under paragraph (d), nor the issue of a notice under paragraph (a)(ii) or (a)(iii)B, will:
        1. limit or affect the Consultant's obligations or liabilities under the Contract or prejudice the right of the Commonwealth to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Consultant breaches the Contract, whether under the Contract or otherwise according to law; or
        2. entitle the Consultant to bring a Claim against the Commonwealth.
     6. The Consultant acknowledges that any Act of Prevention which prevents:
        1. finalisation of a resource plan which is approved by the Commonwealth's Representative as required under clause 8.2(a) by the Date for Delivery Phase Agreement;
        2. agreement on all the matters in clause 8.3(a)(i) - 8.3(a)(ii) as required under clause 8.3(a) by the Date for Delivery Phase Agreement; or
        3. satisfaction with the performance of the Consultant under the Contract as required under clause 8.3(c)(ii) by the Date for Delivery Phase Agreement,

will not:

* + - 1. entitle the Consultant to bring a Claim against the Commonwealth; or
      2. limit or affect any right of the Commonwealth or the Commonwealth's Representative, including the right of the Commonwealth to elect not to engage the Consultant to perform the Services for the Delivery Phase or to issue a notice under clause (a)(ii),

whether on the basis that the obligation to finalise or agree the relevant matter or achieve the relevant satisfaction referred to in subparagraph (i) or (ii) has become an obligation to finalise or agree the relevant matter or achieve the relevant satisfaction within a reasonable time or on any other basis at law or in equity.

* 1. Failure to Achieve Delivery Phase Agreement or Delivery Phase Approval

If the Commonwealth issues a notice under clause 8.4(a)(ii)A or 8.4(a)(iii)B, then:

* + 1. subject to paragraph (d), the Consultant will:
       1. have no entitlement to perform the Services for the Delivery Phase;
       2. be entitled to payment of the Development Phase Fee and due and payable for the Services completed in accordance with the Contract before issue of the relevant notice; and
       3. not be entitled to payment of any portion of the Fee or to make any Claim (to the extent permitted by law) against the Commonwealth arising out of, or in any way in connection with, the relevant notice, the Contract, the Services or the Project other than for the amount payable under subparagraph (ii);
    2. subject to paragraph (d), the Consultant must:
       1. immediately hand over to the Commonwealth copies (or, where required by the Commonwealth's Representative, originals) of all Project Documents prepared by the Consultant to the date of issue of the relevant notice (whether complete or not);
       2. immediately take all steps necessary to novate to the Commonwealth any of the subconsultants required by the Commonwealth's Representative to be novated; and
       3. co-operate with the Commonwealth and any third parties required by the Commonwealth's Representative and take all other steps necessary to ensure that the Commonwealth is able to re-tender or procure the performance of the Services for the Delivery Phase under paragraph (c)(i);
    3. subject to paragraph (d), the Commonwealth may:
       1. re-tender the performance of the Services for the Delivery Phase (whether with or without obtaining a tender from the Consultant) or procure the performance of the Services for the Delivery Phase in any other manner which the Commonwealth may determine; and
       2. use the Project Documents for the purposes of re-tendering or procuring the performance of the Services under subparagraph (i); and
    4. the Commonwealth may waive the requirement that the Consultant obtain Delivery Phase Agreement and Delivery Phase Approval before performing certain parts of the Services for the Delivery Phase, in its notice under clause 8.4(a)(ii), in which case:
       1. the relevant provisions of the Contract will apply to those Services as if they were the only services included in the Services for the Delivery Phase; and
       2. the Project End Date, Fee and any Milestone Fee Payment Schedule will be adjusted or determined (as the case may be):
          1. as agreed by the parties; or
          2. if not agreed within 14 days of the notice, by the reasonable Project End Date, Fee and Milestone Fee Payment Schedule as determined by the Commonwealth's Representative.

1. Variation
   1. Variation Price Request
      1. The Commonwealth's Representative may, at any time, issue a document titled "Variation Price Request" to the Consultant which will set out details of a proposed Variation which the Commonwealth is considering with respect to the Services.
      2. Where applicable, the Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant 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 Commonwealth's Representative), the Consultant must provide the Commonwealth's Representative with a written notice in which the Consultant sets out:
         1. the adjustment (if any) to the Fee to carry out the proposed Variation, which must be calculated by reference to the position descriptions set out in the Schedule of Rates (to the extent applicable);
         2. if specified in the "Variation Price Request", the Consultant's proposed methodology for the performance of the proposed Variation; and
         3. the effect (if any) which the proposed Variation will have on the then current program.
   2. Variation Order

Whether or not the Commonwealth's Representative has issued a "Variation Price Request" under clause 9.1, the Commonwealth's Representative may at any time instruct the Consultant to carry out a Variation by a written document titled "Variation Order", in which the Commonwealth's Representative will state one of the following:

* + 1. the proposed adjustment to the Fee set out in the Consultant's notice under clause 9.1 (if any) is agreed and the Fee will be adjusted accordingly; or
    2. any adjustment to the Fee will be determined under clauses 9.3(a)(ii) and 9.3(a)(iii).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

* 1. Cost of Variation
     1. The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Commonwealth's Representative:
        1. as agreed under clause 9.2(a);
        2. if subparagraph (i) does not apply, in accordance with the rates and prices in the Schedule of Rates, if and insofar as the Commonwealth's Representative determines that those rates or prices are applicable to, or it is reasonable to use them for valuing, the Variation; or
        3. to the extent subparagraphs (i) and (ii) do not apply, by a reasonable amount:
           1. agreed between the parties; or
           2. failing agreement, determined by the Commonwealth's Representative.
     2. If the Fee is adjusted under this clause 9.3 and a Milestone Fee Payment Schedule applies, the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
        1. to be agreed between the parties; or
        2. failing agreement, determined by the Commonwealth's Representative.
  2. Rates and Prices

Where any rates and prices in the Schedule of Rates are used under clause 9.3(a)(ii), the rates and prices will be deemed to cover:

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

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

* 1. All Work Included

The Consultant has allowed for the provision of all work necessary for the Services, whether or not expressly mentioned in the Brief.

Any such work:

* + 1. must be undertaken and provided by the Consultant; and
    2. forms part of the Services and will not entitle the Consultant to make a Claim except as otherwise provided for in the Contract.

1. Payment
   1. Payment Obligation

Subject to clause 10.11 and to any other right to set‑off which the Commonwealth may have, the Commonwealth will pay the Consultant:

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

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

* + 1. at the times specified in the Contract Particulars until completion of the Services or termination of the Contract (whichever is earlier);
    2. unless terminated earlier, after completion of the Services, within the time required by clause 10.7;
    3. in the format which the Commonwealth's Representative reasonably requires;
    4. which are based on the Schedule of Rates to the extent it is relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Fee, including the currency or currencies (as applicable) in which it is claimed (which currencies must be in accordance with the breakdown in Annexure 3 (if any)); and
       2. all other amounts then payable by the Commonwealth to the Consultant under the Contract; and
    6. which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
       1. to enable the Commonwealth's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Consultant under the Contract; and
       2. including any such documentation or information which the Commonwealth's Representative may by written notice from time to time require the Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
  1. Certification to Accompany Submission of Payment Claim
     1. The Consultant must, with each payment claim under clause 10.2, certify to the Commonwealth's Representative that it has complied with:
        1. clause 2.20;
        2. clause 5.9; and
        3. its programming obligations under clause 7.2.
  2. Payment Statement

The Commonwealth's Representative:

* + 1. must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 10.2; or
    2. may, if the Consultant fails to submit any such claim in accordance with clause 10.2, at any time,

give the Consultant (with a copy to the Commonwealth), on behalf of the Commonwealth, a payment statement which states:

* + 1. the payment claim to which it relates (if any);
    2. the Consultant's total value of entitlement under the Contract;
    3. the amount previously paid to the Consultant on account of the Fee and otherwise in accordance with the Contract;
    4. the amount (if any) which the Commonwealth's Representative believes to be then payable by the Commonwealth to the Consultant on account of the Fee and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Consultant; and
    5. if the amount in paragraph (f) is less than the amount claimed in the payment claim:
       1. the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and
       2. if the reason for the difference is that the Commonwealth 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 Commonwealth's Representative will not:

* + 1. constitute approval of any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Contract; or
    2. constitute a waiver of the requirements of clauses 10.2 and 10.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment statement.
  1. Payment
     1. Within 3 business days of the Consultant receiving a payment statement under clause 10.4, the Consultant must give the Commonwealth's Representative a tax invoice for the amount stated as then payable by the Commonwealth to the Consultant in the payment statement.
     2. Subject to clause 10.14(c), within the number of business days specified in the Contract Particulars of the Commonwealth receiving a tax invoice from the Consultant under and in accordance with paragraph (a), the Commonwealth will pay the Consultant the amount stated as then payable by the Commonwealth to the Consultant in the relevant payment statement given under clause 10.4.
  2. Payment on Account

Any payment of moneys under clause 10.5 is not:

* + 1. evidence of the value of Services or that Services have been satisfactorily carried out in accordance with the Contract;
    2. an admission of liability; or
    3. approval by the Commonwealth or the Commonwealth's Representative of the Consultant’s performance or compliance with the Contract,

but is only to be taken as payment on account.

* 1. Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Commonwealth's Representative) of completion of the Services, the Consultant must give the Commonwealth's Representative:

* + 1. a payment claim which complies with clause 10.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of the Fee and all other amounts payable under the Contract; and
    2. notice of any other amounts which the Consultant claims from the Commonwealth,

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

The payment claim and notice required under this clause 10.7 are in addition to the other notices which the Consultant must give to the Commonwealth's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by clause 14.5.

* 1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 10.7 has passed, the Consultant releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion, except any Claim included in a payment claim or notice under clause 10.7 which is given to the Commonwealth's Representative within the time required by and in accordance with the terms of clause 10.7.

* 1. Interest
     1. The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:
        1. amount which has been stated as then payable by the Commonwealth's Representative in a payment statement under clause 10.4, but which is not paid by the Commonwealth within the time required by the Contract; and
        2. damages.
     2. This will be the Consultant’s sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
  2. Correction of Payment Statements

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

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

issued by the Commonwealth's Representative.

* 1. Right of Set‑Off

The Commonwealth may:

* + 1. deduct from moneys otherwise due to the Consultant:
       1. any debt or other moneys due from the Consultant to the Commonwealth; and
       2. any claim to money which the Commonwealth asserts in good faith against the Consultant whether for damages or otherwise, whether under the Contract or otherwise at law, relating to the Project or the Services; and
    2. without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any amount which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a "Variation Order" under clause 9.2.
  1. Payment of Workers and Subconsultants

The Consultant must with each payment claim submitted under clause 10.2 provide the Commonwealth's Representative with a duly completed declaration (in the format which the Commonwealth reasonably requires) for each applicable jurisdiction in which the Services were carried out during the relevant period.

* 1. General Liability for Taxes

Subject to clause 10.14, unless otherwise stated in the Contract Particulars, as between the Commonwealth and the Consultant, the Consultant bears the risk of, and must pay, all Taxes incurred or imposed in connection with the Services and this Contract, and the Contract Price is not subject to adjustment or gross up on account of any Tax.

The Consultant must indemnify the Commonwealth against any loss, damage or liability arising out of or in connection with Taxes which the Consultant is required to pay under this clause 10.13.

* 1. GST
     1. Subject to paragraph (b), where any supply arises out of or in connection with the Contract or the Services for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
     2. Where an amount is payable to the Supplier for a supply arising out of or in connection with the Contract or the Services which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
     3. As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
     4. If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
        1. is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
        2. is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
     5. In this clause 10.14, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Accounting Records

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

* + 1. all Variations; and
    2. all other amounts payable to the Consultant other than on account of the original Fee specified in the Contract Particulars.
  1. Applicable Currencies

Where the Fee is comprised of more than one currency:

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

1. Payment times procurement connected policy

This clause 11 applies if the Consultant is a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy.

* 1. PT PCP Subcontracts
     1. The Consultant must comply with the Procurement Times Procurement Connected Policy.
     2. If the Consultant enters into a PT PCP Subcontract, the Consultant must include in the PT PCP Subcontract:
        1. a requirement for the Consultant to pay the PT PCP Subcontractor:
           1. subject to paragraph (d), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
           2. subject to paragraph (e), for payments made by the Consultant after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (e) and (f);
        2. a statement that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract; and
        3. a statement that the PT PCP Subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth as represented by the Commonwealth Entity specified in the Contract Particulars in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of this paragraph (b).
     3. If the Consultant enters into a Reporting Entity Subcontract in anticipation of, or after, entering into the Contract, the Consultant must use reasonable endeavours to include in that Reporting Entity Subcontract:
        1. obligations equivalent to those in paragraph (b); and
        2. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract will include:
           1. obligations equivalent to those in paragraph (b); and
           2. obligations equivalent to this subparagraph (ii) (such that the obligations in this subparagraph (ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
     4. Paragraph (b)(i)A does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in paragraph (b)(i)A.
     5. The Consultant is not required to pay any interest in accordance with paragraph (b)(i)B if either:
        1. the Commonwealth has failed to pay the Consultant in accordance with the timeframes and requirements under the Contract; or
        2. the amount of interest payable is less than $100 (GST inclusive).
     6. Interest payable under paragraph (b)(i)B:
        1. will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Consultant effects payment; and
        2. will be paid at the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment.
  2. PT PCP Evaluation Questionnaire

If requested in writing by the Commonwealth, the Consultant must properly complete and return a PT PCP Evaluation Questionnaire within 30 days of the request.

* 1. Non-Compliance and Remediation 
     1. If the Commonwealth considers or becomes aware that the Consultant has not or may not have complied with:
        1. the requirements of clause 11.1; or
        2. the payment requirements of a PT PCP Subcontract,

the Commonwealth may direct the Consultant to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth:

* + - 1. information to enable the Commonwealth to review the Consultant's compliance; or
      2. a properly completed PT PCP Remediation Plan.
    1. The Consultant must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under paragraph (a)(iv).
    2. If the Commonwealth considers that the Consultant has failed to comply with any of its obligations under this clause 11, without limiting the Commonwealth's rights and remedies at law or otherwise under the Contract, the Commonwealth may do either or both of the following:
       1. take the failure or non-compliance into account as part of the Commonwealth's monitoring of the Consultant's performance under the Contract; or
       2. report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
    3. The Consultant agrees that if it is the subject of a complaint in relation to its compliance with clause 11.1 or the associated payment requirements of a PT PCP Subcontract:
       1. it will not take any prejudicial action against the PT PCP Subcontractor due to the complaint or any investigation or inquiry in relation to the complaint; and
       2. it will cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint.
  1. Consent
     1. For any PT PCP Purpose, the Consultant consents to the Commonwealth:
        1. using and sharing with any other Commonwealth Entity the information provided by the Consultant as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Commonwealth in connection with the Contract or PT PCP Subcontract; and
        2. receiving information obtained under, or in accordance with, the PTR Act (**Protected Information**) from Entrusted Person and using such Protected Information.

For the purposes of subparagraph (ii), **Entrusted Person** has the meaning given in the PTR Act.

* + 1. By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the Payment Times Procurement Connected Policy that includes any personal information within the meaning of *Privacy Act 1988* (Cth), the Consultant warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 11.4. The Consultant will provide evidence of such consents to the Commonwealth on request.
  1. Interpretation of Clause 11

A reference to the Commonwealth in clauses 11.2, 11.3(a), 11.3(d)(ii) and 11.4 includes the PT PCP Policy Team.

1. Termination
   1. Preservation of Rights

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

* 1. Consultant Default

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

* 1. Contents of Notice of Default

A notice under this clause 12.3 must state:

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

If:

* + 1. an Insolvency Event occurs to the Consultant or, where the Consultant comprises two or more persons, to any one of those persons;
    2. the Consultant does not remedy a failure or breach the subject of a notice under clause 12.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 12.3; or
    3. the Consultant fails to comply with:
       1. clause 16;
       2. if clause 17 applies, clause 17; or
       3. if clause 18 applies, clause 18,

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

* 1. Commonwealth's Entitlements after Termination by Commonwealth

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

* + 1. the Commonwealth will:
       1. be entitled to require the Consultant to novate to the Commonwealth, or the Commonwealth's nominee, any or all subcontracts between the Consultant and its subconsultants as required by the Commonwealth;
       2. not be obliged to make any further payments to the Consultant, including any amount the subject of a payment claim under clause 10.2 or a payment statement under clause 10.4; and
       3. be entitled to recover from the Consultant all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of, or in any way in connection with, such termination; and
    2. the Consultant must immediately hand over to the Commonwealth all copies of:
       1. documents provided by the Commonwealth in connection with the Services (including the Commonwealth Material); and
       2. subject to clauses 16.3 and 17.4, Project Documents prepared by the Consultant to the date of termination (whether complete or not).
  1. Consultant's Entitlements after Termination by Consultant

If the Commonwealth repudiates the Contract and the Consultant terminates the Contract, the Consultant will:

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

This clause 12.6 will survive the termination of the Contract.

* 1. Termination for Convenience

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

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

If the Commonwealth terminates the Contract under clause 12.7, the Consultant:

* + 1. will be entitled to payment of the following amounts as determined by the Commonwealth's Representative:
       1. for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
       2. the cost of goods or materials (if any) reasonably ordered by the Consultant for the Services for which the Consultant 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; and
    2. must:
       1. take all steps possible to mitigate the costs referred to in paragraph (a)(ii); and
       2. immediately hand over to the Commonwealth all copies of all:
          1. documents provided by the Commonwealth in connection with the Services (including the Commonwealth Material); and
          2. subject to clauses 16.3 and 17.4, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

The amount to which the Consultant is entitled under this clause 12.8 will be a limitation upon the Commonwealth’s liability to the Consultant arising out of, or in any way in connection with, the termination of the Contract (whether under clause 12.7 or deemed to be under clause 12.7 through the operation of clause 12.6(a)) and to the extent permitted by law, the Consultant will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 12.8.

This clause 12.8 will survive the termination of the Contract by the Commonwealth under clause 12.7 or by the Consultant following repudiation by the Commonwealth.

1. Dispute resolution
   1. Notice of Dispute

If a dispute or difference arises between the Consultant and the Commonwealth or between the Consultant and the Commonwealth's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services, the Project or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 13.

Where such a dispute or difference arises, either party may give a notice in writing to the Commonwealth's Representative and the other party specifying:

* + 1. the dispute or difference;
    2. particulars of the party's reasons for being dissatisfied; and
    3. the position which the party believes is correct.
  1. Expert Determination

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

* 1. The Expert
     1. The expert determination under clause 13.2 is to be conducted by:
        1. the independent industry expert specified in the Contract 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 Contract Particulars.
     2. If the expert appointed under this clause 13.3:
        1. is unavailable;
        2. declines to act;
        3. does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
        4. does not enter into the agreement in accordance with clause 13.9(b) within 14 days of his or her appointment under this clause 13; or
        5. does not make a determination within the time required by clause 13.8,

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

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

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

* 1. Procedure for Determination

The expert will:

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

The expert must:

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

Each party will:

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

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

* 1. Agreement with Expert
     1. The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
     2. The parties must enter into an agreement with the appointed expert on such 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 Commonwealth's Representative unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 13.11 and 13.12, any such appeal will be by way of a hearing de novo; and
    3. will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.
  1. Executive Negotiation
     1. If:
        1. clause 13.2 applies and a notice of appeal is given under clause 13.10; or
        2. clause 13.2 does not apply,

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

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

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

* 1. Arbitration Agreement

If, within:

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

the Executive Negotiators:

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

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

* 1. Arbitration
     1. Arbitration pursuant to this clause 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 this clause.
     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 this clause 13 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to this clause 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 the proportionate liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to this clause.

* 1. Continuation of Services

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

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

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

1. Notices
   1. Notice of Variation

If a direction by the Commonwealth's Representative, other than a "Variation Order" under clause 9.2, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Commonwealth arising out of, or in any way 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 Commonwealth'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 Commonwealth's Representative which includes the details required by clause 14.3(b); and
    3. continue to carry out the Services in accordance with the Contract and all directions of the Commonwealth's Representative, including any direction in respect of which notice has been given under this clause 14.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. payment under clause 10 on account of the unadjusted Fee;
    2. a Variation instructed in accordance with clause 9.2 or to which clause 14.1 applies; or
    3. contribution or indemnity for loss or damage caused or contributed to by the negligence of the Commonwealth, where a third party (other than a subconsultant of the Consultant or other party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

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

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

as determined by the Commonwealth's Representative.

* 1. Prescribed Notices

The notices referred to in clause 14.2 are:

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

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

* 1. Time Bar

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

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

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

* 1. Other Provisions Unaffected

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

* 1. Address for Service

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

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

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

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

To the extent the Services are carried out in Australia, the Consultant must use its reasonable endeavours to increase its:

* + 1. purchasing from Indigenous Enterprises; and
    2. employment of Indigenous Australians,

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

1. INFORMATION SECURITY - CONFIDENTIAL INFORMATION
   1. Consultant's Warranty
      1. The Consultant acknowledges and agrees that the Confidential Information is confidential.
      2. The Consultant warrants that on the Award Date and on the date of submitting each payment claim under clause 10.2 it is not aware of any of any breach of this clause 16 by the Consultant or any Recipient.
   2. Confidential Information Requirements
      1. The Consultant must:
         1. strictly comply with:
            1. this clause 16; and
            2. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
         2. immediately put in place arrangements to ensure that it strictly complies with:
            1. this clause 16; and
            2. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
      2. Subject to, if clause 17 applies, clause 17, the Consultant must not:
         1. copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
         2. disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than carrying out the Services.

* + 1. The Consultant must ensure that all Recipients of Confidential Information:
       1. strictly comply with:
          1. this clause 16; and
          2. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. this clause 16; and
          2. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
          1. this clause 16; or
          2. any other Confidential Information or information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
    2. The Consultant must:
       1. ensure:
          1. the Confidential Information (or any part of it); and
          2. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar); and
        2. otherwise in accordance with all Separation Arrangements; and
      1. immediately:
         1. detect all actual or potential Confidential Information Incidents;
         2. notify the Commonwealth's Representative if it becomes aware of any actual or potential Confidential Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate, resolve 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 Commonwealth'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 Commonwealth's Representative, at any time;
        2. the termination of the Contract under clause 12 or otherwise at law; or
        3. the expiry of the last Defects Liability Period (as defined in the Project Contract) under the Project Contract,

the Consultant must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth's Representative or the Commonwealth in the request or notice (as the case may be) (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 Commonwealth'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 Commonwealth's Representative with a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by the Commonwealth (acting reasonably) confirming that the Confidential Information has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
      2. promptly notify the Commonwealth's Representative of all Confidential Information (or any part of it) which the Consultant knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
         2. is beyond the Consultant's or a Recipient's possession, power, custody or control,

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

* + 1. To the extent required by a Statutory Requirement or to maintain compliance with the Consultant's quality assurance process, system or framework, the Consultant may keep one copy of the Confidential Information for its records subject to the Consultant:
       1. promptly notifying the Commonwealth'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 16.
    2. The Consultant acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Consultant's obligations under this clause 16.
  1. Compliance with Clause 16

Within 24 hours (or such other period notified by the Commonwealth's Representative) of receipt of a request by the Commonwealth's Representative, at any time, the Consultant must:

* + 1. provide the Commonwealth's Representative with:
       1. evidence of the Consultant's and all Recipients' compliance with clause 16 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Consultant and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 16 (including any Separation Arrangements and the Confidential Information Requirements); and
    2. as directed by the Commonwealth's Representative in the request, provide the Commonwealth's Representative and the Commonwealth with access to the Consultant's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth's Representative and the Commonwealth to monitor and assess the Consultant's and all Recipients' compliance with clause 16 (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 Contract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Commonwealth has:
          1. entered into the Contract; and
          2. if applicable, made payments to the Consultant under clause 10.5,

strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in this clause 16;

* + - 1. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Consultant:
         1. notifies the Commonwealth's Representative under clause 16.2(d)(ii)B; or
         2. has failed to strictly comply with:

this clause 16; or

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

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

* + - * 1. terminate the Contract under clause 12.4; or
        2. take such Confidential Information Incident or failure into account in assessing any future registration of interest or tender submitted by the Consultant; and
      1. the exercise of any of the Commonwealth's absolute discretions under this clause 16 is not capable of being the subject of a dispute or difference for the purposes of clause 13 or otherwise subject to review;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 16; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. a Confidential Information Incident;
       2. the Consultant's failure to strictly comply with clause 16 or any other Confidential Information or information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); or
       3. the exercise of any of the Commonwealth's absolute discretions under this clause 16.

1. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

This clause 17 does not apply unless the Contract Particulars state that it applies.

* 1. Sensitive and Classified Information, generally
     1. Nothing in this clause 17 limits or otherwise affects clause 16.
     2. The Consultant acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.
  2. Consultant's Warranties
     1. The Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2 it is not aware of any of any breach of this clause 17 by the Consultant or any Recipient.
     2. The Consultant warrants that, except as otherwise approved in writing by the Commonwealth, each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Services, properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars or in accordance with clause 17.3(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 Consultant must:
        1. strictly comply with:
           1. this clause 17; and
           2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
        2. immediately put in place arrangements to ensure that it strictly complies with:
           1. this clause 17; and
           2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
     2. Subject to paragraph (d)(i) the Consultant must not:
        1. copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
        2. disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including carrying out the Services.

* + 1. If the Consultant wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Services, it must notify the Commonwealth'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 (b), the Commonwealth's Representative will notify the Consultant that the Commonwealth (in its absolute discretion) either:
       1. grants permission, whether with or without such conditions as the Commonwealth 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 Commonwealth; or

* + - 1. refuses permission.
    1. If the Commonwealth grants permission under paragraph (d)(i), the Consultant must strictly comply with any conditions notified under paragraph (d)(i).
    2. The Consultant must ensure that all Recipients of Sensitive and Classified Information:
       1. strictly comply with:
          1. this clause 17; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. this clause 17; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
          1. this clause 17; or
          2. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
    3. The Consultant must:
       1. ensure:
          1. the Sensitive and Classified Information (or any part of it); and
          2. all containers, devices or systems on or in which the Sensitive and Classified Information (or any part of it) may be contained, stored, transferred, transmitted or communicated (including via electronic or similar means),

are strictly kept:

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

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

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

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

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);
        2. without limiting subsubparagraph E, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia (unless otherwise approved in writing by the Commonwealth (in its 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 Commonwealth'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, resolve 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 Commonwealth'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 Commonwealth's Representative, at any time;
        2. the termination of the Contract under clause 12 or otherwise at law; or
        3. the expiry of the last Defects Liability Period (as defined in the Project Contract) under the Project Contract,

the Consultant must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth's Representative or the Commonwealth in the request or notice (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 Commonwealth'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 Commonwealth's Representative with a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by the Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
      2. promptly notify the Commonwealth's Representative of all Sensitive and Classified Information (or any part of it) which the Consultant knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
         2. is beyond the Consultant's (or a Recipient's) possession, power, custody or control,

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

* + 1. To the extent required by a Statutory Requirement, the Consultant may keep one copy of the Sensitive and Classified Information for its records subject to the Consultant:
       1. promptly notifying the Commonwealth'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 17.
    2. The Consultant acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Consultant's obligations under this clause 17.
  1. Compliance with Clause 17

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

* + 1. provide the Commonwealth's Representative with:
       1. evidence of the Consultant's and all Recipients' compliance with clause 17 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Consultant and all Recipients have in place; and
       2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 17 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
    2. as directed by the Commonwealth's Representative in the request, provide the Commonwealth's Representative and the Commonwealth with access to the Consultant's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth's Representative and the Commonwealth to monitor and assess the Consultant's and all Recipients' compliance with clause 17 (including any Separation Arrangements and Sensitive and Classified Information Requirements).
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has:
          1. entered into the Contract;
          2. if applicable, made payments to the Consultant under clause 10.5,

strictly on the basis of, and in reliance upon, the warranties, obligations, releases and indemnities set out in this clause 17;

* + - 1. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Consultant:
         1. notifies the Commonwealth's Representative under clause 17.3(g)(ii)B; or
         2. has failed to strictly comply with:

this clause 17; or

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

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

* + - * 1. terminate the Contract under clause 12.4; or
        2. take such failure into account in assessing any future registration of interest or tender submitted by the Consultant; and
      1. the exercise of any of the Commonwealth's absolute discretions under this clause 17 is not capable of being the subject of a dispute or difference for the purposes of clause 13 or otherwise subject to review;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 17; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. the Consultant's failure to strictly comply with clause 17 or any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); or
       2. the exercise of any of the Commonwealth's absolute discretions under this clause 17.

1. Defence Industry Security Program

This clause 18 applies unless the Contract Particulars state that it does not apply.

Without limiting clause 17, or any other provision of the Contract, the Consultant:

* + 1. must at its cost obtain and thereafter maintain for the term of the Contract the level of DISP membership specified in the Contract Particulars in accordance with Control 16.1 of the Defence Security Principles Framework dated 31 July 2020 (as amended from time to time);
    2. must comply with any other direction or requirement of the Commonwealth's Representative in relation to the DISP; and
    3. acknowledges and agrees that if the Consultant has failed to strictly comply with this clause 18 (including any direction or requirement of the Commonwealth's Representative in relation to the DISP), the Commonwealth may (in its absolute discretion):
       1. terminate the Contract under clause 12.4; or
       2. take such failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project,

and the exercise of any of the Commonwealth's absolute discretions under this paragraph is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review.

1. General
   1. Workplace Gender Equality

The Consultant must:

* + 1. comply with its obligations (if any) under the *Workplace Gender Equality Act 2012* (Cth); and
    2. not enter into a subcontract made in connection with the Contract with a subconsultant named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
  1. Not used
  2. Privacy
     1. The Consultant must:
        1. comply with its obligations under the Privacy Act;
        2. comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;
        3. use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract only for the purposes of fulfilling its obligations under the Contract;
        4. not disclose Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Commonwealth's Representative;
        5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Commonwealth's Representative;
        6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Commonwealth's Representative in relation to the management of Personal Information in connection with the Contract;
        7. ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
        8. comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
        9. ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Commonwealth's Representative's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Commonwealth's Representative to oversee such deletion or destruction;
        10. agree to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
        11. ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of clause 19.3 as if the subconsultant were the Consultant;
        12. enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Commonwealth's Representative may give;
        13. not use Personal Information collected by the Consultant for the purposes of, under, arising out of or in connection with the Contract for, or in any way relating to, any direct marketing purpose; and
        14. indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
            1. a breach of the obligations of the Consultant under clause 19.3;
            2. a breach of a subconsultant's obligations under a subcontract 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 Contract by the Consultant or a subconsultant; or
            4. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Consultant or a subconsultant in breach of an obligation of confidence.
     2. For the purposes of paragraph (a)(xiv), costs, expenses, losses, damages or liabilitiesincludes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 19.3.
     3. The Consultant must immediately notify the Commonwealth in writing if the Consultant:
        1. becomes aware of a breach of the obligations under clause 19.3 by itself or by a subconsultant;
        2. becomes aware of a breach of a subconsultant's obligations under a subcontract 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 subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     4. The Consultant acknowledges that, in addition to the requirements of clause 19.3, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
     5. Nothing in clause 19.3 limits any of the Consultant's obligations under the Contract or otherwise at law or in equity.
     6. In clause 19.3, **received** includes collected.
  3. 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 Consultant acknowledges that Commonwealth requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

* 1. Long Service Leave

Clause 19.5 only applies if the Long Service Leave Legislation applies to the Services.

* + 1. Without limiting the Consultant's obligations under the Contract or otherwise at law or in equity, the Consultant must comply with its obligations under the Long Service Leave Legislation.
    2. If required by the Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
    3. Any amount paid by the Consultant under paragraph (b) is deemed to be included in the Fee and to the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with its obligations under clause 19.5 or any other obligations under the Long Service Leave Legislation.
  1. Assignment
     1. The Consultant must not, without the prior written approval of the Commonwealth and except on such terms and conditions notified by the Commonwealth, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
     2. For the purpose of but without limiting paragraph (a), an assignment of the Contract will be deemed to have occurred where there has been a Change of Control.
  2. Publicity

Without limiting clause 16 and, if clause 17 applies, clause 17, the Consultant must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Services or the Project for publication in the media without the prior written approval of the Commonwealth's Representative; and
    2. refer any enquiries from the media concerning the Services or the Project to the Commonwealth's Representative.
  1. Not used
  2. Fraud Control
     1. Without limiting the Consultant's other obligations, the Consultant must:
        1. proactively take all necessary measures to prevent, detect and investigate any fraud in connection with the Contract or the Services (including all measures directed by the Commonwealth's Representative); and
        2. proactively take all necessary corrective action to mitigate any loss or damage to the Commonwealth resulting from fraud to the extent that the fraud was caused or contributed to by the Consultant or any of its officers, employees, subconsultants or agents and put the Commonwealth in the position it would have been in if the fraud had not occurred (including all corrective action directed by the Commonwealth's Representative).
     2. If the Consultant knows or suspects that any fraud is occurring or has occurred it must immediately provide a detailed written notice to the Commonwealth's Representative including details of:
        1. the known or suspected fraud;
        2. how the known or suspected fraud occurred;
        3. the proactive corrective action the Consultant will take under paragraph (a)(ii); and
        4. the proactive measures which the Consultant will take under paragraph (a)(i) to ensure that the fraud does not occur again,

and such further information and assistance as the Commonwealth, or any person authorised by the Commonwealth, requires in relation to the fraud.

* 1. Shadow Economy Procurement Connected Policy
     1. Clause 19.10 does apply unless the Contract Particulars state that it does not apply.
     2. Without limiting the operation of clause 2.9(c), the Consultant must not enter into a subcontract with a subconsultant (or agree to a novation of a subcontract to a subconsultant) if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST) unless the Consultant has obtained and holds any of the STRs referred to in the table below, as applicable to the relevant subconsultant.

|  |  |
| --- | --- |
| **If the subconsultant to enter into the subcontract is:** | **STRs required:** |
| 1. a body corporate or natural person | a satisfactory and valid STR in respect of that body corporate or person. |
| 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR:  (i) on behalf of the partnership; and  (ii) in respect of each partner in the partnership that will be 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 the:  (i) trustee; and  (ii) the trust. |
| 1. a joint venture participant | a satisfactory and valid STR in respect of:  (i) each participant in the joint venture; and  (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator. |
| 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of:  (i) the relevant member of the Consolidated Group; and  (ii) the head company in the Consolidated Group. |
| 1. a member of a GST Group | a satisfactory and valid STR in respect of the:  (i) the GST Group member; and  (ii) the GST Group representative. |

* + 1. The Consultant must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Consultant becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Consultant or subconsultant 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 Contract or subcontract (as applicable). |
| 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 Consultant must provide the Commonwealth with copies of the STRs referred to in paragraph (b) or paragraph (c) within 5 business days after a written request by the Commonwealth.
    2. The Consultant:
       1. warrants that at the Award Date it holds a valid and satisfactory STR;
       2. must hold a valid and satisfactory STR at all times during the Services and, on request by the Commonwealth's Representative, provide to the Commonwealth's Representative a copy of any such STR;
       3. must ensure that any subconsultant, if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), holds a valid and satisfactory STR at all times during the term of the relevant subcontract; and
       4. must retain a copy of any STR held by any subconsultant in accordance with subparagraph (iii) and must, on request by the Commonwealth's Representative, provide to the Commonwealth's Representative a copy of any such STR.
    3. For the purposes of the Contract, 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. Commercial-in-Confidence Information

This clause 20 does not apply unless the Contract Particulars state that it applies.

* 1. General

The Consultant acknowledges that the Commonwealth is and will be subject to a number of Commonwealth requirements and policies, which support internal and external scrutiny of its 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 its contracts in other ways pursuant to its 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
     1. Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Consultant's information described in the Contract Particulars and received from the Consultant (**Commercial-in-Confidence Information**).
     2. The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
        1. disclosed by the Commonwealth 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 Contract;
        2. disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth's management, reporting or auditing requirements;
        3. disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
        4. disclosed by the Commonwealth 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 its functions, or statutory or portfolio responsibilities;
        6. authorised or required by law to be disclosed; or
        7. in the public domain otherwise than due to a breach of paragraph (a).
     3. The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Consultant as confidential in nature for the justifications given by the Consultant in the Contract Particulars and for the period asserted by the Consultant in the Contract Particulars.
     4. The Consultant:
        1. must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
        2. acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

1. MATERIAL CHANGE OR DEFENCE STRATEGIC INTEREST ISSUE
   1. Consultant's Warranty

Subject to clause 21.2, the Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2 it is not aware of any:

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

in relation to the Consultant.

* 1. Consultant must notify Material Change or Defence Strategic Interest Issue

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

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

the Consultant must immediately notify the Commonwealth's Representative, providing details of:

* + 1. the Material Change or Defence Strategic Interest Issue; and
    2. the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Defence Strategic Interest Issue on the interests of the Commonwealth.
  1. Commonwealth May Act
     1. Without limiting any other provision of the Contract, if:
        1. the Consultant notifies the Commonwealth's Representative under clause 21.2; or
        2. the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Material Change or Defence Strategic Interest Issue in relation to the Consultant,

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

* + - 1. notify the Consultant that the Commonwealth requires it to:
         1. meet with the Commonwealth to provide further information, documents or evidence in relation to, and otherwise clarify, the:

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

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

by the date specified in the notice;

* + - * 1. provide the Commonwealth's Representative with further information, documents or evidence in relation to, and otherwise clarify, the:

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

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

by the date specified in the notice; or

* + - 1. regardless of whether or not the Commonwealth has notified the Consultant under subparagraph (iii), notify the Consultant that:
         1. the Consultant may continue to perform the Services, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Consultant:

implementing Separation Arrangements; or

completing, duly executing and returning to the Commonwealth's Representative a deed in a form approved by the Commonwealth; or

by the date specified in the notice; or

* + - * 1. the Commonwealth has elected to treat the Material Change or Defence Strategic Interest Issue as an Insolvency Event for the purposes of clause 12.4.
    1. Without limiting any other provision of the Contract, if the Consultant:
       1. is in breach of the warranty under clause 21.1;
       2. fails to notify the Commonwealth's Representative under clause 21.2; or
       3. fails to comply with any of the requirements or conditions notified under clause 21.3,

then the Commonwealth may (in its absolute discretion) notify the Consultant that the Commonwealth has elected to treat the Material Change or Defence Strategic Interest Issue as an Insolvency Event for the purposes of clause 12.4.

* 1. Acknowledgements, Release and Indemnity

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

* + 1. acknowledges and agrees that if it:
       1. is in breach of the warranty under clause 21.1;
       2. fails to notify the Commonwealth's Representative under clause 21.2; or
       3. fails to comply with any of the requirements or conditions notified under clause 21.3,

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

* + - 1. terminate the Contract under clause 12.4 or otherwise at law; or
      2. take such failure into account in assessing any future registration of interest or tender lodged by the Consultant;
    1. acknowledges and agrees that the exercise of any of the Commonwealth's absolute discretions under this clause 21 is not capable of being the subject of a dispute or difference for the purposes of clause 13 or otherwise subject to review;
    2. releases the Commonwealth from all Claims arising out of in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 21;
    3. indemnifies the Commonwealth in respect of all Claims arising out of in connection with:
       1. the Consultant:
          1. being in breach of the warranty under clause 21.1;
          2. failing to notify the Commonwealth's Representative under clause 21.2; or
          3. failing to comply with any of the requirements or conditions notified under clause 21.3; or
       2. the exercise of any of the Commonwealth's absolute discretions under this clause 21; and
    4. acknowledges and agrees that the Commonwealth has entered into the Contract strictly on the basis of, and in reliance upon, the acknowledgments, warranties, releases and indemnities set out in this clause 21.

1. FINANCIAL VIABILITY
   * 1. The Consultant:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2:
           1. it has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants (in accordance with paragraph (b))); and
           2. each subconsultant engaged in the Services has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
        2. acknowledges and agrees that the Commonwealth has entered into the Contract, if applicable, has made payments to the Consultant under clause 10.5 and if applicable, proceeded to the Delivery Phase, strictly on the basis of and in reliance upon the warranties set out in clause 22.
     2. The Consultant must pay all subconsultants in accordance with the payment terms in all subcontracts.
     3. The Consultant must keep the Commonwealth's Representative fully and regularly informed as to all financial viability matters which could adversely affect:
        1. the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; and
        2. a subconsultant's ability to perform its activities in accordance with the relevant subcontract,

including any potential or actual change in:

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

to provide the Commonwealth's Representative and any independent financial adviser engaged by the Commonwealth with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Commonwealth, the Commonwealth's Representative and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:

* + - * 1. the Consultant has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants in accordance with paragraph (b)); or
        2. a subconsultant has the financial viability necessary to perform its activities in accordance with the relevant subcontract.
    1. If the Commonwealth considers (in its absolute discretion) that there could be or has been a change in:
       1. the Consultant's financial viability; or
       2. a subconsultant's financial viability,

which could adversely affect:

* + - 1. the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; or
      2. a subconsultant's ability to perform its activities in accordance with the relevant subcontract,

the Commonwealth's Representative may (in its absolute discretion) direct the Consultant to take such steps as the Commonwealth considers necessary to secure the performance of the Services, Completion and the meeting of its obligations under the Contract.

* + 1. If the Commonwealth's Representative gives a direction under paragraph (e), then the Consultant must take such steps as the Commonwealth considers necessary to better secure a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
    2. The Consultant acknowledges and agrees that:
       1. nothing in clause 22 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity;
       2. neither the Commonwealth nor the Commonwealth's Representative is required to exercise any discretion under clause 22 for the benefit of the Consultant (or any subconsultant);
       3. clause 22 does not give the Consultant (or any subconsultant) any rights; and
       4. the exercise or failure to exercise a discretion under clause 22 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 of the Contract or otherwise subject to review.
    3. Unless otherwise approved by the Commonwealth's Representative, the Consultant must ensure that each subcontract includes provisions equivalent to the obligations of the Consultant in clause 22.

1. Child Safety
   * 1. If any part of the Services involves the Consultant employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Consultant agrees:
        1. without limiting its other obligations under the Contract, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
        2. if requested, provide the Commonwealth at the Consultant's cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.
     2. When child safety obligations may be relevant to a subcontract made in connection with the Contract, the Consultant must ensure that any such subcontract entered into by the Consultant for the purposes of fulfilling the Consultant's obligations under the Contract imposes on the subcontractor the same obligations regarding child safety that the Consultant has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.
2. Modern Slavery
   * 1. The Consultant must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services.
     2. The Consultant must ensure that the people referred to in clause 4.5(a) and other personnel responsible for managing the operations and supply chains used in the performance of the Services have undertaken suitable training to be able to identify and report Modern Slavery.
     3. If at any time the Consultant becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services, the Consultant must:
        1. promptly notify the Commonwealth's Representative of the Modern Slavery practices and provide any relevant information requested by the Commonwealth's Representative;
        2. as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
        3. regularly update the Commonwealth's Representative of the steps taken by it in accordance with subparagraph (ii).
     4. For the purposes of this clause 24, Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

CONTRACT PARTICULARS

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS** | | | | | | | |
| **Additional Host Nation Requirements:** (Clause 1.1) | |  | | | | | |
| **Commonwealth's Representative:** (Clause 1.1) | | The person holding the position of ***[INSERT POSITION TITLE]*** for the time being ***[INSERT NAME]***. | | | | | |
| **Consultant:** (Clause 1.1) | | ***[INSERT LEGAL NAME AND ABN]*** | | | | | |
| **Consultant's Representative:** (Clause 1.1) | | The person holding the position of ***[INSERT POSITION TITLE]*** for the time being ***[INSERT NAME]***. | | | | | |
| **Contract:** (Clause 1.1) | | The other documents forming part of the Contract are:  ***[INSERT OTHER DOCUMENTS FORMING PART OF THE CONTRACT; OR***  No other documents form part of the Contract.*]* | | | | | |
| **Date for Delivery Phase Agreement:** (Clause 1.1) | | ***[INSERT DATE FOR DELIVERY PHASE AGREEMENT; OR***  Not applicable.*]* | | | | | |
| **Date for Delivery Phase Approval:** (Clause 1.1) | | ***[INSERT DATE FOR DELIVERY PHASE APPROVAL; OR***  Not applicable.*]* | | | | | |
| **ESD Principles (additional):** (Clause 1.1) | | ***[INSERT ADDITIONAL ESD PRINCIPLES; OR***  None specified.*]* | | | | | |
| **Executive Negotiators:** (Clause 1.1) | | **Commonwealth**:  The person holding the position of Assistant Secretary Indo-Pacific Enhanced Engagement Branch.  **Consultant**:  The person holding the position of ***[INSERT POSITION TITLE]*** for the time being ***[INSERT NAME]*** | | | | | |
| **Host Nation:** (Clause 1.1) | |  | | | | | |
| **Indicative Project End Date:** (Clause 1.1) | | ***[INSERT DATE; OR***  Not applicable.*]* | | | | | |
| **Project Contracts:** (Clause 1.1) | | ***[INSERT THE NAMES OF THE CONTRACTS THAT THE CONSULTANT WILL ADMINISTER OR MANAGE ON BEHALF OF COMMONWEALTH: OR***  Not applicable.*]* | | | | | |
| **Project Plans:** (Clause 1.1) | | ***[INSERT PROJECT PLANS REQUIRED E.G. ENVIRONMENTAL MANAGEMENT PLAN; METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES; WORK HEALTH AND SAFETY PLAN; AND/OR SITE MANAGEMENT PLAN.***  ***A METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES WILL BE REQUIRED IF THE SERVICES ARE TO BE CARRIED OUT ON OR IN THE VICINITY OF AN AIRFIELD.***  ***A WORK HEALTH AND SAFETY PLAN WILL BE REQUIRED IF THERE IS A RISK TO WORKERS AND OTHER PERSONS ARISING FROM THE CARRYING OUT OF THE SERVICES; OR***  None specified.*]* | | | | | |
| **Site:** (Clause 1.1) | | ***[INSERT A DESCRIPTION OF THE LOCATION OF THE SITE OR REFER TO AN ATTACHMENT IF SITE MAP IS TO BE USED AS REFERENCE]*** | | | | | |
| **Site Management Plan:** (Clause 1.1) | | ***[INSERT ANY MATTERS REQUIRED TO BE ADDRESSED IN THE SITE MANAGEMENT PLAN; OR***  None specified.*]* | | | | | |
| **Statutory Requirements (additional):** (Clause 1.1) | | (IPACE Supplier Code of Conduct and Infrastructure Directorate Dispensations Process (each as provided by the Commonwealth's Representative, as may be amended by the Commonwealth from time to time), unless otherwise stated) | | | | | |
| **Work Health and Safety Plan (additional):** (Clause 1.1) | | ***[INSERT; OR***  Not applicable.*]* | | | | | |
| **Days which are not a "business day" (additional):**  (Clause 1.2(l)(iii)) | | (27, 28, 29, 30 and 31 December, unless otherwise stated) | | | | | |
| **Governing Law:** (Clause 1.3(a)) | | (The law in the State of New South Wales, Australia applies unless otherwise stated) | | | | | |
| **CLAUSE 2 - ROLE OF THE CONSULTANT** | | | | | | | |
| **Subconsultants:** (Clause 2.9(a)) | | **Subconsultant** | | **Services** | | | |
| ***[INSERT]*** | | ***[INSERT DESCRIPTION]*** | | | |
|  | |  | | | |
| **Statutory Requirements with which the** [**Consultant**](#Consultant) **does not need to comply:** (Clause 2.10(a)(i)) | | ***[INSERT DESCRIPTION; OR***  The Consultant must comply with all Statutory Requirements.*]* | | | | | |
| **Approvals which the Consultant is to assist the Commonwealth to apply for and obtain:** (Clause 2.10(a)(ii)A) | | ***[INSERT DESCRIPTION OF SPECIFIC APPROVALS; OR***  The Consultant is to assist with applying for and obtaining all necessary Approvals.*]* | | | | | |
| **Co-ordination with other projects/programs** (Clause 2.13) | | Clause 2.13 ***[DOES/DOES NOT]*** apply. (Clause 2.13 does not apply unless otherwise stated)  **Other Project/Program:**  ***[INSERT DESCRIPTION OF OTHER PROJECT/ PROGRAM; OR***  None specified.*]* | | | | | |
| **Environment:** (Clause 2.14) | | Clause 2.14 ***[DOES/DOES NOT]*** apply. (Clause 2.14 does not apply unless otherwise stated) | | | | | |
| **Services Not Included:** (Clause 2.15) | | ***[INSERT DESCRIPTION OF SERVICES NOT INCLUDED; OR***  None specified.*]* | | | | | |
| **Site Restrictions:** (Clause 2.16) | | ***[INSERT DESCRIPTION OF SITE RESTRICTIONS; OR***  None specified.*]* | | | | | |
| **Insurance policies required to be obtained by the Consultant:**  (Clause 2.20) | | [[**Public Liability Insurance**](#PublicLiabilityInsurance)](#PublicLiabilityInsurance)  If written on an occurrence basis:  Amount of Cover: $***[INSERT]*** for each and every occurrence for public liability claims.  If written on a claims made basis:  Amount of Cover: $***[INSERT]*** per claim and $***[INSERT]*** in the aggregate.  ***[FOR WHICHEVER OF OCCURRENCE BASIS OR CLAIMS MADE BASIS DOES NOT APPLY, INSERT "N/A" AFTER THE $ REFERENCES]***  ***[COMMONWEALTH TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS]*** | | | | | |
| [[**Workers Compensation Insurance**](#WorkersCompensationInsurance)](#WorkersCompensationInsurance)  Amount of Cover: Amount of Cover prescribed by Statutory Requirement in each State or Territory or international jurisdiction in which the Services are performed or the Consultant's employees perform work, are employed or normally reside. | | | | | |
| [[**Professional Indemnity Insurance**](#ProfessionalIndemnityInsurance)](#ProfessionalIndemnityInsurance)  Amount of Cover: $***[INSERT]*** per claim and $***[INSERT]*** in theaggregate.  ***[COMMONWEALTH TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS]*** | | | | | |
| **Employers' Liability Insurance**  Amount of Cover: The amount that a prudent, competent and experienced consultant undertaking the Services would purchase which must not be less than $***[INSERT]***.  ***[EMPLOYERS' LIABILITY INSURANCE IS REQUIRED IF THE SERVICES ARE PERFORMED OR THE CONSULTANT'S EMPLOYEES PERFORM WORK, ARE EMPLOYED OR NORMALLY RESIDE IN WESTERN AUSTRALIA OR ANY JURISDICTION OUTSIDE AUSTRALIA]*** | | | | | |
| **Other Insurances:** (Clause 2.20(a)(v))  ***[COMMONWEALTH TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED, E.G. TRAVEL INSURANCE (SEE BELOW)***  **Travel insurance** -such insurance to cover all on Site personnel for all work related travel risks, including to provide for medical evacuation. Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Services would purchase.***]*** | | | | | |
| **Minimum amounts of subconsultants' Professional Indemnity Insurance:** (Clause 2.20(h)) | | Amount of Cover: $***[INSERT]*** per claim and $***[INSERT]*** in the aggregate.  ***[COMMONWEALTH AND COMMONWEALTH'S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS]*** | | | | | |
| **Period for maintenance of Public Liability Insurance if written on a claims made basis:** (Clause 2.22(a)(ii)) | | Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years. | | | | | |
| **Period for maintenance of Professional Indemnity Insurance:**  (Clause 2.22(c)) | | Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years. | | | | | |
| **CLAUSE 4 - PERSONNEL** | | | | | | | |
| **Assistant Commonwealth's Representatives and their functions:** (Clause 4.4(b)) | | **Person** | | **Function** | | | |
| ***[INSERT NAME]*** | | ***[INSERT FUNCTIONS TO BE PERFORMED]*** | | | |
| ***[INSERT NAME]*** | | ***[INSERT FUNCTIONS TO BE PERFORMED]*** | | | |
| [[**Consultant**](file:///C:\NRPortbl\tanyamartens\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\0L25HSEZ\#Consultant)**'s**](file:///C:\NRPortbl\tanyamartens\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\0L25HSEZ\#Consultant) **key people:**  (Clause 4.5(a)) | | **Person** | | **Position** | | | |
| ***[INSERT NAME]*** | | ***[INSERT ROLE]*** | | | |
| ***[INSERT NAME]*** | | ***[INSERT ROLE]*** | | | |
| **CLAUSE 5 - DOCUMENTATION** | | | | | | | |
| **DCAP Workshop:** (Clause 5.8(b)) | | A DCAP Workshop ***[IS/IS NOT]*** required. (A DCAP Workshop is not required unless otherwise stated) | | | | | |
| **Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:** (Clause 5.10(a)) | | 1. Formal Agreement; 2. Terms of Engagement; 3. Special Conditions (if any); 4. Contract Particulars; 5. Fee Schedule; 6. Brief; 7. Project DCAP; and 8. any other document forming part of the Contract (if any) specified in the relevant item in clause 1.1 of these Contract Particulars; 9. Consultant Material (which has not been rejected under clause 5.2); and 10. Project Plans. | | | | | |
| **Number of days for submission of Project Plans:** (Clause 5.13(a)(ii)A) | | Environmental Management Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Site Management Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Work Health and Safety Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Other: ***[SPECIFY]*** | | ***[INSERT (IF APPLICABLE)]*** | | | |
| **Number of days for review of Project Plans:** (Clause 5.13(a)(ii)B) | | Environmental Management Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Site Management Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Work Health and Safety Plan | | ***[INSERT (IF APPLICABLE)]*** | | | |
| Other: ***[SPECIFY]*** | | ***[INSERT (IF APPLICABLE)]*** | | | |
| **CLAUSE 7 - TIME** | | | | | | | |
| **Maximum intervals between program updates by Consultant:** (Clause 7.2(a)(ii)) | | ***[INSERT A TIME PERIOD FOR PROGRAM UPDATES, e.g.***  Monthly*]* | | | | | |
| **Program methodology and format:** (Clause 7.2(a)(iv)) | | Prepared as a computerised "Critical Path Method" network precedence diagram, and compatible with Microsoft Project (or equivalent format approved by the Commonwealth's Representative) | | | | | |
| **CLAUSE 8 - PHASES - DEVELOPMENT PHASE AND DELIVERY PHASE** | | | | | | | |
| **Phases:** (Clause 8) | | Clause 8 ***[DOES/DOES NOT]*** apply. (Clause 8 applies unless otherwise stated) | | | | | |
| **CLAUSE 10 - PAYMENT** | | | | | | | |
| **Times for submission of payment claims by the Consultant to Commonwealth's Representative:** (Clause 10.2(a)) | | Monthly on the day of each month. | | | | | |
| **Number of business days for payment:** (Clause 10.5(b)) | | To the extent that the relevant part of the Services is carried out in:  1. Queensland or New South Wales: 5; or  2. any other State or Territory or the Host Nation: 10 | | | | | |
| **Interest Rate:**  (Clause 10.9) | | The Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator. | | | | | |
| **Taxes for which the Commonwealth bears the risk:**  (Clause 10.13) | |  | | | | | |
| **Accounting records (additional):** (Clause 10.15(b)) | | ***[INSERT DETAILS FOR ADDITIONAL ACCOUNTING RECORDS (IF APPLICABLE)]*** | | | | | |
| **CLAUSE 11 - PAYMENT TIMES PROCUREMENT CONNECTED POLICY** | | | | | | | |
| **Commonwealth Entity:** (Clause 11.1(b)(iii)) | | ***[INSERT RELEVANT COMMONWEALTH ENTITY, E.G. DEPARTMENT OF DEFENCE]*** | | | | | |
| **CLAUSE 12 - TERMINATION** | | | | | | | |
| **Number of days to remedy breach:** (Clause 12.3(c) and 12.4(b)) | | ***[INSERT]*** days | | | | | |
| **CLAUSE 13 - DISPUTE RESOLUTION** | | | | | | | |
| **Industry expert who will conduct expert determinations:**  (Clause 13.3(a)(i)) | | ***[INSERT NAME, COMPANY (IF APPLICABLE) AND ABN OF SPECIFIC EXPERT; OR***  None specified.*]* | | | | | |
| **Nominating authority for expert:**  (Clause 13.3(a)(ii)) | | ***[INSERT NAME, COMPANY (IF APPLICABLE) AND ABN OF SPECIFIC NOMINATING AUTHORITY]*** (The President for the time being of the Resolution Institute unless otherwise specified) | | | | | |
| **CLAUSE 14 - NOTICES** | | | | | | | |
| **Address and email address, for the giving or serving of notices, upon:** (Clause 14.7) | | **Commonwealth:**  **Attn:** ***[INSERT NAME/POSITION]***  **Address:  *[INSERT STREET ADDRESS (DO NOT USE PO BOX)] [INSERT SUBURB, STATE, POSTCODE]***  **Email:** ***[INSERT EMAIL]***  **Consultant:**  **Attn:** ***[INSERT NAME/POSITION]***  **Address:  *[INSERT STREET ADDRESS (DO NOT USE PO BOX)] [INSERT SUBURB, STATE, POSTCODE]***  **Email:** ***[INSERT EMAIL]*** | | | | | |
| **CLAUSE 17 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION** | | | | | | | |
| **Sensitive and Classified Information:** (Clause 17) | | Clause 17 ***[DOES/DOES NOT]*** apply. (Clause 17 does not apply unless otherwise stated) | | | | | |
| **Current security clearance level/s:** (Clause 17.2(b)) | | ***[INSERT, IF APPLICABLE]*** | | | | | |
| **Information technology environment accreditation or certification level/s:** (Clause 17.3(g)(i)D) | | ***[INSERT, IF APPLICABLE]*** | | | | | |
| **CLAUSE 18 - DEFENCE INDUSTRY SECURITY PROGRAM** | | | | | | | |
| **DISP:** (Clause18) | | Clause 18 ***[DOES/DOES NOT]*** apply. (Clause 18 does not apply unless otherwise stated) | | | | | |
| **Level of DISP Membership:** (Clause 18) | | DISP Membership ***[IS/IS NOT]*** required.  Where DISP Membership is required: | | | | | |
| **DISP Membership / Security Domain** | | | **Level** | | |
| DISP Membership | | | ***[INSERT LEVEL, WHICH MUST EQUAL THE HIGHEST DISP MEMBERSHIP REQUIRED FOR THE 4 DOMAINS BELOW. INSERT "NOT APPLICABLE" IN THIS AND BELOW ROWS IF DISP MEMBERSHIP IS NOT REQUIRED]*** | | |
| Governance | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Personnel Security | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Physical Security | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Information / Cyber Security | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| **CLAUSE 19 - GENERAL** | | | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 19.10) | | Clause 19.10 ***[DOES/DOES NOT]*** apply. (Clause 19.10 applies unless otherwise stated) | | | | | |
| **CLAUSE 20 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 20) | | Clause 20 ***[DOES/DOES NOT]*** apply. (Clause 20 does not apply unless otherwise stated) | | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 20.2) | | **Specific Information** | **Justification** | | | **Period of confidentiality** | |
|  |  | | |  | |

1. - BRIEF

*[COMMONWEALTH TO COMPLETE BRIEF, INCLUDING SCOPE OF SERVICES NOTING THAT THE IPACE PMCA PROFORMA SCOPE OF SERVICES SHOULD BE ADAPTED FOR THIS PURPOSE]*

Part 1 - The Project

1. Project Description

***[COMMONWEALTH TO INSERT DESCRIPTION OF THE PROJECT IN GENERAL AND ITS OBJECTIVES. THE ACTUAL SERVICES REQUIRED TO BE PERFORMED BY THE CONSULTANT ARE TO BE SET OUT IN PART 2 OF THE BRIEF - SCOPE OF SERVICES. THIS SECTION SHOULD INCLUDE INFORMATION REGARDING THE LOCATION OF THE PROJECT AND A DESCRIPTION OF THE RELEVANT BASE OR BASES (AS THE CASE MAY BE)]***

1. The Works under the Project

*[COMMONWEALTH TO INSERT BRIEF DESCRIPTION OF THE PHYSICAL WORKS TO BE DELIVERED UNDER THE PROJECT (IF ANY)]*

1. Key Issues and Risks

***[COMMONWEALTH TO INSERT KEY ISSUES AND RISKS FOR THE PROJECT. THESE SHOULD NOT REFER TO THE KEY ISSUES AND RISKS FOR THE SERVICES (WHICH ARE TO BE ADDRESSED IN Annexure 2 - PROJECT DCAP)]***

1. Commonwealth's Budget for the Project

*[COMMONWEALTH TO INSERT BUDGET FOR THE PROJECT (IF APPLICABLE)]*

1. Commonwealth's Indicative Program for the Project

***[COMMONWEALTH TO INSERT KEY DATES FOR THE PROJECT AND ENSURE THESE ALIGN WITH THE DATES IN THE CONTRACT PARTICULARS]***

1. Other Matters

***[COMMONWEALTH TO INSERT PROJECT SPECIFIC ISSUES NOT COVERED ABOVE]***

Part 2 - Scope of Services

***[COMMONWEALTH TO INSERT PROFORMA SCOPE OF SERVICES FROM DEQMS, AND TAILOR IT FOR THE PROJECT. THIS SECTION MUST SET OUT THE SERVICES THE CONSULTANT WILL PERFORM FOR THE COMMONWEALTH. TIME PERIODS MUST BE INCLUDED FOR RELEVANT ASPECTS OF THE SERVICES.***

***NOTE THE PROFORMA SCOPE OF SERVICES MAY INCLUDE REFERENCES TO THE DIP PANEL AGREEMENT (INCLUDING THE PANEL CONDITIONS) WHICH WILL NEED TO BE DELETED OR AMENDED AS RELEVANT]***

1. - Project DCAP
2. - Fee Schedule

***[INSERT APPLICABLE FEE STRUCTURE AND MILESTONE INFORMATION (IF RELEVANT) AND DELETE THOSE THAT ARE NOT APPLICABLE.]***

***[THE INFORMATION IN THE FEE SCHEDULE IS TO BE COMPLETED FOLLOWING SELECTION OF THE SUCCESSFUL TENDERER.]***

1. Fee

***[OPTION 1 - LUMP SUM ONLY (NO PHASES)]***

**Lump Sum**

|  |  |
| --- | --- |
| **FEE** (GST exclusive) | $ |

***[OPTION 2 - TWO PHASES (DEVELOPMENT PHASE AND DELIVERY PHASE)]***

**Development Phase - Lump Sum**

|  |  |
| --- | --- |
| **DEVELOPMENT PHASE FEE** (GST exclusive) | $ |

**Delivery Phase**

Refer to clause 8 of the Terms of Engagement.

The following information will be used to determine any adjustment to the Indicative Delivery Phase Fee as part of any transition to the Delivery Phase (if any).

|  |  |
| --- | --- |
| **INDICATIVE DELIVERY PHASE FEE** (GST exclusive) | $ |

|  |
| --- |
| **INDICATIVE DELIVERY PHASE FEE PROPOSAL** |
|  |

|  |
| --- |
| **INDICATIVE DELIVERY PHASE RESOURCE PLAN** |
|  |

2. Milestone Fee Payment Schedule *[OPTIONAL - INCLUDE IF A MILESTONE FEE PAYMENT SCHEDULE WILL APPLY]*

***[OPTION 1 - LUMP SUM ONLY (NO PHASES)]***

| **Milestone name** | **Milestone description** | **Date for Completion** | **Amount (GST exclusive)** |
| --- | --- | --- | --- |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |

***[OPTION 2 - TWO PHASES (DEVELOPMENT PHASE AND DELIVERY PHASE)]***

| **Milestone name** | **Milestone description** | **Date for Completion** | **Amount (GST exclusive)** |
| --- | --- | --- | --- |
| **DEVELOPMENT PHASE** | | | |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| **DELIVERY PHASE** | | | |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |
| ***[INSERT]*** | ***[INSERT]*** | ***[INSERT]*** |  |

**3. Reimbursable Costs**

The payment of reimbursable costs is deemed to be included within the Fee payable to the Consultant and therefore there is no separate and additional entitlement to reimbursable costs (including any travel costs, car hire and taxi fares, administrative costs or other disbursements).

1. - SCHEDULE OF RATES

|  |  |  |
| --- | --- | --- |
| **Position** | **Hourly Rate (exclusive of GST)** | **Daily Rate (exclusive of GST)** |
|  |  |  |
|  |  |  |
|  |  |  |

***[INCLUDE THE FOLLOWING WHERE CLAUSE 1 OF THE SPECIAL CONDITIONS IS NOT INCLUDED: For the avoidance of doubt, the Schedule of Rates is not subject to any adjustment for rise and fall in costs.]***

1. - SPECIAL CONDITIONS

***[THE COMMONWEALTH IS REQUIRED TO IDENTIFY ANY SPECIAL CONDITIONS WHICH MAY BE REQUIRED AND ADVISE THE PROJECT'S LEGAL ADVISER (IF ANY).]***

1. ADJUSTMENT OF SCHEDULE OF RATES

***[THE COMMONWEALTH SHOULD CONSIDER WHETHER THIS SPECIAL CONDITION SHOULD APPLY AND WHETHER ANY AMENDMENTS MAY BE REQUIRED, HAVING REGARD TO WHETHER THE SERVICES ARE BEING CARRIED OUT IN AUSTRALIA AND THE LOCATION OF THE TENDERERS]***

* + 1. The Fee is not subject to rise and fall.
    2. All rates and prices in the Schedule of Rates are to be adjusted (using the formula set out below) annually on the anniversary of the Award Date.
    3. The following formula shall be used to calculate the rise and fall of the Schedule of Rates:

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

Where:

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

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

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

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

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

|  |  |  |
| --- | --- | --- |
| **Description** | **Table** | **Group** |
| ABS Catalogue 6345.0 Wage Price Indexes | Table 5 - Total Hourly Rates of Pay excluding Bonuses | Private Sector - Professional, Scientific and Technical Services |

* + 1. If the Price Revision Index described in paragraph (d) above is no longer published, the Commonwealth will apply the index which provides the most similar calculation as determined by the Commonwealth's Representative (acting reasonably).

1. QUALIFICATIONS OF KEY PEOPLE
   * 1. The Consultant must ensure that all nominated key people holding the position of REB Member or TEB Member (or equivalent) and at least one additional nominated key person, and any replacement person approved under clause 4.5 of the Terms of Engagement has completed a Certificate IV in Procurement and Contracting (or equivalent approved by the Commonwealth's Representative).
     2. For the purposes of paragraph (a), the key people as at the Award Date are:
        1. [*Name of key persons to be inserted following selection of successful Consultant*].