GOVERNMENT FURNISHED FACILITIES LICENCE

Note to drafters: This Attachment is to be used if a GFF Licence is to be provided to the Contractor (see COC clause 3.8).

All necessary approvals under the Lands Acquisition Act 1989 (Cth) (LAA) to grant a GFF Licence must be obtained before the Contract is signed. Failure to obtain the necessary LAA approvals before the Contract is signed will breach the LAA.

Drafters must engage with Directorate of Estate Licensing and Leasing (DELL), Infrastructure Division, Security and Estate Group to ensure the necessary approvals are in place before Contract signature.

Drafters should include details of any proposed or required GFF Licensed Area in an annex to the GFF Licence prior to release of the RFT.

Note to tenderers: This Attachment O will consist of an amalgamation of TDR E-13, the draft annex(es) to this GFF Licence, the successful tenderer’s response and any negotiated adjustments. The date for provision of access to the GFF should be included in TDR E-13.

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ANNEXES

1. GFF Licensed Area #1
2. [INSERT OTHER ATTACHMENTS]

APPENDIXES

A-1 Plans

A-2 Licensed Fittings

A-3 Facilities Condition Report

[INSERT OTHER APPENDIXES]

1. TERM
   1. GFF Licence Term

Note to drafters: The term of the GFF Licence must be within the term of the Contract.

* + 1. The GFF Licence commences on the GFF Licence Commencement Date and ends on the earlier of:
       1. the day on which the GFF Licence is terminated;
       2. the GFF Licence Expiry Date; and
       3. the day on which the Contract expires or is terminated.
    2. The GFF Licence applies to a GFF Licensed Area from the relevant GFF Licence Application Date until the earlier of:
       1. the date specified in the annex as the date the GFF Licence ceases to apply to the GFF Licensed Area; and
       2. the end of the GFF Licence Term in accordance with clause 1.1.1.

1. GFF
   1. Use of GFF
      1. The Contractor shall only use a GFF Licensed Area for a GFF Permitted Purpose.
   2. Licensed Fittings
      1. The Contractor’s right to occupy and use a GFF Licensed Area includes the right to use the Licensed Fittings in that area for a GFF Permitted Purpose.
   3. State and Condition of the GFF
      1. The Contractor acknowledges and agrees that the state and condition of a GFF Licensed Area, at the GFF Licence Application Date for that area, is as described in the Facilities Condition Report for that area and accepts the GFF Licensed Area in that state and condition subject to any works agreed to be carried out by either party and as recorded in the Facilities Condition Report.
      2. The Commonwealth has not made, and the Contractor acknowledges and agrees that the Commonwealth has not made, any promise, representation or warranty as to the suitability of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located for a GFF Permitted Purpose or any other purpose.
   4. Commonwealth Access
      1. The Contractor acknowledges and agrees that, without limiting any other rights of the Commonwealth under the Contract, the Commonwealth may access a GFF Licensed Area at any time for the purposes of:
         1. exercising its rights and powers under this GFF Licence or the Contract;
         2. monitoring or inspecting the performance of the Contractor of its obligations under this GFF Licence or the Contract; or
         3. for any other reasonable purpose.
      2. The Contractor acknowledges and agrees that Commonwealth Contractors may access a GFF Licensed Area in accordance with their contracts with the Commonwealth.
      3. The Commonwealth shall comply with, and shall require any Commonwealth Contractors to comply with, any reasonable Contractor safety and security requirements for a GFF Licensed Area notified to, and approved by, the Commonwealth.
2. RIGHTS UNDER THE GFF LICENCE

Note to drafters: The purpose of the GFF Licence is to provide the Contractor with a non-exclusive right to access Defence premises. Defence does not intend to provide the Contractor with a lease. Therefore, clause 3.1 must remain unchanged to ensure that Defence's intentions are carried into effect.

* 1. Contractor’s Rights
     1. The Contractor’s rights under the GFF Licence:
        1. are personal rights in contract;
        2. do not create any interest or estate in a GFF Licensed Area;
        3. do not create the relationship of landlord and tenant between the Contractor and the Commonwealth; and
        4. do not confer exclusive possession of a GFF Licensed Area on the Contractor.
  2. Access Arrangements for GFF
     1. The Commonwealth shall provide access to a GFF Licensed Area for persons Approved under this clause 3.2, as necessary for the Contractor’s carrying out a GFF Permitted Purpose.
     2. Unless otherwise agreed, the Contractor shall seek written Approval from the Commonwealth Representative, at least five Working Days prior to entry being required, for each person the Contractor wishes to have access to a GFF Licensed Area.
     3. The Commonwealth Representative may, by notice to the Contractor, exclude the Contractor and specified Contractor Personnel from a GFF Licensed Area, or any part of it, at any time and for any period.
     4. The Contractor shall comply with, and require persons given access under clause 3.2.2 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour applicable to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.

1. SHARED FACILITIES
   1. Shared Facilities
      1. The Contractor acknowledges and agrees that:
         1. the Commonwealth Representative may, at any time, notify the Contractor that a specified part (or the whole) of a GFF Licensed Area is Shared Facilities; and
         2. Shared Facilities may be used by the Commonwealth and other persons authorised by the Commonwealth.
      2. The Commonwealth may, by direction to the Contractor, determine the priority of use of the Shared Facilities as between the Contractor and other users. The Commonwealth shall do this on the basis of the operational priority of the tasks requiring the use of the Shared Facilities. The Contractor shall act in accordance with, and give effect to, such a direction.
2. DEALINGS WITH THE GFF
   1. Sublicensing
      1. The Contractor shall not sublicense or part with possession of any part of a GFF Licensed Area or any right or obligation under the GFF Licence without the prior written Approval of the Commonwealth.
      2. The Contractor shall ensure that each sublicence of any part of a GFF Licensed Area or any right or obligation under the GFF Licence includes, as far as possible, terms corresponding to the terms on which the Contractor occupies the GFF Licensed Area (including terms limiting the purposes for which the sublicensee may use the sublicensed area to a GFF Permitted Purpose).
   2. Security Interests
      1. The Contractor shall not create or allow to be created any Security Interest in respect of any part of a GFF Licensed Area.
3. OBLIGATIONS
   1. Occupation and Use of GFF
      1. The Contractor shall at all times comply with the laws in force in the locality in which a GFF Licensed Area is situated that relate to the use or occupation of the area and shall ensure that all persons whom it gives access to the area do the same.
      2. The Contractor shall:
         1. keep all GFF Licensed Areas clean and tidy;
         2. not do anything that is, or may be, dangerous, annoying, or offensive, or that may interfere with the Commonwealth or other persons using a GFF Licensed Area, the Commonwealth Premises in which a GFF Licensed Area is located or properties adjoining the Commonwealth Premises; and
         3. comply with the requirements of the Commonwealth concerning the storage and removal of waste and debris.
      3. The Contractor’s obligation to keep a GFF Licensed Area clean and tidy only applies to the extent to which the uncleanliness or untidiness is not materially caused or contributed to by the Commonwealth or any other person using a GFF Licensed Area with the authority of the Commonwealth.
      4. The Contractor shall not obstruct or permit the obstruction, in any way, of a GFF Common Area or a fire door or escape door of a GFF Licensed Area.
   2. Altering the GFF
      1. The Contractor shall not carry out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area without the prior written Approval of the Commonwealth.
      2. The Contractor shall ensure that any such works are carried out:
         1. by:
            1. tradespersons nominated by the Commonwealth; or
            2. if the Commonwealth Approves in advance of the works, by other suitably qualified and licensed tradespersons;
         2. in accordance with applicable laws and any applicable requirements of Government Agencies;
         3. in accordance with the terms of any Commonwealth Approval (which may include a requirement for the provision of security in respect of the proposed works); and
         4. to the satisfaction of the Commonwealth.
      3. All costs incurred by the Commonwealth in connection with any such works under clauses 6.2.1 and 6.2.2, including the costs of obtaining relevant professional advice, shall be met by the Contractor and the Commonwealth may elect to recover the amount of the costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 6.2.3 until the Commonwealth elects to recover the amount.
      4. This clause 6.2 does not prevent the Commonwealth from carrying out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area.
   3. Maintenance Obligations
      1. For a GFF Licensed Area, the Contractor shall maintain any Contractor Maintained Licensed Fittings for that area in accordance with clause 3.19 of the SOW.
      2. If the Contractor fails to comply with clause 6.3.1, 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 6.3.2 until the Commonwealth elects to recover the amount.
   4. Commonwealth to Maintain GFF
      1. Unless required by clause 3.19 of the SOW to maintain a GFF Licensed Area, if the Contractor becomes aware of a need for maintenance for the GFF Licensed Area (other than the Contractor Maintained Licensed Fittings), the Contractor shall report the matter to the Commonwealth Representative as soon as practicable and in any event:
         1. for maintenance required urgently, within 24 hours; and
         2. otherwise, within five Working Days.
      2. The Commonwealth shall undertake such maintenance as is necessary to keep a GFF Licensed Area (other than the Contractor Maintained Licensed Fittings) in good and functional repair and condition having regard to:
         1. the condition of the GFF Licensed Area as at the GFF Licence Application Date for the area (as evidenced in the relevant Facilities Condition Report); and
         2. in the case of the fixed plant and equipment that are included in the Licensed Fittings in the GFF Licensed Area, the expected life of the plant and equipment as at the GFF Licence Application Date for the area.
      3. The Commonwealth shall, other than in relation to urgent maintenance, provide prior reasonable notice to the Contractor of any proposed maintenance that may cause significant delay or disruption to the Contractor's use of a GFF Licensed Area for a GFF Permitted Purpose.
      4. Nothing in this clause 6.4 affects or limits any liability of the Contractor under clause 10.8 of the COC in relation to loss of, or damage to, any GFF.
   5. Sewerage and Trade Waste
      1. The Contractor shall not, and shall ensure that Contractor Personnel do not, discharge trade waste from a GFF Licensed Area through the sewerage system interface to the Commonwealth’s Sewerage Treatment Plant on the Commonwealth Premises in which the GFF Licensed Area is located.
4. RELOCATION
   1. Relocation
      1. The Commonwealth may, by notice to the Contractor, require the Contractor to relocate from a GFF Licensed Area into another specified area no later than a date specified in the notice (which shall be no less than two months after the date of the notice).
      2. The notice may require specified amendments to the provisions of this Attachment O (including the details of the GFF Licensed Area included in this GFF Licence) in relation to the relocation.
      3. If the Commonwealth issues a notice under clause 7.1.1, the Contractor shall submit a CCP that is consistent with the notice.
      4. The Contractor shall vacate the GFF Licensed Area by no later than the date specified in the notice.
      5. The Contractor shall vacate the GFF Licensed Area in accordance with clause 10.5 and a reference to the expiry or termination of the GFF Licence in that clause shall be taken to be a reference to the date specified in the notice under clause 7.1.1.
5. GFF LICENCE FEE AND RELATED ARRANGEMENTS
   1. GFF Licence Fee
      1. No fee is payable by the Contractor in respect of the GFF Licence.
   2. Operating Expenses
      1. No amount is payable by the Contractor under the Contract by way of contribution to the Operating Expenses of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.
      2. The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor.
   3. Utilities and Telecommunications Facilities
      1. No amount is payable by the Contractor under the Contract by way of contribution to the costs of utilities or telecommunications facilities in relation to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.
      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 8.2.2) for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities in the GFF Licensed Area by the Contractor.
6. DAMAGE TO OR DESTRUCTION OF THE GFF
   1. Damage or Destruction
      1. If the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located:
         1. subject to clause 7.1, the right of the Contractor to continue to use so much of the GFF Licensed Area as it is safe and practicable for it to use is not affected; and
         2. the Commonwealth may (but is not required to), repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located.
7. TERMINATION AND MAKE GOOD
   1. Commonwealth’s Right to Terminate GFF Licence for Breach
      1. Without limiting clause 13 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, without terminating the Contract if the Contractor:
         1. fails to comply with a Default Notice under clause 13.3.1 of the COC in relation to a Contractor Default in respect of any GFF, or a direction under clause 13.3.2b of the COC issued in connection with such a Default Notice; or
         2. fails to comply with any of the following by the relevant due date:
            1. [LIST SPECIFIC REQUIREMENTS]
   2. Right to Terminate on Damage to, or Destruction of, the GFF or Commonwealth Premises
      1. Either the Commonwealth or the Contractor may, by notice to the other, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas (without terminating the Contract), if:
         1. the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; and
         2. either:
            1. the Commonwealth notifies the Contractor that it does not propose to repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; or
            2. the Commonwealth notifies the Contractor that it will repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located but does not complete that within a reasonable period,

and the Commonwealth does not, within a reasonable period after the notice, give a notice under clause 7.1.1.

* 1. Commonwealth’s Right to Terminate GFF Licence for Convenience
     1. In addition to clause 13.4 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, for convenience (without terminating the Contract).
     2. None of the other provisions of the Contract limit the Commonwealth’s ability to terminate the GFF Licence under this clause 10.3.
  2. CCP to be Submitted
     1. If the GFF Licence is terminated, or the GFF Licence ceases to apply to one or more GFF Licensed Areas (and the Contract has not been terminated), the Contractor shall, within 10 Working Days after the termination or cessation takes effect or such longer period agreed to by the Commonwealth, submit a CCP to amend the Contract to address the consequences of the termination or cessation.
  3. Contractor to Vacate GFF
     1. If the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall vacate the GFF Licensed Area and return it and any other Commonwealth Property on the GFF Licensed Area to the Commonwealth in the same condition as they were:
        1. at the GFF Licence Application Date for the GFF Licensed Area (as evidenced by the relevant Facilities Condition Report); or
        2. in the case of Commonwealth Property brought onto the GFF Licensed Area after the GFF Licence Application Date for the area, at the time it was first brought onto the GFF.
     2. Without limiting clause 10.5.1, except to the extent otherwise agreed by the Commonwealth Representative:
        1. by the date the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall remove from the GFF Licensed Area all of the Contractor’s property and shall take down, remove and carry away, without causing any damage to the GFF Licensed Area or any Commonwealth Property, all removable items or equipment that the Contractor has fixed to or brought onto the GFF Licensed Area; and
        2. if the Contractor causes any such damage, the Contractor shall immediately make good that damage.
     3. If, after an inspection of the GFF Licensed Area in accordance with clause 3.19 of the SOW, any part of the GFF Licensed Area or Commonwealth Property is found not to be in the condition described in clause 10.5.1, then:
        1. the Contractor shall return the GFF Licensed Area or Commonwealth Property to the condition referred in clause 10.5.1; or
        2. the Commonwealth may return the GFF Licensed Area or Commonwealth Property to that condition and the Commonwealth may elect to recover the amount of any reasonable costs incurred by the Commonwealth in doing so under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 10.5.3 until the Commonwealth elects to recover the amount.
     4. Clause 10.5.3 does not apply to the extent that the difference in the condition of the GFF Licensed Area is due to:
        1. fair wear and tear;
        2. alterations or improvements or other works made in accordance with clause 6.2; or
        3. loss or damage of the type referred to in clause 10.8.3 of the COC.
     5. Any items that the Contractor is required to remove under clause 10.5.2 that are not removed within five Working Days (or such other period agreed to in writing by the Commonwealth) after the date the GFF Licence ceases to apply to a GFF Licensed Area, are taken to be abandoned and become Commonwealth Property. Any costs incurred by the Commonwealth in removing or disposing them, and storing them for a reasonable period awaiting disposal, 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 10.5.5 until the Commonwealth elects to recover the amount.
     6. The Contractor's obligations under this clause 10.5 are not affected by any decision by the Commonwealth as to the future use or disposal of any part of the GFF Licensed Area, whether or not the Commonwealth restores, continues in use unrestored, retains unused or disposes of the part of the area or Commonwealth Property to which the obligations relate.

Details of GFF Licensed Area #1 [INSERT DESCRIPTIVE TITLE]

Note to drafters: A separate annex should be included for each geographically distinct GFF Licensed Area to be covered by the GFF Licence. For example, a building on Garden Island and a building at a RAAF Base in Victoria to be supplied as GFF under the Contract would each require separate GFF Licensed Area annexes.

Drafters should complete the GFF Licence application and cessation dates for each GFF Licensed Area included in the GFF Licence. For a GFF Licensed Area that is to be covered by the GFF Licence during the whole term of the GFF Licence, drafters should include a reference to the GFF Licence Commencement Date in column 1 and the GFF Licence Expiry Date for column 2.

1. GFF Licence Application Period
   1. For the purposes of clause 1.1.2 of Attachment O, the GFF Licence applies to the GFF Licensed Area described in this annex as set out below:

|  |  |
| --- | --- |
| 1. Date the GFF Licence applies … 2. (column 1) | 1. Date the GFF Licence ceases to apply … 2. (column 2) |
| 1. [INSERT DATE] | 1. [INSERT DATE] |

Appendixes:

1. Plans
2. Licensed Fittings (including any Contractor Maintained Licensed Fittings)
3. Facilities Condition Report