

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

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

MAINTENANCE SERVICES CONTRACT (INTERNATIONAL)

(MSCI-2024)

***[Last amended: 20 MARCH 2024 - 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 contractor specified in the Contract Particulars (Contractor)

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

(a) attached Conditions of Contract; and

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

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

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

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

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

CONDITIONS OF CONTRACT

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

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

ACM

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

Act of Prevention

1. Any one of:
   1. a breach of the Contract by the Commonwealth;
   2. any other act or omission of the Commonwealth, the Contract Administrator or an Other Contractor engaged by the Commonwealth; or
   3. a Variation the subject of a direction by the Contract Administrator,
2. but excluding any act or omission of the Commonwealth, the Contract Administrator or an Other Contractor engaged by the Commonwealth in accordance with or otherwise permitted by the Contract.

Additional Host Nation Requirements

1. Means those requirements set out in the Contract Particulars.

Anti-Corruption Laws

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

Annual Requirements

1. In respect of a year during the term of the Contract, the Commonwealth’s requirements for the Services to be provided by the Contractor in that year (including information, documents and other material) as provided by or on behalf of the Contract Administrator to the Contractor prior to commencement of that year.

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any national, state or local authority, body or other organisation having any jurisdiction in connection with a Site or the Services or under any applicable Statutory Requirement, which must be obtained or satisfied to carry out the Services.

Approved Security

1. An unconditional undertaking (duly stamped) in the form:
   1. set out in the Schedule of Collateral Documents; or
   2. required by the Contract Administrator,
2. and otherwise on terms and given by a financial institution approved by the Commonwealth.

Asbestos

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

Asset

1. A building, asset or infrastructure to which Services will be provided.

Australian Privacy Principle

1. Has the meaning given in the Privacy Act.

Authorised Subcontract

An agreement which is entered into by the Contractor with a subcontractor:

* 1. in accordance with the Contract (including clauses 9.4, 9.5 or 9.6 as applicable);
  2. which includes the provisions required by the Contract; and
  3. which includes rates which are no less favourable than the rates in Annexure 3.

Award Date

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

Change of Control

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

Claim

1. Includes any claim for an increase in the Fee, for payment of money (including damages) or for an extension of time:
   1. under, arising out of or in connection with the Contract, including any direction of the Contract Administrator;
   2. arising out of or in connection with 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.

Code of Practice

1. A code of practice approved in accordance with the WHS Legislation.

Commonwealth

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

Commonwealth Material

1. All material provided to the Contractor by the Commonwealth, including documents, equipment, machinery and data (stored by any means).

Commonwealth Risk

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

Completion

1. In respect of any Services, the stage at which those Services have been completed in accordance with the Contract and, to the extent relevant, the Asset to which the Services relate is capable of being used for its intended purposes and is free from any Defect.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Contract;
     2. the Contract Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way connected with the Services, which:
        1. by its nature is confidential;
        2. the Contractor 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 Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which:
     1. is in the possession of the Contractor without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf;
     2. is in the public domain otherwise than due to a breach of clause 21; or
     3. has been independently developed or acquired by the Contractor.

Confidential Information Incident

1. A single breach or a series of breaches of clause 21, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

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

Consequential Loss

1. Means any:
   1. loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the Commonwealth property) or loss of production; or
   2. financing costs,
2. whether present or future, fixed or unascertained, actual or contingent.

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).

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:
   1. the Formal Agreement;
   2. these Conditions of Contract;
   3. the Contract Particulars;
   4. the Special Conditions;
   5. the Specification;
   6. the other Annexures to these Conditions of Contract;
   7. the Service Requests (if any);
   8. Contract Management Plans; and
   9. the other documents (if any) specified in the Contract Particulars.

Contract Administrator

1. The person specified in the Contract Particulars or any other person nominated by the Commonwealth from time to time under clause 5.2 to replace that person.

Contract Documents

1. All data, documents, drawings, records, programs and information (including information relating to the Contractor's compliance with the WHS Legislation) and other material:
   1. produced; or
   2. provided, or required to be provided, to the Commonwealth or the Contract Administrator,
2. under, for the purposes of, arising out of or in connection with the Contract or the Services by, for or on behalf of the Contractor (including by subcontractors).

Contract Management Plans

1. The:
   1. Fraud and Corruption Control Plan;
   2. Operational Plan;
   3. Work Health and Safety Plan;
   4. Local Industry Capability Plan;
   5. Transition-In Plan;
   6. Transition-Out Plan; and
   7. additional plans specified in the Contract Particulars and finalised by the Contractor under clause 10.9(a)(ii),
2. as updated or amended under clause 10.9.

Contract Particulars

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

Contractor

1. The person specified in the Contract Particulars.

Contractor’s Representative

1. The person specified in the Contract Particulars or any other person from time to time appointed as the Contractor's Representative in accordance with clause 5.5.

Control

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

Criminal Code

1. The Criminal Code enacted by the *Criminal Code Act* *1995* (Cth).

Cyber Security Event

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

Cyber Security Incident

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

Dangerous Goods

1. Has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.

Deed of Guarantee, Undertaking and Substitution

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

Defect

1. Any defect, fault or omission:
   1. in any Services; or
   2. of an Asset, to the extent caused by an act or omission of the Contractor in performance of the Services or failure to perform the Services,

including any aspect of the Services which is not performed in accordance with the requirements of the Contract or any of the matters referred to in clauses 10.5(a)(ii) - 10.5(a)(v).

Defence

1. The Australian Department of Defence.

DEQMS

1. The Defence Estate Quality Management System website available at [www.defence.gov.au/deqms](http://www.defence.gov.au/deqms).

Direction

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

Employers' Liability Insurance

1. A policy of insurance covering the liability of the Contractor to its employees at common law, for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Environment

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

Environmental Harm

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

Environmental Incident

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

Environmental Objectives

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

Expert Determination Agreement

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

Fee

1. The sum of:
   1. the Management Fee;
   2. the Transition-In Fee;
   3. the Scheduled Maintenance Services Fee; and
   4. the Reactive Maintenance Services Fee.

Financial Representative

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

Force Majeure

1. The occurrence of any of the following exceptional events or circumstances:
   1. a Commonwealth Risk; and
   2. a natural catastrophe comprising an earthquake, cyclone, tsunami, volcanic activity, flood, fire, landslide, epidemic or pandemic,
2. provided that it is an event or circumstance:
   1. which is beyond a party's control;
   2. which such party could not reasonably have provided against before entering into the Contract;
   3. which, having arisen, such party could not reasonably have avoided or overcome;
   4. which is not substantially attributable to the other party; and
   5. of which such party did not have, or which a prudent contractor acting reasonably in the circumstances could not have been expected to have, knowledge prior to the submission of the Contractor's tender.

Fraud

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

Fraud and Corruption Control Plan

1. The plan prepared by the Contractor and finalised under clause 10.9 which must set out in adequate detail the strategy and procedures the Contractor will implement to prevent, monitor, detect, investigate and address instances of known or suspected Fraud or corruption arising in connection with the Contract and the Services.
2. The Fraud and Corruption Control Plan must, at a minimum:
   1. be consistent with the Commonwealth Fraud Control Framework 2017 (as published by the Commonwealth and amended from time to time);
   2. contain appropriate Fraud and corruption prevention, detection, investigation, reporting and audit processes and procedures, including in respect of the procurement and payment of subcontractors;
   3. include protocols for detecting and handling incidents of known or suspected Fraud or breach of applicable Anti-Corruption Laws;
   4. include mechanisms on how the Contractor will ensure that its officers, employees, agents and subcontractors are made aware of what constitutes Fraud, bribery and corruption, including risks and arrangements for handling incidents relating to the Contractor;
   5. outline key roles and responsibilities of all Contractor personnel regarding Fraud and corruption control; and
   6. address any:
      1. other relevant matters to ensure the Contractor complies with its obligations under clause 19 with regards to Fraud, anti-bribery and corruption;
      2. relevant Statutory Requirements, including applicable Anti-Corruption Laws; and
      3. other matters required by the Contract Administrator.

Good Industry Practice

1. The degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled, qualified and experienced provider of services similar to the Services.

Governmental Requirements

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

GST

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

GST Group

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

GST Legislation

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

Hazardous Chemical

1. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) and includes:
   1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
   2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
   3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
   4. Schedule 11 Hazardous Chemicals;
   5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
   6. Schedule 15 Chemical; and
   7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Hazardous Substances

1. Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.

Host Nation

1. The country specified in the Contract Particulars.

Information Security Requirements

1. Means the:
   1. Australian Government's ProtectiveSecurityPolicy Framework available at https://www.protectivesecurity.gov.au;
   2. Australian Government's Information Security Manual available at https://www.cyber.gov.au/ism; and
   3. Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security,
2. 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 Contract Administrator, as updated, superseded or replaced from time to time.

Initial Term

1. The period specified in the Contract Particulars.

Innovation

1. Has the meaning given to that term in clause 3.12(a)(i).

Insolvency Event

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

Key Performance Indicator or KPI

1. The KPIs set out in the Specification.

Level 1 Representatives

1. The ‘Level 1 Representatives’ set out in the Contract Particulars (or such replacement representatives as notified by the relevant party to the other from time to time).

Level 2 Representatives

1. The ‘Level 2 Representatives’ set out in the Contract Particulars (or such replacement representatives as notified by the relevant party to the other from time to time).

Level 3 Representatives

1. The ‘Level 3 Representatives’ set out in the Contract Particulars (or such replacement representatives as notified by the relevant party to the other from time to time).

Local Industry Capability Plan

1. The plan prepared by the Contractor and finalised under clause 10.9, which must be based on the draft Local Industry Capability Plan prepared by the Contractor and lodged as part of its tender for the Services.

Long Service Leave Legislation

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

Management Fee

1. The fee calculated in accordance with [#insert relevant Annexure reference].

Management Services

1. The Management Services described in the Specification.

Material Change

1. Any actual, potential or perceived material change to the circumstances of the Contractor including any change:
   1. arising out of or in connection with:
      1. a Change of Control;
      2. an Insolvency Event; or
      3. the Contractor'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 Contractor lodged a registration of interest, the Contractor's registration of interest;
      2. if the Contractor lodged a tender, the Contractor's tender; or
      3. any other information, documents, evidence or clarifications provided by the Contractor 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.

Modern Slavery

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

Modern Slavery Act

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

Modern Slavery Laws

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

Moral Rights

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

Moral Rights Consent

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

NATA

1. National Association of Testing Authorities Australia.

Operational Plan

1. The plan prepared by the Contractor and finalised under clause 10.9, which must set out in adequate detail the Contractor’s approach to:
   1. delivering and performing the Services, including to management of Service Requests, security, Site access, Variations, extensions of time to Times or Dates for Completion and management of Assets;
   2. satisfying the Annual Requirements;
   3. recruitment and engagement with its personnel and subcontractors, including the Contractor’s approach to induction, training, supervision and performance of its personnel and subcontractors and management of disputes with its subcontractors;
   4. the Contractor’s approach to quality assurance, including in respect of non-complying Services and Defects;
   5. ensuring business continuity, including in the event of Force Majeure;
   6. customer service and communication with the Commonwealth and the Host Nation; and
   7. ensuring that the Key Performance Indicators are met or exceeded.

and any other matters required by:

* 1. the Contract;
  2. the Specification; or
  3. the Contract Administrator.

Option Period

1. The period (if any) specified in the Contract Particulars.

Other Contractor

1. Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person engaged to do work or provide services other than the Contractor and its subcontractors.

Ozone Depleting Substance

1. Any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.

Personal Information

1. Has the meaning given in the Privacy Act.

Privacy Act

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

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Contractor and all subcontractors 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 Contractor (or any subcontractor),
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 or Employers' Liability Insurance.

Quarterly Report

1. Means a report which includes, at a minimum:
   1. in respect of the Contractor’s performance of the Services during the preceding quarter:
      1. an overview of the Services provided by the Contractor during that quarter;
      2. details of the Contractor’s performance against the Key Performance Indicators during the relevant quarter;
      3. if the Contractor has failed to achieve a Key Performance Indicator during the relevant quarter, the reason for that failure;
   2. confirmation that, during the preceding quarter, the Contractor has managed the Services so as to maximise the achievement of the Environmental Objectives;
   3. any Innovations identified by the Contractor during the preceding quarter; and
   4. any other information required by the Specification or the Contract Administrator.

Reactive Maintenance Services

1. Has the meaning given to that term in the Specification.

Reactive Maintenance Services Fee

1. The fee calculated in accordance with [#insert relevant Annexure reference].

Reactive Maintenance Services Threshold

1. The amount stated in the Contract Particulars.

Recipient

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

Reimbursable Costs

1. The aggregate of:
   1. all amounts properly and actually incurred and payable by the Contractor to subcontractors for the performance of Reimbursable Work in accordance with Authorised Subcontracts:
      1. excluding:
         1. any adjustments in accordance with the subcontracts for the performance of Variations;
         2. amounts incurred and payable to subcontractors for correcting Defects;
         3. time spent travelling to, from and between Sites;
         4. attendance at a Site to gain access where access is delayed;
         5. time spent on off-site activities;
         6. amounts (including damages) paid or payable by the Contractor to any subcontractor by reason of any breach of contract or other wrongful act or omission by the Contractor, including a breach by the Contractor of the subcontract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of the Commonwealth; and
         7. other amounts not properly incurred in respect of the execution of Reimbursable Work or which the Contract provides are to be borne by the Contractor or to be a debt due from the Contractor to the Commonwealth; and
      2. adjusted for Variations by the amounts determined in accordance with clause 12; and
   2. any other amounts stated in the Contract to be ‘Reimbursable Costs’,

less, in respect of any Defect, the amount that, in the opinion of the Commonwealth, would have been payable to subcontractors for correcting the Defect if an instruction had been made under clause 10.6.

Reimbursable Work

1. That part of the Services for which the Contractor must engage subcontractors, being all of the Services other than the Management Services.

Related Body Corporate

1. Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth) or equivalent entity under any other Statutory Requirement (including a subsidiary or holding company of the Contractor).

Schedule 11 Hazardous Chemical

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

Schedule 15 Chemical

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

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Defence Maintenance Services Contract (International) (MSCI-2024):
   1. posted on DEQMS (or any alternative location notified by the Commonwealth), as may be amended from time to time by the Commonwealth; and
   2. which as at the Award Date include the contracts and other documents specified in the Contract Particulars.

Scheduled Maintenance Services

1. Means the Scheduled Maintenance Services described in the Specification**.**
2. **Scheduled Maintenance Services Fee**
3. The fee calculated in accordance with [#insert relevant Annexure reference].

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 Contractor by the Commonwealth, the Contract Administrator 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 Contractor knows or ought to know is subject to, or ought to be treated as, sensitive or classified information in accordance with any Statutory Requirement of Australia (including the Information Security Requirements); and
   2. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

1. A single breach or a series of breaches of clause 22, any Separation Arrangements (in respect of Sensitive and Classified Information), any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

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

Separation Arrangement

1. Any arrangement that the Contractor:
   1. has in place;
   2. will put in place; or
   3. is required to put in place in accordance with a Statutory Requirement or this Contract (including under clause 21.3),
2. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 21 and, if clause 22 applies, clause 22.

Service Request

1. A request issued by the Commonwealth to the Contractor accepting the Contractor’s offer to carry out the Reactive Maintenance Services and specifying:
   1. the Reactive Maintenance Services to be carried out by the Contractor;
   2. the Site and Asset in respect of which the Reactive Maintenance Services will be carried out; and
   3. the time within which the Reactive Maintenance Services must be Completed.

Services

1. The Management Services, the Scheduled Maintenance Services and, to the extent the subject of a Service Request or undertaken under clause 3.1(b), the Reactive Maintenance Services and include all tasks and things which it is necessary for the Contractor to perform or do to comply with the Contract.

Services Commencement Date

1. The date specified in the Contract Particulars.

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 place on or at which the Services are to be performed in respect of the Assets as described in the Specification and any other location at which the Contractor is required to perform the Services as directed by the Commonwealth in a Service Request or otherwise under the Contract.

Special Conditions

1. The special conditions as set out in Annexure 6.

Specification

1. The specification in Annexure 1.

Statement of Tax Record or STR

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

Statutory Requirements

1. Means:
   1. any law applicable to the Services, 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.

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 Contractor with Australia’s national security requirements, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements).

Subcontractor Deed of Covenant

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

Subcontractor Trust Account

1. Has the meaning given in clause 14(a)(ii).

Subcontractor Trust Account Trust Deed

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

Supplied Information

1. Any information (whether written, verbal or stored in electronic media) given or made available to the Contractor by or on behalf of the Commonwealth before or after the Award Date.

Synthetic Greenhouse Gas

1. Any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

Table of Variation Rates and Prices

1. The table (if any) in Annexure 3, containing rates and prices to be used for the purposes of valuing Variations under clause 12.3.

Tax or Taxes

1. 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.

Time or Date for Completion

1. Has the meaning given to that term in clause 11.1(c).

Transition-In Activities

1. The activities required to be carried out by the Contractor during the Transition-in Period to ensure that it is able to commence full performance of the Services on the Services Commencement Date, as described in further detail in the Specification.

Transition-In Fee

1. The fee calculated in accordance with the fees [#insert relevant Annexure reference].

Transition-In Period

1. The period from the Award Date to the Services Commencement Date.

Transition-In Plan

1. The plan prepared by the Contractor and finalised under clause 10.9, which must set out in adequate detail how, during the Transition-In Period, the Contractor will undertake the Transition-In Activities.
2. The Transition-In Plan must address, at a minimum:
   1. how the Contractor will establish and procure the labour and resources required for the Services, including subcontractors, vehicles, plant, equipment and office accommodation;
   2. the training and induction to be provided by the Contractor to its employees and subcontractors;
   3. how the Contractor will acquire any technology required for the performance of the Services;
   4. the procedures to be implemented by the Contractor to capture and report data under the Contract;
   5. the Contractor’s proposed mobilisation arrangements, including the process by which its operations on each Site and access arrangements will be established; and
   6. the Contractor’s program for the preparation, submission and finalisation of each other Contract Management Plan required to be finalised prior to expiry of the Transition-In Period,
3. so as to ensure that the Contractor can perform the Services in accordance with the Contract on and from the Service Commencement Date.

Transition-Out Activities

1. The activities specified in the Specification.

Transition-Out Period

1. The period specified in the Contract Particulars.

Transition-Out Plan

1. The plan prepared by the Contractor and finalised under clause 10.9, which must set out in adequate detail how, during the Transition-Out Period, the Contractor will undertake the Transition-Out Activities.
2. The Transition-Out Plan must address, at a minimum:
   1. how the Contractor intends to disengage from its obligation to provide the Services at the end of the term of the Contract, including in respect of its Subcontractors, vehicles, plant, equipment and office accommodation;
   2. how the Contractor intends to transfer responsibility for the provision of the Services to the Commonwealth or its nominee at the end of the term of the Contract;
   3. how the Contractor will continue to meet its contractual obligations up to the later of expiry of the term of the Contract and Completion of the last Service Request; and
   4. the transfer to the Commonwealth or its nominee of the Contract Documents held or controlled by the Contractor or its subcontractors, agents or suppliers, including proposed dates and methods of transfer.

Variation

1. Has the meaning given in clause 12.1 or the Specification, in the case of a variation to a Service Request.

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)*.*

Work Health and Safety Plan

1. The plan prepared by the Contractor and finalised under clause 10.9 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Services from a work health and safety perspective to ensure compliance with all Statutory Requirements (including where applicable, 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;
   2. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Services are being undertaken regarding consulting, cooperating and coordinating activities where the PCBU(s) at the workplace and the Contractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Services are carried out, including:
      1. incident (including notifiable incident) reporting procedures;
      2. preventative and corrective action procedures; and
      3. record-keeping and reporting requirements, including reporting to the Contract Administrator with respect to incidents and accidents under clause 3.23(d);
   4. any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
   5. the arrangements for the collection and recording, and any assessment, monitoring and review of any applicable safe work method statements;
   6. the procedures and arrangements for the management of work health and safety generally, including:
      1. details of the Contractor's work health and safety policy;
      2. details of any work health and safety management system (whether certified or uncertified);
      3. inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
      4. emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid equipment;
   7. the procedures for ensuring the provision of written assurances to the Contract Administrator under clause 3.23(f) regarding compliance with the WHS Legislation by the Contractor, subcontractors and Other Contractors;
   8. the procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 10.9 (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);
   9. the procedures for the management of subcontractors, including:
      1. inductions, training and other awareness programmes (in addition to those referred to in subparagraph (f)(iii));
      2. the subcontractor's development and provision of safe work method statements, job safety assessments or equivalent documentation;
      3. ensuring subcontractors comply with their obligation to consult, cooperate and coordinate activities (including information-sharing and communication of information); and
      4. ensuring subcontractor compliance with the Contractor's Work Health and Safety Plan;
   10. details of the project and Contract specific hazards and risks identified by the Contractor and the Contractor's approach to the management of these hazards and risks including how the Contractor will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
       1. prior to commencing the Services; and
       2. during the delivery of the Services;
   11. the actions the Contractor 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;
   12. the procedures the Contractor will adopt to audit or otherwise monitor and verify its (and its subcontractors') 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);
   13. any additional matters specified in the Contract Particulars; and
   14. any other matters required by the:
       1. Contract; or
       2. Contract Administrator.

Workers Compensation Insurance

1. A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Services are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment (and including Employers' Liability Insurance, if applicable).
   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 13.3),

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

* + 1. for the purposes of clause 11.5, any:
       1. extension of time stated in days; or
       2. reference to "day",

will exclude public holidays and include only those days which are stated in the Contractor's then current program under clause 11.2 as working days;

* + 1. for the purposes of clauses13.3 and 18.8, references to "business days" are to days other than:
       1. a Saturday or Sunday;
       2. a public holiday in the place where the Services are being carried out; and
       3. any other day specified in the Contract Particulars;
    2. other than as set out in paragraphs (k), (l) and (m) references to "day" are references to calendar days;
    3. the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
    4. the word "subcontractor" will include subcontractors, consultants and suppliers, and the word "subcontract" will include a contract with a subcontractor;
    5. where a clause contains two options, the option specified in the Contract Particulars will apply;
    6. derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1;
    7. unless agreed or notified in writing by the Contract Administrator or the date of the standard or reference document is specified in the Specification, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Specification is a reference to the edition last published prior to the Award Date;
    8. for the purposes of clauses 3.19(c), 3.20(b) and 11.4(b)(ii)B, a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Contractor as a direct result of the applicable event delaying the Contractor; and
    9. requirements contained in the Specification:
       1. whether or not they include the expression "the Contractor must" or "the Contractor shall" or any equivalent expression, will be deemed to be requirements to be satisfied by the Contractor, unless stated otherwise;
       2. represent the Commonwealth's minimum requirements, which must be met or exceeded by the Contractor in performing the Services; and
       3. will not operate to limit or exclude the Contractor's obligations under the Contract.
  1. Miscellaneous
     1. The Contract 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 Contractor must indemnify the Commonwealth against any liability to or claim by a third party including a subcontractor or Other Contractor caused by any breach by the Contractor of a term of the Contract.
     7. All obligations to indemnify under the Contract survive termination of the Contract on any basis.
     8. Unless expressly stated to the contrary in the Contract, the Contractor must perform the Services at its cost.
  2. 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 other Contract Document:

* + 1. subject to paragraphs (b) and (c), the order of precedence specified in the Contract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Specification and any other requirement of the Contract (including any other requirement of the Specification), 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 part of any other Contract Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and
    4. irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
       1. the Contractor or the Commonwealth, then the party discovering it must promptly give Contract Administrator and the other party notice in writing. After receipt of a notice from a party the Contract Administrator must within 14 days of receipt of the notice instruct the Contractor as to the course it must adopt; or
       2. the Contract Administrator, then the Contract Administrator must promptly give the parties notice in writing together with an instruction to the Contractor as to the course it must adopt,

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

1. term
   1. Term
      1. The Contract commences on the Award Date and, subject to earlier termination or extension under clause 2.2, terminates on the last day of the Initial Term.
      2. Despite any other provision of the Contract, the provisions of the Contract relevant to the performance of Reactive Maintenance Services ordered under a Service Request issued prior to the end of the term of the Contract will continue to apply to those Reactive Maintenance Services to the extent the performance of those Reactive Maintenance Services continues after the expiry of the term of the Contract.
   2. Option to extend
      1. The Commonwealth may, at its absolute discretion, give the Contractor written notice that the Commonwealth intends to extend the Initial Term by the Option Period (such notice to be given to the Contractor at least 90 days’ written notice before expiry of the Initial Term) (**Extension Notice**).
      2. The Extension Notice may set out amendments to the Contract that the Commonwealth requires to apply during the Option Period.
      3. If the Contractor receives an Extension Notice, the Contractor must (acting reasonably and in good faith) prepare and submit to the Commonwealth a proposal:
         1. for the provision of the Services during the Option Period in accordance with the requirements of the Extension Notice, including:
            1. any adjustment to the Management Fee, the Scheduled Maintenance Fee or the Reactive Maintenance Fee that the Contractor proposes will be payable for the Services performed during the Option Period, together with a detailed breakdown of the proposed Management Fee, Scheduled Maintenance Fee or Reactive Maintenance Fee (as applicable); and
            2. any adjustment to the Table of Variation Rates and Prices that the Contractor proposes will apply during the Option Period,

together with a detailed explanation and rationale for the proposed adjustments;

* + - 1. which confirms that the Contractor agrees to the amendments to the Contract set out in the Extension Notice and that it has allowed for its amendments in its proposal;
      2. which otherwise addresses any matters required by the Extension Notice or the Contract Administrator; and
      3. which is prepared having regard to all relevant considerations, including the importance to the Commonwealth of ensuring that the Services achieve value for money and any other considerations notified by the Contract Administrator to the Contractor,

(**Extension Proposal**).

* + 1. The Commonwealth may by written notice to the Contractor:
       1. negotiate the Extension Proposal or any aspect of it with the Contractor;
       2. accept the Extension Proposal (including as may be negotiated under paragraph (d)) in which case:
          1. the Contract will be amended (as recorded in writing between the parties) to incorporate the Extension Proposal and the amendments to the Contract stated in the Extension Notice (each as negotiated); and
          2. subject to earlier termination, the Contract will terminate on the last day of the Option Period; or
       3. reject the Extension Proposal, in which case:
          1. subject to earlier termination, the Contract will terminate on the last day of the Initial Term; and
          2. the Commonwealth will not be liable upon any Claim (insofar as is permitted by law) in respect of the Commonwealth’s election not to extend the term of the Contract.
    2. Where the Commonwealth issues a notice under subparagraph (d)(i), the Contractor must undertake genuine and good faith negotiations with the Commonwealth to negotiate and reach agreement on the Extension Proposal and the amendments to be made to the Contract (if any).
    3. The Commonwealth may, regardless of whether it has first given the Contractor an Extension Notice:
       1. engage another Contractor to perform the Services from the end of the Initial Term;
       2. obtain tenders from other contractors before, at the same time or after the Commonwealth issues the Extension Notice to the Contractor; or
       3. undertake an external audit or review of the Contractor’s Extension Proposal.
  1. Holding over

If the parties continue to perform their obligations under the Contract immediately after expiry of the term of the Contract and the Commonwealth has not provided notice to the Contractor that the Contract has expired, the Contract will continue until either party terminates the Contract by giving at least 30 days’ written notice to the other party.

1. services
   1. Engagement
      1. The Contractor:
         1. must perform:
            1. the Management Services;
            2. the Transition-In Activities;
            3. the Scheduled Maintenance Services;
            4. where paragraph (b) applies, the relevant Reactive Maintenance Services; and
         2. irrevocably offers to carry out any or all of the Reactive Maintenance Services,

on the terms and conditions set out in the Contract.

* + 1. Without limiting paragraph (c) or clause 3.5, if:
       1. the Contractor (acting reasonably) identifies in the course of performing the Scheduled Maintenance Services in respect of an Asset or part of an Asset that Reactive Maintenance Services are required to enable that Asset or part of an Asset to be used for its intended purposes or to rectify any defect in or damage to it; and
       2. the value of that Reactive Maintenance Service is equal to or less than the Reactive Maintenance Services Threshold,

then, notwithstanding that the Commonwealth has not issued a Service Request in respect of that Reactive Maintenance Service under paragraph (c), the Contractor may undertake that Reactive Maintenance Service in accordance with the Contract and invoice the Commonwealth for that Reactive Maintenance Service under clause 13.2.

* + 1. The Commonwealth may at any time accept the Contractor’s offer to provide Reactive Maintenance Services by issuing a Service Request for the relevant Reactive Maintenance Services.
    2. The issue of a Service Request by the Commonwealth will only be an acceptance of the Contractor’s offer to carry out Reactive Maintenance Services and will not be a rejection of the Contractor’s offer to carry out the Reactive Maintenance Services.
    3. The Commonwealth makes no representation that the Contractor will be required to carry out any particular volume of Services, and the Contractor will have no Claim against the Commonwealth in relation to the volume of Services it is required to perform under the Contract, other than for the Fee for the Services it actually performs.
    4. The Contractor:
       1. must remain at all times willing and able to perform the Reactive Maintenance Services but acknowledges that:
          1. it has no entitlement to perform those Reactive Maintenance Services; and
          2. the allocation of such Reactive Maintenance Services to the Contractor will be at the sole discretion of the Commonwealth; and
       2. without limiting subparagraph (i), acknowledges that the Commonwealth may at its discretion offer to the Host Nation the opportunity to carry out such Reactive Maintenance Services in respect of Assets that are not listed in the ‘PPM Schedule’ in [insert Appendix reference #] to the Specification and, if the Host Nation rejects or does not respond to that offer, allocate those Reactive Maintenance Services to the Contractor
  1. Transition-In

During the Transition-in Period the Contractor must:

* + 1. diligently carry out the Transition-In Activities in accordance with the Contract and the Transition-In Plan;
    2. undertake all planning and preparatory steps necessary to ensure that it will be able to commence full performance of the Services on the Services Commencement Date; and
    3. fully cooperate with the Commonwealth, the Host Nation and any Other Contractor and do all such tasks and things as may be necessary or as directed by the Contract Administrator to ensure the smooth transition of the Services to the Contractor.
  1. Planning

The Contractor must:

* + 1. undertake all planning and management of the Services (irrespective of whether or not expressly mentioned in the Contract) necessary to ensure that it is able to perform the Services:
       1. in accordance with the Contract;
       2. in accordance with the Operational Plan and all other Contract Management Plans;
       3. in accordance with the Commonwealth’s Annual Requirements; and
       4. so as to meet or exceed the Key Performance Indicators; and
    2. in planning the Services, consult with the Contract Administrator:
       1. about the Commonwealth’s Annual Requirements; and
       2. so as to ensure that the Contractor complies with paragraph (a).
  1. Knowledge of the Commonwealth's Requirements

The Contractor must:

* + 1. inform itself of the Commonwealth's requirements for the Services;
    2. refer to the Commonwealth Material and the Annual Requirements; and
    3. consult the Commonwealth during the Services.
  1. General Service delivery obligations

The Contractor must:

* + 1. ensure that the Services are provided economically and in accordance with any budgetary requirements of the Commonwealth notified to the Contractor;
    2. except to the extent otherwise expressly stated in the Contract, provide at its cost all goods, equipment, spare parts, labour and services necessary to perform the Services;
    3. must 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 Services;
    4. at all times, ensure that its personnel and subcontractors are:
       1. suitably trained, qualified and experienced; and
       2. appropriately licensed and authorised in accordance with relevant Statutory Requirements,

to perform the Services; and

* + 1. ensure that the Services are fit and suitable for any purpose expressed in this Contract or which the Commonwealth has made known to the Contractor, or in the absence of such expressed purpose, be fit for the purposes for which services of a similar kind as the Services are commonly procured;
    2. ensure that all goods used by it to perform the Services:
       1. conform in quality, quantity, specification and in all other respects with the requirements of the Contract and any other samples of the goods inspected and approved by the Commonwealth;
       2. are of merchantable quality;
       3. are free from all liens, charges, and encumbrances of any kind;
       4. are capable of safe operation;
       5. are fit for the purpose for which they are to be used; and
       6. are free from defects in composition, materials and workmanship;
    3. ensure that all building products, construction materials and construction or manufacturing processes used by it to perform the Services conform with their intended use and comply with relevant standards;
    4. ensure that any plant and equipment provided by the Contractor to be used in or in connection with the Services:
       1. is maintained in good working order;
       2. complies with all Statutory Requirements; and
       3. does not represent a safety or security hazard;
    5. consult with and co-operate with the Commonwealth and the Host Nation in relation to the Contract;
    6. adopt a proactive and flexible approach to the delivery of the Services and the changing needs and requirements of the Commonwealth and the Host Nation over the term of the Contract; and
    7. create and maintain records of its performance of the Services in accordance with Good Industry Practice and as required by the Contract and give the Commonwealth access to such records on reasonable request.
  1. Access to the Site
     1. Subject to paragraph (b), the Contractor must:
        1. liaise with the Host Nation to ensure it obtains access to the Sites which it requires to perform the Services in accordance with the Contract (including the right for the Contractor personnel referred to in clause 5.5(a)(iv) to access, occupy and use the relevant parts of the Site during the period in which those personnel are required to be co-located at the Site); and
        2. otherwise arrange access to any other property which may be necessary for the Contractor to carry out the Services.
     2. The Contractor must not access a Site or provide any Services unless and until:
        1. the Operational Plan and the Work Health and Safety Plan have been finalised under clause 10.9;
        2. the Contractor having provided to the Contract Administrator:
           1. the Approved Security required under clause 6.1;
           2. if clause 6.4 applies, the Deed of Guarantee, Undertaking and Substitution required under clause 6.4; and
           3. evidence satisfactory to the Contract Administrator under clause 7.2(e) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 7.2; and
        3. the Contractor has satisfied any other conditions specified in the Contract Particulars or elsewhere in the Contract.
     3. The Contract Administrator may impose restrictions upon the Contractor’s access to a Site, and the Contractor must at its cost perform the Services subject to any such restrictions.
     4. The Contractor must, and must procure that its subcontractors, observe all security and other requirements at any Site which are notified to it from time to time by the Contract Administrator or the Host Nation.
  2. Sites and Assets

The Contractor:

* + 1. acknowledges that the Sites and Assets are owned, leased or otherwise occupied by the Commonwealth or the Host Nation; and
    2. in performing the Services, must:
       1. fully co-operate and co-ordinate with the Commonwealth and the Host Nation; and
       2. use its best endeavours to not cause any disruption to, and take all steps which are necessary or required by the Contract Administrator to minimise inconvenience to, any person using or occupying the Assets and the activities of the Commonwealth and the Host Nation.
  1. Business Rules

The Contractor acknowledges and agrees that:

* + 1. the Commonwealth has avoided being overly prescriptive in the way in which it has specified its requirements for the Services in the Contract (including the Specification);
    2. accordingly, it will be necessary to specify in greater detail the numerous processes, procedures, work methods and other requirements for the performance of the Services (**Business Rules**) which have not been specified in the Contract;
    3. the Contract Administrator may (acting reasonably) at any time and from time to time during the term of the Contract issue directions to the Contractor prescribing Business Rule for the performance of the Services, and the Contractor must comply with any such directions; and
    4. subject to clause 12, the Contractor will have no Claim against the Commonwealth arising out of or in connection with a direction issued by the Contract Administrator under paragraph (c).
  1. Making good and keeping clean

The Contractor must:

* + 1. keep the areas of the Sites in which the Services are being performed clean and tidy and regularly remove rubbish and surplus or salvaged materials;
    2. take all protective measures necessary to guard against any damages to any property of the Commonwealth, the Host Nation or any other user or occupier of an Asset or a Site;
    3. at its cost make good any damage to any property of the Commonwealth, the Host Nation or any other user or occupier of an Asset or a Site caused by or arising out of or in connection with the provision of the Services to the Site; and
    4. carry out repairs required under this clause 3.9 to the satisfaction of the Contract Administrator.
  1. Removal of goods, materials, plant and equipment

The Contractor must not remove, or authorise or allow to be removed, from a Site any goods, materials, plant or equipment which is the property of the Commonwealth or the Host Nation or is required for the use or occupation of an Asset or a Site without the prior written approval of the Contract Administrator.

* 1. Utilities

The Contractor must:

* + 1. immediately notify the Contract Administrator:
       1. upon encountering any utility services on any Site which are not shown on the existing utility service drawings for the Site;
       2. of any connection, disconnection or interference with any utility services;
       3. of any damage to any utility services; and
       4. the proposed course of action to make good and repair the utility services; and
    2. in performing the Services, and subject to complying with any Statutory Requirement, repair, divert, relocate, cut, seal, disconnect or make safe any utility services as required by the Contract Administrator and the relevant local authority.

For the purposes of this clause 3.11, “**utility service**” includes any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other similar services.

* 1. Innovations
     1. The Contractor must:
        1. at all times during the term of the Contract, use its best endeavours to discover and identify to the Commonwealth all ways in which it could reasonably improve the performance of the Services or the maintenance of the Site, including measures which increase efficiency and effectiveness, whether using current or new methods (**Innovations**); and
        2. if required by the Contract Administrator, meet with the Contract Administrator and its nominees to discuss any Innovations identified by the Contractor, including the anticipated cost of implementing such Innovations and any anticipated cost savings resulting from such implementation.
     2. If the Contract Administrator wishes to proceed with an Innovation, the Contract Administration may issue a Variation Price Request to the Contractor in respect of that Innovation in accordance with clause 12.1 and clause 12 will apply.
  2. Productivity and purchasing power

The Contractor must, at all times during the term of the Contract, use its best endeavours to maximise:

* + 1. the productivity of all employees and subcontractors engaged in delivering the Services;
    2. purchasing power in purchasing all goods, materials and services for use in providing and delivering the Services; and
    3. productivity and purchasing power under all employment, subcontracting and purchasing arrangements it implements for the purposes of the Contract.
  1. Authority to Act
     1. Other than as expressly authorised, the Contractor 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.
     2. The Contractor is an independent contractor and is not, and must not purport to be, a partner or joint venturer of the Commonwealth.
  2. Co‑operation with Other Contractors

The Contractor must:

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

The Contractor must at all reasonable times:

* + 1. give to the Contract Administrator, or to any persons authorised in writing by the Contract Administrator, access to premises occupied by the Contractor or its subcontractors where the 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 Contract Documents.
  1. Conflict of Interest

The Contractor 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 use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subcontractors; and
    3. if any such conflict of interest or risk of such conflict of interest arises, the Contractor will:
       1. notify the Contract Administrator immediately in writing of that conflict or risk; and
       2. take all steps required by the Contract Administrator to avoid or minimise the conflict of interest or risk of conflict of interest.
  1. Statutory Requirements
     1. In carrying out the Services, the Contractor must:
        1. unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
        2. without limiting subparagraph (i):
           1. apply for and obtain all Approvals specified 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 Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site or the Services issues to the Contractor; and
        4. immediately notify the Commonwealth if any Approval that it holds has been revoked or suspended.
     2. Without limiting paragraph (a), the Contractor 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, subcontractors 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
     1. If:
        1. there is any change in a Statutory Requirement after the Award Date; or
        2. a Statutory Requirement is at variance with the Contract,

then the party discovering the change or variance must promptly give the Contract Administrator and the other party notice in writing.

* + 1. The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Contractor as to the course it must adopt insofar as the Services are affected by the change or variance.
    2. Subject to paragraph (d), the Contractor will be entitled to have the Fee increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
    3. The Fee will be decreased by any savings made by the Contractor which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
    4. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under paragraph (b), other than under paragraph (c).
  1. The Environment
     1. The Contractor must:
        1. ensure that in carrying out the Services:
           1. other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
           2. it does not cause or contribute to any Environmental Incident;
           3. without limiting subsubparagraph B, it does not cause or contribute to Contamination of the Site or any other land, air or water or cause or contribute to any Contamination emanating from the Site;
           4. it immediately notifies the Contract Administrator of:

any non-compliance with the requirements of clause 3.20;

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

any Environmental Incident; or

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

* + - * 1. its subcontractors comply with the requirements in clause 3.20; and
      1. clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in connection with the Services, whether or not it has complied with all Statutory Requirements and other requirements of the Contract for the protection of the Environment.
    1. To the extent that the requirement to clean up and restore the Environment under subparagraph (a)(ii) arises other than as a result of a failure by the Contractor to carry out the Services strictly in accordance with all Statutory Requirements and other requirements of the Contract, the Contractor will be entitled to have the Fee increased by the extra costs reasonably incurred by the Contractor which arise directly from the cleaning up and restoration of the Environment under clause 3.20, as determined by the Contract Administrator.
  1. Hazardous Substances
     1. The Commonwealth seeks to ensure that:
        1. workers and other persons are not exposed to Hazardous Substances as a consequence of activities conducted on the Sites or the Services, unless the Hazardous Substances are managed in accordance with subparagraph (ii); and
        2. risks to health and safety concerning Hazardous Substances are managed in accordance with the WHS Legislation.
     2. The Contractor must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Services to the Contract Administrator as soon as possible after the Award Date (and in any event no later than 30 days prior to the proposed Hazardous Substance being used in the Services).
     3. The Contractor must not use, handle or store a Hazardous Substance which falls within one or more of the categories of Hazardous Chemical in connection with the Services without the prior written consent of the Contract Administrator.
     4. Without limiting paragraph (b), in its request for consent under paragraph (c), the Contractor must provide:
        1. details of the Hazardous Substance and the relevant category of Hazardous Chemical;
        2. details of the purpose, use, handling or storage of each Hazardous Substance which falls within one or more of the categories of Hazardous Chemical; and
        3. for each Hazardous Substance which falls within one or more of the following categories:
           1. paragraph (a) or (b) of the definition of “Hazardous Chemical”, a copy of all Approvals for use, handling or storage;
           2. paragraph (e) or (g) of the definition of “Hazardous Chemical”, details of how the health of workers using, handling or storing such Hazardous Chemical will be monitored in accordance with WHS Legislation; and
           3. paragraph (f) of the definition of “Hazardous Chemical”, a copy of:

all notices given to a relevant regulator; and

all licences required to be held by the Contractor or subcontractor,

in relation to use, storage or handling.

* + 1. Without limiting clause 3.23 or any other provision of the Contract, the Contractor must, irrespective of where the Services are carried out:
       1. comply with any applicable Code of Practice;
       2. ensure that all documentation (including all Contract Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) identifies the nature of the hazard and risk;
       3. ensure that all goods used in the Services comply with the WHS Legislation (as if it applied to the Contractor) and any other Australian Statutory Requirements or Host Nation Statutory Requirements relating to Hazardous Substances;
       4. ensure that all Hazardous Substances used in the Services are correctly labelled and packaged in accordance with the WHS Legislation (as if it applied to the Contractor) and any other Australian Statutory Requirements or Host Nation Statutory Requirements;
       5. notify the Contract Administrator within 14 days of becoming aware of any non-hazardous substance which could be substituted for the Hazardous Substance without significant detriment to the performance of the Services; and
       6. be able to demonstrate compliance with this paragraph (e) at the request of the Contract Administrator.
    2. Without limiting clause 3.23, the Contractor is responsible for all Hazardous Substances used in the Services by subcontractors.
  1. Representations and warranties
     1. The Contractor represents and warrants that:
        1. prior to entering into the Contract, it informed itself of:
           1. the terms and conditions of the Contract; and
           2. the effect of all current and pending applicable Statutory Requirements; and
        2. it has a clear understanding of its obligations under the Contract and has:
           1. examined and carefully checked all information relevant to the risks, contingencies and other circumstances which could affect the performance of the Services and could have been obtained by making detailed enquiries;
           2. made due enquiry and satisfied itself as to all local and other conditions affecting the performance of the Services; and
           3. satisfied itself as to the correctness and sufficiency of its tender to undertake all of its obligations under the Contract and that its Fee, subject to any adjustments permitted under the Contract, includes the cost of performing all of the Services.
     2. The representations and warranties set out in paragraph (a) survive termination of the Contract and remain in full force and effect so long as is necessary to give effect to them.
     3. The Contractor acknowledges that the Commonwealth has entered into the Contract in reliance upon the warranties made by the Contractor in paragraph (a).
  2. Work Health and Safety

The Contractor must:

* + 1. ensure that in carrying out the Services in the Host Nation, it uses its best endeavours to comply with:
       1. all Statutory Requirements and other requirements of the Contract in respect of work health and safety, including where applicable, the WHS Legislation;
       2. the duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
       3. the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
       4. the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
          1. it is to assist an injured person or remove a deceased person;
          2. it is to make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site,

as if the WHS Legislation applied to the Contractor;

* + 1. 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;
    2. carry out the Services to ensure the health and safety of persons is not put at risk;
    3. without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident (irrespective of whether they occur in Australia or in the Host Nation);
       2. work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
       3. all other work health and safety matters arising out of or in connection with the Services, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 5.9;
    4. for the purposes of paragraphs (a)(iii) and (d) above, in respect of any notifiable incident:
       1. immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth or Host Nation regulator;
       2. promptly provide the Contract Administrator with copies of:
          1. all witness statements and the investigation report relating to the notifiable incident; and
          2. any notice(s) or other documentation issued by the relevant Commonwealth or Host Nation regulator; and
       3. within 10 days of the date of notification to the relevant Commonwealth or Host Nation regulator, provide the Contract Administrator with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident;
    5. if requested by the Contract Administrator, use its best endeavours to:
       1. obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation; and
       2. provide, in a format specified by the Contract Administrator, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:
          1. on a monthly basis in the reports under clause 5.9;
          2. on a quarterly basis (when requested by the Contract Administrator); and
          3. as otherwise directed by the Contract Administrator;
    6. use its best endeavours to provide the written assurances obtained under paragraph (f) to the Contract Administrator in accordance with paragraph (f);
    7. without limiting the Contractor's obligations under the Contract or otherwise at law or in equity within 10 days of receipt provide to the Contract Administrator 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 Contractor or subcontractor relating to work health and safety matters;
       2. formal notices issued by a health and safety representative of the Contractor or subcontractor under or in compliance with the applicable WHS Legislation; and
       3. formal notices, written communications and written undertakings given by the Contractor or subcontractor to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,

arising out of or in connection with the Services;

* + 1. exercise a duty of the utmost good faith to the Commonwealth in carrying out the Services to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;
    2. use its best endeavours to ensure all subcontracts include provisions equivalent to the obligations set out in this clause 3.23;
    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 or a Statutory Requirement of the Host Nation (as applicable)) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (in accordance with the WHS Legislation or any Statutory Requirement of the Host Nation (as applicable)), that person has the required qualifications or experience or is so supervised; or
       2. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    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 (k) are met;
    5. not use Asbestos or ACM in carrying out the Services;
    6. immediately notify the Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of an Australian or Host Nation regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
    7. without limiting the Contractor's obligations under the Contract (including paragraph (e) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of the Commonwealth, provide all information or copies of documentation held by the Contractor or a subcontractor to the Contract Administrator or anyone else acting on behalf of the Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation; and
    8. if requested by the Contract Administrator or required by the WHS Legislation or any Statutory Requirements of the Host Nation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contract Administrator before the Contractor or any subcontractor commences such work.
  1. Local Industry Capability

Without limiting clause 10.9, the Contractor must:

* + 1. comply with the Local Industry Capability Plan;
    2. report at least six monthly on the implementation of the Local Industry Capability Plan, including on:
       1. the matters set out in the Local Industry Capability Plan; and
       2. any other matters as may be required by the Contract Administrator,

in accordance with the form set out in the Local Industry Capability Plan, or if not specified, in a form required by the Contract Administrator; and

* + 1. notify the Contract Administrator in writing within 7 days of any change to the person specified as the Contractor’s point of contact in the Local Industry Capability Plan.

1. Role of the COMMONWEALTH
   1. Information and Services

The Commonwealth must make available to the Contractor:

* + 1. the Annual Requirements by no later than 20 business days before the commencement of the year to which the Annual Requirements relate; and
    2. as soon as practicable, all relevant information, documents and particulars relating to the Services and to the Commonwealth's requirements for the Services.
  1. Additional Information

If:

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

1. Personnel
   1. Contract Administrator
      1. The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of the Commonwealth (and not as an independent certifier, assessor or valuer).
      2. The Contractor must:
         1. comply with any direction by the Contract Administrator given or purported to be given under a provision of the Contract; and
         2. not comply with any direction of the Commonwealth other than as expressly stated in the Contract.
      3. Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.
   2. Replacement of Contract Administrator
      1. The Commonwealth may at any time replace the Contract Administrator, in which event the Commonwealth will appoint another person as the Contract Administrator and notify the Contractor of that appointment.
      2. Any substitute Contract Administrator appointed under clause 5.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.
   3. Parties' Conduct

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

* 1. Contract Administrator's Representative
     1. The Contract Administrator may:
        1. by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract (which may include the appointment of a ‘Site Representative’ to discharge some or all of the Contract Administrator’s functions under the Contract with respect to a particular Site or Asset); and
        2. revoke any appointment under subparagraph (i) by notice in writing to the Contractor.
     2. As at the Award Date, the Contract Administrator 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 Contract Administrator include a reference to a representative appointed under clause 5.4.
  2. Key People for the Services
     1. The Contractor must:
        1. employ those people specified as 'Key People' in Annexure 5, including the Contractor's Representative in the jobs specified in Annexure 5;
        2. subject to subparagraph (iii), not replace the people referred to in subparagraph (i) without the Contract Administrator's prior written approval;
        3. if any of the people referred to in subparagraph (i) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise; and
        4. procure that those people specified in the Contract Particulars (and any other Contractor personnel as are reasonably directed by the Contract Administrator from time to time) are co-located at the Site.
     2. A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
  3. Removal of Persons
     1. The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Services who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.
     2. The Contractor must ensure that this person is not again involved in the delivery of the Services.
  4. Minimum resource levels
     1. Without limiting the Contractor’s obligations under the Contract, the Contractor must:
        1. as a minimum, maintain during the term of the Contract the minimum resource levels set out in Annexure 4;
        2. if required by the Contract Administrator, review the actual resource levels being provided by the Contractor in the performance of the Services in consultation with the Contract Administrator to ensure that those resource levels are sufficient to enable the Contractor to perform the Services in accordance with the Contract (including having regard to any Variation or change in the volume of the Services); and
        3. if required following a review under subparagraph (ii), adjust the actual resource levels to a level sufficient to enable the Contractor to perform the Services in accordance with the Contract.
     2. Where the Contractor fails to maintain the minimum resource levels set out in Annexure 4 in the performance of the Services in a calendar month, the relevant Management Fee will be reduced to reflect the reduction in the resource level actually provided by the Contractor for the relevant month in accordance with Annexure 2.
     3. To the extent permitted by law, except where clause 12.3 applies, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the any increase in resource levels which the Contractor is required to provide, or any reduction in the Management Fee, under this clause 5.7 except to the extent permitted by clause 12.
  5. Monthly Meeting
     1. Without limiting its obligations to attend and participate in meetings under the Specification, the Contractor must:
        1. meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
        2. discuss the report it has prepared under clause 5.9 and such other matters as the Contract Administrator may from time to time require;
        3. promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
        4. if it requires instructions from the Commonwealth, make all necessary recommendations with respect to the instructions required.
     2. The Contract Administrator must:
        1. before each meeting:
           1. prepare an agenda for the meeting; and
           2. issue an agenda for the meeting; and
        2. after each meeting:
           1. prepare minutes of the meeting; and
           2. issue minutes of the meeting.
  6. Contractor’s Monthly Report

At least 7 days prior to each meeting under clause 5.8, the Contractor must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include, at a minimum:

* + 1. details of any deviations from the Contractor's then current program under clause 11.2;
    2. detailed particulars of all:
       1. Scheduled Maintenance Services performed by the Contractor in the preceding month;
       2. Reactive Maintenance Services performed by the Contractor under clause 3.1(b) in the preceding month;
       3. invoices and payments made (which must, where applicable, be categorised using the ledger categories specified in the Specification);
       4. Variation Price Requests, responses, Variation Orders and proposed adjustments to the Fee;
       5. written claims and notices given and received under clause 11 in respect of delays and extensions of time;
       6. other Claims made by the Contractor (including in respect of Statutory Requirements and the resolution of ambiguities under clause 1.4);
       7. calls, attendances, recommendations and actions taken in respect of non-conforming Services (in accordance with clause 10.6);
       8. calls, attendances, recommendations and actions taken in respect of all Defects;
       9. significant updates or amendments that have been made to the Contract Management Plans under clause 10.9;
       10. quality assurance activities carried out by the Contractor in the preceding month under clause 10.2, the Specification and the Operational Plan;
       11. disputes under clause 16; and
       12. notices under clause 17.1 or 17.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

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

* + 1. confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 3.23 including:
       1. the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 10.9);
       2. details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Services;
       3. details of lead indicator data, including:
          1. inductions, training and other work health and safety awareness programmes conducted; and
          2. Site audits and verification activities (including copies of Site audit reports and verification activity reports);
       4. without limiting the Contractor's obligations to notify the Contract Administrator under:
          1. clauses 3.23(d)(i) and 3.23(e), summary data regarding notifiable incidents; and
          2. clauses 3.23(d)(ii) and 3.23(d)(iii), details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
       5. relevant statistics and other information regarding lost time injury days; and
       6. all other work health and safety matters required by the Contract or the Contract Administrator;
    2. confirmation of compliance with, and (as applicable) an update in respect of:
       1. Site-related requirements;
       2. environmental requirements;
       3. local industry participation requirements, including the Local Industry Capability Plan;
       4. fraud and corruption control requirements, including the Fraud and Corruption Control Plan;
       5. information security requirements, including clause 21 and, if clause 22 applies, clause 22; and
       6. any other security requirements,

together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (vi) above including, where any non-compliance has been identified, details of any action taken in respect of such non-compliance;

* + 1. in respect of Hazardous Substances, the information as required by clause 3.21;
    2. a self-assessment of the Contractor's performance of the Services during the preceding month against any Key Performance Indicators that are measured on a monthly basis including, if the Contractor has failed to achieve a Key Performance Indicator during the relevant month, the reason for that failure;
    3. a forecast of the total amount of the payments expected to be made to the Contractor under the Contract during the then-current year;
    4. details of any audits or testing of the Services undertaken under the Contract including any material failures identified by those audits or testing and any action taken in respect of such failures;
    5. any training provided by the Contractor in accordance with the Local Industry Capability Plan;
    6. the dates on which each insurance effected by the Contractor under clause 7.2 will lapse;
    7. if any of the ‘Key People’ specified in Annexure 4 (or any person who has replaced any such person under clause 5.5) are expected to take leave in the 6 month period following the date of the monthly report, the duration of the expected absence; and
    8. any other matters required by the Contract or Contract Administrator.
  1. Contractor’s Quarterly Report

Within 20 Business Days after the end of each quarter during the term of the Contract, the Contractor must prepare and provide a Quarterly Report to the Contract Administrator.

* 1. Meetings and Reports Generally

Without limiting clauses 5.8 and 5.9, the Contractor must comply with any additional meeting and reporting requirements specified in the Contract Particulars or notified by the Contract Administrator from time to time.

1. security
   1. Form

The Contractor must provide security to the Commonwealth:

* + 1. in the form of Approved Security;
    2. in the amounts specified in the Contract Particulars; and
    3. within 14 days of the Award Date.
  1. Release of Security

Subject to any other rights or remedies of the Commonwealth under the Contract or otherwise at law or in equity (including the right of set-off in clause 13.8), the Commonwealth must:

* + 1. within the later of:
       1. 90 days after the expiry of the term of the Contract; and
       2. the Contractor having complied with all of its obligations under the Contract, except for minor breaches of contract which cannot be rectified and which the Contract Administrator considers do not require rectification,

release the security held under clause 6.1.

* 1. Interest
     1. The Commonwealth:
        1. is not obliged to pay the Contractor interest on:
           1. the Approved Security; or
           2. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
        2. does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
     2. If the Commonwealth makes a call upon any security held under clause 6.1 and obtains cash as a consequence:
        1. the Commonwealth will pay simple interest, at the rate applying to damages for the purpose of clause 13.7, on the amount of any cash obtained in excess of the sum to which the Commonwealth is entitled at the time of such call; and
        2. the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Commonwealth at the time such amounts become payable.
  2. Deed of Guarantee, Undertaking and Substitution

Clause 6.4 does not apply unless the Contract Particulars state that it applies.

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

1. risks and Insurance
   1. Risk of damage

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

* + 1. any physical loss of or damage to property of the Commonwealth (including Sites and Assets); and
    2. any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

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

* 1. Contractor Insurance Obligations

The Contractor 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. 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 Poor's, Moody's, 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 Contract Administrator (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 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 in respect of any statutory and common law liability to the Contractor's employees; and
       2. each of its subcontractors which is legally required to do so, has Workers Compensation Insurance and Employers' Liability Insurance covering the subcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Contractor is required to do under subparagraph (i);
    3. promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
       1. it has complied with clause 7.2; and
       2. each insurance required under clause 7.2 is current and complies with clause 7.2,

as required by the Contract Administrator from time to time;

* + 1. ensure that:
       1. if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld or delayed; and
       2. if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor 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 Contract Administrator 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 Contract Administrator copies of receipts for payment of premiums upon request by the Contract Administrator;
       5. renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
       6. immediately notifies the Contract Administrator (in writing) if the Contractor 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 Contract Administrator;
       8. immediately notifies the Contract Administrator (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 obligations 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 and the Contract Administrator 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 this 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; and
    3. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under this clause 7.2. Any excess borne by the Commonwealth will be a debt due from the Contractor to the Commonwealth.

For the purpose of paragraph (d), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 7.2.

The obtaining of insurance as required under clause 7.2 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

* 1. Failure to Insure
     1. If the Contractor fails to comply with clause 7.2, 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 Contractor to the Commonwealth.
     2. The Contractor 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 insurance information and documents (including proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.
  2. Period of Insurance

The insurance which the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 7.2 must be maintained:

* + 1. in the case of Public Liability Insurance:
       1. written on an occurrence basis, until the Completion of the Services; or
       2. written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the Completion of the Services; and
    2. in the case of Workers Compensation Insurance and Employers' Liability Insurance, until Completion of the Services.
  1. Notice of Potential Claim

The Contractor 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 7.2 or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy required by clause 7.2;
    2. keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
    3. ensure that its subcontractors similarly inform the Contractor 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 Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy required by the Contract.
  1. Cross Liability

Clause 7.6 does not apply to Workers Compensation Insurance.

Where the Contract requires insurance to provide cover to more than one insured, the Contractor 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 deductibles or reducing 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 this Contract or generally.
     2. The Contractor is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this 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.
  2. Exclusion of Consequential Loss and Limitation on Liability
     1. Subject to paragraphs (b) and (c):
        1. neither the Commonwealth nor the Contractor will be liable to the other for any Consequential Loss howsoever arising; and
        2. to the extent permitted by law, the maximum aggregate liability of the Contractor to the Commonwealth arising out of or in connection with the Contract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Contract Particulars.
     2. Paragraph (a) does not apply to a liability of the Contractor:
        1. for any deliberate breach or repudiation of the Contract;
        2. under the indemnities in clauses 1.3(f), 8.3(b); 18.2(a)(xiv); 21.5(c); and 23.3(c);
        3. for Fraud or breach of clause 19;
        4. to the extent that payments are received by the Contractor under any insurance policy or policies required to be effected and maintained under the Contract in relation to that liability or which would have been received by the Contractor under such insurance policy or policies but for:
           1. the failure of the Contractor to effect and maintain the required insurance policy or insurance policies;
           2. any failure of an insurance policy to respond due to the misconduct of the Contractor (including a failure to make proper disclosure or to comply with the requirements of the policy);
           3. the failure by the Contractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
           4. the reliance by the insurer of the required insurance on this clause 7.8 to deny liability on the basis that the party has no liability to the Commonwealth; and
        5. for fines or penalties incurred by the Commonwealth arising from the Contractor’s performance of the Services.
     3. Paragraph (a)(i) does not apply to a liability of the Commonwealth for:
        1. any deliberate breach or repudiation of the Contract;
        2. Fraud; or
        3. fines or penalties incurred by the Contractor arising from an act or omission of the Commonwealth.

1. Contract documents and commonwealth material
   1. Licence over Contract Documents
      1. The Contractor 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 Contract Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Contract Documents.
      2. The licence referred to in paragraph (a):
         1. arises, for each Contract Document, immediately when the Contract Document is:
            1. produced; or
            2. provided, or required to be provided, to the Commonwealth or the Contract Administrator,

under, for the purposes of, arising out of or in connection with the Contract, the Services or the Assets by, for or on behalf of the Contractor;

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

* + 1. the Contractor owns all Intellectual Property Rights in the Contract Documents 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 Contract Documents 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 Contract Documents, 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 Contract Documents 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 Contractor 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 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 Contractor 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 Contractor may use that material only in accordance with those conditions.
     3. Without limiting clause 21 and if clause 22 applies, clause 22 the Contractor will be responsible for the protection, maintenance and return of the Commonwealth Material in its possession.
  2. Access to Premises and Contract Documents

The Contractor must:

* + 1. at the request of the Commonwealth at any time during the Services and the period of 10 years following Completion of the Services provide and make available:
       1. access to its premises and make the Contract Documents available for inspection by the Contract Administrator or anyone else acting on behalf of the Commonwealth on an open book basis, including for examination, audit, copying and use in any re-tender or other procurement of the Services or any part of the Services;
       2. such copies of the Contract Documents as the Contract Administrator or anyone else acting on behalf of the Commonwealth may require, in such formats as may be required;
       3. all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
       4. any officers, employees, agents or subcontractors for interviews with the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
    2. ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under clause 8.5 as if the subcontractor were the Contractor.
  1. Updating Contract Documents for addition and deletion of Assets or Sites

If the Commonwealth elects to add or remove an Asset or a Site to or from the Contract in accordance with the Contract, the Contractor must:

* + 1. take such steps as may be necessary or required by the Contract Administrator to ensure the smooth:
       1. handover of the Asset or Site to or from the Commonwealth; and
       2. transition of the performance of the Services to or from the Contractor in respect of the Asset or Site; and
    2. amend all Contract Documents so that the Contract Documents:
       1. fully provide for the Asset or Site being added and the Services required at the Asset or Site can be performed by the Contractor from the time required in the direction; and
       2. deletes references to the Asset or Site that is being deleted and the Services being performed at the Asset or Site cease from the time required in the direction.

1. subcontracting and reimbursable work
   1. Subcontracting
      1. The Contractor:
         1. unless agreed by the Contract Administrator in writing (including in accordance with clause 9.7), must subcontract all Services (other than the Management Services unless otherwise agreed by the Contract Administrator under paragraph (iii)) on the terms of an Authorised Subcontract;
         2. unless clause 3.1(b) applies, must obtain the Contract Administrator’s prior approval (which will not be unreasonably withheld) to each subcontract (except for a subcontract for part of the Services specified in the Contract Particulars to a subcontractor named in the Contract Particulars);
         3. must not subcontract any of the Management Services without the prior written approval of the Contract Administrator;
         4. will:
            1. not be relieved of any of its liabilities or obligations under the Contract, including those under clause 3.5; and
            2. remain responsible for all subcontractors and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subcontractors default or otherwise fail to observe any of the requirements of the relevant subcontract;
         5. will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Services;
         6. must ensure that each subcontract contains provisions:
            1. which bind the subcontractor to participate in any novation required by the Commonwealth under clause 15.6(a)(i); and
            2. as otherwise required by the Contract; and
         7. must, if requested by the Contract Administrator:
            1. execute;
            2. procure the relevant subcontractor to execute; and
            3. deliver to the Contract Administrator,

a Subcontractor Deed of Covenant, duly completed with all relevant particulars:

* + - * 1. as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
        2. where such approval is not required, within the time required by the Contract Administrator and in any event before commencement of any Services by the relevant subcontractor.

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

* + 1. The Contractor must obtain and hold valid and satisfactory STRs of any subcontractor referred to under paragraph (a)(ii) 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 "valid" and “satisfactory” has the meaning given in clause 18.8(e).
    2. Without prejudice to the Contractor’s obligations under the Contract, all guarantees and warranties obtained by the Contractor from subcontractors must be extended to the Commonwealth to the full extent of their terms.
  1. Subcontract Proposal

The Contractor must:

* + 1. provide the Commonwealth and the Contract Administrator with (and obtain the consent of the Contract Administrator to) a proposal which sets out:
       1. how the Services will be divided into packages for the purposes of subcontracting those Services; and
       2. any other information required by the Contract Administrator,

(**Subcontracting Proposal**);

* + 1. regularly review, update and amend the Subcontracting Proposal and submit to the Commonwealth and the Contract Administrator (and obtain the consent of the Contract Administrator to) the updated or amended Subcontracting Proposal; and
    2. subcontract the Services in accordance with the Subcontracting Proposal.
  1. Co-ordination and management of subcontractors

The Contractor must:

* + 1. coordinate the work of all subcontractors engaged by it;
    2. provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the subcontractors engaged by it;
    3. co-ordinate the Services and ensure execution and Completion of the work which is to be carried out by subcontractors engaged by it in a proper and professional manner according to the relevant requirements of the Contract;
    4. administer any tender process which it conducts and the subcontracts which it lets strictly in accordance with the terms of tender or subcontract (as the case may be);
    5. not approve an extension of time or grant any entitlement to the subcontractor unless the subcontractor is entitled to that extension of time or entitlement under the subcontract and it has been approved by the Contract Administrator;
    6. not vary the work the subject of a subcontract unless a Variation Order for an equivalent Variation has been issued under the Contract or the Contract Administrator has otherwise approved that variation in writing;
    7. establish collaborative relationships with all subcontractors and administer all subcontracts in a manner which motivates subcontractors to improve their performance;
    8. if the Contractor terminates a subcontract:
       1. complete the work the subject of that terminated subcontract; and
       2. bear the costs incurred by the Contractor in completing this work, and such costs will not form part of the Reimbursable Costs except to the extent they do not exceed the amount of Reimbursable Costs that would have been payable under the terminated subcontract.
  1. Sole sourcing

If clause 9.6 does not apply and the Contractor proposes to engage a subcontractor other than by conducting a tender process, the Contractor must ensure that:

* + 1. that subcontractor is engaged on an arms length basis and on commercial terms; and
    2. the terms of the subcontract represent value for money for the Commonwealth.
  1. Tendering ethics and value for money

The Contractor must ensure that:

* + 1. none of its tenderers for any subcontract have any arrangement or arrive at any understanding with any of the other tenderers or with any employee of an association of which any of the tenderers is a member about the work which is the subject of the tender;
    2. without limiting paragraph (a), no tenderer:
       1. engages in any discussion or correspondence with any of the persons referred to in paragraph (a) concerning the sum of money it is going to tender as its tender sum;
       2. engages in any collusive tendering with any of the other tenderers; or
       3. engages in any conduct or has any arrangement or arrives at any understanding with any of the other tenderers, which in any way could have the effect of reducing the competitiveness of the tender process for the work and so increasing the price; and
    3. all quotation and tender processes for subcontracts are conducted:
       1. ethically, fairly and according to the highest standards of probity;
       2. so as to maximise value for money for the Commonwealth; and
       3. in accordance with all other requirements notified by the Contract Administrator.
  1. Tendering process
     1. This clause 9.6 will only apply to the procurement process for a subcontract if the Contract Administrator notifies the Contractor that the Commonwealth requires that procurement process to be undertaken in accordance with this clause.
     2. If this clause 9.6 applies to the procurement process for a subcontract then:
        1. the Contractor must, in respect of tenders or quotes for the Services the subject of that subcontract, ensure that, unless otherwise directed by the Contract Administrator, the organisations or persons from whom those quotes or tenders are obtained:
           1. are not Related Bodies Corporate of the Contractor; and
           2. operate independently and at arms length from the Contractor;
        2. the Contractor must examine and analyse all tenders received and must provide a recommendation (and a tender evaluation report if directed by the Contract Administrator) to the Contract Administrator:
           1. recommending to the Contract Administrator the tender that represents the best value for money and the tender (if any) which should be accepted by the Contractor; and
           2. attaching a copy of each tender or quote;
        3. the Contract Administrator will consider the Contractor’s recommendation and will accept or reject that recommendation in writing; and
        4. if the Contract Administrator:
           1. accepts the Contractor’s recommendation, the Contractor must enter into a subcontract with the organisation or person the subject of the recommendation in accordance with the Contract Administrator’s acceptance; or
           2. rejects the Contractor’s recommendation:

the Contract Administrator may in its absolute discretion direct the Contractor to undertake an alternative procurement process for the relevant Services; and

the Contractor must at all times continue to deliver the Services in accordance with the Contract.

* 1. Self-Delivery
     1. The Contractor must not self-deliver the Services (other than the Management Services) unless it obtains the prior written consent of the Commonwealth, on terms and conditions as determined by the Commonwealth, in its absolute discretion.
     2. If the Contractor proposes to self-deliver any part of the Services (i.e. using direct labour rather than subcontractors) other than the Management Services it must provide the Commonwealth a proposal for the delivery of the relevant part of the Services using direct labour.

1. Quality
   1. Good Industry Practice

Without limiting any other provision of the Contract (including clause 3.5 and the Specification), the Contractor must comply with, and ensure that its subcontractors comply with, Good Industry Practice in performing the Services.

* 1. Quality Assurance

The Contractor:

* + 1. must implement the quality assurance process, system or framework consistent with best industry practice;
    2. must allow the Contract Administrator or anyone else acting on the behalf of the Commonwealth access to the quality assurance process, system or framework of the Contractor and its subcontractors so as to enable auditing or other monitoring; and
    3. will not be relieved from compliance with any of its obligations 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 Contract Administrator concerning the Contractor's quality assurance process, system or framework or its compliance or non‑compliance with the process, system or framework;
       3. any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Commonwealth of the Contractor's compliance with the process, system or framework; or
       4. any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any Services which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
  1. Contractor audit, testing and inspection
     1. The Contractor must, and must procure that its subcontractors, carry out and conduct all audits, tests and inspections:
        1. as required by, and in accordance with, the Contract (including the Specification); and
        2. as reasonably directed by the Contract Administrator.
     2. The Contractor must report the results of its audits, tests and inspections to the Contract Administrator in accordance with the Contract (including the Specification) and as otherwise reasonably directed by the Contract Administrator.
  2. Commonwealth audits and testing
     1. The Commonwealth or its nominee may carry out an audit or any testing of the Services and the Sites at any time prior to the first anniversary of expiry or termination of the Contract.
     2. The Commonwealth does not owe the Contractor any obligation to inspect the Services or the Sites and neither any inspection nor any failure to inspect will limit or affect the Commonwealth or Contract Administrator’s rights and powers under the Contract or otherwise in connection with the Services or the Sites.
     3. The Contractor must co-operate with the Commonwealth or its nominee (as applicable) to enable the Commonwealth or its nominee (as applicable) to carry out any audit or testing of the Services or the Sites, including by providing, and procuring that its subcontractors and personnel provide, all reasonable co-operation, facilities and assistance and answering all such questions as may reasonably be required by the Commonwealth or its nominee (as applicable).
     4. Without limiting any other provision of the Contract (including clauses 10.5(a) and 15), where an audit or testing by the Commonwealth or its nominee identifies a material failure by the Contractor to comply with the requirements of the Contract, the cost of that audit or testing will be a debt due and payable by the Contractor to the Commonwealth.
  3. Defects and non-Complying Services
     1. If the Contract Administrator discovers or believes that:
        1. there is a Defect; or
        2. any Services have not been performed in accordance with the Contract,

including:

* + - 1. any materials or work which do not comply with the requirements of the Contract;
      2. any work which has not been Completed in accordance with the requirements of the Contract; or
      3. any work which has been carried out by the Contractor but which was not ordered by the Commonwealth in accordance with the Contract or which was in excess of the scope of the Services,

then the Contract Administrator may give the Contractor a direction specifying the Defect or the non-complying Services and doing one or more of the following:

* + - 1. requiring the Contractor to:
         1. reperform the non-complying Services and specifying the time within which this must occur; and
         2. take all such steps as are reasonably necessary to:

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 Contractor had carried out the Services in accordance with the Contract; or

* + - 1. advising the Contractor that the Commonwealth will accept the non-complying Services despite the non-compliance.
    1. Nothing in the Contract will prejudice any other right which the Commonwealth may have against the Contractor arising out of a failure of the Contractor to perform the Services in accordance with the Contract or any Defect and any action taken by the Commonwealth under the Contract in respect of such a failure or Defect will not prejudice the Commonwealth’s power to subsequently take another action.
  1. Reperformance of the Defect or non-complying Services
     1. If a direction is given under clause 10.5(a)(vi), the Contractor must correct the Defect or reperform the non-complying Services:
        1. within the time specified in the Contract Administrator's direction; and
        2. so as to minimise the delay and disruption to the Services and cause as little inconvenience as is reasonably possible to persons occupying, working on or using the relevant Assets and Site,

and will not be entitled to make any Claim against the Commonwealth in respect of such work.

* + 1. If the Contractor has not commenced or completed the correction of the Defect or reperformance of the non-complying Services by the time specified in the Contract Administrator’s direction, the Contract Administrator may, without prejudice to the Commonwealth’s other rights under the Contract, take any action it considers to be necessary to correct the Defect or rectify the non-confirming Services and any costs incurred by the Contract Administrator or the Commonwealth in doing so will be a debt due and payable from the Contractor to the Commonwealth.
    2. The Contractor will:
       1. have no entitlement to payment for any part of the cost of the Services requiring re-performance or correction of any Defect under this clause 10.6; and
       2. be entitled to payment of the original cost of the part of the Services which it re-performs under this clause 10.6, subject to deduction for any costs, losses and damages incurred by the Commonwealth arising out of or in connection with the failure to perform the Services in accordance with the Contract.
  1. Acceptance of the Defect or non-complying Services

If a direction is given under clause 10.5(a)(vii), the Commonwealth may recover from the Contractor as a debt immediately due and payable:

* + 1. in the case of work referred to in clauses 10.5(a)(iii) or 10.5(a)(iv), the amount determined by the Contract Administrator as representing the cost of correcting the Defect or non-conformance or completing the uncompleted work; or
    2. in the case of work referred to in clause 10.5(a)(v), the amount determined by the Contract Administrator as representing the cost of removing the work and, if relevant, restoring the Assets and the Site to the condition in which they would have been but for the performance by the Contractor of the work; and
    3. all other costs, losses and damages incurred or suffered by the Commonwealth as a result of, or arising out of, or in any way in connection with the Defect or the non-compliance.
  1. Warranties

The Contractor must:

* + 1. in all circumstances in which such a warranty would ordinarily be available, or otherwise when required by the Contract Administrator, procure and provide to the Commonwealth or the Host Nation (as relevant) a warranty:
       1. from the relevant subcontractor for workmanship, materials, goods or equipment performed or supplied by that subcontractor; and
       2. on terms ordinarily available or otherwise as required by the Contract Administrator;
    2. maintain a register of all warranties in existence in respect of the Assets and, for that purpose, take every possible step to identify all such warranties and ensure that the register is as complete and up to date as possible;
    3. if any Defect or breakdown of an Asset is the subject of a warranty from a subcontractor or a defects liability period or warranty under another contract, do all things necessary to assist the Commonwealth to procure the rectification of the Defect under the relevant warranty or defects liability period;
    4. provide the Commonwealth and the Host Nation with such assistance as may be reasonably necessary in relation to any claim by the Commonwealth or the Host Nation (as applicable) against a warranty in the register referred to in paragraph (b) or defects liability period referred to in paragraph (c); and
    5. indemnify the Commonwealth against the cost of any work which is carried out prior to the end of the term of the Contract and paid for by the Commonwealth to the extent such work is covered by a warranty which is on the register under paragraph (b) (or ought reasonably to be if the Contractor had complied with its obligations under paragraph (b)) other than to the extent that the warrantor is insolvent or has otherwise ceased to trade and is unable to discharge its warranty obligations.

This clause 10.8 does not release, and is without prejudice to, the Contractor’s obligations under the Contract.

* 1. Contract Management Plans
     1. The Contractor:
        1. must carry out the Services in accordance with, and otherwise implement, the Contract Management Plans; and
        2. for the purposes of subparagraph (i), must:
           1. prepare Contract Management Plans:

where applicable, based on the draft Contract Management Plans lodged by the Contractor in its tender for the Services; and

otherwise in accordance with the requirements of the Contract,

and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Services and in any event no later than the date specified in the Contract Particulars for each Contract Management Plan;

* + - * 1. not commence any of the Services to which any Contract Management Plan applies, unless the Contract Administrator has had the number of days specified in the Contract Particulars for each Contract Management Plan to review the Contract Management Plan and has not rejected the Contract Management Plan;
        2. if any Contract Management Plan is rejected, submit an amended Contract Management Plan to the Contract Administrator;
        3. in any event, finalise each Contract Management 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 Contract Administrator;
        4. after each Contract Management Plan has been finalised:

regularly review, update and amend each Contract Management Plan in accordance with the process set out in each Contract Management Plan and (other than the Transition-In Plan) otherwise at least on each anniversary of the Award Date, including to address the Commonwealth’s Annual Requirements;

update or amend a Contract Management Plan on request of the Contract Administrator; and

continue to correct any defects in or omissions from a Contract Management Plan (whether identified by the Contract Administrator or the Contractor),

and submit an updated or amended Contract Management Plan to the Contract Administrator, after which:

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

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

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

reviews, updates, amendments and submissions of each Contract Management Plan;

audits or other monitoring of each Contract Management Plan; and

training and awareness programs and communications provided to Contractor and subcontractor personnel in respect of each Contract Management Plan (including each updated or amended Contract Management Plan).

* + 1. The Contractor will not be relieved from compliance with any of its obligations under the Contract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the requirements of any Contract Management Plan;
       2. any direction by the Contract Administrator concerning a Contract Management Plan or the Contractor's compliance or non-compliance with a Contract Management Plan;
       3. any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Commonwealth of the Contractor's compliance with a Contract Management Plan; or
       4. any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any defect in or omission from a Contract Management Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
  1. Monitoring of satisfaction

The Contractor must:

* + 1. during the term of the Contract, monitor and use its best endeavours to maximise the Commonwealth’s level of satisfaction with the performance of the Services including by taking such steps as the Contract Administrator may require from time to time; and
    2. if the Contract Administrator indicates to the Contractor in writing that the Commonwealth is not satisfied with the performance of the Services, take such steps as may be reasonably required by the Contract Administrator to ensure that the issue is resolved to the satisfaction of the Contract Administrator and does not arise again.
  1. Performance Management
     1. The Contractor acknowledges that:
        1. the Commonwealth will assess the Contractor’s performance of the Services in accordance with this clause 10.11; and
        2. the duration of the Term, and the volume of the Services, are conditional upon (among other things) the Commonwealth’s ongoing satisfaction with the Contractor’s performance of the Services.
     2. Upon receipt of a Quarterly Report, the Contract Administrator will:
        1. evaluate the performance of the Services during the quarter the subject of the Quarterly Report having regard to:
           1. the matters set out in the Quarterly Report;
           2. the Contractor’s performance of the Services against the Key Performance Indicators;
           3. the results of any audits, monitoring or inspections carried out under the Contract;
           4. the Contractor’s compliance with the Contract and the Contract Management Plans; and
           5. any other matters notified by the Contract Administrator to the Contractor; and
        2. make an assessment as to whether the Contractor’s performance of any of the Services has been unsatisfactory to the Commonwealth having regard to the matters set out in subparagraph (i).
     3. Without limiting any other provision of the Contract, if the Commonwealth assesses the Contractor’s performance of any of the Services to have been unsatisfactory under paragraph (b)(ii), the Commonwealth may, at its absolute discretion, issue a notice directing the Contractor to:
        1. meet with the Contract Administrator to discuss the outcome of the Commonwealth’s assessment;
        2. undertake more frequent performance management and auditing; or
        3. take corrective action to improve the performance of the Services,

and the Contractor must promptly comply with any such direction.

* + 1. If:
       1. an Act of Prevention or Force Majeure has materially adversely affected, or will materially adversely affect, the performance of the Services by the Contractor; and
       2. that Act of Prevention or Force Majeure was not caused or contributed to by an act or omission of the Contractor and the Contractor has taken all reasonable steps to mitigate the effect of that Act of Prevention or Force Majeure,

then the assessment of the Contractor’s performance under paragraph (b)(ii) will be adjusted on account of that affect as determined by the Contract Administrator (acting reasonably).

* + 1. Notwithstanding paragraph (d), the Contract Administrator may, in its absolute discretion at any time and from time to time by written notice to the Contractor, unilaterally adjust the assessment of the Contractor's performance, including by way of adjustment of any Key Performance Indicator.
    2. The Contract Administrator is not required to exercise its discretion under paragraph (e) for the benefit of the Contractor.
    3. The Contract Administrator may review the Key Performance Indicators on each anniversary of the Services Commencement Date and, if the Contract Administrator considers it necessary (acting reasonably), adjust the Key Performance Indicators (including by increasing, decreasing, replacing, omitting or adding new Key Performance Indicators) having regard to:
       1. the Contractor’s actual performance against the Key Performance Indicators during the preceding year;
       2. the need to maintain an incentive for the Contractor to achieve continuous improvement in the performance of the Services;
       3. changes in the Commonwealth’s needs and targets; and
       4. any other key performance indicators which may be useful in evaluating the performance of the Services,

and any such adjustment will take effect on the first day of the first quarter occurring after the Contract Administrator notifies the Contractor in writing of the adjustment.

1. Time
   1. Progress

The Contractor must:

* + 1. commence performance of the Services from the Services Commencement Date, except to the extent the Contract Administrator has directed a delay to commencement of any part of the Services;
    2. perform the Services regularly and diligently and in a timely manner in accordance with the Contract and any directions issued by the Contract Administrator; and
    3. Complete the:
       1. Scheduled Maintenance Services by the relevant dates specified in the program prepared by the Contractor under clause 11.2; and
       2. Reactive Maintenance Services by the times and dates specified in the relevant Service Request (or, if no date is specified or the Reactive Maintenance Services are undertaken under clause 3.1(b), within the period of time specified in [insert clause reference #] of the Specification) or if no such time is specified, such other reasonable period time,

(each a **Time or Date for Completion**) as extended under clause 11.5.

* 1. Programming
     1. The Contractor must:
        1. prepare a program of the Scheduled Maintenance Services as required by, and in accordance with, the Specifications and the Contract Management Plans and

containing the details required by the Contract or which the Contract Administrator otherwise reasonably directs;

* + - 1. update the program
         1. periodically, at least at intervals of no less than that specified in the Contract Particulars, to take account of:

changes to the program; and

delays which may have occurred, including any for which the Contractor is granted an extension of time under clause 11.5;

* + - 1. give the Contract Administrator copies of all programs; and
      2. provide all programs in a format compatible with the software and any methodology specified in the Contract Particulars.
    1. The Contract Administrator may review and comment on any program given under this clause 11.2.
    2. The Contract Administrator may instruct the Contractor to change the order in which the Services are to be carried out. If such an instruction is issued, the Contractor will be entitled to have the Fee increased by the extra costs reasonably incurred by the Contractor which arise directly from such instruction, as determined by the Contract Administrator.
  1. Contractor Not Relieved

Any review of, comment upon or any failure to review or comment upon, a program by the Contract Administrator will not:

* + 1. relieve the Contractor from or alter its obligations under the Contract especially (without limitation) the obligation to achieve Completion of any Services by the relevant Time or Date for Completion;
    2. evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any, or all, of the Services; or
    3. affect the time for the carrying out of the Commonwealth's or Contract Administrator's Contract obligations.
  1. Suspension
     1. The Contract Administrator:
        1. may instruct the Contractor 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 Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
     2. If a suspension under clause 11.4 arises as a result of:
        1. the Contractor's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension; or
        2. a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 11.4 will entitle the Contractor to:
           1. an extension of time to any relevant Time or Date for Completion where it is otherwise so entitled under clause 11.5; and
           2. have the Fee increased by the extra costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Contract Administrator.

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

* + 1. The Contractor may only suspend the Services when instructed to do so under clause 11.4.
  1. Delays Entitling Claim in Extension of Time
     1. If the Contractor becomes aware of any occurrence that is likely to delay it in carrying out any Services it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contract Administrator in writing of the occurrence and the likely delay.
     2. If the Contractor has been delayed in carrying out any Services by an Act of Prevention or Force Majeure in a manner which has delayed, or is likely to delay, the Contractor in achieving Completion of those Services:
        1. the Contractor may submit a claim to the Contract Administrator for an extension to the relevant Time or Date for Completion for those Services; and
        2. the relevant Time or Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Commonwealth and the Contractor.
     3. In determining a reasonable period under paragraph (b), the Contract Administrator must not include any period of delay in respect of which the Contractor:
        1. contributed to the delay; or
        2. failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.
     4. The Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any delay in the carrying out of the Services, other than under subparagraph (b)(i).
  2. Force Majeure
     1. If a party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it must give written notice to the other party of the event or circumstance constituting the Force Majeure within 14 days after the party becomes aware, or should have become aware of the event or circumstance, and shall specify the obligations, the performance of which is or will be prevented.
     2. Each party must at all times take all reasonable steps to minimise delay in the performance of the Contract as a result of Force Majeure.
     3. A party must give notice to the other party when it ceases to be affected by the Force Majeure.
     4. If a Force Majeure of which notice has been given under paragraph (a), continues for a period of more than 2 months, the Commonwealth may by written notice to the Contractor immediately terminate the Contract whereupon clause 15.9 will apply.
     5. If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure, the Contractor will be entitled to: 
        1. an extension of time to any relevant Time or Date for Completion where it is otherwise so entitled under clause 11.5; and
        2. have the Fee increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the Force Majeure.
     6. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Force Majeure, other than under paragraph (e).

1. VariationS
   1. Variation Price Request
      1. The Contract Administrator may, at any time, issue a document titled "**Variation Price Request**" to the Contractor which will set out details of a proposed:
         1. increase, decrease, omission or deletion to any part of the Services;
         2. addition or removal of any Asset or Site;
         3. change to the character, quality or quantity of any part of the Services; or
         4. additional service,

(each a **Variation**) which the Commonwealth is considering.

* + 1. The Contractor must immediately take all action required under any relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.
    2. Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contract Administrator), the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:
       1. adjustment (if any) to the Management Fee, the Transition-In Fee and the Scheduled Maintenance Services Fee to carry out the proposed Variation; and
       2. the effect (if any) which the proposed Variation will have on:
          1. the Reimbursable Costs; and
          2. the then current program, including each relevant Time or Date for Completion.
  1. Variation Order

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 12.1, the Contract Administrator may, at any time, instruct the Contractor to carry out a Variation by a written document titled "**Variation Order**", in which the Contract Administrator will state one of the following:

* + 1. the proposed adjustment to the Fee set out in the Contractor's notice under clause 12.1 (if any) is agreed and the Fee will be adjusted accordingly; or
    2. any adjustment to the Fee will be determined under clause 12.3.

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

* 1. Valuation of Variation

The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Contract Administrator:

* + 1. as agreed under clause 12.2(a);
    2. if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates and prices are applicable to or it is reasonable to use them for valuing the Variation; or
    3. to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
       1. agreed between the parties; or
       2. failing agreement, determined by the Contract Administrator.
  1. Table of Variation Rates and Prices

Where the rates and prices in the Table of Variation Rates and Prices are used under clause 12.3(b), the rates and prices will be deemed to cover:

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

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

1. Payment
   1. Payment Obligation

Subject to clause 13.8 and to any other right to set‑off which the Commonwealth may have, the Commonwealth will pay the Contractor:

* + 1. the Fee; and
    2. any other amounts which are payable by the Commonwealth to the Contractor under the Contract.
  1. Issue of invoices
     1. The Contractor must give the Contract Administrator invoices on account of the Fee and all other amounts then payable by the Commonwealth to the Contractor 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. which includes the Service Request number (if applicable);
        3. which are based on the Table of Variation Rates and Prices to the extent it is relevant;
        4. which show separately the amounts (if any) claimed on account of:
           1. each of the Management Fee, the Transition-In Fee, the Scheduled Maintenance Services Fee and the Reactive Maintenance Services Fee, including the currency or currencies (as applicable) in which it is claimed (which currencies must be in accordance with the breakdown in Annexure 2 (if any)); and
           2. all other amounts then payable by the Commonwealth to the Contractor under the Contract; and
        5. which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
           1. to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Contractor under the Contract; and
           2. including any such documentation or information which the Contract Administrator may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
     2. Without limiting paragraph (a)(i), invoices for the Reactive Maintenance Services Fee must be submitted to the Contract Administrator within 3 months of Completion of the relevant Reactive Maintenance Services or earlier termination of the Contract. The Commonwealth is not obliged to make payment for any invoice for Reactive Maintenance Services which is not submitted strictly within this timeframe.
  2. Payment
     1. Subject to paragraphs (b) and (c), the Commonwealth will pay the Contractor the amount stated in each correctly rendered invoice issued under clause 13.2 as follows:
        1. the Reimbursable Costs payable to subcontractors will be:
           1. paid by the Commonwealth into the Subcontractor Trust Account within the time period specified in the Contract Particulars; and
           2. held by the Contractor on trust for the subcontractors in accordance with the terms of the Subcontractor’s Trust Account Trust Deed; and
        2. the balance will be paid by the Commonwealth to the Contractor within the time period specified in the Contract Particulars.
     2. If the Commonwealth disputes the amount of any invoice:
        1. the Commonwealth may, on written notice to the Contractor, withhold or suspend payment of that disputed amount until the dispute is resolved;
        2. the Contractor must continue to perform its obligations under the Contract; and
        3. the Commonwealth must promptly pay any disputed amounts that are subsequently found to be correctly payable.
     3. If any part of any invoice is found to have been rendered incorrectly after payment has been made by the Commonwealth then:
        1. to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor (as applicable); and
        2. where the Contractor owes any amount to the Commonwealth under subparagraph (i), the Contractor must pay that amount to the Commonwealth within 10 business days of receipt of a written demand from the Commonwealth.
  3. Payment on Account

Any payment of moneys under clause 13.3 will not constitute:

* + 1. approval of the Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment has been satisfactorily carried out in accordance with the Contract;
    2. a waiver of the requirements of clause 13.2 in relation to any invoice other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the invoice the subject of the payment;
    3. an admission or evidence of the value of the Services or that the Services comply with the Contract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

* 1. Completion Invoice and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contract Administrator) of Completion of the Services, the Contractor must give the Contract Administrator:
        1. an invoice which complies with clause 13.2 and which must include all amounts which the Contractor 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 Contractor claims from the Commonwealth,

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

* + 1. The invoice and notice required under paragraph (a) are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.
    2. Without limiting the previous paragraph, the Contractor cannot include in its invoice or notice any Claims which are barred by clause 17.3.
  1. Release after Completion Invoice and Notice

After the date for submitting the invoice and notice under clause 13.5 has passed, the Contractor releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract which occurred prior to Completion of the Services, except any Claim:

* + 1. included in an invoice or notice under clause 13.5 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 13.5; or
    2. directly arising as a result of a Claim made by a third party against the Contractor which could not have been reasonably foreseen by the Contractor at the time of submitting the invoice and notice under clause 13.5.
  1. Interest
     1. The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:
        1. amount payable by the Commonwealth under clause 13.3, but which is not paid by the Commonwealth within the time required by the Contract; and
        2. damages.
     2. This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
  2. Right of Set-Off

The Commonwealth may:

* + 1. deduct from moneys otherwise due to the Contractor:
       1. any debt or other moneys due from the Contractor to the Commonwealth; and
       2. any claim to money which the Commonwealth asserts in good faith against the Contractor whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with 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 Contractor by the Commonwealth in respect of any Variation the subject of a Variation Order under clause 12.2.
  1. Payment of Workers and Subcontractors

The Contractor must with each invoice submitted under clause 13.2provide the Contract Administrator with a duly completed declaration (in the format set out in the Schedule of Collateral Documents) for each applicable jurisdiction in which the Services were carried out during the relevant period.

* 1. General Liability for Taxes

Subject to clause 13.11, unless otherwise stated in the Contract Particulars, as between the Commonwealth and the Contractor, the Contractor bears the risk of, and must pay, all Taxes incurred or imposed in connection with the Services and this Contract, and the Fee is not subject to adjustment or gross up on account of any Tax.

The Contractor must indemnify the Commonwealth against any loss, damage or liability arising out of or in connection with Taxes which the Contractor is required to pay under this clause 13.10.

* 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 clause 13.10, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Accounting Record

The Contractor must keep accurate and up to date accounting records including books of account, labour time sheets, subcontractor quotations and invoices, invoices for materials, plant hire, final accounts and any other documents or papers:

* + 1. which show all details in relation to:
       1. all Variations; and
       2. without limiting subparagraph (i), all amounts paid to the Contractor on account of the Fee and otherwise in accordance with the Contract; and
    2. which could otherwise be required by the Contract Administrator to establish actual costs paid or incurred by the Contractor in performing any Services and to verify amounts claimed by or paid to the Contractor in relation to the Services.
  1. Cost Allocation Advice

Without limiting clause 13.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Contractor must with each invoice under clause 13.2, provide the Contract Administrator with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all Services completed since the Commonwealth's previous payment to the Contractor.

* 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 Contract Administrator and the Contractor or determination by the Contract Administrator in respect of that adjustment must be made to the extent reasonably practicable in the relevant currency or currencies having regard to Annexure 2 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 Contract Administrator, and the Contract Administrator considers that it is not reasonably practicable to determine the adjustment having regard to Annexure 2 or the location from which the Services are or will be provided, the Contract Administrator shall determine the adjustment in Australian dollars.
  1. Unfixed plant and materials
     1. Unfixed goods and materials must not be included in an invoice under clause 13.2 unless:
        1. the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
        2. the unfixed goods and materials are clearly marked as the property of the Commonwealth and are on the Site or available for immediate delivery to the Site; and
        3. the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.
     2. Upon payment by the Commonwealth of an invoice which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.
  2. All Work
     1. Unless otherwise expressly stated in the Contract, the Contractor acknowledges that:
        1. it has made an allowance in the rates and prices in Annexure 2 for all labour, preliminaries, attendance, supervision, on- and off-site overheads, goods, materials, spare parts, plant and equipment, consumables, parking of vehicles and all other tasks and things which are required to enable the Contractor to perform the Services other than those Services described in subparagraph (ii) (**All Service Work**);
        2. it has made allowance in its Management Fee for all matters described in the definitions of ‘Management Fee’ and ‘Management Services’ and all associated or reasonably inferred matters related to the carrying out of its management functions (**All Management Work**); and
        3. it is not entitled to make any Claim (insofar as is permitted by law) against the Commonwealth arising out of or in connection with the cost of performance of All Service Work or All Management Work (collectively **All Work**) other than for the Fee as calculated in accordance with Annexure 2.
     2. The Contractor must provide All Work which is required to enable the Contractor to comply with its obligations under the Contract or which is to be reasonably inferred from the Specification or otherwise from the Contract, and all resources required for All Work, notwithstanding that it is not expressly mentioned in the Specification or otherwise in the Contract.
     3. Unless otherwise expressly stated in the Contract, the Contractor must perform the Services at its cost.

1. Trust Account and Trust Deed
   * 1. Within 7 business days of the Award Date, the Contractor must:
        1. execute the Subcontractor Trust Account Trust Deed;
        2. establish a bank account in accordance with the Subcontractor Trust Account Trust Deed (**Subcontractor Trust Account**); and
        3. deliver a duly executed copy of the Subcontractor Trust Account Trust Deed to the Contract Administrator.
     2. The Contractor must maintain and operate the Subcontractor Trust Account out of which the Contractor will have authority to pay its subcontractors.
     3. The Commonwealth will deposit into the Subcontractor Trust Account amounts certified for Reimbursable Work.
     4. The Contractor will make prompt payments, no more than 5 days after deposit of the relevant funds, directly to all subcontractors using the funds in the Subcontractor Trust Account.
     5. The Commonwealth may:
        1. review, audit or otherwise monitor; or
        2. engage a third party to review, audit or otherwise monitor,

the Contractor’s use and operation of the Subcontractor Trust Account set up in accordance with the Subcontractor Trust Account Trust Deed and the Contractor must:

* + - 1. co-operate with the Commonwealth and any third party; and
      2. otherwise comply with its obligations under clause 14.

1. Termination
   1. Preservation of Rights

Subject to clause 15.7, nothing in clause 15 or that the Commonwealth does or fails to do pursuant to clause 15 will prejudice any right or remedy of the Commonwealth (including the recovery of damages) where the Contractor breaches (including repudiates) the Contract.

* 1. Contractor Default

The Commonwealth may give a written notice under clause 15.3 to the Contractor if the Contractor is in breach of the Contract.

* 1. Contents of Notice of Default

A notice under clause 15.3 must state:

* + 1. that it is a notice under clause 15.3;
    2. the failure or breach relied upon; and
    3. that the Commonwealth requires the Contractor 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 Contractor or, where the Contractor comprises two or more persons, to any one of those persons;
    2. the Contractor does not remedy a failure or breach the subject of a notice under clause 15.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 15.3;
    3. a direction has been given under clause 10.5, the Contractor fails to comply with clause 10.6; or
    4. the Contractor fails to comply with:
       1. clause 21; or
       2. if clause 22 applies, clause 22,

then the Commonwealth may by written notice to the Contractor immediately (and without having to first give a notice under clause 15.3 (except in the case of paragraph (b)) terminate the Contract.

* 1. Termination of a Service Request

Without limiting its rights under the Contract (including the right to cancel, vary or modify a Service Request), the Commonwealth may terminate a Service Request immediately upon written notice to the Contractor if the Commonwealth is entitled to terminate the Contract.

* 1. Commonwealth's Entitlements after Termination or omission by Commonwealth
     1. Subject to clause 15.1, if the Commonwealth terminates the Contract under clause 15.4 or a Service Request under clause 15.5 or if the Contractor repudiates the Contract and the Commonwealth otherwise terminates the Contract:
        1. the Commonwealth will:
           1. be entitled to require the Contractor to novate to the Commonwealth or the Commonwealth's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Commonwealth in respect of the terminated Services;
           2. not be obliged to make any further payments to the Contractor, including any amount the subject of an invoice under clause 13.2 in respect of the terminated Services; and
           3. be entitled to recover from the Contractor all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with such termination; and
        2. if the Commonwealth terminates the Contract, the Contractor must comply with clause 21.3.
     2. Clause 15.6 will survive the termination of the Contract.
  2. Contractor’s Entitlements after Termination by Contractor

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

* + 1. be entitled to payment of an amount determined in accordance with clause 15.9 as if the Commonwealth had terminated the Contract under clause 15.8; and
    2. not be entitled to a quantum meruit.

Clause 15.7 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 Contractor terminate the Contract or omit any Site, Asset or Service from 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 Contractor; and
    2. thereafter (at its absolute discretion), complete the uncompleted part of the Services either itself or by engaging Other Contractors.
  1. Contractor’s Entitlements after Termination for Force Majeure or Convenience by Commonwealth
     1. If the Commonwealth terminates the Contract or omits any Site, Asset or Service from the Contract under clause 11.6 or 15.8, the Contractor:
        1. will be entitled to payment of the following amounts, as determined by the Contract Administrator:
           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 or the relevant Site, Asset or Service had not been omitted (as applicable) and the Contractor submitted a payment claim for Services carried out to the date of termination; and
           2. the cost of goods or materials reasonably ordered by the Contractor for the Services the subject of termination or omission for which the Contractor is legally bound to pay provided that:

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

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

* + - * 1. the reasonable cost of removing from the Sites or Assets all labour, plant, equipment and other things used in providing the Services the subject of termination or omission; and
      1. must:
         1. take all steps possible to mitigate the costs referred to in subparagraph (i)B; and
         2. if the Commonwealth terminates the Contract, comply with clause 21.3.
    1. The amounts to which the Contractor is entitled under paragraph (a)(i) will be a limitation upon the Commonwealth's liability to the Contractor arising out of or in connection with the termination of the Contract or omission of the Site, Asset or Service (as applicable) (whether under clause 15.8 or deemed to be under clause 15.8 through the operation of clause 15.7(a)) and, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the termination of the Contract or omission of the Site, Asset or Service (as applicable), other than for the amount payable under clause 15.9.
    2. Clause 15.9 will survive the termination of the Contract by the Commonwealth under clause 15.8 or by the Contractor following repudiation by the Commonwealth.
  1. Transition-Out
     1. The Contractor must diligently carry out the Transition-Out Activities during the Transition-Out Period in accordance with the Contract and the Transition-Out Plan.
     2. Without limiting clause 15.10(a), the Contractor:
        1. acknowledges that the Commonwealth or the Host Nation may, on or before expiry or termination of the term of this agreement, undertake a tender process for the purposes of appointing, or otherwise invite, any person to provide services the same or similar to the Services for a period commencing after expiry or termination of the Contract;
        2. must, to the extent permitted by law, provide the Commonwealth and its nominees with reasonable access to:
           1. the Contractor’s employees and subcontractors; and
           2. the information, books and records kept by or on behalf of the Contractor in connection with the Services,

including for the purposes of the Contractor preparing reports and documents in connection with any tender process for invitation to a person to submit an offer for the performance of services the same or similar to the Services after expiry or termination of the Contract; and

* + - 1. must do all things reasonably required by the Commonwealth to ensure that any person engaged by the Commonwealth or the Host Nation to provide services the same or similar to the Services after expiry or termination of the Contract can take over and perform those services without unreasonable interruption, and must not do anything that directly or indirectly avoids or materially prejudices or frustrates the take over and performance of those services, including by providing information, records and training to that person as reasonably required by the Commonwealth.

1. DisputeS
   1. Notice of Dispute
      1. If a dispute or difference arises between the Contractor and the Commonwealth or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in clause 16.
      2. Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:
         1. the dispute or difference;
         2. particulars of the party's reasons for being dissatisfied; and
         3. the position which the party believes is correct.
   2. Negotiation between the parties
      1. Any dispute or difference notified by one party to the other under clause 16.1 will be referred to the Level 1 Representatives and the Level 1 Representatives must meet and undertake genuine negotiations to resolve the dispute or difference.
      2. If the Level 1 Representatives cannot resolve a dispute or difference within 10 days of the notice under clause 16.1, then the dispute or difference will be referred to the Level 2 Representatives and the Level 2 Representatives must meet and undertake genuine negotiations to resolve the dispute or difference.
      3. If the Level 2 Representatives cannot resolve a dispute or difference within 10 days after the referral under paragraph (b), then the dispute or difference will be referred to the Level 3 Representatives and the Level 3 Representatives must meet and undertake genuine negotiations to resolve the dispute or difference.
      4. If, despite using all reasonable efforts, the Level 3 Representatives are unable to resolve the dispute or difference within 10 days after the referral under paragraph (c), clause 16.3 will apply unless the parties otherwise agree to a procedure (including whether to commence legal proceedings) to resolve the dispute or difference.
   3. Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses specified in the Contract Particulars and is not resolved within 30 days after a notice is given under clause 16.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 16.3 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 clause 16.4:
        1. is unavailable;
        2. declines to act;
        3. does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
        4. does not enter into the Expert Determination Agreement or other agreement in accordance with clause 16.10(b) within 14 days of his or her appointment under clause 16.4; or
        5. does not make a determination within the time required by clause 16.9,

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

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

An expert determination conducted under clause 16 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

* 1. Procedure for Determination

The expert will:

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

The expert must:

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

Each party will:

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

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 16 within 28 days from the acceptance by the expert of his or her appointment.

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

The determination of the expert:

* + 1. must be in writing;
    2. will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clause 16.12, 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. Arbitration Agreement

If either:

* + 1. clause 16.3 applies, and a notice of appeal is given under clause 16.11; or
    2. clause 16.3 does not apply and the dispute or difference has not been resolved within 30 days after a notice is given under clause 16.1;

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

* 1. Arbitration
     1. Arbitration pursuant to clause 16.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 16.13.
     2. The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
     3. The parties agree that the place and location of the arbitration will be via videoconference, and that the preferred videoconference platform option to be used is Microsoft Teams.
     4. The parties agree that any:
        1. request issued in accordance with Article 4 3) h) of the ICC Rules; and
        2. answer issued in accordance with Article 5 1) f) of the ICC Rules,

will propose that the place of the arbitration for hearings and meetings to be conducted be held via videoconference, and that the preferred videoconference platform option to be used is Microsoft Teams.

* + 1. The parties agree that no objection shall be taken to the decision, order or award of the arbitral tribunal on the basis that the arbitration, including any hearing and meeting, was held via videoconference.
    2. The second sentence of Article 35(6) of the ICC Rules (effective as of 1 January 2021) or its equivalent in any subsequent version of the ICC Rules shall not apply.
    3. Article 32(3) of the ICC Rules (effective as of 1 January 2021) or its equivalent in any subsequent version of the ICC Rules will be modified to read:

*The award shall be deemed to be made at the seat of the arbitration and on the date stated therein.*

* + 1. The parties agree that:
       1. they have entered into the arbitration agreement under clause 16 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
       2. any arbitration conducted pursuant to clause 16.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
       3. in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
    2. One arbitrator will be appointed.
    3. The language of the arbitration will be English.
    4. All evidence in chief will be in writing unless otherwise ordered by the arbitral tribunal.
    5. Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
    6. If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
       1. the date and duration of the oral hearing will be fixed by the arbitral tribunal at the first case management conference. The arbitral tribunal must have regard to the principles set out in paragraph (g) when determining the duration of the oral hearing;
       2. oral evidence in chief at the hearing will be permitted only with the permission of the arbitral tribunal for good cause;
       3. 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 arbitral tribunal, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
       4. 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
       5. in exceptional circumstances, the arbitral tribunal may amend the date of hearing and extend the time for the oral hearing set under subparagraph (i).
    7. Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.
  1. Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 16.14.

* 1. Continuation of Services

Despite the existence of a dispute or difference between the parties the Contractor 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 16, 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 Contract Administrator, other than a Variation Order under clause 12.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Commonwealth arising out of or in connection with the direction:

* + 1. within 7 days of receiving the direction and before commencing services the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
    2. within 7 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 17.2; and
    3. continue to carry out the Services in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 17.1.
  1. Notices of Other Claims
     1. The Contractor must, if it wishes to make a Claim against the Commonwealth in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by the Commonwealth) under, arising out of or in connection with the Services or the Contract, give the Contract Administrator a written Claim within 21 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based 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.
     2. Paragraph (a) does not apply to any Claim to the extent that any other provision of the Contract requires the Contractor to give notice to the Contract Administrator or the Commonwealth in respect of a Claim against the Commonwealth.
  2. Time Bar

If the Contractor fails to comply with clause 17.1 or 17.2, the:

* + 1. Commonwealth will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
    2. Contractor will be absolutely barred from making any Claim against the Commonwealth, arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 17.1 or 17.2 applies.
  1. Other Provisions Unaffected

Nothing in clauses 17.1 ‑ 17.3 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator 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 15 and 16 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
       1. specified in the 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 17.5 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 17.5 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 15 and 16, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 17.5(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of the:
        1. date the notice sent by email is taken to be received; or
        2. date the notice delivered by hand or sent by prepaid express post is taken to be received,

as determined in accordance with paragraph (a).

1. General
   1. Workplace Gender Equality

The Contractor 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 subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
  1. Privacy
     1. The Contractor 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 Contractor 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 Contractor for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Contract Administrator;
        5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor 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 Contract Administrator;
        6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;
        7. ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor 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 Contractor 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 Contract Administrator's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;
        10. agree to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;
        11. ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 18.2 as if the subcontractor were the Contractor;
        12. enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contract Administrator may give;
        13. not use Personal Information collected by the Contractor 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 Contractor under clause 18.2;
            2. a breach of a subcontractor'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 Contractor or a subcontractor; or
            4. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor in breach of an obligation of confidence.
     2. For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 18.2.
     3. The Contractor must immediately notify the Commonwealth in writing if the Contractor:
        1. becomes aware of a breach of the obligations under clause 18.2 by itself or by a subcontractor;
        2. becomes aware of a breach of a subcontractor'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 subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     4. The Contractor acknowledges that, in addition to the requirements of clause 18.2, the Contractor 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 18.2 limits any of the Contractor's obligations under the Contract or otherwise at law or in equity.
     6. In clause 18.2, **received** includes collected.
  2. Moral Rights
     1. To the extent permitted by law, the Contractor:
        1. must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subcontractors do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of the Contract Documents or any works carried out by the Contractor by:
           1. the Commonwealth;
           2. any third party to whom the Commonwealth sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Contract Documents or any such works (Sub‑Licensee);
           3. any third party to whom the Commonwealth assigns any Intellectual Property Rights in the Contract Documents or any such works (Assignee); or
           4. any Other Contractors;
        2. without limiting subparagraph (i), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
           1. failing to acknowledge or attribute the Contractor's or any other person's authorship of the Contract Documents or any works carried out by the Contractor;
           2. falsely attributing authorship of the Contract Documents or any such works; and
           3. making any modification, variation or amendment of any nature whatsoever to the Contract Documents or any such works, whether or not:

it results in a material distortion of or destruction or mutilation of the Contract Documents or any such works; or

it is prejudicial to the honour or reputation of the Contractor or any other author of the Contract Documents or any such works; and

* + - 1. without limiting subparagraphs (i) and (ii), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
         1. using the Contract Documents or any works carried out by the Contractor other than for the purpose for which it was intended at the time the Contract Document was or those works were created;
         2. altering the Contract Documents or any such works by adding to or removing elements from, or rearranging elements of, the Contract Documents or those works, including by combining elements of the Contract Documents or those works with any other material; or
         3. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any works carried out by the Contractor), whether or not it incorporates, is based on, or is constructed in accordance with, the Contract Documents.
    1. The Contractor must:
       1. in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of a Contract Document or any works, obtain from that person, before he or she creates a Contract Document or part of any works, a duly completed and executed Moral Rights Consent;
       2. ensure that no person creates a Contract Document or any part of any works before that person has duly completed and executed a Moral Rights Consent;
       3. not coerce any person to complete or execute a Moral Rights Consent;
       4. pay to each person who executes a Moral Rights Consent in accordance with clause 18.3 the sum of $1 on behalf of the Commonwealth;
       5. within 7 days of a Moral Rights Consent having been executed in accordance with clause 18.3, provide the Moral Rights Consent to the Contract Administrator; and
       6. maintain an up-to-date record of the names and addresses of each person who is an author of Contract Documents or any part of any works and the Contract Documents or any part of any works of which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.
  1. Freedom of Information
     1. The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
     2. The Contractor acknowledges that Commonwealth requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.
  2. Long Service Leave

Clause 18.5 only applies if the Long Service Leave Legislation applies to the Services.

* + 1. Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must comply with its obligations under the Long Service Leave Legislation.
    2. If required by the Long Service Leave Legislation, the Contractor must pay any levy, charge, contribution or associated amount in respect of the Services.
    3. Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Fee and the Contractor will have no Claim against the Commonwealth arising out of or in connection with its obligations under clause 18.5 or the Long Service Leave Legislation.
  1. Assignment
     1. The Contractor 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 21 and, if clause 22 applies, clause 22, the Contractor must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Services for publication in the media without the prior written approval of the Contract Administrator; and
    2. refer any enquiries from the media concerning the Services to the Contract Administrator.
  1. Shadow Economy Procurement Connected Policy

Clause 18.8 applies unless the Contract Particulars state that it does not apply.

* + 1. Without limiting the operation of clause 9.1(b), the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontractor) if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST) unless the Contractor has obtained and holds any of the STRs referred to in the table below, as applicable to the relevant subcontractor.

| **If the subcontractor 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 Contractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Contractor becoming aware of the circumstances arising:

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

* + 1. The Contractor must provide the Commonwealth with copies of the STRs referred to in paragraph (a) or paragraph (b) within 5 business days after a written request by the Commonwealth.
    2. The Contractor:
       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 Contract Administrator, provide to the Contract Administrator a copy of any such STR;
       3. must ensure that any subcontractor, 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 subcontractor in accordance with subparagraph (iii) and must, on request by the Contract Administrator, provide to the Contract Administrator 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. Fraud Control, Anti-Corruption and Modern Slavery
   1. Fraud Control and Anti-Bribery and Corruption
      1. Without limiting the Contractor's other obligations under the Contract, the Contractor must:
         1. comply, and use all reasonable endeavours to ensure that its officers, employees, subcontractors and agents comply, with all Anti-Corruption Laws;
         2. not, and must use all reasonable endeavours to ensure that its officers, employees, subcontractors and agents do not, engage in Fraud;
         3. proactively take all necessary measures to prevent, detect and investigate any:
            1. Fraud; and
            2. breach of any Anti-Corruption Laws,

in connection with the Contract or the Services (including all measures directed by the Contract Administrator);

* + - 1. maintain Adequate Procedures to ensure the prevention and detection of Fraud and compliance with Anti-Corruption Laws;
      2. proactively take all necessary corrective action to mitigate any loss or damage to the Commonwealth resulting from Fraud or breach of Anti-Corruption Laws to the extent that the Fraud or breach was caused or contributed to by the Contractor or any of its officers, employees, subcontractors or agents and put the Commonwealth in the position it would have been in if the Fraud or breach had not occurred (including all corrective action directed by the Contract Administrator); and
      3. without limiting the foregoing, comply with the Pacific Division Infrastructure Supplier Code of Conduct.
    1. The Contractor warrants that it will not, either directly or indirectly, offer, make, cause to be made or accept any form of bribe, kickback, political donation, gift or other benefit which would or could be construed as an impropriety or that creates the appearance of an impropriety in connection with the Contract and the Services.
    2. In this clause 19.1, **Adequate Procedures** means policies, procedures, processes and systems designed to ensure, and which are reasonably capable of ensuring, the prevention and detection of Fraud and compliance with Anti-Corruption Laws, including (without limiting the requirements of this clause 19.1):
       1. internal policies clearly setting out employees' obligations for ensuring compliance with Anti-Corruption Laws;
       2. due diligence procedures for agents, subcontractors and business partners;
       3. adequate training of officers, directors and employees in relation to Fraud prevention and anti-corruption compliance;
       4. undertaking regular risk assessments in relation to susceptibility to Fraud and breaches of the Anti-Corruption Laws; and
       5. maintaining:
          1. books, records and accounts which, in reasonable detail, accurately and fairly reflect activities in sufficient detail to identify potential Fraud and breaches of any Anti-Corruption Laws; and
          2. an internal account controls system that is sufficient to ensure the proper authorisation, recording, and reporting of all transactions and to provide reasonable assurance that Fraud and violations of any Anti-Corruption Laws will be prevented, detected and deterred.
  1. Modern Slavery

The Contractor:

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

including by implementing and maintaining, and procuring that its subcontractors implement and maintain, adequate procedures to ensure prevention, detection and remediation of Modern Slavery and compliance with Modern Slavery Laws.

* 1. Breach or Suspected Breach of Fraud, Anti-Bribery and Corruption or Modern Slavery Obligations
     1. If the Contractor knows or suspects that:
        1. Fraud in connection with this Contract or the Services (including by any officers, employees, subcontractors and agents); or
        2. any breach (including by any officers, employees, subcontractors and agents) of:
           1. the Anti-Corruption Laws;
           2. the Modern Slavery Laws; or
           3. the other obligations set out in this clause 19,

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

* + - 1. the known or suspected Fraud or breach;
      2. how the known or suspected Fraud or breach occurred;
      3. the proactive corrective action the Contractor will take under clause 19.1(a)(v) (if applicable);
      4. the proactive measures which the Contractor will take to ensure that the Fraud or breach does not occur again; and
      5. any other relevant information required by the Contract Administrator.
    1. Subject to paragraph (c)(i), the Contractor must, in consultation with the Contract Administrator, develop and implement a strategy to investigate the known or suspected Fraud or breach described in paragraph (a) and undertake such investigation at the Contractor’s own cost and in accordance with any directions of or standards required by the Contract Administrator.
    2. The Commonwealth reserves the right to:
       1. appoint its own investigator and conduct its own audit or investigation in accordance with paragraph (d); and
       2. report any Fraud or breach of any Anti-Corruption Law or Modern Slavery Law (as applicable) to the appropriate law enforcement agencies or any other person or entity the Commonwealth deems appropriate in Australia or the Host Nation for further investigation.
    3. At any time during the Contract, the Contractor must permit the Commonwealth, the Contract Administrator and such other persons as may be nominated in writing by the Contract Administrator to conduct an audit and investigation:
       1. in relation to actual or suspected Fraud or a breach as described in paragraph (a); and
       2. to otherwise verify the Contractor’s compliance with this clause 19 irrespective of whether there has been a breach or suspected breach of this clause.
    4. Without limiting the Contractor’s obligations under the Contract or otherwise at law or in equity, the Contractor must:
       1. do all things reasonably necessary to assist the Commonwealth, the Contract Administrator and its nominees with any audit or investigation under this clause 19; and
       2. within 7 days of a request by the Contract Administrator, provide the Contract Administrator with all information reasonably required by the Contract Administrator in connection with the Contractor’s compliance with, or any audit or investigation under, this clause 19.
    5. The Contractor must undertake appropriate remediation actions to address any breaches, issues or failures arising in connection with this clause 19 (including any identified by an audit or investigation carried out under this clause 19.3) at the Contractor’s own cost and in accordance with any directions of or standards required by the Contract Administrator.
  1. Subcontracts

The Contractor must ensure that all subcontracts contain provisions equivalent to the obligations of the Contractor in this clause 19, including rights for the Commonwealth, the Contract Administrator and its nominees to audit and investigate the subcontractor’s compliance on equivalent terms to clause 19.3.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Contractor 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

Clause 20.2 does not apply unless the Contract Particulars state that it applies.

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

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

* + 1. The Commonwealth's obligation 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).

1. INFORMATION SECURITY - CONFIDENTIAL INFORMATION
   1. Contractor’s Warranty
      1. The Contractor acknowledges and agrees that the Confidential Information is confidential.
      2. The Contractor warrants that, on the Award Date and on the date of submitting each invoice under clause 13.2, it is not aware of any breach of clause 21 by the Contractor or any Recipient.
   2. Confidential Information Requirements
      1. The Contractor must:
         1. strictly comply with:
            1. clause 21; and
            2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
         2. immediately put in place arrangements to ensure that it strictly complies with:
            1. clause 21; and
            2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
      2. Subject to, if clause 22 applies, clause 22, the Contractor must not:
         1. copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
         2. disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than performing the Services.

* + 1. The Contractor must ensure that all Recipients of Confidential Information:
       1. strictly comply with:
          1. clause 21; and
          2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 21; and
          2. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
          1. clause 21; or
          2. any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements).
    2. The Contractor 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 Contract Administrator if it becomes aware of any actual or potential Confidential Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
         4. strictly comply with all other Confidential Information and information security requirements notified by the Contract Administrator (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 Contract Administrator, at any time;
        2. the termination of the Contract under clause 15 or otherwise at law; or
        3. the Completion of the Services,

the Contractor must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) promptly:
         1. where the Confidential Information is in a tangible form, securely and appropriately return all copies of that Confidential Information to the Contract Administrator;
         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 Contract Administrator 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 Contractor and all Recipients; and
      2. promptly notify the Contract Administrator of all Confidential Information (or any part of it) which the Contractor knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
         2. is beyond the Contractor'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 Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Confidential Information for its records subject to the Contractor:
       1. promptly notifying the Contract Administrator of all Confidential Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Confidential Information in accordance with clause 21.
    2. The Contractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Contractor's obligations under clause 21.
  1. Compliance

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

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

by the time and date specified in the request; and

* + 1. as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 21 (including any Separation Arrangements and Confidential Information Requirements) by the time and date specified in the request.
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has:
          1. entered into the Contract; and
          2. if applicable, made payments to the Contractor under clause 13.3,

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

* + - 1. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
         1. notifies the Contract Administrator under clause 21.2(d)(ii)B; or
         2. has failed to strictly comply with:

clause 21; or

any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements),

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

* + - * 1. terminate the Contract under clause 15.4; and
        2. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Commonwealth's absolute discretions under clause 21 is not capable of being the subject of a dispute or difference for the purposes of clause 16.1 or otherwise subject to review;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 21; 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 Contractor's failure to strictly comply with clause 21 or any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 21.

1. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

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

* 1. Sensitive and Classified Information, generally
     1. Nothing in clause 22 limits the Contractor's obligations under clause 21.
     2. The Contractor acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.
  2. Contractor’s Warranties
     1. The Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 13.2, it is not aware of any breach of clause 22 by the Contractor or any Recipient.
     2. The Contractor 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 in the Contract Particulars or in accordance with clause 22.3(d)(i)B (as applicable):
        1. before the Recipient was issued with the Sensitive and Classified Information; and
        2. at all times during the Recipient's access to the Sensitive and Classified Information.
  3. Sensitive and Classified Information Requirements
     1. The Contractor must:
        1. strictly comply with:
           1. clause 22; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
        2. immediately put in place arrangements to ensure that it strictly complies with:
           1. clause 22; and
           2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
     2. Subject to paragraphs (c) and (d), the Contractor 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 Contractor 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 Contract Administrator, providing details of the proposed copying, reproduction, disclosure, use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of all proposed Recipients, and a justification as to why those Recipients have a need to know such information).
    2. Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (c), the Contract Administrator will notify the Contractor 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 Contractor must strictly comply with any conditions notified under paragraph (d)(i).
    2. The Contractor must ensure that all Recipients of Sensitive and Classified Information:
       1. strictly comply with:
          1. clause 22; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
       2. immediately put in place arrangements to ensure that they strictly comply with:
          1. clause 22; and
          2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
       3. do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
          1. clause 22; or
          2. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
    3. The Contractor 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 in the Contract Particulars or in accordance with paragraph (d)(i)A (as applicable):

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

at all times during the Contractor'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 Contract Administrator if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
         4. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (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 Contract Administrator, at any time;
        2. the termination of the Contract under clause 15 or otherwise at law; or
        3. the Completion of the Services,

the Contractor must:

* + - 1. subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) and in accordance with all Statutory Requirements of Australia (including the Information Security Requirements), promptly:
         1. where the Sensitive and Classified Information is in a tangible form, securely and appropriately return all copies of that Sensitive and Classified Information to the Contract Administrator;
         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 Contract Administrator 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 Contractor and all Recipients; and
      2. promptly notify the Contract Administrator of all Sensitive and Classified Information (or any part of it) which the Contractor knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
         2. is beyond the Contractor'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 Contractor may keep one copy of the Sensitive and Classified Information for its records subject to the Contractor:
       1. promptly notifying the Contract Administrator of all Sensitive and Classified Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Sensitive and Classified Information in accordance with clause 22.
    2. The Contractor acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Contractor obligations under clause 21.
  1. Compliance

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

* + 1. provide the Contract Administrator with:
       1. evidence of the Contractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Contractor 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 Contractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
    2. as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 22 (including any Separation Arrangements and Sensitive and Classified Information Requirements).
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has:
          1. entered into the Contract; and
          2. if applicable, made payments to the Contractor under clause 13.3,

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

* + - 1. without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
         1. notifies the Contract Administrator under clause 22.3(g)(ii)B; or
         2. has failed to strictly comply with:

clause 22; or

any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (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 15.4; and
        2. take such Sensitive and Classified Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Commonwealth's absolute discretions under clause 22 is not capable of being the subject of a dispute or difference for the purposes of clause 16.1 or otherwise subject to review;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 22; 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 Sensitive and Classified Information Incident;
       2. the Contractor's failure to strictly comply with clause 22 or any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 22.

1. MATERIAL CHANGE or STRATEGIC INTEREST ISSUE
   1. Contractor’s Warranty

Subject to clause 23.2, the Contractor warrants that, on the Award Date and on the date of submitting each invoice under clause 13.2, it is not aware of any:

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

in relation to the Contractor.

* 1. Notice of Material Change or Strategic Interest Issue

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

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

the Contractor must immediately notify the Contract Administrator, providing details of:

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

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

* + 1. acknowledges and agrees that:
       1. the Commonwealth has:
          1. entered into the Contract; and
          2. if applicable, made payments to the Contractor under clause 13.3,

strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 23;

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

notifies the Contract Administrator under clause 23.2; or

has failed to strictly comply with clause 23; or

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

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

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

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 Strategic Interest Issue; and

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

by the time and date specified in the notice; or

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

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

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

by the time and date specified in the notice; or

* + - * 1. regardless of whether or not the Commonwealth has notified the Contractor under subparagraph C:

notify the Contractor that:

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

implementing Separation Arrangements; or

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

by the time and date specified in the notice; or

the Commonwealth has elected to treat the Material Change or Strategic Interest Issue as an Insolvency Event for the purposes of clause 15.4 and terminate the Contract under clause 15.4; or

* + - * 1. take such Material Change or Strategic Interest Issue or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
      1. the exercise of any of the Commonwealth's absolute discretions under clause 23 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 23; 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 Material Change or Strategic Interest Issue;
       2. the Contractor's failure to strictly comply with clause 23; or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 23.

1. FINANCIAL VIABILITY
   * 1. The Contractor:
        1. warrants that, on the Award Date and on the date of submitting each invoice under clause 13.2:
           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 subcontractors in accordance with paragraph (b)); and
           2. each subcontractor 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:
           1. entered into the Contract; and
           2. if applicable, made payments to the Contractor under clause 13.3,

strictly on the basis of, and in reliance upon, the obligations and warranties set out in clause 24.

* + 1. The Contractor must pay all subcontractors in accordance with the payments terms in all subcontracts.
    2. The Contractor must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
       1. the Contractor's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; and
       2. a subcontractor's ability to perform its activities in accordance with the relevant subcontract,

including any potential or actual change in:

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

to provide the Contract Administrator 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 Contract Administrator and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:

* + - * 1. the Contractor has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subcontractors in accordance with paragraph (b)); or
        2. a subcontractor 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 Contractor's financial viability; or
       2. a subcontractor's financial viability,

which could adversely affect:

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

the Contract Administrator may (in its absolute discretion) direct the Contractor 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, including requiring the Contractor to:

* + - 1. provide a Deed of Guarantee, Undertaking and Substitution in the form required by the Commonwealth;
      2. establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by the Commonwealth;
      3. provide Subcontractor Deeds of Covenant or Contractor Deeds of Covenant; or
      4. provide collateral warranties in the form required by the Commonwealth.
    1. If the Contract Administrator gives a direction under paragraph (e), then the Contractor must take such steps as the Commonwealth considers necessary to better secure a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
    2. The Contractor acknowledges and agrees that:
       1. nothing in clause 24 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 Contract Administrator is required to exercise any discretion under clause 24 for the benefit of the Contractor (or any subcontractor);
       3. clause 24 does not give the Contractor (or any subcontractor) any rights; and
       4. the exercise or failure to exercise a discretion under clause 24 is not capable of being the subject of a dispute or difference for the purposes of clause 16.1 or otherwise subject to review.
    3. Unless otherwise approved by the Contract Administrator, the Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in clause 24.

CONTRACT PARTICULARS

|  |  |  |  |
| --- | --- | --- | --- |
| **CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS** | | | |
| 1. **Additional Host Nation Requirements:**   (Clause 1.1) |  | | |
| **Contract - other documents forming part of the Contract:**  (Clause 1.1) |  | | |
| **Contract Administrator:**  (Clause 1.1) |  | | |
| **Contract Management Plans (additional):** (Clause 1.1) | ***[COMMONWEALTH TO INSERT ANY ADDITIONAL PLANS REQUIRED]*** | | |
| **Contractor:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | |
| **Contractor’s Representative:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | |
| **Host Nation:**  (Clause 1.1) | [Insert] | | |
| **Initial Term:**  (Clause 1.1) | [Insert] | | |
| **Level 1 Representatives:** (Clause 1.1) | **Commonwealth:** [Insert]  **Contractor:** [Insert] | | |
| **Level 2 Representatives:** (Clause 1.1) | **Commonwealth:** [Insert]  **Contractor:** [To be inserted following selection of the successful Tenderer] | | |
| **Level 3 Representatives:** (Clause 1.1) | **Commonwealth:** [To be inserted following selection of the successful Tenderer]  **Contractor:** [To be inserted following selection of the successful Tenderer] | | |
| **Option Period:**  (Clause 1.1) | [Insert] | | |
| **Reactive Maintenance Services Threshold:** (Clause 1.1) | [Insert] | | |
| **Schedule of Collateral Documents:**  (Clause 1.1) | 1. Subcontractor Deed of Covenant  2. Subcontractor Trust Account Trust Deed  3. Declaration in respect of payment of workers and subcontractors  4. Approved Security  5. Deed of Guarantee, Undertaking and Substitution  6. Expert Determination Agreement  7. Moral Rights Consent | | |
| **Services Commencement Date:**  (Clause 1.1) |  | | |
| **Statutory Requirements (additional):** (Clause 1.1) | (Pacific Division Infrastructure Supplier Code of Conduct and Infrastructure Directorate Dispensations Process (each as provided by the Contract Administrator, as may be amended by the Commonwealth from time to time), unless otherwise stated) | | |
| **Transition-Out Period:** (Clause 1.1) |  | | |
| **Work Health and Safety Plan (additional):**  (Clause 1.1) |  | | |
| **Days which are not a "business day" (additional):**  (Clause 1.2(m)(iii)) | (27, 28, 29, 30 and 31 December, unless otherwise stated) | | |
| **Governing law:**  (Clause 1.3(a)) | (The law in the State of New South Wales, Australia applies unless otherwise stated) | | |
| **Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:** (Clause 1.4(a)) | 1. Formal Agreement  2. Conditions of Contract  3. the Contract Particulars  4. the Special Conditions  5. the Specification  6. the other Annexures to the Conditions of Contract  7. the Service Requests (if any)  8. any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)  9. Contract Management Plans | | |
| **CLAUSE 3 - SERVICES** | | | |
| **Other conditions precedent to Site access:** (Clause 3.6(b)(iii)) |  | | |
| **Statutory Requirements with which the Contractor does not need to comply:** (Clause 3.18(a)(i)) |  | | |
| **Approvals which the Contractor is to obtain:**  (Clause 3.18(a)(ii)A) |  | | |
| **CLAUSE 5 - ROLE OF THE COMMONWEALTH** | | | |
| **Contract Administrator's representatives and their functions:** (Clause 5.4(b)) | **Representative** | **Function(s)** | |
|  |  | |
| **Contractor personnel to be co-located at the Site:** (Clause 5.5(a)(iv)) |  | | |
| **Meeting and reporting requirements (additional):** (Clause 5.11) |  | | |
| **CLAUSE 6 - SECURITY** | | | |
| **Security to be provided by the Contractor:** (Clause 6.1) |  | | |
| **Deed of Guarantee, Undertaking and Substitution:**  (Clause 6.4) | Clause 6.4 [does/does not] apply. [To be inserted following selection of the successful Tenderer and subject to completion of Financial Viability Assessment] (Clause 6.4 does not apply unless otherwise stated)  If clause 6.4 applies, the Related Body Corporate of the Contractor is: [To be inserted following selection of the successful Tenderer] | | |
| **CLAUSE 7 - RISKS AND INSURANCE** | | | |
| **Insurance policies required to be effected by the Contractor:**  (Clause 7.2) | ***[INSURANCE LEVELS TO BE FINALISED IN LIGHT OF SUCCESSFUL TENDERER'S NOMINATED LEVELS, THE COMMONWEALTH'S RISK ASSESSMENT AND ANY NEGOTIATIONS WITH THE PREFERRED TENDERER ARISING FROM THAT RISK ASSESSMENT.***  ***WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT]***  **Public Liability Insurance**  If written on an occurrence basis:  Amount of Cover: $ for any one occurrence for public liability claims.  If written on a claims made basis:  Amount of Cover: $ per claim and $ in the aggregate | | |
| **Workers Compensation Insurance**  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 Contractor’s employees perform work, are employed or normally reside. | | |
| **Employers' Liability Insurance**  Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase which must not be less than $ . | | |
| **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | |
| **Other Insurances:** (Clause 7.2(a)(iv)) | | |
| **Run-off period for Public Liability Insurance if written on a claims made basis:** (Clause 7.4(a)(ii)) | 7 years | | |
| **Maximum aggregate liability of the Contractor to the Commonwealth:**  (Clause 7.8(a)(ii)) | $ | | |
| **CLAUSE 9 - SUBCONTRACTING AND REIMBURSABLE WORK** | | | |
| **Parts of the Services which do not require Contract Administrator’s approval to subcontract**  (Clause 9.1(a)(i)) | **Part of the Services** | **Subcontractors** | |
|  |  | |
|  |  | |
| **CLAUSE 10 - QUALITY** | | | |
| **Number of days for submission of Contract Management Plans:** (Clause 10.9(a)(ii)A) | Transition-In Plan: | days | |
| Operational Plan: | days | |
| Work Health and Safety Plan:  Local Industry Capability Plan | days | |
| Fraud and Corruption Control Plan: | days | |
| Transition-Out Plan: | days | |
| Other ***[SPECIFY]***: | …. | |
| **Number of days for review of Contract Management Plans:** (Clause 10.9(a)(ii)B) | Transition-In Plan: | days | |
| Operational Plan: | days | |
| Work Health and Safety Plan:  Local Industry Capability Plan | days  days | |
| Fraud and Corruption Control Plan: | days | |
| Transition-Out Plan: | days | |
| Other ***[SPECIFY]***: |  | |
| **CLAUSE 11 - TIME** | | | |
| **Maximum intervals between program updates by Contractor:**  (Clause 11.2(a)(ii)) |  | | |
| **Program format to be compatible with:**  (Clause 11.2(a)(iv)) |  | | |
| **CLAUSE 13 - PAYMENT** | | | |
| **Times for submission of invoices by the Contractor to Contract Administrator:**  (Clause 13.2(a)) |  | | |
| **Time period for payment of Reimbursable Costs into the Subcontractor Trust Account:**  (Clause 13.3(a)(i)) | [insert] days | | |
| **Time period for payment of balance of amount due to the Contractor:**  (Clause 13.3(a)(ii)) | [insert] days | | |
| **Interest rate:** (Clause 13.7(a)) | In the case of damages or late payments, the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator | | |
| **Taxes for which the Commonwealth bears the risk:**  (Clause 13.10) |  | | |
| **clause 15 ‑ Termination** | | | |
| **Number of days to remedy breach:** (Clauses 15.3(c) and 15.4(b)) | [insert] days | | |
| **CLAUSE 16 - DISPUTES** | | | |
| **Directions to be subject of an expert determination if disputed:**  (Clause 16.3) |  | | |
| **Industry expert who will conduct expert determinations:**  (Clause 16.4(a)(i)) |  | | |
| **Nominating authority for industry expert:**  (Clause 16.4(a)(ii)) | (The President for the time being of the Resolution Institute unless otherwise specified) | | |
| **CLAUSE 17 - NOTICES** | | | |
| **Address and email address for the giving or serving of notices upon:**  (Clause 17.5(b)(i)) | **Commonwealth:**  Email address:  Attention: | | |
| **Contract Administrator:**  Email address:  Attention: | | |
| **Contractor:**  Address (not PO Box): [To be inserted following selection of the successful Tenderer]  Email address: [To be inserted following selection of the successful Tenderer]  Attention: [To be inserted following selection of the successful Tenderer] | | |
| **CLAUSE 18- GENERAL** | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 18.8) | Clause 18.8 ***[DOES/DOES NOT]*** apply. (Clause 18.8 applies unless otherwise stated) | | |
| **CLAUSE 20 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | |
| **Commercial-in-Confidence Information:** (Clause 20.2) | Clause 20.2 [does/does not] apply. [To be inserted following selection of the successful Tenderer]. (Clause 20.2 does not apply unless otherwise stated) | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 20.2) | **Specific Information** | **Justification** | **Period of confidentiality** |
|  |  |  |
| **CLAUSE 22 - INFORMATION SECURITY - sensitive and classified information** | | | |
| **Sensitive and Classified Information:** (Clause 22) | Clause 22 ***[DOES/DOES NOT]*** apply. (Clause 22 does not apply unless otherwise stated) | | |
| **Current security clearance level/s:** (Clause 22.2(b)) |  | | |
| **Information technology environment accreditation or certification level/s:** (Clause 22.3(g)(i)) | ***[THIS TEMPLATE DOES NOT REQUIRE THE CONTRACTOR TO HOLD DISP ACCREDITATION. IF THERE ARE PROJECT-SPECIFIC REASONS TO REQUIRE THE CONTRACTOR OR A PARTICULAR SUBCONTRACTOR TO HOLD DISP ACCREDITATION, COMMONWEALTH / CONTRACT ADMINISTRATOR, IN CONSULTATION WITH THE PROJECT'S LEGAL ADVISOR, TO CONSIDER A SPECIAL CONDITION FOR THIS PURPOSE]*** | | |

- Specification

- Fee

- Table of Variation Rates and Prices

- Minimum Resource Levels

- Key People

- Special Conditions

1. NOTIFICATION OF SIGNIFICANT EVENTS

***[NOTE TO DEFENCE/TENDER ADMINISTRATOR (TO BE DELETED PRIOR TO THIS CONTRACT BEING ISSUED): THIS IS A MANDATORY SPECIAL CONDITION TO BE INCLUDED FOR ALL PROCUREMENTS WHICH ADDRESSES THE INTRODUCTION BY THE AUSTRALIAN DEPARTMENT OF FINANCE OF A WHOLE OF GOVERNMENT POLICY IN RELATION TO THE NOTIFICATION OF "SIGNIFICANT EVENTS" BY CONTRACTORS]***

* + 1. For the purposes of this clause 1, **Significant Event** means:
       1. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
       2. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
    2. The Contractor must immediately issue the Contract Administrator a notice on becoming aware of a Significant Event.
    3. The notice issued under paragraph (b) must provide a summary of the Significant Event, including the date that it occurred and whether any of the Contractor's key people under clause 5.5 of the Conditions of Contract or other personnel engaged in connection with the Contractor's Activities or the Works were involved.
    4. The Contract Administrator may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a notice under paragraph (b) in relation to the event within 3 business days of being notified by the Contract Administrator.
    5. Where reasonably requested by the Contract Administrator, the Contractor must provide the Contract Administrator with any additional information regarding the Significant Event within 3 business days of the request.
    6. If requested by the Contract Administrator, the Contractor must prepare a draft remediation plan and submit that draft plan to the Contract Administrator for approval within 10 business days of the request.
    7. A draft remediation plan prepared by the Contractor under paragraph (f) must include the following information:
       1. how the Contractor will address the Significant Event in the context of the Contractor's Activities and the Works, including confirmation that the implementation of the remediation plan will not in any way impact on the performance of the Contractor's Activities or the Works or compliance by the Contractor with its other obligations under the Contract;
       2. how the Contractor will ensure events similar to the Significant Event do not occur again; and
       3. any other matter reasonably requested by the Contract Administrator.
    8. The Contract Administrator will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by the Contract Administrator and resubmit the draft remediation plan to the Contract Administrator for approval within 3 business days of the request unless a different timeframe is agreed in writing by the Contract Administrator. This paragraph (h) will apply to any resubmitted draft remediation plan.
    9. Without limiting its other obligations under the Contract, the Contractor must comply with the remediation plan as approved by the Contract Administrator. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by the Contract Administrator.
    10. A failure by the Contractor to comply with its obligations under this clause will be a breach of the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Commonwealth.