GFF ADDITIONAL CLAUSE BANK

Note to drafters: This clause bank contains additional clauses for use in Attachment O (GFF Licence) and other provisions of the Contract. The formatting in this document is designed to preserve cross referencing within the clauses where possible, as such the paragraph numbering does not align with what it should be once the paragraphs are copied and pasted into Attachment O. Drafters should refer to the drafting instructions for guidance on where to insert the additional clauses, and further should review and check the numbering and cross references once the clauses have been incorporated into Attachment O.

Directorate of Estate Licensing & LeasingInfrastructure Division, Security and Estate Group will notify drafters of which of these additional requirements are to be included in Attachment O as well as any other tailored clauses to be included.

***A. Contractor has maintenance obligations***

Note to drafters: If the Contractor is to be obliged to maintain more than the Contractor Maintained Licensed Fittings (i.e. the GFF itself or the Licensed Fittings), replace clause 6.3 in Attachment O.

* 1. Contractor to Maintain GFF
     1. The Contractor shall undertake maintenance in accordance with clause 3.20 of the SOW.
     2. If the Contractor fails to comply with clause 1.1.2, the Commonwealth may undertake the required maintenance itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such maintenance shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.1.2 until the Commonwealth elects to recover the amount.

***B. Commonwealth has maintenance obligations***

Note to drafters: Include clauses 6.4.5 and 6.4.6 if the Contractor is to be required to contribute towards maintenance costs.

* 1. Commonwealth to Maintain GFF
     1. The Commonwealth Representative may, by notice to the Contractor, determine that the Contractor is to make a contribution specified in the notice to the cost of maintenance for a GFF Licensed Area. If the Commonwealth Representative does this:
        1. the amount of the contribution is to be reasonable, having regard to the period of the Contractor’s use of and access to, and the nature and extent of the use by Contractor Personnel of, the GFF Licensed Area; and
        2. the amount so determined is payable by the Contractor to the Commonwealth on demand.
     2. To avoid doubt:
        1. the Commonwealth Representative may give more than one such notice; and
        2. a notice may specify the times at which contributions are payable.

***C. Use of Sewerage System***

Note to drafters: If the Contractor is permitted to discharge trade waste through the sewerage system interface to the Commonwealth’s Sewerage Treatment Plant on the Commonwealth Premises in which the GFF is located, replace clause 6.5 of Attachment O with the following and insert definitions for capitalised terms in the Glossary.

* 1. Sewerage and trade waste
     1. The Contractor may discharge trade waste from the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O, after processing through the Trade Waste Treatment Plant, through the sewerage system interface to the Sewerage Treatment Plant, subject to the following conditions:
        1. the Commonwealth Representative may, at any time, by notice to the Contractor, suspend or terminate the Contractor's rights under clause 1.3.1;
        2. the Contractor shall at its cost maintain the effective operation of the Trade Waste Treatment Plant and the sewerage system interface to the Sewerage Treatment Plant. The Contractor is entitled to reasonable access to the Sewerage Treatment Plant for that purpose;
        3. in maintaining the effective operation of the sewerage system interface to the Sewerage Treatment Plant, the Contractor shall:
           1. repair any damage that it causes to the Commonwealth’s Sewerage Treatment Plant;
           2. cause as little interference to the Commonwealth’s activities on the Commonwealth Premises in which the GFF Licensed Area is located as reasonably possible;
           3. comply with any directions of the Commonwealth; and
           4. comply with all applicable laws and Authorisations;
        4. the Contractor shall ensure that any discharge of material through the sewerage system interface will not adversely affect the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property in any way;
        5. if the Commonwealth Representative so requires, the Contractor shall make good, as soon as practicable and at its cost, any damage to the GFF or the Commonwealth Premises in which the GFF Licensed Area is located resulting from:
           1. the repair or removal of the sewerage interface or the Sewerage Treatment Plant; or
           2. the connection to the Sewerage Treatment Plant,

except to the extent that the Contractor is not liable for any such damage in accordance with clause 10.8.3 of the COC;

* + - 1. the Contractor shall notify the Commonwealth Representative of any breach of standards for discharge quality from the Trade Waste Treatment Plant no later than one Working Day after it becomes aware of the breach; and
      2. the Contractor shall provide to the Commonwealth every three months (or otherwise as agreed by the Commonwealth Representative):
         1. reports regarding the testing and performance of the Trade Waste Treatment Plant; and
         2. copies of all laboratory reports prepared as a result of such testing.
    1. If the Contractor discharges trade waste from the GFF Licensed Area that, in the Commonwealth’s opinion, adversely affects the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property:
       1. the Commonwealth Representative may direct the Contractor to cease discharging such waste;
       2. if the Contractor fails to comply with the direction, the Commonwealth may sever the sewerage system interface itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.3.2b until the Commonwealth elects to recover the amount; and
       3. the Contractor agrees that it is not entitled to damages or compensation for any Loss it suffers resulting from, and is not entitled to a postponement of a date for delivery under the Contract or a Milestone Date, or postponement costs on account of, complying with a direction under clause 1.3.2a or the Commonwealth severing the sewerage system interface.
    2. The Commonwealth shall use its reasonable endeavours to keep the Sewerage Treatment Plant in operation.
    3. If the Commonwealth exercises its rights under clause 1.3.1a, the Contractor shall immediately make its own arrangements for the safe removal and disposal of all its trade waste from the GFF Licensed Area.

and include a new clause 8.4 into Attachment O …

1. GFF LICENCE FEE AND RELATED ARRANGEMENTS
   1. Sewerage and trade waste
      1. The Contractor shall meet the cost of upgrading the processing of the Trade Waste Treatment Plant and the Commonwealth’s Sewerage Treatment Plant to the extent that the upgrade is required due to the Contractor’s increased use of the sewerage interface for the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O.
      2. If separate metering of the Contractor’s interface to the Sewerage Treatment Plant is not available:
         1. the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amount of the charges incurred that, in the opinion of the Commonwealth Representative, is attributable on a pro-rata basis to the Contractor’s use of the Sewerage Treatment Plant under the Contract; and
         2. the Commonwealth may elect to recover the amount of those charges under clause 13.6 of the COC within 30 days after the date of the notice. No amount shall be owing to the Commonwealth under this clause 2.1.2b until the Commonwealth elects to recover the amount.
      3. If separate metering of the Contractor's interface to the Sewerage Treatment Plant is available, the Contractor shall pay the charges incurred in respect of the Contractor's use of the Sewerage Treatment Plant.
      4. If the Contractor breaches clause 1.3.1d, the Commonwealth may repair the resultant damage to the Sewerage Treatment Plant or the Commonwealth Premises in which the GFF Licensed Area is located itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 2.1.4 until the Commonwealth elects to recover the amount.

and insert an additional paragraph in clause 6.3.2 of the COC …

d. as provided in clause 1.3.2c of Attachment O.

and include the following definitions in the Glossary in their appropriate alphabetical positions …

|  |  |
| --- | --- |
| 1. Trade Waste Treatment Plant | 1. means the facility so identified on the plan at Appendix 1 of Annex **[INSERT ANNEX #]** to Attachment O. |

***D. Fire protection equipment***

Note to drafters: If the Commonwealth is not providing and maintaining fire protection equipment in the GFF and the Contractor is required to install and maintain its own fire protection equipment, add after clause 6.5 of Attachment O …

1. OBLIGATIONS
   1. Fire Protection Equipment
      1. The Contractor shall, for the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O, do the following:
         1. install and maintain fire protection equipment which is adequate for the GFF Licensed Area and the conduct of a GFF Permitted Purpose; and
         2. maintain the fire protection equipment for the GFF Licensed Area in accordance with applicable laws and any applicable requirements of Government Agencies.

***E. GFF Licence Fee***

Note to drafters: If the Contractor is permitted to do non-contract work in a specific GFF Licensed Area (ie, the conduct of specified non-contract work has been provided for in the GFF Licence), it will be required to pay a market-based GFF Licence Fee. Replace clause 8 of Attachment O with the following (with the exception of clause 8.4 if already included as set out above in item C of this Clause Bank).

1. GFF LICENCE FEE AND RELATED ARRANGEMENTS
   1. GFF Licence Fee
      1. The Contractor shall pay the Commonwealth the GFF Licence Fee in respect of the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O, without set off or deduction, on or before each due date for payment, which is **[INSERT DAY OF MONTH]**.
      2. No demand for payment is necessary.
      3. No fee is payable by the Contractor in respect of any other GFF Licensed Area.
   2. GFF Licence Fee Review
      1. The Commonwealth may, in the period from 2 months before and at any time after a Market Review Date, give the Contractor a notice:
         1. specifying an adjusted GFF Licence Fee with effect from the Market Review Date; and
         2. requiring the Contractor to submit a CCP to incorporate the adjusted GFF Licence Fee into the Contract and to do so:
            1. within 20 Working Days after the date of the notice; or
            2. if the Contractor objects to the specified adjusted GFF Licence Fee, within 10 Working Days after the parties agree on the adjustment, or the valuer makes a determination, under clause 4.2.2c(iii).
      2. If the Contractor objects to the specified adjusted GFF Licence Fee:
         1. the Contractor shall give the Commonwealth a notice of objection within 20 Working Days after the date of the notice under clause 4.2.1;
         2. the parties shall negotiate in good faith to try to agree on the adjustment to the GFF Licence Fee;
         3. if the parties do not so agree within 20 Working Days after the Commonwealth receives the notice under clause 4.2.2a:
            1. within a further 20 Working Days, the parties shall jointly appoint a valuer and give the valuer instructions in accordance with this clause 4.2.2;
            2. if, within that 20 Working Days, the parties have not agreed on the identity of the valuer, they shall request the President of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) in the jurisdiction in which the GFF Licensed Area is located to appoint an independent valuer; and
            3. the valuer shall, in accordance with this clause 4.2 determine the adjusted GFF Licence Fee within 15 Working Days after appointment.

Each time limit in this clause 4.2.2 is of the essence.

* + 1. The valuer shall be a member of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) and have at least five years experience in valuing similar premises in the location of the Commonwealth Premises in which the GFF Licensed Area is located.
    2. The valuer shall act as an independent expert and not as an arbitrator, and shall give written reasons for the determination.
    3. The Contractor and the Commonwealth shall share the valuer's costs equally.
    4. In determining or agreeing upon an adjusted GFF Licence Fee, the Commonwealth and the Contractor shall (and shall require any valuer to):
       1. assume that the Commonwealth is a willing but not anxious licensor and the Contractor is a willing but not anxious licensee; and
       2. take into account all relevant matters as at the relevant Market Review Date, including:
          1. the licence fee value or equivalent rental value (other than values that have been escalated to a predetermined amount or in accordance with movements in the consumer price index or another index) at the Market Review Date of comparable premises in the locality in which the Commonwealth Premises in which the GFF Licensed Area is located is located, whether that value is in respect of new lettings with vacant possession or occupied premises;
          2. the GFF Permitted Purpose for the GFF Licensed Area subject to the GFF Licence Fee;
          3. the period Market Review Dates, or if there is no further Market Review Date, the remaining period of the GFF Licence Term;
          4. the increased value of the GFF Licensed Area resulting from the Commonwealth upgrading or improving the GFF Licensed Area (or any part of it, including the Licensed Fittings) or any services available to the GFF Licensed Area;
          5. any increase in value in the GFF Licensed Area as a result of any structural alterations or other improvements made to the GFF Licensed Area (including repair or replacement of, and provision of additional, Licensed Fittings) by the Commonwealth (having regard to any contribution by the Contractor to the costs of those improvements, including by way of paying for outgoings);
          6. the terms and conditions generally of the GFF Licence; and
          7. any period for which no GFF Licence Fee is payable, and any financial or capital contribution of the Commonwealth,

but not take into account:

* + - * 1. any partitions and other improvements installed in or made to the GFF Licensed Area by or for the Contractor, a permitted sublicensee or a predecessor of any of them during the term of the GFF Licence;
        2. any special interest of the Contractor;
        3. goodwill occasioned by the Contractor, a permitted sublicensee or a predecessor of any of them during the GFF Licence Term;
        4. areas other than the GFF Licensed Area (except as provided for by clause 4.2.6b(i); or
        5. amounts equivalent to GST paid or payable in respect of a taxable supply for which the Commonwealth is entitled to an input tax credit.
    1. A determination of a valuer made in accordance with this clause 4.2 binds the parties.
  1. Operating Expenses
     1. If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor’s obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in Operating Expenses that, in the opinion of the Commonwealth Representative, is attributable to that use.
     2. The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.3.1 within 20 Working Days after the date of the notice.
     3. The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor in relation to a GFF Permitted Purpose.
  2. Utilities and telecommunications facilities
     1. If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor’s obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in the costs of:
        1. Defence internal and external telephone and fax facilities and internal and external data link facilities; and
        2. electricity, gas, water, sewerage and drainage services,

that, in the opinion of the Commonwealth Representative, is attributable to that use.

* + 1. The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.4.1 within 20 Working Days after the date of the notice.
    2. The Contractor shall pay to the Commonwealth an amount in respect of the costs of utilities or telecommunications facilities (to the extent not included in an amount referred to in clause 4.3), if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities by the Contractor in relation to a GFF Permitted Purpose.

and, if the Commonwealth requires the Contractor to install separate metering for a particular GFF Licensed Area, add …

* + 1. The Contractor shall, at its cost, install separate electricity, telecommunications or other metering to the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O no later than three months after the GFF Licence Application Date for that area or a later time agreed by the Commonwealth Representative.

Note to drafters: Defence is obliged, under the Energy Efficiency in Government Operations Policy 2006 (EEGO) to install progressively sub-meters at relevant Commonwealth Premises used by Defence to measure and monitor energy usage and to identify efficiency opportunities, address problems and evaluate outcomes.

Advice should be sought from [Defence's environmental team] or the Australian Greenhouse Office before agreeing to deleting or modifying clause 8.4.4.

Please also consider the cost implications for Defence, as well as the broader EEGO requirements, before agreeing to pay the Contractor's costs of installing separate digital electricity metering.

and include the following definition in the Glossary in its appropriate alphabetical position …

|  |  |
| --- | --- |
| 1. GFF Licence Fee | 1. means **[INSERT AMOUNT]** adjusted as provided in clause 8.2 of Attachment O. |
| 1. Market Review Date | 1. means each of the following dates:  * 1. [INSERT DATES]. |

***F. Airfield rights***

Note to drafters: If a GFF Licensed Area includes airfield facilities, add the following clause as a new clause 3.3.

1. RIGHTS UNDER THE GFF LICENCE
   1. Airfield rights
      1. The Commonwealth shall provide the Contractor with reasonable access to and use of the Airfield and the navigational facilities, air traffic control, aviation rescue, firefighting facilities and meteorological services on the Commonwealth Premises in which the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O is located to enable the Contractor to carry out its obligations under the Contract.
      2. The Commonwealth Representative may, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amounts incurred by the Commonwealth in relation to the Airfield and the services referred to in clause 5.1.1 as, in the opinion of the Commonwealth Representative, is attributable to the Contractor’s access to and use of the Airfield.
      3. The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 3.3.2 within 20 Working Days after the date of the notice.

and include the following definition in the Glossary in its appropriate alphabetical position …

|  |  |
| --- | --- |
| 1. Airfield | 1. means the area so identified on the plan at Appendix 1 of an annex to Attachment O. |