

DISCLAIMER AND CONFIDENTIALITY AGREEMENT

HEAD CONTRACT Two Phase (international) (HCI-2P-2022)

This agreement is made on day of

BETWEEN THE COMMONWEALTH OF AUSTRALIA (Commonwealth)

AND THE PERSON OR ENTITY SPECIFIED IN ITEM 1 OF THE SCHEDULE (Tenderer)

RECITALS

A. The Commonwealth proposes to invite the Tenderer to lodge a tender (**Tender**) for the Contractor's Activities, the Works and the project described in Item 2 of the Schedule (**Project**) and will publish on AusTender, or issue by the tender administrator named in Item 3 of the Schedule (**Tender Administrator**) by email or post (as applicable), the documents described under clause 2.1(s) of the Tender Conditions for the Project (**Tender Documents**).

B. The Commonwealth will publish on AusTender, or issue by the Tender Administrator by email or post (as applicable), for the information only of the Tenderer:

* + 1. the documents described under clause 2.1(j)(i) of the tender conditions forming part of the Tender Documents (**Tender Conditions**) and listed in Item 4 of the Schedule; and
		2. the documents described under clause 2.1(j)(ii) of the Tender Conditions,

(**Information Documents**), notwithstanding that AusTender describes such documents as "addenda" or "ATM documents".

C. In consideration of the Commonwealth agreeing to pay the sum of $1.00, the Tenderer has agreed to make the acknowledgements, agreements and warranties and undertake the obligations set out in this agreement.

**OPERATIVE**

1. The Commonwealth agrees to pay the Tenderer the sum of $1.00.
2. The Tenderer:
	* 1. acknowledges that the entire tender process contemplated in recital A (including the process for any industry briefing or meeting any of the Tenderers under clauses 2.3, 7 or 25.3 of the Tender Conditions and then obtaining, evaluating and (if applicable) negotiating Tenders) (**Process**) is being conducted solely for the benefit of the Commonwealth;
		2. acknowledges that, to the extent permitted by law:
			1. without limiting the legal effect of a preferred Tenderer's obligations under any preferred Tenderer negotiation protocol required under clause 7.2(d)(ii)A of the Tender Conditions, the Commonwealth does not intend to create any contract or other relationship under which the Commonwealth is legally obliged to conduct the Process in any manner or at all (whether in accordance with the terms of the Tender Documents or otherwise) and that there is in fact no such contract or other relationship in existence;
			2. there will be no procedural or substantive limitation upon the manner in which the Commonwealth may (in its absolute discretion) conduct the Process;
			3. the Commonwealth does not make any warranty, guarantee or representation about a Tenderer's Tender, the Commonwealth's requirements for the Contractor's Activities, the Works or the Project or the way in which it will evaluate Tenders arising out of or in connection with anything which the Commonwealth states or does or omits to state or do in, arising out of or in connection with any industry briefing, meeting or presentation under clause 2.3, 7 or 25.3 of the Tender Conditions (**Meeting Conduct**);
			4. the Commonwealth does not owe any duty of care to the Tenderer in respect of any Meeting Conduct; and
			5. the Tenderer will not in any way rely upon any such Meeting Conduct for the purposes of preparing, amending or negotiating its Tender or entry into any contract with the Commonwealth for the Contractor's Activities and the Works;
		3. acknowledges that, without limiting paragraph (b)(ii), the Commonwealth may (in its absolute discretion) notify the Tenderer, by publishing on AusTender or issuing by the Tender Administrator by email or post (as applicable), that it is varying, suspending, discontinuing or terminating the Process at any time and for any reason;
		4. acknowledges that, notwithstanding paragraphs (a) – (c), the Tenderer is submitting to the Process because it considers that this represents a valuable commercial opportunity for the Tenderer;
		5. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the Process, the rejection of, failure to evaluate or failure to accept the Tenderer's Tender, any failure to comply with the Tender Documents, any Meeting Conduct, any debrief, any variation or suspension of the Process or any discontinuance or termination of the Process;
		6. acknowledges that the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the acknowledgements and releases set out above; and
		7. 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 any breach of any acknowledgement or release given by the Tenderer under this clause 2.
3. The Tenderer:
	* 1. acknowledges and agrees that the Commonwealth published on AusTender, or issued by the Tender Administrator by email or post (as applicable), this Disclaimer and Confidentiality Agreement (Disclaimer and Confidentiality Agreement);
		2. warrants that to the extent that the Tender Documents and the Information Documents:
			1. are published on AusTender, before the Tenderer downloaded any of the Tender Documents and Information Documents from AusTender; or
			2. are not published on AusTender, before the Tender Administrator issued any of the Tender Documents and Information Documents to the Tenderer by email or post,

the Tenderer duly completed, executed and returned the Disclaimer and Confidentiality Agreement by email to the Tender Administrator at the email address in Item 5 of the Schedule; and

* + 1. acknowledges and agrees that if requested by the Tender Administrator by email at any time, the Tenderer must provide to the Tender Administrator by email the names and addresses of all persons to whom it has issued the whole or any part of the Tender Documents and Information Documents by the time and date specified in the Tender Administrator's request.
1. The Tenderer:
	* 1. acknowledges that the Information Documents will be provided by the Commonwealth for the Tenderer's information only;
		2. warrants that it will not in any way rely upon:
			1. the Information Documents; or
			2. the relevance, completeness, accuracy or adequacy of the Information Documents,

for the purposes of preparing its Tender or entering into any contract with the Commonwealth for the Contractor's Activities and the Works;

* + 1. warrants that it will prepare its Tender and enter into any contract with the Commonwealth for the Contractor's Activities and the Works based on its own investigations, interpretations, deductions, information and determinations; and
		2. acknowledges and agrees that:
			1. neither the Commonwealth, the Tender Administrator nor anyone on the Commonwealth's behalf, warrants, guarantees or makes any representation about the relevance, completeness, accuracy or adequacy of the Information Documents or whether or not any other information exists;
			2. the Commonwealth does not owe any duty of care to the Tenderer with respect to the Information Documents;
			3. the Information Documents do not form part of the Tender Documents and will not form part of any contract for the Contractor's Activities and the Works;
			4. to the extent permitted by law, the Commonwealth will not be liable upon any Claim for any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity on the Tenderer's behalf arising out of or in connection with the Information Documents;
			5. the Commonwealth will be entering into any contract for the Contractor's Activities and the Works with the Tenderer in reliance upon the terms of this agreement; and
			6. this clause 4 applies notwithstanding that AusTender describes such documents as "addenda" or "ATM Documents".
1. The Tenderer acknowledges and agrees that:
	* 1. the Confidential Information is confidential; and
		2. as part of its Tender, the Tenderer will be requested to complete and lodge Tender Schedule H - Miscellaneous Matters for Evaluation, which includes providing details of its general approach to the security of Confidential Information. The Tenderer acknowledges and agrees that:
			1. if the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it will be requested to provide any information in Tender Schedule H - Miscellaneous Matters for Evaluation which it considers relevant to proposed joint bid arrangements (as applicable); and
			2. such details will be an evaluation criterion under clause 4(a) of the Tender Conditions.
2. The Tenderer warrants that it will:
	* 1. strictly comply with:
			1. clauses 5 - 15; and
			2. all other Confidential Information and information security requirements notified by the Tender Administrator by email (including any Separation Arrangements); and
		2. immediately put in place arrangements to ensure that it strictly complies with:
			1. clauses 5 - 15; and
			2. all other Confidential Information and information security requirements notified by the Tender Administrator by email (including any Separation Arrangements).
3. Subject to, if clauses 17 - 30 apply, clauses 17 - 30, the Tenderer warrants that it will 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 preparing a Tender and if it is the successful Tenderer, carrying out the Contractor's Activities and the Works.

1. The Tenderer warrants that it will ensure that all Recipients of Confidential Information:
	* 1. strictly comply with:
			1. clauses 5 - 15; and
			2. all other Confidential Information and information security requirements notified by the Tender Administrator by email (including any Separation Arrangements);
		2. immediately put in place arrangements to ensure that all Recipients strictly comply with:
			1. clauses 5 - 15; and
			2. all other Confidential Information and information security requirements notified by the Tender Administrator by email (including any Separation Arrangements); and
		3. do not do or omit to do anything which, if done or omitted to be done by the Tenderer, would be a breach of:
			1. clauses 5 - 15; or
			2. any other Confidential Information or information security requirements notified by the Tender Administrator by email (including any Separation Arrangements).
2. The Tenderer warrants that it will:
	* 1. ensure that:
			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 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 Tender Administrator by email 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 Tender Administrator by email (including any Separation Arrangements),

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

1. Within 7 days of:
	* 1. a request from the Tender Administrator by email, at any time; or
		2. a notice from the Commonwealth by email or post under clause 9(a)(i) or 9(a)(ii)B of the Tender Conditions,

the Tenderer warrants that it will:

* + 1. subject to clause 11, as directed by the Commonwealth or the Tender Administrator in the request or notice promptly:
			1. where the Confidential Information is in a tangible form, securely and appropriately return all copies of the Confidential Information to the Tender Administrator at the postal address in Item 6 of the Schedule;
			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 Tender Administrator by email with a statutory declaration 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 Tenderer and all Recipients; and
		2. promptly notify the Tender Administrator by email of all Confidential Information (or any part of it) which the Tenderer knows or ought to know:
			1. has not been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and
			2. is beyond the Tenderer's (or a Recipient's) (as the case may be) 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 Tenderer's quality assurance procedure, system or framework, the Tenderer may keep one copy of the Confidential Information for its records, subject to the Tenderer:
	* 1. promptly notifying the Tender Administrator by email of all Confidential Information that it proposes to keep and the detailed basis for so doing; and
		2. maintaining the information security of the Confidential Information in accordance with clauses 5 - 15.
2. The Tenderer acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Tenderer's obligations under clauses 5 - 15.
3. Within 24 hours (or such other period notified by the Tender Administrator in its request) of receipt of a request by the Tender Administrator by email at any time, the Tenderer warrants that it will:
	* 1. provide the Tender Administrator by email with:
			1. evidence of the Tenderer's and all Recipients' compliance with clauses 5 - 15 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Tenderer and all Recipients have in place; and
			2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by the Commonwealth (acting reasonably) in respect of the Tenderer's and all Recipients' compliance with clauses 5 - 15 (including any Separation Arrangements and the Confidential Information Requirements),

by the time and date specified in the request; and

* + 1. as directed by the Tender Administrator in the request, provide the Commonwealth and the Tender Administrator with access to the Tenderer's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Tender Administrator to monitor and assess the Tenderer's and all Recipients' compliance with clauses 5 - 15 (including any Separation Arrangements and Confidential Information Requirements) by the time and date specified in the request.
1. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:
	* 1. acknowledges and agrees that:
			1. the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 5 - 15; and
			2. without limiting any other right or remedy of the Commonwealth (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if the [Tenderer](#tenderer):
				1. notifies the Tender Administrator under clause 9(b)(ii); or
				2. has failed to strictly comply with:

clauses 5 - 15; or

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

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

* + - * 1. notify the Tenderer by email or post that the Tenderer:

is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or

may continue to participate in the Process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Tenderer:

implementing Separation Arrangements; or

completing, duly executing and returning to the Tender Administrator by email a deed in a form approved by the Commonwealth,

by the time and date specified in the notice; or

* + - * 1. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with the Project or any other Commonwealth project;
		1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clauses 5 - 15 or corresponding clauses in respect of any other Tenderer; 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 Tenderer's failure to strictly comply with clauses 5 - 15; or
			3. the exercise of any of the Commonwealth's absolute discretions under clauses 5 - 15 or corresponding clauses in respect of any other Tenderer.
1. For the purposes of clauses 5 - 15:
	* 1. subject to paragraph (b), **Confidential Information** means:
			1. the Tender Documents;
			2. the Information Documents;
			3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Tenderer by the Commonwealth, the Tender Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way connected with the Contractor's Activities, the Works or the Project which:
				1. by its nature is confidential;
				2. the Tenderer 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 Tenderer by the Commonwealth, the Tender Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which:
			1. is in the possession of the Tenderer without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Tender Administrator or anyone on the Commonwealth's behalf;
			2. is in the public domain otherwise than due to a breach of clauses 5 - 15; or
			3. has been independently developed or acquired by the Tenderer;
		3. **Confidential Information Incident** means a single breach or a series of breaches of clauses 5 - 15 or any Separation Arrangements or the occurrence of any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security; and
		4. **Confidential Information Security Event** means an identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.
2. Clauses 17 - 30 of the Disclaimer and Confidentiality Agreement do not apply unless Item 7 of the Schedule states that they apply.
3. The Tenderer acknowledges and agrees that:
	* 1. nothing in clauses 17 - 30 limits the Tenderer's obligations under clauses 5 - 15;
		2. part of the Confidential Information is Sensitive and Classified Information; and
		3. as part of its Tender, the Tenderer will be requested to complete and lodge Tender Schedule H - Miscellaneous Matters for Evaluation, which includes providing details of its general approach to the security of Sensitive and Classified Information. The Tenderer acknowledges and agrees that:
			1. if the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it will be requested to provide any information in Tender Schedule H - Miscellaneous Matters for Evaluation which it considers relevant to proposed joint bid arrangements (as applicable); and
			2. such details will be an evaluation criterion under clause 4(a) of the Tender Conditions.
4. The Tenderer 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 preparing the Tender properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in Item 8 of the Schedule or in accordance with clause 21(a)(i) (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.
5. The Tenderer warrants that it will:
	* 1. strictly comply with:
			1. clauses 17 - 30; and
			2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements); and
		2. immediately put in place arrangements to ensure that it strictly complies with:
			1. clauses 17 - 30; and
			2. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements).
6. Subject to clause 21(a) and clause 26, the Tenderer warrants that it will 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 preparing a Tender and if it is the successful Tenderer, carrying out the Contractor's Activities and the Works. If the Tenderer wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of preparing a Tender and, if it is the successful Tenderer, carrying out the Contractor's Activities and the Works, it must notify the Tender Administrator by email, 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).

1. Where a request for copying, reproduction, disclosure, use or dealing is made under clause 20, the Tender Administrator will notify the Tenderer by email 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:
				1. properly apply for, obtain and hold a current security clearance 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
				2. to enter into a deed in a form approved by the Commonwealth; or
		2. refuses permission.
2. If the Commonwealth grants permission under clause 21(a), the Tenderer warrants that it will strictly comply with any conditions notified under clause 21(a).
3. The Tenderer warrants that it will ensure that all Recipients of Sensitive and Classified Information:
	* 1. strictly comply with:
			1. clauses 17 - 30; and
			2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements);
		2. immediately put in place arrangements to ensure that all Recipients strictly comply with:
			1. clauses 17 - 30; and
			2. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements); and
		3. do not do or omit to do anything which, if done or omitted to be done by the Tenderer, would be a breach of:
			1. clauses 17 - 30; or
			2. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements).
4. The Tenderer warrants that it will:
	* 1. ensure that:
			1. the Sensitive and Classified Information (or any part of it); and
			2. all documents, materials, media and all other things on or in which the Sensitive and Classified 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. 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 Item 9 of the Schedule or in accordance with clause 21(a)(i) (as applicable):
				1. before the Tenderer (or any Recipient) was issued with the Sensitive and Classified Information; and
				2. at all times during the Tenderer'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 administration (or similar);
			2. without limiting subparagraph (v), secure and protected at all times from all use, access, configuration 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 (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 Tender Administrator by email 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 Tender Administrator by email or otherwise (including any Separation Arrangements),

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

1. Within 7 days of receipt of:
	* 1. a request from the Tender Administrator by email, at any time; or
		2. a notice from the Commonwealth by email or post under clause 9(a)(i) or 9(a)(ii)B of the Tender Conditions,

the Tenderer warrants that it will:

* + 1. subject to clause 26, as directed by the Commonwealth or the Tender Administrator in the notice or request and in accordance with all Statutory Requirements (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 Tender Administrator at the postal address stated in Item 6 of the Schedule;
			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 Tender Administrator by email 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 Tenderer and all Recipients; and
		2. promptly notify the Tender Administrator by email of all Sensitive and Classified Information (or any part of it) which the Tenderer knows or ought to know:
			1. has not been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and
			2. is beyond the Tenderer's (or a Recipient's) (as the case may be) 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 Tenderer may keep one copy of the Sensitive and Classified Information for its records, subject to the Tenderer:
	* 1. promptly notifying the Tender Administrator by email of all Sensitive and Classified Information that 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 clauses 17 - 30.
2. The Tenderer acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Tenderer's obligations under clauses 17 - 30.
3. Within 12 hours (or such period notified by the Tender Administrator in its request) of receipt of a request by the Tender Administrator by email, at any time, the Tenderer warrants that it will:
	* 1. provide the Tender Administrator by email with:
			1. evidence of the Tenderer's and all Recipients' compliance with clauses 17 - 30 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Tenderer or the Recipients have in place; and
			2. a statutory declaration (or equivalent) in a form approved by the Commonwealth from an authorised officer approved by Commonwealth (acting reasonably) in respect of the Tenderer's and all Recipients' compliance with clauses 17 - 30 (including any Separation Arrangements and Sensitive and Classified Information Requirements); and
		2. as directed by the Tender Administrator in the request, provide the Commonwealth and the Tender Administrator with access to the Tenderer's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Tender Administrator to monitor and assess the Tenderer's and all Recipients' compliance with clauses 17 - 30 (including any Separation Arrangements and Sensitive and Classified Information Requirements) by the time and date specified in the request.
4. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:
	* 1. acknowledges and agrees that:
			1. the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 17 - 30; and
			2. without limiting any other right or remedy of the Commonwealth (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if the [Tenderer](#tenderer):
				1. notifies the Tender Administrator under clause 24(b)(ii);or
				2. has failed to strictly comply with:

clauses 17 - 30; or

any other Sensitive and Classified Information or information security requirements notified by the Tender Administrator by email or otherwise (including any Separation Arrangements),

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

* + - * 1. notify the Tenderer by email or post that the Tenderer:

is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or

may continue to participate in the Process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Tenderer:

implementing Separation Arrangements; or

completing, duly executing and returning to the Tender Administrator by email a deed in a form approved by the Commonwealth,

by the time and date specified in the notice; and

* + - * 1. take such Sensitive and Classified Information Incident or failure into account in any registration of interest, tender process or similar procurement process in connection with the Project or any other Commonwealth project;
		1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity on the Tenderer's behalf arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clauses 17 - 30 or corresponding clauses in respect of any other Tenderer; 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 Tenderer's failure to strictly comply with clauses 17 - 30; or
			3. the exercise of any of the Commonwealth's absolute discretions under clauses 17 - 30 or corresponding clauses in respect of any other Tenderer.
1. For the purposes of clauses 17 - 30:
	* 1. **Cyber Security Event** means 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;
		2. **Cyber Security Incident** means 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;
		3. **Sensitive and Classified Information** means:
			1. any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Tenderer by the Commonwealth, the Tender 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 Tenderer knows or ought to know is subject to, or ought to be treated as sensitive or classified information in accordance with any Statutory Requirement (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 subparagraph (i) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things;
		4. **Sensitive and Classified Information Incident** means a single breach or a series of breaches of clauses 17 - 30, or 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; and
		5. **Sensitive and Classified Information Security Event** means 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.
2. Clauses 32 to 36 only apply to the Disclaimer and Confidentiality Agreement if an invitation to register interest process was not used.
3. The Tenderer warrants that, at the time of returning the Disclaimer and Confidentiality Agreement to the Tender Administrator, it is not aware of any:
	* 1. Material Change; or
		2. Strategic Interest Issue,

in relation to the Tenderer.

1. If, at any time after returning the Disclaimer and Confidentiality Agreement to the Tender Administrator but before lodging its Tender, the Tenderer becomes aware of any:
	* 1. Material Change; or
		2. Strategic Interest Issue,

the Tenderer must immediately notify the Tender Administrator by email, providing details of:

* + 1. the Material Change or Strategic Interest Issue; and
		2. the steps which the Tenderer 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. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:
	* 1. acknowledges and agrees that:
			1. the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 32 to 35; and
			2. without limiting any other right or remedy of the Commonwealth (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if:
				1. the [Tenderer](#tenderer):

notifies the Tender Administrator under clause 33;

has failed to strictly comply with clauses 32 to 35; 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 Tenderer,

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

* + - * 1. notify the Tenderer by email or post that the Tenderer 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 Tenderer 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 Tender Administrator by email 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 Tenderer 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;

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

notify the Tenderer by email or post that the Tenderer:

is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or

may continue to participate in the Process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Tenderer:

implementing Separation Arrangements; or

completing, duly executing and returning to the Tender Administrator by email a deed in a form approved by the Commonwealth,

by the time and date specified in the notice; and

* + - * 1. take such Material Change or Strategic Interest Issue or failure into account in any registration of interest, tender process or similar procurement process in connection with the Project or any other Commonwealth project;
		1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clauses 32 to 35 or corresponding clauses in respect of any other Tenderer; 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 Tenderer's failure to strictly comply with clauses 32 to 35; or
			3. the exercise of any of the Commonwealth's absolute discretions under clauses 32 to 35 or corresponding clauses in respect of any other Tenderer.
1. For the purposes of clauses 32 to 35:
	* 1. **Material Change** means any actual, potential or perceived material change to the circumstances of the Tenderer including any change:
			1. arising out of or in connection with:
				1. a Change of Control (as defined in the Tender Documents) of the Tenderer;
				2. an Insolvency Event (as defined in the Tender Documents) affecting the Tenderer; or
				3. the Tenderer's financial viability, availability, capacity or ability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 of the Tender Documents; or
			2. which affects the truth, completeness or accuracy of any information, documents, evidence or clarifications provided by the Tenderer to the Commonwealth arising out of or in connection with its Disclaimer and Confidentiality Agreement or the Process.
		2. **Strategic Interest Issue** means 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 Confidential Information and, if applicable, Sensitive and Classified Information will be treated strictly in accordance with the Disclaimer and Confidentiality Agreement and the Tender Documents; and
			3. ensuring compliance by all Tenderers and the successful Tenderer with Australia’s national security requirements, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements).
2. The Tenderer is requested to complete and return Attachment 1 - Information Security with its Disclaimer and Confidentiality Agreement.
3. For the purposes of the Disclaimer and Confidentiality Agreement:
	* 1. all words and expressions will (unless the context otherwise requires) have the meanings assigned to them under the Tender Conditions;
		2. **Claim** includes (without limitation) any claim:
			1. under, arising out of, or in any way in connection with:
				1. the Process;
				2. the Disclaimer and Confidentiality Agreement;
				3. the Tender Documents; or
				4. without limiting subsubparagraph C, any contract which the Tenderer may enter into with the Commonwealth with respect to the Contractor's Activities and the Works;
			2. arising out of, or in any way in connection with, any task, thing or relationship connected with the Contractor's Activities, the Works or the Project; or
			3. otherwise at law or in equity including (without limitation):
				1. by statute;
				2. in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
				3. for restitution;
		3. **Information Security Requirements** means the:
			1. Australian Government's Protective Security Policy Framework available at https://www.protectivesecurity.gov.au/;
			2. Australian Government's Information Security Manual available at https://www.cyber.gov.au/ism; and
			3. Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security,

each as amended from time to time;

* + 1. **Recipient** means any person provided with Confidential Information or Sensitive and Classified Information or any part of Confidential Information or Sensitive and Classified Information (whether in a tangible or an intangible form) including potential or actual subcontractors, suppliers and material suppliers;
		2. **Separation Arrangement** means any arrangement that the Tenderer:
			1. has in place;
			2. will put in place; or
			3. is required to put in place in accordance with a Statutory Requirement, the Disclaimer and Confidentiality Agreement (including under clause 34) or the Tender Documents,

for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue.

1. All obligations under this agreement survive the expiration or earlier termination of the Process or the expiration or earlier termination of this agreement.
2. If the Tenderer consists of more than one party, the provisions of this agreement jointly and severally bind, and apply to, each such party.
3. This agreement is governed by the law of the State or Territory specified in Item 10 of the Schedule.

**Schedule**

|  |  |  |
| --- | --- | --- |
| Item 1 | [Tenderer](file:///%5C%5Cd85userdata.dpe.protected.mil.au%5Cswalsh%5CDesktop%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CNRPortbl%5CLegal%5CSWALSH%5C313098646_4.doc#tenderer): | **[INSERT NAME AND ABN AS APPLICABLE BEFORE EXECUTING AGREEMENT]**  |
| Item 2(Recital A.) | ATM ID:  | ***[INSERT ATM ID]*** |
| Project No:  | ***[INSERT PROJECT NUMBER]*** |
| Project Name: | ***[INSERT PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]*** |
| 1. Item 3(Recital A.)
 | 1. Tender Administrator:
 | ***[INSERT NAME OF TENDER ADMINISTRATOR]*** |
| Item 4(Recital B(i)) | Information Documents: | * + 1. The following documents:

***[INSERT LIST OF INFORMATION DOCUMENTS COMPRISING "***[***INFORMATION DOCUMENTS***](file:///%5C%5Cd85userdata.dpe.protected.mil.au%5Cswalsh%5CDesktop%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CNRPortbl%5CLegal%5CSWALSH%5C313098646_4.doc#info)***" TO BE ISSUED AT TIME OF ISSUING TENDER DOCUMENTS. SEE DEFINITION IN CLAUSE 2.1(j) OF THE*** [***TENDER CONDITIONS***](file:///%5C%5Cd85userdata.dpe.protected.mil.au%5Cswalsh%5CDesktop%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CNRPortbl%5CLegal%5CSWALSH%5C313098646_4.doc#tenderconditions) ***AND CLAUSE 6 OF THE*** [***TENDER CONDITIONS***](file:///%5C%5Cd85userdata.dpe.protected.mil.au%5Cswalsh%5CDesktop%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CNRPortbl%5CLegal%5CSWALSH%5C313098646_4.doc#tenderconditions)***]*** |
|  |
| **NO.** | **DATE** | **REVISION** | **AUTHOR** | **TITLE** | **AUSTENDER, EMAIL OR POST** |
| **1.** |  |  |  |  |  |
| **2.** |  |  |  |  |  |
| **3.**  |  |  |  |  |  |
|  |
| * + 1. any other document or amendment to a document published or issued prior to the Closing Date and Time and at the time of being published or issued, expressly stated to be an Information Document or an amendment to an Information Document.
 |
| 1. Item 5(Clause 3(b))
 | Email address of Tender Administrator: | ***[INSERT EMAIL ADDRESS OF TENDER ADMINISTRATOR]*** |
| 1. Item 6(Clauses 10(c)(i) and 25(c)(i))
 | Postal address of Tender Administrator:  | 1. ***[INSERT POSTAL ADDRESS OF TENDER ADMINISTRATOR - NOT A P.O BOX]***
 |
| 1. Item 7(Clause 16)
 | Sensitive and Classified Information: | 1. Clauses 17 - 30 ***[DO/DO NOT]*** apply
2. (Clauses 17 - 30 do not apply unless stated otherwise)
 |
| 1. Item 8(Clause 18)
 | Security clearance level/s: | 1. ***[INSERT RELEVANT LEVEL/S]***
 |
| 1. Item 9 (Clause 24(a)(iv))
 | Certification/ accreditation level/s: | 1. ***[INSERT RELEVANT LEVEL/S]***
 |
| 1. Item 10(Clause 40)
 | Governing Law:  | 1. ***[INSERT]***
2. (If not stated, the law in the State of New South Wales, Australia)
 |

**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 |

[THE BELOW ARE EXAMPLE EXECUTION CLAUSES ONLY. IF SUBMITTING ON A JOINT BID BASIS, ONLY ONE TENDER FORM IS TO BE SUBMITTED BUT ALL JOINT BID PARTIES MUST EXECUTE THAT TENDER FORM. IF THE TENDERER IS INCORPORATED OVERSEAS, INSERT APPROPRIATE EXECUTION CLAUSE FOR THE RELEVANT JURISDICTION]

[THE TENDERER IS REQUESTED TO ENSURE THAT THE DISCLAIMER AND CONFIDENTIALITY AGREEMENT IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID]

[S 127 OF CORPORATIONS ACT]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[INSERT NAME]** 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 **[INSERT NAME]** |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of **[INSERT NAME]** |

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

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

**Attachment 1 - Information Security**

The Tenderer is referred to clause 36 of the Disclaimer and Confidentiality Agreement. This Attachment 1 only applies if an invitation to register interest process was not used.

Sensitive and Classified Information ***[APPLIES/DOES NOT APPLY]****.*

The Tenderer is requested to:

* + 1. describe its general approach to ensuring the security of Confidential Information and, if Sensitive and Classified Information applies, Sensitive and Classified Information:
			1. in accordance with the Disclaimer and Confidentiality Agreement and the Tender Documents for Head Contract Two Phase (International) (HCI-2P-2022); and
			2. if it is the successful Tenderer, in accordance with the Conditions of Contract for Head Contract Two Phase (International) (HCI-2P-2022); and
		2. complete the Questionnaire in item B.

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis (as defined in the Tender Conditions), it is requested to provide any information in this Attachment 1 - Information Security which it considers relevant to proposed joint bid arrangements (as applicable).

**A GENERAL APPROACH TO INFORMATION SECURITY**

1. Disclaimer and Confidentiality Agreement and Tender Documents:

**[INSERT]**

1. Conditions of Contract:

**[INSERT]**

**B QUESTIONNAIRE**

The following questions apply to ***[INSERT ATM* *NUMBER, PROJECT NUMBER, PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]***, described in the Disclaimer and Confidentiality Agreement:

1. Does the Tenderer (and any proposed Recipient) have information security procedures, policies and measures in place that are or may be relevant to the requirements:
	* 1. in the Disclaimer and Confidentiality Agreement and the Tender Documents; and
		2. if it is the successful Tenderer, in the Conditions of Contract,

in respect of Confidential Information and, if Sensitive and Classified Information is applicable, Sensitive and Classified Information?

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

1. Do the Tenderer's (and any proposed Recipient's) information security procedures, policies and measures comply with the requirements:
	* 1. in the Disclaimer and Confidentiality Agreement and the Tender Documents; and
		2. if it is the successful Tenderer, in the Conditions of Contract,

in respect of Confidential Information and, if Sensitive and Classified Information is applicable, Sensitive and Classified Information?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

If No, please provide details of the steps that the Tenderer (and any proposed Recipient) will take to ensure compliance with these requirements, including timeframes:

**[INSERT]**

1. What is the Tenderer's (and any proposed Recipient's) approach to preventing, detecting, reporting on, responding to and closing out:
	* 1. new and emerging threats to information security procedures, policies and measures:

**[INSERT]**

* + 1. observed or suspected security weaknesses/threats to information security procedures, policies and measures:

**[INSERT]**

* + 1. information security procedures, policies and measures not operating as effectively as intended:

**[INSERT]**

* + 1. hardware or software malfunctions:

**[INSERT]**; and

* + 1. any breach of the requirements:
			1. in the Disclaimer and Confidentiality Agreement and the Tender Documents; and
			2. if it is the successful Tenderer, in the Conditions of Contract,

in respect of Confidential Information and, if Sensitive and Classified Information is applicable, Sensitive and Classified Information?

**[INSERT]**

1. Has the Tenderer (and any proposed Recipient) been the subject of any notices, investigations, proceedings, consequences or sanctions during a procurement process, in connection with any alleged or actual breach of contract or otherwise in relation to an unauthorised disclosure of confidential, sensitive or classified information during the past 5 years?

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

If Yes, is the Tenderer (and any proposed Recipient) fully complying with the outcomes of such investigations, proceedings, consequences or sanctions?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. If Sensitive and Classified Information is applicable, what is the Tenderer's (and any proposed Recipient's) approach to preventing, detecting, reporting on, responding to and closing out malicious code and other Cyber Security Incidents or Cyber Security Events (as defined in the Disclaimer and Confidentiality Agreement) (e.g. countermeasures, intrusion detection strategies, audit analysis, system integrity checking, vulnerability assessments)?

**[INSERT/NOT APPLICABLE]**

1. If Sensitive and Classified Information is applicable, what is the Tenderer's (and any proposed Recipient's) approach to quantifying and monitoring the types, volumes and costs of hardware and software malfunctions, malicious code and other Cyber Security Incidents or Cyber Security Events?

**[INSERT/NOT APPLICABLE]**

1. If Sensitive and Classified Information is applicable, has the Tenderer (and any proposed Recipient) been subject to a hardware and software malfunction, malicious code or other Cyber Security Incidents or Cyber Security Events in the past 5 years?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

1. If Sensitive and Classified Information is applicable, does each proposed Recipient of Sensitive and Classified Information (or any part of it) hold a current security clearance at or above the level/s specified in Item 8 of the Schedule?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

If No, please provide details of your understanding of the clearance process and steps that the Tenderer (and each proposed Recipient) will take to properly apply for, obtain and hold a current security clearance at or above the level/s specified in Item 8 of the Schedule if it is the successful Tenderer, including timeframes, having regard to the information available at https://www1.defence.gov.au/security/clearances.

**[INSERT]**

1. Does the Tenderer currently hold Defence Industry Security Program (**DISP**) membership (see https://www1.defence.gov.au/security/industry/eligibility)?

**❑ YES ❑ NO**

If Yes, please provide details of the level of membership:

**[INSERT]**

If No, please provide details as to why, including whether the Tenderer is:

* + - 1. in the process of obtaining DISP membership; or
			2. not eligible to obtain DISP membership, including reasons (e.g. the Applicant is not registered as a legal business entity in Australia).

**[INSERT]**.

The Tenderer should note that:

* + 1. the above is not a comprehensive list of information security matters; and
		2. if the Tenderer is unsure of whether any aspect of the Tenderer's (and any proposed Recipient's) current or proposed arrangements comply with the requirements:
			1. in the Disclaimer and Confidentiality Agreement and the Tender Documents; and
			2. if it is the successful Tenderer, in the Conditions of Contract,

it is preferable that the relevant arrangements be noted in this Attachment 1 - Information Security so that an assessment can be made.