

DISCLAIMER AND CONFIDENTIALITY AGREEMENT

early contractor involvement HEAD CONTRACT – TWO CONTRACTOR PLANNING PHASE APPROACH

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

1. The Commonwealth proposes, subject to the Tenderer's due execution of, and compliance with, this Disclaimer and Confidentiality Agreement, to invite the Tenderer to lodge a tender (**Tender**) for the Works and the project described in Item 2 of the Schedule (**Project**) and will issue either itself or through the tender administrator named in Item 3 of the Schedule (**Tender Administrator**), the documents which set out, among other things, the conditions and requirements in relation to the Tender (**Tender Documents**).
2. 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 Disclaimer and Confidentiality Agreement.

**OPERATIVE**

1. The Commonwealth agrees to pay the Tenderer the sum of $1.00.
2. The Commonwealth may give any notice or undertake any written communication contemplated by this Disclaimer and Confidentiality Agreement by publication on AusTender or otherwise through the Tender Administrator by email, other electronic means, post or hand.
3. The Tenderer acknowledges and agrees that it must duly complete, execute and return this Disclaimer and Confidentiality Agreement by email to the Tender Administrator at the email address in Item 4 of the Schedule prior to the Tender Administrator issuing the Tender Documents.

TENDER PROCESS

1. The Tenderer:
	* 1. acknowledges that the entire tender process contemplated in Recital A (including the process for any industry briefing or meeting with any of the Tenderers 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 provided for under the Tender Documents, 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; and
			3. the Commonwealth does not make any warranty, guarantee or representation about the Tender or the Commonwealth's requirements for the Project;
		3. acknowledges that the Commonwealth may vary, suspend, discontinue or terminate 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 Tender, any failure to comply with the Tender Documents, any debrief, any variation or suspension of the Process or any discontinuance or termination of the Process, except to the extent of any compensation awarded in accordance with the *Government Procurement (Judicial Review) Act* *2018* (Cth);
		6. acknowledges and agrees that its participation in the Process will be governed by and is subject to, and that it must comply with, the Tender Documents upon the Tenderer receiving those Tender Documents;
		7. warrants that it will prepare its Tender and enter into any contract with the Commonwealth for the Project based on its own investigations, interpretations, deductions, information and determinations;
		8. acknowledges that the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the acknowledgements, warranties and releases set out above;
		9. acknowledges and agrees that the Commonwealth will be entering into any contract for the Project with the Tenderer in reliance upon the terms of this Disclaimer and Confidentiality Agreement; and
		10. 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 4.

CONFIDENTIALITY AND INFORMATION SECURITY

1. The Tenderer acknowledges and agrees that:
	* 1. the Confidential Information is confidential to the Commonwealth and that any unauthorised use or disclosure of the Confidential Information may cause loss or damage to the Commonwealth; and
		2. part of the Confidential Information may be Sensitive and Classified Information.
2. Except as expressly provided in clauses 7 and 8, the Tenderer must:
	* 1. hold the Confidential Information in strict confidence and must not disclose, use or deal with it or otherwise make it available to any person; and
		2. ensure all Confidential Information is strictly kept secure and protected from all unauthorised access and use.
3. The Tenderer may disclose Confidential Information where such disclosure is required by law provided that the Tenderer:
	* 1. only discloses such of the Confidential Information as is strictly required by law to be disclosed, including by taking all reasonable steps in consultation with the recipient (whether by agreed redaction or otherwise) to limit the Confidential Information which is disclosed;
		2. where legally permitted to do so, immediately notifies the Tender Administrator and the Commonwealth in writing of such requirement and provides such details as would enable the Commonwealth to independently seek to protect the confidentiality of the Confidential Information; and
		3. ensures that any recipient is made aware of the confidential status of the Confidential Information and takes all reasonable steps to obtain confidentiality undertakings from the recipient.
4. Subject to clause 9(b), the Tenderer may disclose Confidential Information to:
	* 1. an employee, officer, agent, legal adviser, insurer, subcontractor or proposed subcontractor of the Tenderer who needs to know the Confidential Information to enable the Tenderer to prepare a Tender and, if it is the successful Tenderer, perform its obligations under any resultant contract; and
		2. such other persons, provided the Tenderer has obtained the prior written approval of the Tender Administrator (including on such conditions as the Tender Administrator may impose in its absolute discretion),

provided that the Tenderer must ensure that:

* + 1. all such persons strictly comply with equivalent obligations as are imposed on the Tenderer by this Disclaimer and Confidentiality Agreement in respect of all Confidential Information disclosed to them; and
		2. in the case of disclosure to a subcontractor or proposed subcontractor and prior to making any disclosure, the Tenderer has entered into a written agreement with the relevant person, which:
			1. imposes equivalent obligations as are imposed on the Tenderer by this Disclaimer and Confidentiality Agreement in respect of all Confidential Information disclosed to them; and
			2. is expressed to be made for the benefit of both the Tenderer and the Commonwealth.
1. The Tenderer must:
	* 1. strictly comply with all:
			1. Information Security Requirements, including as set out in Control 10 of the DSPF; and
			2. additional information security or confidentiality requirements:
				1. specified in Item 5 of the Schedule; or
				2. notified by the Tender Administrator or the Commonwealth, including in respect of any Security or Confidentiality Incident; and
		2. without limiting clause 8 or paragraph (a), ensure that no Sensitive and Classified Information is released to any third party, without the prior written approval of the originator through the Tender Administrator (including on such conditions as the Tender Administrator may impose in its absolute discretion).
2. The Tenderer must:
	* 1. detect all actual or potential Security or Confidentiality Incidents;
		2. immediately notify the Tender Administrator and the Commonwealth by email if it becomes aware of any actual or potential Security or Confidentiality Incident; and
		3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Security or Confidentiality Incident, including those directed by the Tender Administrator or the Commonwealth.
3. Within such period as the Tender Administrator or the Commonwealth may direct, the Tenderer must return to the Commonwealth or destroy all documents in its possession, power or control which contain any Confidential Information in accordance with the Information Security Requirements, provided that the Tenderer may retain Confidential Information in its records if retention is required to comply with the Information Security Requirements or any Statutory Requirement, insurance obligation or otherwise with the prior written approval of the Tender Administrator (including on such conditions as the Tender Administrator may impose in its absolute discretion).
4. If the Tenderer is aware that documents containing the Confidential Information are beyond its possession or control, then the Tenderer must provide to the Tender Administrator and the Commonwealth full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and procure compliance by such persons with clause 11 as applicable.
5. Within such period as the Tender Administrator or the Commonwealth may direct, the Tenderer must, in accordance with the other terms of the direction, provide:
	* 1. evidence of the Tenderer's (including all persons who have been provided with or had access to Confidential Information) compliance with clauses 5 to 12; and
		2. a statutory declaration in a form and from an authorised officer satisfactory to the Commonwealth (acting reasonably) in respect of the Tenderer's (including all persons who have been provided with or had access to Confidential Information) compliance with clauses 5 to 12.
6. Without limiting any other provision of this Disclaimer and Confidentiality Agreement, if the Tenderer:
	* 1. notifies the Tender Administrator under clause 10(b); or
		2. has failed to strictly comply with:
			1. clauses 5 to 13; or
			2. any other Confidential Information or information security requirements notified by the Tender Administrator or the Commonwealth,

the Commonwealth may (in its absolute discretion) and either itself, or through the Tender Administrator, notify the Tenderer that the Tenderer:

* + 1. is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or
		2. may continue to participate in the Process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion).
1. The Tenderer must bear, and releases the Commonwealth in respect of, all 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 Security or Confidentiality Incident or the exercise of any of the Tender Administrator's or the Commonwealth's absolute discretions under clause 14.
2. The Tenderer 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 a Security or Confidentiality Incident.
3. The Tenderer is requested to complete and return Attachment 1 - Information Security with its Disclaimer and Confidentiality Agreement.

STRATEGIC NOTICE EVENTS

1. The Tenderer warrants that, at the time of returning this Disclaimer and Confidentiality Agreement to the Tender Administrator, it is not aware of any Strategic Notice Event.
2. If, at any time after returning this Disclaimer and Confidentiality Agreement to the Tender Administrator and prior to notification of the outcome of the Process after lodging its Tender, the Tenderer becomes aware of any Strategic Notice Event, the Tenderer must, as soon as reasonably practicable, notify the Tender Administrator by email, providing details, to the extent such details are known by or reasonably available to the Tenderer, of:
	* 1. the Strategic Notice Event, including:
			1. whether the Tenderer considers that it is a Material Change, Defence Strategic Interest Issue or a Significant Event;
			2. the date or dates on or during which the Strategic Notice Event occurred and the date on which the Tenderer became aware of the Strategic Notice Event; and
			3. whether any of the Tenderer's key people, other personnel proposed to be engaged in connection with the Project or any officers or employees of any subcontractors were involved; 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 Strategic Notice Event on the interests of the Commonwealth.
3. Without limiting any other provision of this Disclaimer and Confidentiality Agreement, if:
	* 1. the [Tenderer](#tenderer):
			1. notifies the Tender Administrator under clause 19; or
			2. has given a false warranty in any respect under clause 18 or has failed to strictly comply with clause 19; or
		2. the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Strategic Notice Event,

the Commonwealth may (in its absolute discretion) and either itself, or through the Tender Administrator, do any one or more of the following:

* + 1. notify the Tenderer that it is required to provide further information, documents or evidence in relation to, and otherwise clarify, the:
			1. nature and extent of the Strategic Notice Event to the extent such information, documents or evidence are known or reasonably available to the Tenderer; and
			2. 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 Strategic Notice Event on the interests of the Commonwealth,

within 3 business days of the request (or longer period agreed in writing by the Commonwealth); and

* + 1. regardless of whether or not the Commonwealth has notified the Tenderer under paragraph (c), notify the Tenderer that the Tenderer:
			1. is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or
			2. may continue to participate in the Process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion).
1. The Tenderer must bear, and releases the Commonwealth in respect of, all 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 Strategic Notice Event or the exercise of any of the Tender Administrator's or the Commonwealth's absolute discretions under clause 20.
2. Nothing in clauses 18 to 21 requires the Tenderer to act in any manner or disclose any information which would:
	* 1. breach an obligation of confidentiality that existed prior to the date the Strategic Notice Event occurred, that is owed to an unrelated third party;
		2. cause the Tenderer to breach any law or regulation or contractual obligation regarding privacy or security (in Australia or outside of Australia);
		3. have the effect of waiving legal professional privilege (or any equivalent privilege in Australia or outside of Australia) in relation to the information; or
		4. breach the rules of a stock exchange or any similar body on which the Tenderer, or any Related Body Corporate of the Tenderer, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Tenderer must disclose the information to the Tender Administrator promptly after disclosure is made to the stock exchange or body.
3. Notwithstanding any restriction that may apply in respect of specific information, such as that described in clause 22, the Tenderer must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of clauses 18 to 21 is achieved.

**INTERPRETATION AND MISCELLANEOUS**

1. For the purposes of this Disclaimer and Confidentiality Agreement:
	* 1. **Change of Control** means where a person who did not (directly or indirectly) effectively Control the Tenderer at the date of return of its Disclaimer and Confidentiality Agreement, either alone or together with others, acquires Control of the Tenderer;
		2. **Confidential Information**:
			1. means, subject to subparagraph (ii):
				1. the Tender Documents;
				2. any "information documents" issued pursuant to the process contemplated in the Tender 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:

by its nature is confidential; or

the Tenderer knows or ought to know is confidential;

* + - * 1. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subsubparagraph C, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things; and
			1. excludes 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 - 11; or
				3. has been independently developed or acquired by the Tenderer;
		1. **Control** includes:
			1. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
			2. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
			3. the ability to appoint or remove all or a majority of the directors of a corporation;
			4. the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
			5. any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation;
		2. **Corruption** means any conduct (whether criminal or non-criminal in nature) that does or could compromise the integrity, accountability or probity of public administration, including:
			1. any conduct of any person (whether or not a staff member of a Commonwealth agency) that adversely affects, or that could adversely affect, either directly or indirectly:
				1. the honest or impartial exercise of any staff member's powers as a staff member of a Commonwealth agency; or
				2. the honest or impartial performance of any public official's functions or duties as a public official;
			2. any conduct of a staff member of a Commonwealth agency that constitutes or involves a breach of public trust;
			3. any conduct of a staff member of a Commonwealth agency that constitutes, involves or is engaged in for the purpose of abuse of the person's office; and
			4. any conduct of a staff member of a Commonwealth agency, or former staff member of a Commonwealth agency, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a staff member of a Commonwealth agency;
		3. **Defence Strategic Interest Issue** means any issue arising out of or in relation to the Tender, the Tenderer or any proposed subcontractor (or any Related Body Corporate of the Tenderer or any proposed subcontractor) that involves an actual, potential or perceived risk of an adverse effect on the national security interests of the Commonwealth including arising from any breach by the Tenderer of its obligations in respect of compliance with all Statutory Requirements and the Information Security Requirements;
		4. **DSPF** means the Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security, as amended or replaced from time to time;
		5. **Fraud** means dishonestly obtaining (including attempting to obtain) a gain or benefit, or causing a loss or risk of loss, by deception or other means;
		6. **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. DSPF,

each as amended or replaced from time to time;

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

a moratorium of any debts; or

a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

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

* + - 1. where the Tenderer is a corporation, any one of the following:
				1. notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
				2. a liquidator or provisional liquidator is appointed in respect of a corporation;
				3. the corporation entering a deed of company arrangement with creditors;
				4. a controller, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to the corporation;
				5. an application is made to a court for the winding up of the corporation and not stayed within 14 days;
				6. any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of the Commonwealth under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
				7. a winding up order or deregistration order is made in respect of the corporation;
				8. the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
				9. as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)); or
				10. a mortgagee of any property of the corporation takes possession of that property;
			2. the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
			3. anything analogous to anything referred to in subparagraphs (i) to (vi) or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction;
		1. **Joint Bid Basis** means a Tender lodged by an unincorporated joint venture or on any other basis involving more than one party;
		2. **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;
				2. an Insolvency Event;
				3. if the Tenderer lodges its Tender on a Joint Bid Basis, the Tenderer's joint bid arrangement; or
				4. the Tenderer's financial viability, availability, capacity or ability to 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;
		3. **Related Body Corporate** has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth);
		4. **Security or Confidentiality Incident** means:
			1. a "Security Incident" as defined in Control 77.1 of the DSPF insofar as the relevant approach, event or action arises out of or in any way in connection with the Process or otherwise relates to the Tenderer or any Related Body Corporate of the Tenderer; or
			2. any other incident or circumstance involving Confidential Information (including any Sensitive and Classified Information) having been held, disclosed, accessed or used in a way that is inconsistent with the terms of this Disclaimer and Confidentiality Agreement or the Tender Documents;
		5. **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 the Information Security Requirements or any Statutory Requirement; 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;
		6. **Significant Event** means:
			1. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Tenderer or its subcontractors (or any officers, employees or agents of any of them) that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
			2. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Tenderer or its subcontractors (or any officers, employees or agents of any of them) that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation;
		7. **Statutory Requirement** means any law, including Acts, ordinances, regulations, by-laws and other subordinate legislation; and
		8. **Strategic Notice Event** means:
			1. a Material Change;
			2. a Defence Strategic Interest Issue;
			3. a Significant Event; or
			4. any known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Process.
1. All obligations under this Disclaimer and Confidentiality Agreement survive the expiration or earlier termination of the Process or the termination of this Disclaimer and Confidentiality Agreement.
2. If the Tenderer consists of more than one party, the provisions of this Disclaimer and Confidentiality Agreement jointly and severally bind, and apply to, each such party.
3. This Disclaimer and Confidentiality Agreement is governed by the law of the State or Territory specified in Item 6 of the Schedule.

**Schedule**

|  |  |  |
| --- | --- | --- |
|  | [Tenderer](file:///%5C%5Cd85groupdata.dpe.protected.mil.au%5Cgroupdata_rus%5CEWD%5CHelpdesk%5CBAU%5CDefence-website%5CBusiness-industry%5CProcurement%20%26%20Contracting%5Cswalsh%5CDesktop%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CNRPortbl%5CLegal%5CSWALSH%5C313098646_4.doc#tenderer): | **[INSERT NAME AND ABN AS APPLICABLE BEFORE EXECUTING AGREEMENT]**  |
| 1. (Recital A)
 | ATM ID:  | ***[INSERT ATM ID]*** |
| Project No:  | ***[INSERT PROJECT NUMBER]*** |
| Project Name: | ***[INSERT PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]*** |
| Works: | ***[INSERT BRIEF DESCRIPTION OF WORKS]*** |
| 1. (Recital A)
 | 1. Tender Administrator:
 | ***[INSERT NAME OF TENDER ADMINISTRATOR]*** |
| 1. (Clause 3)
 | Email address of Tender Administrator: | ***[INSERT EMAIL ADDRESS OF TENDER ADMINISTRATOR]*** |
| 1. (Clause 9(a)(ii)A)
 | Additional information security or confidentiality requirements:  | 1. ***[INSERT]***
 |
| 1. (Clause 27)
 | Governing Law:  | 1. ***[INSERT]***
2. (If not stated, Australian Capital Territory)
 |

**SIGNED** as an agreement.

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

[S 127 OF CORPORATIONS ACT]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[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 |

[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. IF SUBMITTING ON A JOINT BID BASIS, A SINGLE DISCLAIMER AND CONFIDENTIALITY AGREEMENT SHOULD BE PROVIDED ON BEHALF OF ALL ENTITIES, SEPARATELY EXECUTED BY EACH ENTITY FORMING THE TENDERER]

[THE TENDERER IS REQUESTED TO ENSURE THAT THE DISCLAIMER AND CONFIDENTIALITY AGREEMENT (DCA) IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID. IF THE TENDERER EXECUTES THE DCA BY MEANS OTHER THAN IN ACCORDANCE WITH S 127 OF THE CORPORATIONS ACT 2001 (CTH), THE TENDERER IS ALSO REQUESTED TO PROVIDE EVIDENCE OF AUTHORITY OF THE 'AUTHORISED SIGNATORY' TO SIGN THE DCA (E.G. A COPY OF A POWER OF ATTORNEY DOCUMENT OR A BOARD RESOLUTION)]

**Attachment 1 - Information Security**

The Tenderer is referred to clause 17 of the Disclaimer and Confidentiality Agreement.

***[INSERT THE FOLLOWING IF AN INVITATION TO REGISTER INTEREST PROCESS WAS USED, OTHERWISE DELETE]***

The Tenderer is requested to confirm whether, at the time of signing this Disclaimer and Confidentiality Agreement, any of the information provided in its response to Schedule C - Information Security of the Invitation to Register Interest has changed and, if so, provide details of the change(s) below:

|  |
| --- |
|  |

***[INSERT THE FOLLOWING IF AN INVITATION TO REGISTER INTEREST PROCESS WAS NOT USED, OTHERWISE DELETE]***

The Tenderer is requested to:

* + 1. confirm whether or not it currently holds Defence Industry Security Program (**DISP**) membership and, if so, provide details of such membership in item A; and
		2. if the Tenderer **does not** currently hold DISP membership, complete the Questionnaire in item B.

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

**A DEFENCE INDUSTRY SECURITY PROGRAM**

Does the Tenderer currently hold DISP membership?

**❑ YES ❑ NO**

If Yes, please provide details of the relevant level held for each of the following Security Domains:

* + 1. Governance

**[INSERT]**

* + 1. Personnel Security

**[INSERT]**

* + 1. Physical Security

**[INSERT]**

* + 1. Information / Cyber Security

**[INSERT]**

**B QUESTIONNAIRE**

The Tenderer should only complete this item B in circumstances where the Tenderer has indicated in item A above that it does not currently hold DISP membership.

1. Do the Tenderer's information security procedures, policies and measures comply with the requirements in the Disclaimer and Confidentiality Agreement in respect of Confidential Information (including any Sensitive and Classified Information)?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

If No, please provide details of the steps that the Tenderer will take to ensure compliance with these requirements, including timeframes:

**[INSERT]**

1. Do the Tenderer's information security procedures, policies and measures extend to preventing, detecting, reporting on, responding to and closing out:
	* 1. new and emerging threats to information security procedures, policies and measures; and
		2. hardware or software malfunctions,

in respect of Confidential Information (including any Sensitive and Classified Information)?

**❑ YES ❑ NO**

If No, please provide details:

[**INSERT**]

1. Has the Tenderer been the subject of any notices, investigations, proceedings, consequences or sanctions 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 fully complying with the outcomes of such investigations, proceedings, consequences or sanctions?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. Has the Tenderer been subject to a hardware and software malfunction, malicious code or other Security or Confidentiality Incident in the past 5 years?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details of how the Tenderer managed such incident:

**[INSERT]**