

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]*

MAJOR WORKS SUBCONTRACT

(FOR USE WITH DEFENCE MANAGING CONTRACTOR CONTRACT)

*[LAST AMENDED: 27 February 2025 - PLEASE REMOVE PRIOR TO publication of tender documents]*

Table of Contents

[FORMAL AGREEMENT 1](#_Toc191377333)

[CONDITIONS OF SUBCONTRACT 4](#_Toc191377334)

[1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS 4](#_Toc191377335)

[1.1 Glossary of Terms 4](#_Toc191377336)

[1.2 Interpretation 32](#_Toc191377337)

[1.3 Miscellaneous 34](#_Toc191377338)

[2. COMMENCEMENT 35](#_Toc191377339)

[2.1 Nature of Subcontract 35](#_Toc191377340)

[2.2 Subcontractor’s Obligations 35](#_Toc191377341)

[2.3 Contractor’s Obligations 35](#_Toc191377342)

[2.4 Delayed Access 35](#_Toc191377343)

[3. PERSONNEL 37](#_Toc191377344)

[3.1 Contractor’s Representative 37](#_Toc191377345)

[3.2 Replacement of Contractor’s Representative 37](#_Toc191377346)

[3.3 Parties’ Conduct 37](#_Toc191377347)

[3.4 Contractor’s Representative’s Representative 37](#_Toc191377348)

[3.5 Subcontractor’s Representative 37](#_Toc191377349)

[3.6 Key People for the Subcontractor’s Activities 37](#_Toc191377350)

[3.7 Removal of Persons 38](#_Toc191377351)

[3.8 Industrial Relations 38](#_Toc191377352)

[3.9 Monthly Meeting 38](#_Toc191377353)

[3.10 Subcontractor’s Monthly Report 39](#_Toc191377354)

[4. SECURITY 41](#_Toc191377355)

[4.1 Form 41](#_Toc191377356)

[4.2 Release of Security 41](#_Toc191377357)

[4.3 Interest 41](#_Toc191377358)

[4.4 Deed of Guarantee and Undertaking 42](#_Toc191377359)

[5. RISKS AND INSURANCE 43](#_Toc191377360)

[5.1 Risk of Subcontract Works 43](#_Toc191377361)

[5.2 Other Risks 43](#_Toc191377362)

[5.3 Reinstatement 43](#_Toc191377363)

[5.4 Contractor Insurance Obligations 44](#_Toc191377364)

[5.5 Subcontractor Insurance Obligations 44](#_Toc191377365)

[5.6 Failure to Insure 46](#_Toc191377366)

[5.7 Period of Insurance 46](#_Toc191377367)

[5.8 Notice of Potential Claim 47](#_Toc191377368)

[5.9 Procedure upon Loss or Damage 48](#_Toc191377369)

[5.10 Cross Liability 48](#_Toc191377370)

[5.11 Insurances Secondary 49](#_Toc191377371)

[5.12 Exclusion of Consequential Loss and Limitation on Liability 49](#_Toc191377372)

[6. DESIGN AND DOCUMENTATION 51](#_Toc191377373)

[6.1 Subcontractor’s Documentation Program 51](#_Toc191377374)

[6.2 Subcontractor’s Design 51](#_Toc191377375)

[6.3 Contractor’s Representative May Review Design Documentation 51](#_Toc191377376)

[6.4 No Obligation to Review 51](#_Toc191377377)

[6.5 Copies of Design Documentation 52](#_Toc191377378)

[6.6 Fitness for Purpose 52](#_Toc191377379)

[6.7 Availability 52](#_Toc191377380)

[6.8 Licence over Project Documents 52](#_Toc191377381)

[6.9 Intellectual Property Warranties 53](#_Toc191377382)

[6.10 Intellectual Property Rights 53](#_Toc191377383)

[6.11 Resolution of Ambiguities 53](#_Toc191377384)

[6.12 Access to Premises and Project Documents 54](#_Toc191377385)

[6.13 Design Certification 54](#_Toc191377386)

[6.14 Samples 55](#_Toc191377387)

[7. SITE 56](#_Toc191377388)

[7.1 Subcontractor to Inform Itself 56](#_Toc191377389)

[7.2 Site and Other Information 56](#_Toc191377390)

[7.3 Notice of Latent Condition 56](#_Toc191377391)

[7.4 Subcontractor’s Entitlement 56](#_Toc191377392)

[7.5 Site Access 57](#_Toc191377393)

[7.6 Subcontractor’s Obligation to Provide Access 57](#_Toc191377394)

[7.7 Non-Reliance 57](#_Toc191377395)

[8. CONSTRUCTION 59](#_Toc191377396)

[8.1 Description of Subcontract Works 59](#_Toc191377397)

[8.2 All Work Included 59](#_Toc191377398)

[8.3 Statutory Requirements 59](#_Toc191377399)

[8.4 Change in Statutory Requirements or Variance with Subcontract 59](#_Toc191377400)

[8.5 Subcontracting 60](#_Toc191377401)

[8.6 Collateral Warranties 61](#_Toc191377402)

[8.7 Provisional Sum Work 61](#_Toc191377403)

[8.8 Design for Provisional Sum Work to be Prepared by Contractor - Option 1 62](#_Toc191377404)

[8.8 Design for Provisional Sum Work to be Prepared by Subcontractor - Option 2 62](#_Toc191377405)

[8.9 Tendering Provisional Sum Work 62](#_Toc191377406)

[8.10 Subcontract Price Adjustment for Tendered Provisional Sum Work 63](#_Toc191377407)

[8.11 Subcontract Price Adjustment for Other Provisional Sum Work 63](#_Toc191377408)

[8.12 Further Allowance for Provisional Sum Work 63](#_Toc191377409)

[8.13 Co-operation with Other Contractors 63](#_Toc191377410)

[8.14 Setting Out 63](#_Toc191377411)

[8.15 Survey 64](#_Toc191377412)

[8.16 Work Health and Safety 64](#_Toc191377413)

[8.17 Plant, Equipment and Work 68](#_Toc191377414)

[8.18 Cleaning Up 68](#_Toc191377415)

[8.19 The Environment 68](#_Toc191377416)

[8.20 Urgent Protection 68](#_Toc191377417)

[8.21 Valuable, Archaeological or Special Interest Items 69](#_Toc191377418)

[8.22 The Contractor May Act 69](#_Toc191377419)

[8.23 Access Hours 69](#_Toc191377420)

[8.24 Imported Items 69](#_Toc191377421)

[8.25 Salvaged Materials 70](#_Toc191377422)

[8.26 Project Signboards 70](#_Toc191377423)

[8.27 Measurements and Dimensions 71](#_Toc191377424)

[8.28 Commonwealth’s Actions 71](#_Toc191377425)

[8.29 Pandemic Adjustment Event 71](#_Toc191377426)

[9. QUALITY 73](#_Toc191377427)

[9.1 Workmanship, Materials and Other Requirements 73](#_Toc191377428)

[9.2 Project Plans 73](#_Toc191377429)

[9.3 Contractor’s Representative’s Right to Inspect 74](#_Toc191377430)

[9.4 Inspections and Tests 75](#_Toc191377431)

[9.5 Costs of Inspections and Tests 75](#_Toc191377432)

[9.6 Defects 75](#_Toc191377433)

[9.7 Correction of Defect or Variation 76](#_Toc191377434)

[9.8 Claim for Correction of Defect 76](#_Toc191377435)

[9.9 Claim for Variation 76](#_Toc191377436)

[9.10 Acceptance of Work 76](#_Toc191377437)

[9.11 Extension of Defects Liability Period 77](#_Toc191377438)

[9.12 Common Law Rights not Affected 77](#_Toc191377439)

[9.13 HOTO Process 77](#_Toc191377440)

[9.14 Defects Records and Reports 78](#_Toc191377441)

[9.15 Quality Assurance 78](#_Toc191377442)

[10. TIME 80](#_Toc191377443)

[10.1 Progress and Time for Completion 80](#_Toc191377444)

[10.2 Programming 80](#_Toc191377445)

[10.3 Subcontractor Not Relieved 80](#_Toc191377446)

[10.4 Acceleration by Subcontractor 81](#_Toc191377447)

[10.5 Delays, Including Delays Entitling Claim for Extension of Time 81](#_Toc191377448)

[10.6 Claim for Extension of Time 81](#_Toc191377449)

[10.7 Conditions Precedent to Extension 81](#_Toc191377450)

[10.8 Extension of Time 82](#_Toc191377451)

[10.9 Unilateral Extension of Time 82](#_Toc191377452)

[10.10 Delay Damages 82](#_Toc191377453)

[10.11 Suspension 83](#_Toc191377454)

[10.12 Instruction to Accelerate 83](#_Toc191377455)

[10.13 Partial Acceleration 83](#_Toc191377456)

[10.14 Acceleration 84](#_Toc191377457)

[10.15 Contractor’s Rights to Liquidated Damages Not Affected 84](#_Toc191377458)

[11. VARIATIONS 85](#_Toc191377459)

[11.1 Variation Price Request 85](#_Toc191377460)

[11.2 Variation Order 85](#_Toc191377461)

[11.3 Valuation of Variation 85](#_Toc191377462)

[11.4 Omissions 86](#_Toc191377463)

[11.5 Daywork 86](#_Toc191377464)

[11.6 Valuation of Daywork 86](#_Toc191377465)

[11.7 Subcontractor Variation Request 87](#_Toc191377466)

[11.8 Contractor’s Representative’s Determination 87](#_Toc191377467)

[11.9 Subcontractor Variation Request Approved by Contractor’s Representative 87](#_Toc191377468)

[11.10 Managing Contractor Contract Variation 87](#_Toc191377469)

[12. PAYMENT 89](#_Toc191377470)

[12.1 Payment Obligation 89](#_Toc191377471)

[12.2 Payment Claims 89](#_Toc191377472)

[12.3 Certification to Accompany Submission of Payment Claim 89](#_Toc191377473)

[12.4 Payment Statement 90](#_Toc191377474)

[12.5 Payment 90](#_Toc191377475)

[12.6 Payment on Account 91](#_Toc191377476)

[12.7 Unfixed Goods and Materials 91](#_Toc191377477)

[12.8 Release of Additional Approved Security 92](#_Toc191377478)

[12.9 Completion Payment Claim and Notice 92](#_Toc191377479)

[12.10 Release after Completion Payment Claim and Notice 92](#_Toc191377480)

[12.11 Final Payment Claim and Notice 92](#_Toc191377481)

[12.12 Release after Final Payment Claim and Notice 93](#_Toc191377482)

[12.13 Interest 93](#_Toc191377483)

[12.14 Correction of Payment Statements 93](#_Toc191377484)

[12.15 Right of Set-Off 93](#_Toc191377485)

[12.16 Payment of Workers and Subsubcontractors 94](#_Toc191377486)

[12.17 GST 94](#_Toc191377487)

[12.18 Security of Payment Legislation 94](#_Toc191377488)

[12.19 Accounting Records 96](#_Toc191377489)

[12.20 Cost Allocation Advice 96](#_Toc191377490)

[12.21 Facilities and Infrastructure Accounting 96](#_Toc191377491)

[12.22 Quantities in Schedule of Rates 96](#_Toc191377492)

[12.23 Limits of Accuracy in Schedule of Rates 96](#_Toc191377493)

[13. Completion 98](#_Toc191377494)

[13.1 Subcontractor to Notify 98](#_Toc191377495)

[13.2 Contractor’s Representative to Inspect 98](#_Toc191377496)

[13.3 Unilateral Issue of Completion Notice 98](#_Toc191377497)

[13.4 Take Over Upon Completion 98](#_Toc191377498)

[13.5 Part of the Subcontract Works or a Stage 98](#_Toc191377499)

[13.6 Effect of Notice of Completion 99](#_Toc191377500)

[13.7 Liquidated Damages 99](#_Toc191377501)

[13.8 Liability to the Commonwealth 99](#_Toc191377502)

[14. TERMINATION 100](#_Toc191377503)

[14.1 Preservation of Rights 100](#_Toc191377504)

[14.2 Subcontractor Default 100](#_Toc191377505)

[14.3 Contents of Notice of Default 100](#_Toc191377506)

[14.4 Termination for Insolvency or Breach 100](#_Toc191377507)

[14.5 Contractor’s Entitlements after Termination by Contractor 100](#_Toc191377508)

[14.6 Subcontractor’s Entitlements after Termination by Subcontractor 101](#_Toc191377509)

[14.7 Termination for Convenience 101](#_Toc191377510)

[14.8 Subcontractor’s Entitlements after Termination for Convenience by Contractor 101](#_Toc191377511)

[14.9 Termination of Managing Contractor Contract 102](#_Toc191377512)

[14.10 Consequences Following Managing Contractor Contract Termination 102](#_Toc191377513)

[15. DISPUTES 104](#_Toc191377514)

[15.1 Notice of Dispute 104](#_Toc191377515)

[15.2 Expert Determination 104](#_Toc191377516)

[15.3 The Expert 104](#_Toc191377517)

[15.4 Not Arbitration 104](#_Toc191377518)

[15.5 Procedure for Determination 105](#_Toc191377519)

[15.6 Disclosure of Interest 105](#_Toc191377520)

[15.7 Costs 105](#_Toc191377521)

[15.8 Conclusion of Expert Determination 105](#_Toc191377522)

[15.9 Expert Determination Agreement 105](#_Toc191377523)

[15.10 Determination of Expert 105](#_Toc191377524)

[15.11 Executive Negotiation 106](#_Toc191377525)

[15.12 Arbitration Agreement 106](#_Toc191377526)

[15.13 Arbitration 106](#_Toc191377527)

[15.14 Proportionate Liability 107](#_Toc191377528)

[15.15 MCC Dispute Procedures 107](#_Toc191377529)

[15.16 Managing Contractor Contract Disputes 108](#_Toc191377530)

[15.17 Procedure for Managing Contractor Contract Disputes 108](#_Toc191377531)

[15.18 Further Procedures 109](#_Toc191377532)

[15.19 Continuation of Subcontractor’s Activities 109](#_Toc191377533)

[16. NOTICES 110](#_Toc191377534)

[16.1 Notice of Variation 110](#_Toc191377535)

[16.2 Notices of Other Claims 110](#_Toc191377536)

[16.3 Prescribed Notices 110](#_Toc191377537)

[16.4 Continuing Events 111](#_Toc191377538)

[16.5 Time Bar 111](#_Toc191377539)

[16.6 Other Provisions Unaffected 111](#_Toc191377540)

[16.7 Address for Service 111](#_Toc191377541)

[16.8 Receipt of Notices 111](#_Toc191377542)

[17. WHOLE OF LIFE 113](#_Toc191377543)

[17.1 Design and Construction 113](#_Toc191377544)

[17.2 Consultation 113](#_Toc191377545)

[17.3 WOL Proposals 113](#_Toc191377546)

[17.4 Post Occupancy Evaluation 113](#_Toc191377547)

[17.5 Rights and Obligations Not Affected 114](#_Toc191377548)

[18. GENERAL 115](#_Toc191377549)

[18.1 Workplace Gender Equality 115](#_Toc191377550)

[18.2 Indigenous Procurement Policy 115](#_Toc191377551)

[18.3 Defence's Security Alert System 116](#_Toc191377552)

[18.4 IT Equipment 117](#_Toc191377553)

[18.5 Privacy 117](#_Toc191377554)

[18.6 Moral Rights 119](#_Toc191377555)

[18.7 Freedom of Information 119](#_Toc191377556)

[18.8 Long Service Leave 120](#_Toc191377557)

[18.9 Assignment 120](#_Toc191377558)

[18.10 Publicity 120](#_Toc191377559)

[18.11 Building Works Manual and National Construction Code Certification 120](#_Toc191377560)

[18.12 Applicable Standards 120](#_Toc191377561)

[18.13 Shadow Economy Procurement Connected Policy 121](#_Toc191377562)

[18.14 Commonwealth Publication and Reporting Requirements 122](#_Toc191377563)

[18.15 Modern Slavery 122](#_Toc191377564)

[18.16 Compliance with the Commonwealth Supplier Code of Conduct 123](#_Toc191377565)

[19. COMMERCIAL-IN-CONFIDENCE INFORMATION 124](#_Toc191377566)

[20. INFORMATION SECURITY 125](#_Toc191377567)

[20.1 DISP Membership 125](#_Toc191377568)

[20.2 Confidential Information and Information Security 125](#_Toc191377569)

[20.3 Security or Confidentiality Incidents 126](#_Toc191377570)

[20.4 Return and Retention of Confidential Information 127](#_Toc191377571)

[20.5 Release and Indemnity 127](#_Toc191377572)

[21. STRATEGIC NOTICE EVENT 128](#_Toc191377573)

[21.1 Subcontractor’s Warranty on Award Date 128](#_Toc191377574)

[21.2 Subcontractor to Give Notice 128](#_Toc191377575)

[21.3 Contractor Rights Upon Occurrence of Strategic Notice Event 128](#_Toc191377576)

[21.4 Strategic Notice Event Remediation Plan 129](#_Toc191377577)

[21.5 Additional Obligations in respect of Known or Suspected Fraud or Corruption 129](#_Toc191377578)

[21.6 Release 130](#_Toc191377579)

[21.7 Subcontractor's Compliance 130](#_Toc191377580)

[22. FINANCIAL VIABILITY 131](#_Toc191377581)

[23. ESTATE INFORMATION 133](#_Toc191377582)

[23.1 Subcontractor Estate Information Obligations 133](#_Toc191377583)

[23.2 No Obligation to Review 133](#_Toc191377584)

[Subcontract Particulars 134](#_Toc191377585)

[Annexure 1 - Estate information 149](#_Toc191377586)

[Annexure 2 - SPECIAL CONDITIONS 158](#_Toc191377587)

[Annexure 3 - Subcontract Works Description 184](#_Toc191377588)

[Annexure 4 - Indigenous PARTICIPATION Plan 185](#_Toc191377589)

FORMAL AGREEMENT

The Subcontract is made on day of

Parties The contractor specified in the Subcontract Particulars (Contractor)

The subcontractor specified in the Subcontract Particulars (Subcontractor)

* 1. The Commonwealth of Australia (**Commonwealth**) and the Contractor entered into the Managing Contractor Contract for the design and construction of the MCC Works.
  2. The Contractor wishes to subcontract certain obligations under the Managing Contractor Contract to the Subcontractor under the Subcontract.
  3. The Contractor and the Subcontractor therefore promise to carry out and complete their respective obligations in accordance with the:
     1. attached Conditions of Subcontract; and
     2. other documents referred to in the definition of "Subcontract" in clause 1.1 of the Conditions of Subcontract.
  4. This Formal Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.
  5. ***[IF NONE OF THE SUBCONTRACTOR'S ACTIVITIES ARE TO BE CARRIED OUT IN QUEENSLAND, DELETE THE BELOW:*** This Subcontract is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building and Construction Commission Act 1991* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security is not to be more than 5% of the Subcontract Price of the Subcontract, unless the Subcontract expressly provides otherwise. Under this Subcontract, the parties agree that the amount of the security provided by the Subcontractor is governed by clause 4.

**Initialled for and on behalf of the Subcontractor:**

**Initialled for and on behalf of the Contractor:**

Despite any other provision of the Subcontract, the parties agree that where:

* + 1. section 67N of the *Queensland Building and Construction Commission Act 1991* (Qld) applies; and
    2. to the extent that the Subcontract provides that the total of all securities held by the Contractor shall exceed 2.5% of the Subcontract Price after Completion,

the amount of the excess does not relate to the need to correct defects identified in the Defects Liability Period, but instead to the recovery by the Contractor of any costs, damages, liabilities or other amounts which may become payable to the Contractor by the Subcontractor under or in connection with the Subcontract, the Subcontractor’s performance of the Subcontract or any breach of Subcontract by the Subcontractor.***]***

SIGNED as an agreement

*[S 127 OF CORPORATIONS ACT]*

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

*[OR - AUTHORISED SIGNATORY OF COMPANY]*

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

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

*[S 127 OF CORPORATIONS ACT]*

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

*[OR - AUTHORISED SIGNATORY OF COMPANY]*

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

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

CONDITIONS OF SUBCONTRACT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS
   1. Glossary of Terms

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

Accredited Building Surveyor

1. A person who meets all requirements of a "building surveyor" in accordance with and as defined in the Building Works Manual.

ACM

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

Act of Prevention

1. Any one of:
   1. a breach of the Subcontract by the Contractor;
   2. any other act or omission of the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative or an Other Contractor engaged by the Commonwealth or the Contractor; or
   3. a Variation the subject of a direction by the Contractor’s Representative, except where the Variation is instructed in the circumstances described in clause 9.9(b),
2. but excluding any act or omission of any person specified in paragraph (b) in accordance with or otherwise permitted by the Subcontract.

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Subcontractor’s Activities or the Subcontract Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Subcontractor’s Activities or the Subcontract Works; or
   2. occupy, use, maintain or operate the completed Subcontract Works.

Approved Security

1. An unconditional undertaking (duly stamped) in the form set out in the Schedule of Collateral Documents and otherwise on terms and given by a financial institution (including an Australian Prudential Regulation Authority-regulated insurer) approved by the Contractor.

Asbestos

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

Asbestos Management Plan

1. The Security and Estate Group Asbestos Management Plan dated 15 December 2023, available at https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/security-and-estate-asbestos-management-plan, as amended or replaced from time to time.

Asbestos Related Activities

Any activity relating to Asbestos, including the:

* 1. management, handling, removal of Asbestos; or
  2. remediation of an Asbestos affected area including the enclosure or sealing of an affected area.

Australian Privacy Principle

1. Has the meaning given in the Privacy Act.

Award Date

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

Building Works Manual

1. The Building Works Manual - Edition 1 dated 24 August 2020 available on the Defence Website, as amended or replaced from time to time.

Change of Control

1. In relation to the Subcontractor, where a person who did not (directly or indirectly) effectively Control the Subcontractor at the Award Date, either alone or together with others, acquires Control of the Subcontractor.

Claim

1. Includes any claim for an increase in the Subcontract Price, for payment of money (including damages) or for an extension of time:
   1. under, arising out of or in connection with the Subcontract, including any direction of the Contractor’s Representative;
   2. arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or either party’s conduct before the Subcontract; or
   3. otherwise at law or in equity including:
      1. by statute;
      2. in tort for negligence or otherwise, including negligent misrepresentation; or
      3. for restitution.

Collateral Warranty

1. A warranty in the form set out in the Schedule of Collateral Documents.

Commonwealth

1. Commonwealth of Australia.

Completion

1. The point in time when, in respect of the Subcontract Works or a Stage:
   1. the Subcontract Works are, or the Stage is, complete except for minor Defects:
      1. which do not prevent the Subcontract Works or the Stage from being reasonably capable of being used for the intended purpose of the Subcontract Works or the Stage; and
      2. which can be corrected without prejudicing the convenient occupation, use, operation and maintenance of the Subcontract Works or the Stage;
   2. those inspections and tests which are required by the Subcontract to be carried out and passed before the Subcontract Works or the Stage reach Completion have been carried out and passed;
   3. the Subcontractor has satisfied all Subcontractor HOTO Obligations and other obligations (including applicable Contractor Estate Information Obligations) which must be satisfied to achieve "Handover/Takeover (HOTO)" under and in accordance with the HOTO Requirements;
   4. all documents and other information required for the occupation, use, operation and maintenance of the Subcontract Works or the Stage (including as part of the HOTO Process) have been submitted to the Contractor’s Representative in accordance with the Subcontract; and
   5. without limiting the foregoing, the Subcontractor has done everything which the Subcontract requires it to do as a condition precedent to Completion, including those things specified in the Subcontract Particulars.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Subcontract;
     2. the Project Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Subcontractor by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative or anyone on the Commonwealth’s or the Contractor’s behalf, whether or not owned by the Commonwealth or the Contractor, which is in any way connected with the Subcontractor’s Activities, the Subcontract Works or the MCC Works, which:
        1. by its nature is confidential; or
        2. the Subcontractor knows or ought to know is confidential; 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. Excludes any document, drawing, information or communication (whether in written, oral or electronic form) given to the Subcontractor by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative, or anyone on the Commonwealth’s or the Contractor’s behalf, whether or not owned by the Commonwealth or the Contractor, which:
     1. is in the possession of the Subcontractor without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative or anyone on the Commonwealth’s or the Contractor’s behalf;
     2. is in the public domain otherwise than due to a breach of clause 20; or
     3. has been independently developed or acquired by the Subcontractor.

1. **Consolidated Group**
2. A Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

Construction Risks Insurance

1. A policy of insurance covering the respective rights, interests and liabilities of the Commonwealth, the Contractor, the Subcontractor and all subsubcontractors arising out of or in connection with the works in progress and insuring at minimum all the things referred to in clause 5.1 for which the Subcontractor bears the risk of loss or damage.

Consultant Deed of Covenant

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

Consultant Design Certificate

1. A consultant design certificate in the form set out in the Schedule of Collateral Documents.

Contamination

1. The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

Contractor

1. The person specified in the Subcontract Particulars.

Contractor Risk

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

Contractor’s Environmental Management and Sustainability Plan

1. The environmental management and sustainability plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract.

Contractor’s Program

1. The program prepared by the Contractor for the MCC Works, as updated in accordance with the Managing Contractor Contract.

Contractor’s Project Lifecycle and HOTO Plan

1. The commissioning, handover and takeover plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract.

Contractor's Project Plans

1. The:
   1. Contractor's Environmental Management and Sustainability Plan;
   2. Contractor's Project Lifecycle and HOTO Plan;
   3. Contractor's Quality Plan;
   4. Contractor's Site Management Plan;
   5. Contractor's Work Health and Safety Plan; and
   6. additional plans specified in the Subcontract Particulars.

Contractor’s Quality Plan

1. The quality plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract.

Contractor’s Representative

1. The person specified in the Subcontract Particulars or any other person nominated by the Contractor from time to time under clause 3.2 to replace that person.

Contractor’s Site Management Plan

1. The site management plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract.

Contractor’s Work Health and Safety Plan

1. The work health and safety plan specified in the Subcontract Particulars, as updated in accordance with the Managing Contractor Contract.

Control

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

Data Provision Checklist

1. The worksheets contained within the excel workbook titled "Data Provision Checklist" available at https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy, as amended or replaced from time to time.

Data Supplier

1. Any person identified as a "Data Supplier" or "Estate Data Supplier" in the Defence Estate Information Management Requirements, including a contract administrator, designer, contractor, subcontractor or any person engaged by the Commonwealth to design, construct or otherwise provide services in relation to the Subcontract Works or a Stage.

Date for Completion

1. In respect of:
   1. the Subcontract Works or a Stage, subject to paragraph (b), the date, or period of time, specified in the Subcontract Particulars; or
   2. any new Stage directed under clause 13.5(c), the date, or period of time, specified in the direction,
2. as adjusted under the Subcontract.

Date of Completion

1. The date of Completion set out in a Notice of Completion.

Deed of Guarantee and Undertaking

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

Defect

1. Any defect, shrinkage, fault or omission in the Subcontract Works including any aspect of the Subcontract Works which is not in accordance with the requirements of the Subcontract.

Defects Liability Period

1. The period which commences on the Date of Completion of the Subcontract Works or a Stage, and which continues for the period specified in the Subcontract Particulars, as may be extended by clause 9.11.

Defence

1. Department of Defence.

Defence Asbestos Register

1. The document or documents specified in the Subcontract Particulars, as amended or replaced from time to time.

Defence Environmental Management System

1. The environmental management system applicable to the Site (if any).

Defence Environmental Plan

1. The environmental plan applicable to the Site (if any).

Defence Environmental Requirements

1. The Defence Environmental Management System and Defence Environmental Plan applicable to the Site, the Subcontractor’s Activities or the Subcontract Works, including any procedures, instructions, requirements and standing orders which have been developed or issued under the Defence Environmental Management System or Defence Environmental Plan.

Defence Estate

1. The properties owned, leased or otherwise occupied by the Commonwealth from time to time.

Defence Estate Information Management Requirements

1. The requirements published on the Defence Website in respect of the assessment, creation, recording, updating and management of Estate Information (and whether referred to as "Estate Information", "Estate Data", "GEMS" or otherwise), including:
   1. the documents set out at https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy;
   2. any requirements contained in:
      1. GEMS; and
      2. the Spatial Data Management Plan; and
   3. any other requirement published on the Defence Website relating to the assessment, creation, recording, updating and management of Estate Information,
2. each as amended or replaced from time to time.

Defence Requirements

Includes all policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Defence requirements which are, or may become, applicable to the Site, the Subcontractor’s Activities or the Subcontract Works.

Defence Strategic Interest Issue

1. Any issue arising out of or in relation to the Subcontract, the Subcontractor's Activities, the Subcontractor or any subsubcontractor (or any Related Body Corporate of the Subcontractor or any subsubcontractor) 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 Subcontractor of its obligations in respect of compliance with all Statutory Requirements.

Defence Website

1. The website available at www.defence.gov.au/ or such alternative location as notified by the Contractor's Representative.

Design Documentation

1. All design documentation (including documents, drawings, specifications, reports, models, samples and calculations, equipment technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written forms necessary for the Subcontractor to complete any part of the Subcontract Works which is not fully designed and documented in the Subcontract Works Description.

direction

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

DISP

1. The Defence Industry Security Program more particularly described at http://www.defence.gov.au/dsvs/industry.

DSPF

1. The Defence Security Principles Framework dated 19 July 2024 available at https://www.defence.gov.au/business-industry/industry-governance/defence-security-principles-framework, as amended or replaced from time to time.

EMOS Contractor

1. The person specified in the Subcontract Particulars or any other person nominated by the Commonwealth from time to time to replace that person.

Employers' Liability Insurance

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

Environment

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

Environmental Clearance Certificate

1. The Environmental Clearance Certificate issued by the Commonwealth relating to the Subcontractor’s Activities, the Subcontract Works or the MCC Works and any conditions incorporated in that certificate.

Environmental Harm

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

Environmental Incident

1. Any Environmental Harm or Contamination arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works.

Environmental Management and Sustainability Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works from an environmental perspective to:
   1. ensure compliance with the Environmental Requirements and Statutory Requirements; and
   2. maximise the achievement of the Environmental Objectives.
2. The Environmental Management and Sustainability Plan must not be inconsistent with the Contractor’s Environmental Management and Sustainability Plan and must address, at a minimum:
   1. all Environmental Requirements;
   2. without limiting paragraph (c), all Statutory Requirements;
   3. all Environmental Objectives;
   4. the roles and responsibilities of all Subcontractor and subsubcontractor personnel (including the Subcontractor’s key people under clause 3.6(a)) regarding the Environment;
   5. the procedure for consultation, co-operation and co-ordination of activities with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors regarding the Environment during the Subcontractor’s Activities and the Subcontract Works;
   6. the training and awareness programmes provided to Subcontractor and subsubcontractor personnel regarding the Environment;
   7. the procedure for preparing (including tailoring) and finalising the Environmental Management and Sustainability Plan under clause 9.2;
   8. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Subcontractor’s Activities and the Subcontract Works, including the procedures for recording, reporting, responding to and finalising:
      1. matters arising out of or in connection with such identification, control and monitoring; and
      2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Subcontractor’s Activities and the Subcontract Works;
   9. the procedure for regularly reviewing, updating and amending the Environmental Management and Sustainability Plan under clause 9.2 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on Commonwealth property or the Site during the Subcontractor’s Activities and the Subcontract Works);
   10. the procedure for ensuring subsubcontractor compliance with the Environmental Management and Sustainability Plan;
   11. the procedure for regular auditing or other monitoring of Subcontractor and subsubcontractor compliance with the Environmental Management and Sustainability Plan, including the procedures for recording, reporting, responding to and finalising:
       1. matters arising out of or in connection with such audits or other monitoring; and
       2. complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Subcontractor’s Activities and the Subcontract Works;
   12. all matters in the Smart Infrastructure Handbook and the Sustainable Procurement Guide;
   13. the additional matters specified in the Subcontract Particulars; and
   14. any other matters required by the:
       1. Subcontract; or
       2. Contractor’s Representative.

Environmental Objectives

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

Environmental Requirements

1. Includes the:
   1. Environmental Clearance Certificate;
   2. Defence Environmental Requirements; and
   3. additional requirements specified in the Subcontract Particulars.

Errors and Omissions Insurance

1. A policy of insurance to cover civil liabilities (not covered under Public Liability Insurance, products liability or umbrella liability insurance) whether arising in tort, contract or under statute, incurred by the Subcontractor or its subsubcontractors other than in a professional capacity or the capacity of a corporate director or officer, in carrying out the Subcontractor’s Activities.

Estate Information

1. Information and data created in connection with and relating to the design and construction of the Subcontract Works or a Stage or otherwise relating to each element of the Subcontract Works or a Stage and that part of the Defence Estate upon which they are constructed.

Estate Information Provision Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2 in accordance with and for the purposes of the Defence Estate Information Management Requirements (and whether referred to as the "Data Provision Plan", "Estate Information Provision Plan" or otherwise), which must:
   1. set out in adequate detail all procedures the Subcontractor will implement to manage the assessment, provision, creation, recording and updating of Estate Information in accordance with this Subcontract;
   2. be prepared in accordance with the Data Provision Checklist;
   3. meet all applicable Defence Estate Information Management Requirements;
   4. meet all applicable HOTO Requirements;
   5. include a program for the provision of all Estate Information in accordance with the Subcontract, including to provide for the deliverables and timeframes as required by the Defence Estate Information Management Requirements and clause 23.1; and
   6. include any other materials required by;
      1. the Subcontract;
      2. the Contractor's Representative; or
      3. the EMOS Contractor.

Executive Negotiators

1. The representatives of the parties specified in the Subcontract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Expert Determination Agreement

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

Financial Representative

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

Fraud

1. Dishonestly obtaining (including attempting to obtain) a gain or benefit, or causing a loss or risk of loss, by deception or other means.

GEMS

1. The Garrison and Estate Management System established and managed by the Commonwealth to record and manage Estate Information including to define the classifications, attributes and formats for recording data for each element on the Defence Estate.

GST

1. The tax payable on taxable supplies under the GST Legislation.
2. **GST Group**
3. A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

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

Hazardous Substances

1. Has the meaning in the Special Conditions (if any).

HOTO Plan and Checklist

#### The worksheets contained within the excel workbook titled "HOTO Plan & Checklist" available at https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy, as amended or replaced from time to time.

HOTO Process

1. The process for handover and takeover of the Subcontract Works or a Stage to enable the occupation, use, operation and maintenance of the Subcontract Works or the Stage by the Commonwealth and Other Contractors including the:
   1. commissioning of the Subcontract Works or the Stage (including the inspection and testing process);
   2. handover of the Subcontract Works or the Stage to the Commonwealth; and
   3. occupation, use, operation and maintenance of the Subcontract Works or the Stage by the Commonwealth and Other Contractors,
2. in accordance with the HOTO Requirements.

HOTO Requirements

1. The requirements published on the Defence Website in respect of commissioning, handover and takeover of projects on the Defence Estate, including:
   1. the documents set out at https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy, and all applicable requirements referred to therein; and
   2. any other requirement published on the Defence Website expressed as applying to the commissioning, handover and takeover of projects on the Defence Estate,
2. each as amended or replaced from time to time.

Indigenous Enterprise

1. An organisation that is 50% or more indigenous owned that is operating a business.

Indigenous Participation Plan

1. The plan prepared by the Subcontractor and set out in Annexure 4.

Indigenous Procurement Policy

1. The Commonwealth’s Indigenous Procurement Policy, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp.
2. **Information Security Requirements**
3. Means the:
   1. Australian Government's ProtectiveSecurityPolicy Framework available at https://www.protectivesecurity.gov.au/;
   2. Australian Government's Information Security Manual available at https://www.cyber.gov.au/ism; and
   3. DSPF,

each as amended or replaced from time to time.

Insolvency Event

1. Any one of the following:
   1. the Subcontractor becomes, is declared to be, is taken under any applicable law (including the *Corporations Act* *2001* (Cth)) to be, admits to or informs the Contractor in writing or its creditors generally that the Subcontractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Subcontract for financial reasons;
   2. execution is levied against the Subcontractor 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 Subcontractor;
   4. where the Subcontractor is an individual person or a partnership including an individual person, the Subcontractor:
      1. commits an act of bankruptcy;
      2. has a bankruptcy petition presented against him or her or presents his or her own petition;
      3. is made bankrupt; or
      4. applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
         1. a moratorium of any debts; or
         2. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

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

* 1. where the Subcontractor 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 paragraphs (a) to (f), or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

Intellectual Property Rights

1. All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.
2. **IPP Contractor Portal**
3. The online portal where contractors report on their progress against their mandatory minimum requirements under the Indigenous Procurement Policy.

IT Equipment

1. Any software, hardware or telecommunications equipment:
   1. produced; or
   2. provided, or required to be provided, to the Contractor,
2. under, for the purpose of, arising out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works by, for or on behalf of the Subcontractor.

Latent Condition

1. Any ground condition at the Site, excluding a ground condition resulting from inclement weather wherever occurring, which differs materially from that which should have been anticipated by a prudent, competent and experienced contractor if it had done those things that the Subcontractor is deemed to have done under clause 7.1.
2. **Long Service Leave Legislation**
3. Means:
   1. *Long Service Leave (Portable Schemes) Act 2009* (ACT);
   2. *Building and Construction Industry Long Service Payments Act 1986* (NSW);
   3. *Construction Industry Long Service Leave and Benefits Act 2005* (NT);
   4. *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld);
   5. *Construction Industry Long Service Leave Act 1987* (SA);
   6. *Construction Industry (Long Service) Act 1997* (Tas);
   7. *Construction Industry Long Service Leave Act 1997* (Vic);
   8. *Construction Industry Portable Paid Long Service Leave Act 1985* (WA);
   9. the long service leave obligations in the National Employment Standards in the *Fair Work Act 2009* (Cth); and
   10. any legislation in any State or Territory of Australia addressing long service leave in the building and construction industry.

Managing Contractor Contract

1. The managing contractor contract between the Contractor and the Commonwealth specified in the Subcontract Particulars.

Material Change

1. Any actual, potential or perceived material change to the circumstances of the Subcontractor, including any change:
   1. arising out of or in connection with:
      1. a Change of Control;
      2. an Insolvency Event; or
      3. the Subcontractor’s financial viability, availability, capacity or ability to perform the Subcontractor’s Activities and otherwise meet its obligations under the Subcontract; or
   2. which affects the truth, completeness or accuracy of:
      1. if the Subcontractor lodged a registration of interest, the registration of interest;
      2. if the Subcontractorlodged a tender, the tender; or
      3. any other information, documents, evidence or clarifications provided by the Subcontractor to the Contractor arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Subcontract, the Subcontractor’s Activities or the Subcontract Works.

MCC Contract Administrator

1. Means:
   1. the person specified in the Subcontract Particulars or any other person nominated by the Commonwealth from time to time under the Managing Contractor Contract to administer the Managing Contractor Contract; and
   2. any representative of that person appointed under the Managing Contractor Contract,

as notified by the Contractor's Representative to the Subcontractor.

MCC Dispute Procedures

1. The dispute resolution procedures under the Managing Contractor Contract referred to in the first paragraph of clause 15.15.

MCC Works

1. The physical works, of which the Subcontract Works form part, which the Contractor must design (to the extent required by the Managing Contractor Contract), construct, commission, complete and hand over to the Commonwealth in accordance with the Managing Contractor Contract, a brief description of which appears in the Subcontract Particulars.

Method of Work Plan for Airfield Activities

1. Has the meaning in the Special Conditions (if any).

Moral Rights

1. The right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth).

NATA

1. National Association of Testing Authorities Australia.

National Construction Code

1. The National Construction Code that applies in the State or Territory where the Subcontract Works are located, as amended or replaced from time to time, produced and maintained by the Australian Building Codes Board on behalf of the Commonwealth Government and each State and Territory Government.

Notice of Completion

1. A notice under clause 13.2(b)(i) by the Contractor’s Representative stating that Completion of the Subcontract Works or a Stage has been achieved.

Other Contractor

1. Any contractor, consultant, artist, tradesperson or other person (including the EMOS Contractor) engaged to do work other than the Subcontractor and its subsubcontractors.
2. **Pandemic**
3. The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.
4. **Pandemic Adjustment Event**

Means any of the following events which arise as a direct result of the Pandemic and first occurs after the Award Date:

* 1. a change in Statutory Requirements (including a change in border requirements or quarantine requirements);
  2. a change in:
     1. the availability of local labour required for the Subcontract Works; or
     2. the ability to transport unfixed goods and materials to the Site where such unfixed goods and materials are located outside of the State or Territory in which the Site is located;
  3. closure (or reopening) of a subsubcontractor's factory, or any other location where subcontracted activities are being carried out, in respect of the supply of goods or materials required for the Subcontract Works; or
  4. such other events as may be specified in the Subcontract Particulars,

in each case which impacts the performance or progress of the Subcontractor's Activities at the Site.

Personal Information

1. Has the meaning given in the PrivacyAct.

Plant, Equipment and Work

1. Those things used, or work undertaken, by the Subcontractor to construct the Subcontract Works but which will not form part of the Subcontract Works.

Preliminary Design Solution

1. The preliminary design solution (if any) specified in the Subcontract Particulars.

Privacy Act

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

Professional Indemnity Insurance

1. A policy of insurance to cover claims made against the insured for:
   1. civil liability for breach of professional duty (whether owed in contract or otherwise); and
   2. unintentional breaches of third party intellectual property,
2. by the Subcontractor or its subsubcontractors in carrying out the Subcontractor’s Activities.

Project Documents

1. Means:
   1. Design Documentation prepared by the Subcontractor under clause 6.2;
   2. Project Plans;
   3. Approvals;
   4. IT Equipment to the extent relating to software;
   5. the documents which the Subcontractor is obliged to maintain under clause 12.19; and
   6. without limiting paragraphs (a) - (e), any other, data, documents, drawings, records, programs and information (including Estate Information and information relating to the Subcontractor's compliance with the WHS Legislation) and material:
      1. produced; or
      2. provided, or required to be provided, to the Contractor,

under, for the purposes of, arising out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works by, for or on behalf of the Subcontractor (including by subsubcontractors).

Project Lifecycle and HOTO Plan

1. The plan prepared by the Subcontractor in accordance with, and for the purposes of, the HOTO Requirements and finalised under clause 9.2, which must not be inconsistent with the Contractor's Project Lifecycle and HOTO Plan and must:
   1. be prepared in accordance with the HOTO Plan and Checklist;
   2. meet all applicable HOTO Requirements and Statutory Requirements; and
   3. include any other matters required by the:
      1. Subcontract; or
      2. Contractor’s Representative.

Project Plans

1. The:
   1. Environmental Management and Sustainability Plan;
   2. Estate Information Provision Plan;
   3. Project Lifecycle and HOTO Plan;
   4. Quality Plan;
   5. Site Management Plan;
   6. Work Health and Safety Plan; and
   7. additional plans specified in the Subcontract Particulars and finalised by the Subcontractor under clause 9.2(a)(ii),

as updated or amended under clause 9.2.

Provisional Sum Work

1. The work or goods so specified in the Subcontract Particulars for which the sum of money specified in the Subcontract Particulars is included in the Subcontract Price.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Subcontractor and all subsubcontractors for their respective liabilities; and
   2. Contractor for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Subcontractor (or any subsubcontractor),
2. to third parties and to each other for loss of, loss of use of or damage to property and death of or injury to any person arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works.
3. This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers’ Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Quality Manager

1. The person specified in the Subcontract Particulars or any other person from time to time appointed as the Quality Manager for the Subcontractor’s Activities in accordance with clause 3.6.

Quality Objectives

1. Means to:
   1. encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Subcontractor’s Activities and the Subcontract Works;
   2. prevent and minimise adverse quality impacts during the Subcontractor’s Activities and the Subcontract Works (including Defects before, at and after Completion);
   3. optimise the value for money achieved by the Commonwealth and the Contractor in respect of the Subcontractor’s Activities and the Subcontract Works; and
   4. achieve the additional objectives specified in the Subcontract Particulars.

Quality Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works from a quality perspective to:
   1. ensure compliance with the Smart Infrastructure Handbook and Statutory Requirements; and
   2. maximise the achievement of the Quality Objectives.

The Quality Plan must not be inconsistent with the Contractor’s Quality Plan and must address, at a minimum:

* 1. all Statutory Requirements;
  2. all Quality Objectives;
  3. the Subcontractor’s quality assurance procedure, system or framework (which may or may not be a certified quality assurance procedure, system or framework);
  4. the roles and responsibilities of all Subcontractor and subsubcontractor personnel (including the Quality Manager and the Subcontractor’s key people under clause 3.6(a)) regarding quality;
  5. the procedure for consultation, co-operation and co-ordination of activities with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors regarding quality generally during the Subcontractor’s Activities and the Subcontract Works;
  6. the training and awareness programmes provided to Subcontractor and subsubcontractor personnel regarding quality;
  7. the procedure for preparing (including tailoring) and finalising the Quality Plan under clause 9.2 (including how the Subcontractor will ensure maximum consistency between the Subcontractor’s quality assurance procedure, system or framework and the Quality Plan);
  8. the procedure for regularly reviewing, updating and amending the Quality Plan under clause 9.2;
  9. the procedure for ensuring subsubcontractor compliance with the Quality Plan;
  10. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Subcontractor’s Activities and the Subcontract Works, including the procedures for recording, reporting, responding to and finalising:
      1. matters arising out of or in connection with such identification, control and monitoring; and
      2. complaints regarding quality during the Subcontractor’s Activities and the Subcontract Works;
  11. the procedure for regular auditing or other monitoring of Subcontractor and subsubcontractor compliance with the Quality Plan, including the procedures for recording, reporting, responding to and finalising:
      1. matters arising out of or in connection with such audits or other monitoring; and
      2. complaints regarding quality during the Subcontractor’s Activities and the Subcontract Works;
  12. the additional matters specified in the Subcontract Particulars; and
  13. any other matters required by the:
      1. Subcontract; or
      2. Contractor’s Representative.

Related Body Corporate

1. Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).
2. **Retention Moneys**
3. The moneys retained by the Contractor in accordance with clause 12.5(a).
4. **Schedule of Collateral Documents**
5. The schedule of proforma contracts and other documents applicable to the Defence Major Works Subcontract:
   1. posted on the Defence Website, as amended from time to time by the Commonwealth; and
   2. which as at the Award Date include the contracts and other documents specified in the Subcontract Particulars.

Schedule of Rates

1. The schedule (if any) set out or specified in the Subcontract Particulars, containing rates and prices to be used for the purpose of calculating the Subcontract Price.

Security

Means either:

* 1. Approved Security; or
  2. Retention Moneys,

as specified in the Subcontract Particulars.

Security of Payment Legislation

1. Means:
   1. *Building and Construction Industry Security of Payment Act* *1999* (NSW);
   2. *Building and Construction Industry Security of Payment Act* *2002* (Vic);
   3. *Building Industry Fairness (Security of Payment) Act* *2017* (Qld);
   4. in Western Australia*:*
      1. the *Construction Contracts Act 2004* (WA); or
      2. if this subcontract is executed after the date on which a provision of the *Building and Construction Industry (Security of Payment) Act* *2021* (WA) commences, then the *Building and Construction Industry (Security of Payment) Act* *2021* (WA) and any provision of the *Construction Contracts Act 2004* (WA) which has not been repealed;
   5. *Construction Contracts (Security of Payments) Act* *2004* (NT);
   6. *Building and Construction Industry Security of Payment Act* *2009* (Tas);
   7. *Building and Construction Industry (Security of Payment) Act* *2009* (ACT);
   8. *Building and Construction Industry Security of Payment Act 2009* (SA); and
   9. any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

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 this Subcontract or the carrying out of the Subcontractor's Activities or otherwise relates to the Subcontractor or any Related Body Corporate of the Subcontractor; 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 the Subcontract.

Sensitive and Classified Information

1. Means:
   1. any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Subcontractor by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative or anyone on the Commonwealth’s or Contractor’s behalf, whether or not owned by the Commonwealth or the Contractor:
      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 Subcontractor 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 paragraph (a) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Shadow Economy Procurement Connected Policy

1. The Shadow Economy Procurement Connected Policy – Increasing the Integrity of Government Procurement – October 2024, as amended or replaced from time to time.

**Significant Event**

Means:

* 1. any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Subcontractor or its subsubcontractors (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 Subcontractor or its subsubcontractors (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.

Site

1. The site or sites for the Subcontract Works described in the Subcontract Particulars.

Site Management Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works on and near the Site.
2. The Site Management Plan must not be inconsistent with the Contractor’s Site Management Plan and must address, at a minimum:
   1. all Statutory Requirements;
   2. the roles and responsibilities of all Subcontractor and subsubcontractor personnel (including the Subcontractor’s Representative and the Subcontractor’s key people under clause 3.6(a)) regarding management of the Subcontractor’s Activities and the Subcontract Works on and near the Site;
   3. the procedure for consultation, co-operation and co-ordination of activities with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors regarding the occupation, use, operation and maintenance of Commonwealth property and the Site (including for the purpose of military activities, expeditions and exercises) during the Subcontractor’s Activities and the Subcontract Works;
   4. procedures for access to:
      1. Commonwealth property (including any Defence location); and
      2. the Site,

by the Subcontractor and subsubcontractor personnel, visitors, pedestrians and vehicles, including procedures for:

* + 1. ensuring security (including identification and pass procedures and any physical security measures);
    2. minimising disruption and inconvenience to the Contractor, Commonwealth and Other Contractors;
    3. vehicle and traffic management; and
    4. noise management;
  1. without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Subcontractor and subsubcontractor personnel in respect of Commonwealth property and the Site;
  2. procedures for:
     1. establishing the Site (including site amenities, laydown areas and parking zones);
     2. cleaning, maintenance, waste management and debris control on Commonwealth property and the Site; and
     3. any dangerous or prohibited substances, material or goods (including Commonwealth property) on the Site relevant to the Subcontractor’s Activities and the Subcontract Works;
  3. if the Subcontractor’s Activities or the Subcontract Works are to be carried out on or in the vicinity of an airfield, the procedure for preparation and approval of a Method of Work Plan for Airfield Activities;
  4. the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 9.2;
  5. the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 9.2 (including as a result of any Site management complaint, incident, near-miss and other situation or accident on Commonwealth property or the Site during the Subcontractor’s Activities and the Subcontract Works);
  6. the procedure for ensuring subsubcontractor compliance with the Site Management Plan;
  7. the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Subcontractor’s Activities and the Subcontract Works, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such identification, control and monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Subcontractor’s Activities and the Subcontract Works;
  8. the procedure for managing the effects of the Pandemic on the carrying out of the Subcontractor's Activities;
  9. the procedure for regular auditing or other monitoring of Subcontractor and subsubcontractor compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
     1. matters arising out of or in connection with such audits or other monitoring; and
     2. complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Subcontractor’s Activities and the Subcontract Works;
  10. to the extent that the Subcontractor's Activities include any demolition, procedures for obtaining approval from the Contractor's Representative prior to undertaking such demolition and otherwise complying with any applicable Statutory Requirements or Subcontractor HOTO Obligation in relation to such demolition;
  11. the additional matters specified in the Subcontract Particulars; and
  12. any other matters required by the:
      1. Subcontract; or
      2. Contractor’s Representative.

Smart Infrastructure Handbook

1. The Defence Smart Infrastructure Handbook: Planning, Design and Construction available on the Defence Website, as amended or replaced from time to time.

Spatial Data Management Plan

The plan setting out standards and specifications for spatial data management, available on the Defence Website, as amended or replaced from time to time.

Special Conditions

1. The special conditions as set out in Annexure 2.

Stage

1. A stage of the Subcontract Works specified in:
   1. the Subcontract Particulars; or
   2. a direction under clause 13.5(c).

Statement of Tax Record or STR

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

Statutory Requirements

1. Means:
   1. any law applicable to the Subcontractor’s Activities or the Subcontract Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
   2. Approvals (including any condition or requirement under an Approval);
   3. Defence Requirements;
   4. Environmental Requirements; and
   5. Information Security Requirements.

Strategic Notice Event

1. 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 Subcontract or the Subcontractor's Activities.

Strategic Notice Event Remediation Plan

1. The plan (if any) prepared by the Subcontractor and finalised under clause 21.4.

Subcontract

1. The contractual relationship between the parties constituted by:
   1. the Formal Agreement;
   2. these Conditions of Subcontract;
   3. the Subcontract Particulars;
   4. the Special Conditions;
   5. the Subcontract Works Description; and
   6. the other documents (if any) specified in the Subcontract Particulars.

Subcontract Particulars

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

Subcontract Price

1. The amount specified in the Subcontract Particulars as adjusted, subject to clause 16.5, under the Subcontract.

Subcontract Works

1. The physical works, a brief description of which is specified in the Subcontract Particulars, which the Subcontractor must design (to the extent required by the Subcontract), construct, commission, complete and hand over to the Contractor in accordance with the Subcontract.

Subcontract Works Description

1. The documents in Annexure 3.

Subcontractor

1. The person specified in the Subcontract Particulars.

Subcontractor Deed of Covenant

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

Subcontractor Design Certificate

1. A subcontractor design certificate in the form set out in the Schedule of Collateral Documents.

Subcontractor Estate Information Obligation

1. Means:
   1. the requirements set out in Annexure 1; and
   2. any task, function, requirement or obligation relating to the assessment, creation, recording, updating and management of Estate Information which a Defence Estate Information Management Requirement allocates, or would reasonably be inferred as allocating, to the Contractor including (as applicable to the Subcontractor's Activities) those allocated to a Data Supplier.

Subcontractor HOTO Obligation

1. Any task, function, requirement or obligation relating to the HOTO Process (including commissioning of the Subcontract Works or a Stage) required to be performed by the Subcontractor under this Subcontract or which a HOTO Requirement allocates, or would reasonably be inferred as allocating, to the Subcontractor, including those that the HOTO Plan and Checklist expressly allocates to the "Contractor Representative" (as that term is used in the HOTO Plan and Checklist) as applicable to the Subcontractor's Activities.

Subcontractor’s Activities

1. All things or tasks which the Subcontractor is, or may be, required to do to comply with its Subcontract obligations.

Subcontractor’s Representative

1. The person specified in the Subcontract Particulars or any other person from time to time appointed as Subcontractor’s Representative in accordance with clause 3.6.

Subsubcontractor Deed of Covenant

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

Subsubcontractor Design Certificate

1. The subsubcontractor certificate set out in the Schedule of Collateral Documents.
2. **Sustainable Procurement Guide**
3. The Sustainable Procurement Guide published by the Department of Agriculture, Fisheries and Forestry, as amended or replaced from time to time.

Table of Variation Rates and Prices

1. The table specified in the Subcontract Particulars, containing rates and prices to be used for the purposes of valuing Variations under clause 11.3.

Variation

1. Unless otherwise stated in the Subcontract, means any change to the Subcontract Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Subcontract Works.

WHS Accreditation Scheme

1. The Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Federal Safety Commissioner Act* *2022* (Cth).

WHS Legislation

1. Means any of the following:
   1. *Work Health and Safety Act* *2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth); and
   2. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

WOL

1. Whole of life.

WOL Cost

1. The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to the Commonwealth arising out of or in connection with the Subcontract Works over the whole life of the Subcontract Works including the costs of designing and constructing the Subcontract Works prior to Completion, decommissioning, remediation and disposal costs (including waste disposal) and occupying, using, operating and maintaining the Subcontract Works after Completion.

WOL Objectives

1. Means balancing the:
   1. WOL Cost;
   2. useful life of the Subcontract Works;
   3. reliability and availability of the Subcontract Works throughout their useful life;
   4. operability and maintainability of the Subcontract Works throughout their useful life;
   5. value for money achieved by the Commonwealth from the design, construction, use, occupation, operation and maintenance of the Subcontract Works;
   6. opportunity to reduce resource use during the occupation, use, operation and maintenance of the Subcontract Works throughout their useful life and the achievement of the other requirements of the Smart Infrastructure Handbook; and
   7. achievement of the additional matters specified in the Subcontract Particulars.

Work Health and Safety Plan

1. The plan prepared by the Subcontractor and finalised under clause 9.2 (which is either Subcontract specific or Site specific) and which must set out in adequate detail the procedures the Subcontractor will implement to manage the Subcontractor’s Activities and the Subcontract Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation) and the Asbestos Management Plan, including the obligations in clause 8.16(t).
2. The Work Health and Safety Plan must not be inconsistent with the Contractor’s Work Health and Safety Plan and must address, at a minimum:
   1. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Subcontractor’s Activities and the Subcontract Works;
   2. the arrangements in place, or to be implemented between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Subcontractor’s Activities and the Subcontract Works are being undertaken regarding consulting, co-operating and co-ordinating activities where the PCBU(s) at the workplace and the Subcontractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
   3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Subcontractor’s Activities and the Subcontract Works are carried out, including:
      1. incident (including notifiable incident) reporting procedures;
      2. preventative and corrective action procedures; and
      3. record-keeping and reporting requirements, including reporting to the MCC Contract Administrator and the Contractor’s Representative with respect to incidents and accidents under clause 8.16(b);
   4. any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
   5. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
   6. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, the procedures for:
      1. conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
      2. carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
      3. ensuring the results of such calculations, analysis, testing or examinations are provided to the Contractor, including as a condition precedent to Completion and prior to the expiry of the Defects Liability Period;
   7. procedures and arrangements for the management of work health and safety generally, including:
      1. details of the Subcontractor’s work health and safety policy;
      2. details of any work health and safety management system (whether certified or uncertified);
      3. inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
      4. emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
   8. procedures for ensuring the provision of written assurances to the Contractor’s Representative under clause 8.16(h) regarding compliance with the WHS Legislation by the Subcontractor, subsubcontractors and Other Contractors;
   9. procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 9.2 (including as a consequence of any review of hazards, risks and control measures regarding the Subcontractor’s Activities, the Subcontract Works and any notifiable incident or systemic risk management failure);
   10. procedures for the management of subsubcontractors, including:
       1. inductions, training and other awareness programmes (in addition to those referred to in paragraph (g)(iii));
       2. the subsubcontractor’s development and provision of safe work method statements, job safety assessments or equivalent documentation;
       3. ensuring subsubcontractors comply with their obligation to consult, co-operate and co-ordinate activities (including the information-sharing and communication of information); and
       4. ensuring subsubcontractor compliance with the Subcontractor's Work Health and Safety Plan;
   11. details of the project and Subcontract specific hazards and risks identified by the Subcontractor and the approach to the management of these hazards and risks including how the Subcontractor will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
       1. prior to commencing the Subcontractor’s Activities and the Subcontract Works; and
       2. during the delivery of the Subcontractor’s Activities and the Subcontract Works;
   12. the approach the Subcontractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning Hazardous Substances, including, where they are used or handled in the delivery of the Subcontractor's Activities, incorporated into the Subcontract Works, stored by the Subcontractor at the workplace or transported by the Subcontractor to or from the workplace;
   13. the actions the Subcontractor will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Subcontractor’s Activities and the Subcontract Works;
   14. the procedures the Subcontractor will adopt to audit or otherwise monitor and verify its (and its subsubcontractors’) compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
   15. the procedures the Subcontractor will adopt to ensure it provides to the Contractor, when conducting handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the Subcontract Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 8.16(r));
   16. the approach the Subcontractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning high risk construction as defined in regulation 291 of the Commonwealth WHS Legislation (as applicable);
   17. any additional matters specified in the Subcontract Particulars; and
   18. any other matters required by the:
       1. Subcontract; or
       2. Contractor’s Representative.

Workers Compensation Insurance

1. A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Subcontractor’s Activities are performed or the Subcontractor’s employees perform work, are employed or normally reside to insure against or make provision for the liability of the Subcontractor to its employees for death or injuries arising out of or in connection with their employment.
   1. Interpretation

In the Subcontract, unless the context otherwise indicates:

* + 1. words in the singular include the plural and vice versa;
    2. references to a person include an individual, firm, corporation or unincorporated body;
    3. except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Subcontract;
    4. references to any party to the Subcontract include its successors or permitted assigns;
    5. a reference to a party, clause, Annexure, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, Schedule or exhibit of or to the Subcontract;
    6. references to the Subcontract and any deed, agreement or instrument are deemed to include references to the Subcontract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
    7. words denoting any gender include all genders;
    8. references to any legislation or to any section or provision of any legislation include any:
       1. statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
       2. ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
    9. no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Subcontract or any part;
    10. a reference to "dollars" or "$" is to Australian currency;
    11. amounts expressed in dollars are exclusive of GST;
    12. where under the Subcontract:
        1. a direction is required to be given or must be complied with; or
        2. payment of money must be made (other than under clause 12.5),

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

* + 1. for the purposes of clauses 10.8, 10.9 and 10.10:
       1. any extension of time stated in days; or
       2. any reference to “day”,

will exclude public holidays and include only those days which are stated in the Subcontractor’s then current program under clause 10.2 as working days;

* + 1. for the purposes of clauses 12.4, 12.5, 18.13 and 21 to the extent that the Subcontractor’s Activities are carried out in:
       1. the Australian Capital Territory, "business day" has the same meaning as defined at Part 1 of the *Legislation Act* *2001* (ACT);
       2. New South Wales, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act* *1999* (NSW);
       3. the Northern Territory, "business day" has the same meaning as "working day" as defined in section 4 of the *Construction Contracts (Security of Payments) Act* *2004* (NT);
       4. Queensland, "business day" has the same meaning as defined in Schedule 2 of the *Building Industry Fairness (Security of Payment) Act* *2017* (Qld);
       5. South Australia, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act* *2009* (SA);
       6. Tasmania, "business day" has the same meaning as defined in section 4A of the *Building and Construction Industry Security of Payment Act* *2009* (Tas);
       7. Victoria, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
       8. Western Australia, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry (Security of Payment) Act* *2021* (WA);
    2. other than as set out in paragraphs (l), (m) and (n) references to “day” are references to calendar days;
    3. the words “including” and “includes”, and any variants of those words, will be read as if followed by the words “without limitation”;
    4. the word “subsubcontractor” will include subsubcontractors, suppliers and consultants and the word “subsubcontract” will include a contract with a subsubcontractor;
    5. where a clause contains two options, the option specified in the Subcontract Particulars will apply;
    6. derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1;
    7. unless agreed or notified in writing by the Contractor’s Representative or the date of the standard or reference document is specified in the Subcontract Works Description, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Subcontract Works Description is a reference to the edition last published prior to:
       1. to the extent that the Subcontractor's Activities include design, the submission of the relevant Design Documentation; and
       2. in any other case, the Award Date.

If requested by the Contractor’s Representative, the Subcontractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Subcontract Works Description and Design Documentation available to the Contractor’s Representative;

* + 1. for the purposes of clauses 2.4(a)(ii), 7.4(a)(ii), 8.4(b)(ii), 8.21(d)(ii), 8.29(d)(i)B, 9.5 and 18.3(e)(ii), a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Subcontractor as a direct result of the applicable event delaying the Subcontractor;
    2. requirements contained in the Subcontract Works Description, whether or not they include the expression “the Subcontractor must” or any equivalent expression, will be deemed to be requirements to be satisfied by the Subcontractor, unless stated otherwise; and
    3. where an absolute discretion is conferred on the Contractor, the Contractor's Representative, the Commonwealth or the MCC Contract Administrator:
       1. neither the Contractor, the Contractor's Representative, the Commonwealth nor the MCC Contract Administrator is required to exercise such discretion for the benefit of the Subcontractor; and
       2. the exercise or failure to exercise such discretion is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.
  1. Miscellaneous
     1. The Subcontract is subject to and is to be construed in accordance with the laws of the State or Territory specified in the Subcontract Particulars.
     2. None of the terms of the Subcontract can be waived, discharged or released at law or in equity unless:
        1. to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
        2. otherwise, both parties agree in writing.
     3. The Subcontract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
        1. any prior agreement in conflict or at variance with the Subcontract; or
        2. any correspondence or other documents relating to the subject matter of the Subcontract which may have passed between the parties prior to the Award Date and which are not included in the Subcontract.
     4. Where a party comprises two or more persons, each person will be jointly and severally bound by the party’s obligations under the Subcontract.
     5. Any provision in the Subcontract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Subcontract.
     6. The Subcontractor must indemnify the Contractor against:
        1. any liability to or claim by a third party including a subsubcontractor or an Other Contractor; and
        2. all costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor,

caused by any breach by the Subcontractor of a term of the Subcontract.

* + 1. All obligations to indemnify under the Subcontract survive termination of the Subcontract on any basis.
    2. If a document referred to as being available on the Defence Website is not so available, the Contractor's Representative may provide such document to the Subcontractor by other means.

1. COMMENCEMENT
   1. Nature of Subcontract

The Subcontractor must carry out the Subcontractor’s Activities in accordance with the Subcontract.

* 1. Subcontractor’s Obligations

The Subcontractor must:

* + 1. without limiting the operation of clause 2.3(a), immediately commence to carry out the Subcontractor’s Activities in accordance with the Subcontract;
    2. unless otherwise stated, carry out the Subcontractor’s Activities at its cost; and
    3. if requested by the Contractor’s Representative, execute a Subcontractor Deed of Covenant (duly completed with all relevant particulars) within the period specified by the Contractor’s Representative in such a request and deliver the executed Subcontractor Deed of Covenant to the Contractor’s Representative.
  1. Contractor’s Obligations

The Contractor must:

* + 1. give the Subcontractor sufficient access to the Site to allow it to commence work on the Site on the later of:
       1. satisfaction of the following conditions precedent to access:
          1. the Subcontractor having provided to the Contractor’s Representative:

the Approved Security required under clause 4.1 (where the Security comprises Approved Security); and

evidence satisfactory to the Contractor’s Representative under clause 5.5(d) that the Subcontractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.5;

* + - * 1. the Environmental Management and Sustainability Plan, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 9.2; and
        2. any other conditions specified in the Subcontract Particulars or elsewhere in the Subcontract; and
      1. the date specified in the Subcontract Particulars; and
    1. subject to other provisions of the Subcontract affecting access, continue to allow the Subcontractor sufficient access to the Site to enable it to carry out the Subcontractor’s Activities.
  1. Delayed Access
     1. Any failure by the Contractor to give access as required by clause 2.3(a) will not be a breach of the Subcontract but will entitle the Subcontractor to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly out of the Contractor’s failure to give the Subcontractor access to the Site, as determined by the Contractor’s Representative.
     2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Contractor’s failure to give the Subcontractor access to the Site, other than under paragraphs (a)(i) and (a)(ii).

1. PERSONNEL
   1. Contractor’s Representative
      1. The Contractor’s Representative will give directions and carry out all of the other functions of the Contractor’s Representative under the Subcontract as the agent of the Contractor (and not as an independent certifier, assessor or valuer).
      2. The Subcontractor must comply with any direction by the Contractor’s Representative given or purported to be given under a provision of the Subcontract.
      3. Except where the Subcontract otherwise provides, the Contractor’s Representative may give a direction orally but will as soon as practicable confirm it in writing.
   2. Replacement of Contractor’s Representative
      1. The Contractor may at any time replace the Contractor’s Representative, in which event the Contractor will appoint another person as the Contractor’s Representative and notify the Subcontractor of that appointment.
      2. Any substitute Contractor’s Representative appointed under clause 3.2 will be bound by anything done by the former Contractor’s Representative to the same extent as the former Contractor’s Representative would have been bound.
   3. Parties’ Conduct

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

* 1. Contractor’s Representative’s Representative
     1. The Contractor’s Representative may:
        1. by written notice to the Subcontractor appoint persons to exercise any of the Contractor’s Representative’s functions under the Subcontract; and
        2. revoke any appointment under subparagraph (i) by notice in writing to the Subcontractor.
     2. As at the Award Date, the Contractor’s Representative is deemed to have appointed the persons specified in the Subcontract Particulars to carry out the functions specified in the Subcontract Particulars.
     3. All references in the Subcontract to the Contractor’s Representative include a reference to a representative appointed under clause 3.4.
  2. Subcontractor’s Representative
     1. The Subcontractor must ensure that the Subcontractor’s Representative is present on the Site at all times reasonably necessary to ensure that the Subcontractor is complying with its obligations under the Subcontract.
     2. A direction is deemed to be given to the Subcontractor if it is given to the Subcontractor’s Representative.
  3. Key People for the Subcontractor’s Activities

The Subcontractor must:

* + 1. employ those people specified in the Subcontract Particulars, including the Subcontractor’s Representative and Quality Manager, in the jobs specified in the Subcontract Particulars;
    2. subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contractor’s Representative’s prior written approval; and
    3. if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Subcontractor, replace them with persons approved by the Contractor’s Representative of at least equivalent experience, ability and expertise.
  1. Removal of Persons
     1. The Contractor’s Representative may by notice in writing instruct the Subcontractor to remove any person from the Site or the Subcontractor’s Activities who in the reasonable opinion of the Contractor’s Representative is guilty of misconduct or is incompetent or negligent.
     2. The Subcontractor must ensure that this person is not again involved in the Subcontractor’s Activities.
  2. Industrial Relations

In carrying out the Subcontractor’s Activities, the Subcontractor must:

* + 1. assume sole responsibility for and manage all aspects of industrial relations;
    2. ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
    3. keep the Contractor’s Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Subcontractor’s Activities; and
    4. comply with all other requirements of the Subcontract relating to industrial relations.
  1. Monthly Meeting
     1. The Subcontractor must:
        1. meet monthly (or at such other times as the Contractor’s Representative may require) with the Contractor’s Representative and any other persons whom the Contractor’s Representative nominates;
        2. discuss the report it has prepared under clause 3.10 and such other matters as the Contractor’s Representative may from time to time require;
        3. promptly and fully respond to any questions which the Contractor’s Representative asks in relation to any report; and
        4. if it requires instructions from the Contractor, make all necessary recommendations with respect to the instructions required.
     2. The Contractor’s Representative must:
        1. before each meeting:
           1. prepare an agenda for the meeting; and
           2. issue an agenda for the meeting; and
        2. after each meeting:
           1. prepare minutes of the meeting; and
           2. issue minutes of the meeting.
  2. Subcontractor’s Monthly Report

At least 7 days prior to each meeting under clause 3.9, the Subcontractor must provide the Contractor’s Representative with a monthly report in such form as the Contractor’s Representative requires from time to time and which must include at a minimum:

* + 1. detailed particulars of the progress of the Subcontractor’s Activities and the Subcontract Works including:
       1. key activities, meetings and other events in the previous month;
       2. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, the status of all Design Documentation (including any dispensations being pursued);
       3. the status of all Approvals;
       4. photographs of the Subcontractor’s Activities and the Subcontract Works; and
       5. any deviations from the Subcontractor’s program under clause 10.2;
    2. detailed particulars of all:
       1. payment claims, payment statements and payments;
       2. Variation Price Requests, responses, Variation Orders, Subcontractor requests for Variations under clause 11.7 and proposed adjustments to the Subcontract Price;
       3. written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Completion;
       4. other Claims made by the Contractor (including in respect of Latent Conditions, Statutory Requirements and the resolution of ambiguities under clause 6.11);
       5. calls, attendances, recommendations and actions taken in respect of all Defects (in accordance with clause 9.14);
       6. disputes under clause 15; and
       7. notices under clause 16.1 or 16.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Contractor’s opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

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

* + 1. confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.16, including:
       1. the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 9.2);
       2. details of all proactive risk management measures implemented by the Subcontractor to prevent systemic work health and safety issues, incidents or accidents during the Subcontractor’s Activities and the Subcontract Works;
       3. details of lead indicator data, including:
          1. inductions, training and other work health and safety awareness programmes conducted;
          2. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
          3. inspections of Plant, Equipment and Work;
       4. without limiting the Subcontractor’s obligations to notify the MCC Contract Administrator and the Contractor’s Representative under:
          1. clauses 8.16(b)(i) and (c), summary data regarding notifiable incidents; and
          2. clauses 8.16(b)(ii) and (b)(iii), details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
       5. relevant statistics and other information regarding lost time injury days; and
       6. all other work health and safety matters required by the Subcontract or the Contractor’s Representative;
    2. confirmation of compliance with, and (as applicable) an update in respect of: 
       1. the WHS Accreditation Scheme;
       2. quality assurance requirements, including the Quality Plan;
       3. Site-related requirements, including the Site Management Plan;
       4. commissioning and handover requirements, including the Project Lifecycle and HOTO Plan and Annexure 1;
       5. environmental requirements, including the Environmental Management and Sustainability Plan;
       6. indigenous employment and procurement requirements, including the Indigenous Participation Plan;
       7. information security requirements, including clause 20; and
       8. any other security requirements,

together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (viii);

* + 1. in respect of Hazardous Substances (if any) any information as required by the Special Conditions; and
    2. any other matters required by the Contractor’s Representative.

1. SECURITY
   1. Form

The Subcontractor must provide security to the Contractor:

* + 1. in the case of Approved Security:
       1. in the form of Approved Security;
       2. in the amounts specified in the Subcontract Particulars for the Subcontract Works or a Stage; and
       3. within 14 days of the Award Date; or
    2. in the case of Retention Moneys, in accordance with clause 12.5(a).
  1. Release of Security

Subject to any other rights or remedies of the Contractor under the Subcontract or otherwise at law or in equity (including the right of set-off in clause 12.15), the Contractor must:

* + 1. within 14 days of the issue of a Notice of Completion for the Subcontract Works or a Stage, release from the Security held under clause 4.1, 50% of the Security held for the Subcontract Works or the Stage under clause 4.1;
    2. within 14 days of the expiration of the Defects Liability Period for the Subcontract Works or a Stage (excluding any extensions under clause 9.11), release such amount of the Security under clause 4.1 then held for the Subcontract Works or the Stage, as the Contractor’s Representative determines to be reasonable, having regard to the work to which any remaining Defects Liability Period applies, to ensure the Contractor’s interests are not prejudiced; and
    3. release the balance of the Security then held under clause 4.1 following the latest of:
       1. the expiry of the last Defects Liability Period; or
       2. the Subcontractor has complied with all its obligations under the Subcontract.
  1. Interest
     1. The Contractor:
        1. is not obliged to pay the Subcontractor interest on:
           1. the Security; or
           2. subject to paragraph (b), the proceeds of any Approved Security if it is converted into cash; and
        2. does not hold the Security or the proceeds or money referred to in subparagraph (i) on trust for the Subcontractor.
     2. If the Contractor makes a call upon any Security and obtains cash as a consequence:
        1. the Contractor will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which the Contractor is entitled at the time of such call; and
        2. the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Subcontractor to the Contractor at the time such amounts become payable.
  2. Deed of Guarantee and Undertaking

The Subcontractor must, if requested in writing by the Contractor, provide to the Contractor a Deed of Guarantee and Undertaking duly executed by the Subcontractor and the Related Body Corporate of the Subcontractor nominated in the Contractor’s request by the time and date set out in the request.

1. RISKS AND INSURANCE
   1. Risk of Subcontract Works

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

* + 1. any loss of or damage to:
       1. the Subcontract Works or a Stage;
       2. Plant, Equipment and Work; and
       3. unfixed goods and materials (whether on or off Site), including anything provided by the Contractor to the Subcontractor or brought onto Site by a subsubcontractor, used or to be used in carrying out the Subcontractor’s Activities,

until:

* + - 1. in the case of loss of or damage to the Subcontract Works or a Stage, a Notice of Completion is issued for the Subcontract Works or the Stage; and
      2. otherwise, a Notice of Completion is issued for the Subcontract Works or the last Stage to reach Completion; and
    1. after the issue of a Notice of Completion for the Subcontract Works or the Stage, any loss of or damage to the Subcontract Works or the Stage arising from any act or omission of the Subcontractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Subcontract Works or the Stage.
  1. Other Risks

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

* + 1. any loss of or damage to property of the Contractor (other than property referred to in clause 5.1(a)); and
    2. any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

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

* 1. Reinstatement
     1. During the period during which the Subcontractor bears the risk of loss or damage under clause 5.1, the Subcontractor must:
        1. subject to subparagraph (ii), promptly replace or otherwise make good any loss of, or repair the damage to, the Subcontract Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Subcontractor’s Activities; and
        2. where the loss or damage arises from a Contractor Risk, only comply with subparagraph (i) to the extent directed by the Contractor’s Representative.
     2. If paragraph (a)(i) applies, the Subcontractor will bear the cost of such replacement, making good or repair. If paragraph (a)(ii) applies, the replacement, making good or repair directed by the Contractor’s Representative will be treated as if it were a Variation the subject of a direction by the Contractor’s Representative and clause 11.3 applied.
  2. Contractor Insurance Obligations
     1. The Contractor must:
        1. from the Award Date cause to be effected and maintained or otherwise have the benefit of Construction Risks Insurance, Public Liability Insurance and the other insurance (if any) specified in the Subcontract Particulars for the amounts specified in the Subcontract Particulars; and
        2. promptly provide the Subcontractor with evidence satisfactory to the Subcontractor that the insurances required under subparagraph (i) are current, as required by the Subcontractor from time to time.
     2. The insurances referred to in paragraph (a)(i) are subject to the exclusions, conditions and excesses noted on the policies and the Subcontractor must:
        1. satisfy itself of the nature and extent of the Contractor’s insurance;
        2. if required by the Subcontractor, take out insurance to:
           1. insure any risks not insured by the Contractor’s insurance; or
           2. cover any such exclusions, conditions or excesses in that insurance,

which the Subcontractor wants to insure against or cover; and

* + - 1. where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Contractor under clause 5.2, bear the cost of any excesses in the Contractor’s insurance.
  1. Subcontractor Insurance Obligations

The Subcontractor must:

* + 1. from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurance:
       1. Workers Compensation Insurance;
       2. if the Subcontractor's Activities are performed, or the Subcontractor's employees perform work, are employed or normally reside, in any jurisdiction outside Australia, Employers' Liability Insurance;
       3. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars; and
       4. such other insurances on such terms as are specified in the Subcontract Particulars,

each of which must be:

* + - 1. for the amounts specified in the Subcontract Particulars;
      2. with insurers having a Standard and Poors, Moodys, A M Best, Fitch’s or equivalent rating agency’s financial strength rating of A - or better; and
      3. on terms which are satisfactory to the Contractor’s Representative (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to the Workers Compensation Insurance and Employers’ Liability Insurance ensure that:
       1. to the extent permitted by law the insurance extends to provide indemnity to the Contractor as the Subcontractor's principal in respect of any statutory and common law liability to the Subcontractor’s employees; and
       2. each of its subsubcontractors has Workers Compensation Insurance to the extent required by law and Employers' Liability Insurance (if the relevant Subcontractor's Activities are performed or the subsubcontractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia), covering the subsubcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Subcontractor is required to do under subparagraph (i);
    2. in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Subcontractor’s Activities; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Subcontractor's Activities are being carried out;
    3. promptly provide the Contractor’s Representative with evidence satisfactory to the Contractor’s Representative that:
       1. it has complied with clause 5.5; and
       2. each insurance required under clause 5.5 is current and complies with clause 5.5,

as required by the Contractor’s Representative from time to time;

* + 1. ensure that:
       1. if the insurer gives the Subcontractor notice of expiry, cancellation or rescission of any required insurance policy, the Subcontractor as soon as possible informs the Contractor in writing that the notice has been given and effects replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contractor's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract; and
       2. if the Subcontractor cancels, rescinds or fails to renew any required insurance policy, the Subcontractor as soon as possible obtains replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contractor’s Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract;
    2. ensure that it:
       1. does not do or omit to do anything whereby any insurance may be prejudiced;
       2. complies at all times with the terms of each insurance policy;
       3. if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
       4. punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contractor's Representative copies of receipts for payment of premiums upon request by the Contractor's Representative;
       5. renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
       6. immediately notifies the Contractor's Representative (in writing) if the Subcontractor fails to renew any required insurance policy or pay a premium;
       7. does not cancel or allow an insurance policy to lapse during the period for which it is required by the Subcontract without the prior written consent of the Contractor’s Representative;
       8. immediately notifies the Contractor’s Representative (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
       9. complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies;
       10. does everything reasonably required by the Contractor and the Contractor's Representative to enable the Contractor and the Commonwealth to claim and to collect or recover money due under any of the insurances in respect of which they are required to have the benefit of coverage under this Subcontract; and
       11. maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
    3. ensure that any subsubcontractors that perform any design work forming part of the Subcontractor’s Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Subcontractor under clause 5.5 for the amounts specified in the Subcontract Particulars; and
    4. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Subcontractor under this clause 5.5. Any excess borne by the Contractor will be a debt due from the Subcontractor to the Contractor.

For the purpose of paragraph (d), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.5.

The obtaining of insurance as required under clause 5.5 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Subcontractor under the Subcontract or otherwise at law or in equity.

* 1. Failure to Insure
     1. If the Subcontractor fails to comply with clause 5.5, the Contractor may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Subcontractor to the Contractor.
     2. The Subcontractor must take all necessary steps to assist the Contractor in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contractor’s Representative or anyone else acting on behalf of the Contractor.
  2. Period of Insurance

The insurance which the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.4 and the insurance which the Subcontractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.5 must be maintained:

* + 1. in the case of Construction Risks Insurance, until the Subcontractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
    2. in the case of Public Liability Insurance:
       1. written on an occurrence basis, until the completion of the Subcontractor’s Activities; or
       2. written on a claims made basis, until the expiration of the run-off period specified in the Subcontract Particulars following the latest of the:
          1. end of the last Defects Liability Period;
          2. date upon which all Defects have been rectified in accordance with the Subcontract; and
          3. completion of the Subcontractor’s Activities;
    3. in the case of Workers Compensation Insurance and Employers' Liability Insurance, until the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities; and
    4. in the case of Professional Indemnity Insurance or Errors and Omissions Insurance, until the expiration of the run-off period specified in the Subcontract Particulars following the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities.
  1. Notice of Potential Claim

The Subcontractor must:

* + 1. as soon as possible inform the Contractor in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.5 or any claim actually made against the Subcontractor or the Contractor which may be covered by an insurance policy required under clause 5.5;
    2. keep the Contractor informed of all significant developments concerning the claim, except in circumstances where the Contractor is making a claim against the Subcontractor; and
    3. ensure that its subsubcontractors similarly inform the Subcontractor and the Contractor in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Subcontract or any claim actually made against the Subcontractor, a subsubcontractor or the Contractor which may be covered by an insurance policy required by the Subcontract,

provided that, in respect of Professional Indemnity Insurance, the Subcontractor:

* + 1. subject to paragraph (e), is not required to provide details of individual claims; and
    2. must notify the Contractor if the estimated total combined value of claims made against the Subcontractor and claims which may arise from circumstances reported by the Subcontractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Subcontract.
  1. Procedure upon Loss or Damage

If loss of or damage to any part of the Subcontract Works or a Stage occurs whilst the Subcontractor bears the risk of loss of or damage to the Subcontract Works or the Stage under clause 5.1:

* + 1. the Subcontractor must:
       1. make the Subcontract Works or the Stage and the Site safe and secure;
       2. notify the relevant insurers and comply with any reasonable instructions from the insurer(s); and
       3. promptly consult with the Contractor’s Representative to discuss the steps to be taken to:
          1. comply with its obligations under clause 5.3; and
          2. ensure that, to the greatest extent possible, the Subcontractor continues to comply with its other obligations under the Subcontract; and
    2. upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of the Contractor’s consultants) will:
       1. be paid to the Subcontractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Subcontractor replaces, makes good or repairs the loss of or damage to the Subcontract Works or the Stage; and
       2. be the limit of the Subcontractor’s entitlement to payment for the replacement, making good or repair of the loss or damage to the Subcontract Works or the Stage.
  1. Cross Liability
     1. Clause 5.10 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.
     2. Where the Subcontract requires insurance to provide cover to more than one insured, the Subcontractor must ensure that, to the extent permitted by law, the insurance policy provides that:
        1. the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;
        2. the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
        3. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
        4. a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
        5. the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
           1. liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction; or
           2. proportionate liability legislation of any Australian jurisdiction is lawfully excluded by the contract.
  2. Insurances Secondary
     1. The Contractor is not obliged to make a claim or institute proceedings against any insurer under the insurances required to be effected by the Contractor or the Subcontractor under this Subcontract before enforcing any of its rights or remedies under the indemnities referred to in this Subcontract or generally.
     2. The Subcontractor is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this Subcontract and at law regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any insurance responds or fails to respond.
  3. Exclusion of Consequential Loss and Limitation on Liability
     1. Subject to paragraphs (b) and (c):
        1. neither the Contractor nor the Subcontractor will be liable to the other for any Consequential Loss howsoever arising; and
        2. to the extent permitted by law, the maximum aggregate liability of the Subcontractor to the Contractor arising out of or in connection with the Subcontract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Subcontract Particulars.
     2. Paragraph (a) does not apply to a liability of the Subcontractor:
        1. for any deliberate breach or repudiation of the Subcontract;
        2. under the indemnities in clauses 1.3(f)(i), 5.1, 5.2, 6.10(b), 13.8, 18.5(a)(xiv) and 20.5(b);
        3. for Fraud;
        4. to the extent that:
           1. payments are received by the Subcontractor; or
           2. the Subcontractor is entitled to be indemnified (other than in circumstances where the relevant insurer is insolvent),

under any insurance policy or policies required to be effected and maintained under the Subcontract in relation to that liability or payments would have been received by the Subcontractor or the Subcontractor would have been entitled to be indemnified under such insurance policy or policies but for:

* + - * 1. the failure of the Subcontractor to effect and maintain the required insurance policy or insurance policies;
        2. any failure of an insurance policy to respond due to the misconduct of the Subcontractor (including a misrepresentation to the insurer or failure to make proper disclosure or to comply with the requirements of the policy);
        3. the failure by the Subcontractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
        4. the reliance by the insurer of the required insurance on this clause 5.12 to deny liability on the basis that the party has no liability to the Commonwealth;
      1. for fines or penalties incurred by the Contractor arising from the Subcontractor’s Activities; and
      2. in respect of paragraph (a)(i) only, for liquidated damages under clause 13.7.
    1. Paragraph (a)(i) does not apply to a liability of the Contractor for:
       1. any deliberate breach or repudiation of the Subcontract;
       2. Fraud; or
       3. fines or penalties incurred by the Subcontractor arising from an act or omission of the Contractor.
    2. For the purposes of this clause 5.12, **Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the Subcontract Works, MCC Works or other Commonwealth property) or loss of production or financing costs, whether present or future, fixed or unascertained, actual or contingent.

1. DESIGN AND DOCUMENTATION
   1. Subcontractor’s Documentation Program

The Subcontractor must as part of the program it is to prepare under clause 10.2, submit to the Contractor’s Representative for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contractor’s Representative in a manner and at a rate which will give the Contractor’s Representative a reasonable opportunity to review the Design Documentation within the period of time within which the Contractor’s Representative may review the Design Documentation under clause 6.3.

* 1. Subcontractor’s Design

The Subcontractor must:

* + 1. design the parts of the Subcontract Works which the Subcontract requires it to design in accordance with the Subcontract Works Description, the Preliminary Design Solution and the other requirements of the Subcontract and for this purpose (but without limitation) prepare all relevant Design Documentation; and
    2. submit the Design Documentation it prepares to the Contractor’s Representative in accordance with the documentation program approved by the Contractor’s Representative under clause 6.1.
  1. Contractor’s Representative May Review Design Documentation
     1. The Contractor’s Representative may:
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Subcontractor; and
        2. within the number ofdays specified in the Subcontract Particulars of the submission by the Subcontractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in the Contractor’s Representative’s reasonable opinion the Design Documentation does not comply with the requirements of the Subcontract.
     2. If any Design Documentation is rejected, the Subcontractor must submit amended Design Documentation to the Contractor’s Representative.
     3. The Subcontractor must not commence construction of any part of the Subcontract Works to which any Design Documentation it has submitted to the Contractor’s Representative applies, unless the Contractor’s Representative has had the number ofdays specified in the Subcontract Particulars to review the Design Documentation and has not rejected the Design Documentation.
  2. No Obligation to Review

Without limiting the Contractor’s obligations and liability to the Commonwealth under the Managing Contractor Contract:

* + 1. the Contractor’s Representative does not assume or owe any duty of care to the Subcontractor to review, or in reviewing, the Design Documentation submitted by the Subcontractor for errors, omissions or compliance with the Subcontract; and
    2. no review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Subcontractor or any other direction by the Contractor’s Representative about, or any other act or omission by the Contractor’s Representative or otherwise by or on behalf of the Contractor in relation to, the Design Documentation will:
       1. relieve the Subcontractor from, or alter or affect, the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity; or
       2. prejudice the Contractor’s rights against the Subcontractor under the Subcontract or otherwise at law or in equity.
  1. Copies of Design Documentation

For the purposes of clauses 6.2(b) and 6.3, the Subcontractor must submit or resubmit to the Contractor’s Representative the number of copies specified in the Subcontract Particulars of Design Documentation in:

* + 1. hard copy; and
    2. electronic copy,

in accordance with the requirements specified in the Subcontract Particulars.

* 1. Fitness for Purpose

The Subcontractor warrants that:

* + 1. the Design Documentation it prepares will be fit for the purposes as set out in, or reasonably to be inferred from, the Subcontract Works Description; and
    2. upon Completion, the Subcontract Works or the Stage will, to the extent that the Subcontract Works have or the Stage has been designed by the Subcontractor, be fit for the purposes as set out in, or reasonably to be inferred from, the Subcontract Works Description.
  1. Availability

The Subcontractor must:

* + 1. keep available for the use of the Contractor’s Representative, the Contractor, the MCC Contract Administrator, the Commonwealth or anyone else acting on behalf of the Contractor or the Commonwealth, one complete set of the Subcontract Works Description, all Design Documentation (including all Design Documentation issued by the Contractor’s Representative under clause 8.8 if Option 1 of that clause applies) and all other Project Documents directed in writing by the Contractor’s Representative; and
    2. if required by any Statutory Requirement, keep such documents available on Site.
  1. Licence over Project Documents

The Subcontractor grants to the Contractor a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

* + 1. arises, for each Project Document, immediately when the Project Document is:
       1. produced; or
       2. provided, or required to be provided, to the Contractor,

under, for the purposes of, arising out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works by, for or on behalf of the Subcontractor;

* + 1. includes an unlimited right to sub-licence;
    2. without limitation, extends to:
       1. any subsequent occupation, use, operation and maintenance of, or additions, alterations or repairs to the Subcontract Works; and
       2. in the case of the corresponding licence granted by the Contractor to the Commonwealth, use in any way for any other Commonwealth project; and
    3. survives the termination of the Subcontract on any basis.
  1. Intellectual Property Warranties

The Subcontractor warrants that:

* + 1. the Subcontractor owns all Intellectual Property Rights in the Project Documents or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by the Subcontract;
    2. use by the Contractor or any sublicensee or subsublicensee of the Project Documents in accordance with the Subcontract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
    3. neither the Contractor nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Project Documents, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
    4. the use by the Contractor or by any sublicensee or subsublicensee of the Project Documents in accordance with the Subcontract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).
  1. Intellectual Property Rights

The Subcontractor must:

* + 1. ensure that the Subcontractor’s Activities do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
    2. indemnify the Contractor in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by, the Contractor arising out of or in connection with any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right.
  1. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Subcontract or between the Subcontract and any Design Documentation (which the Subcontractor is entitled to use for construction purposes under clause 6.3) or any other Project Document:

* + 1. subject to paragraphs (b) and (c), the order of precedence specified in the Subcontract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Subcontract Works Description and any other requirement of the Subcontract (including any other requirement of the Subcontract Works Description), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
    3. where the ambiguity, discrepancy or inconsistency is between the Subcontract and any part of the Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Subcontract will prevail; and
    4. irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
       1. the Subcontractor, then the Subcontractor must promptly give the Contractor’s Representative notice in writing. After receipt of a notice from the Subcontractor, the Contractor’s Representative must within 14 days of receipt of the notice instruct the Subcontractor as to the course it must adopt; or
       2. the Contractor, the Contractor’s Representative must promptly give the Subcontractor notice in writing together with an instruction as to the course it must adopt,

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

* 1. Access to Premises and Project Documents

The Subcontractor must:

* + 1. at the request of the Contractor at any time during the Subcontractor’s Activities and the period of 10 years following the latest of the:
       1. end of the last Defects Liability Period;
       2. date upon which all Defects have been rectified in accordance with the Subcontract; and
       3. completion of the Subcontractor’s Activities,

provide and make available:

* + - 1. access to its premises and make the Project Documents available for inspection by the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth;
      2. such copies of the Project Documents as the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth may require, in such formats as may be required;
      3. all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth; and
      4. any officers, employees, agents or subsubcontractors for interviews with the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth;
    1. as a condition precedent to Completion, deliver to the Contractor’s Representative a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Subcontract Works or the Stage, in a storage medium reasonably satisfactory to the Contractor, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
    2. ensure that any subsubcontract made in connection with the Subcontract contains enforceable obligations requiring the subsubcontractor to comply with the Subcontractor’s obligations arising under clause 6.12 as if the subsubcontractor were the Subcontractor.
  1. Design Certification

Without limiting the Contractor’s obligations to the Commonwealth under the Managing Contractor Contract and the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, the Subcontractor must, with each submission of Design Documentation under clause 6.2, payment claim under clause 12.2 and as a condition precedent to Completion, provide the Contractor’s Representative with:

* + 1. a certificate in the form of the Subcontractor Design Certificate which certifies that (to the extent then applicable):
       1. the Design Documentation complies with:
          1. subject to clause 8.3(a), all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the Subcontract; and
       2. the Subcontract Works comply or the Stage complies with the Design Documentation which the Subcontractor is entitled to use for construction purposes under clause 6.3(c); and
    2. a corresponding certificate from each subsubcontractor that performs design work forming part of the Subcontractor’s Activities in the form of the Consultant Design Certificate or Subsubcontractor Design Certificate which certifies that (to the extent then applicable):
       1. all design carried out by that subsubcontractor complies with:
          1. subject to the subsubcontract, all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the subsubcontract; and
       2. the Subcontract Works comply or the Stage complies with the design carried out by that subsubcontractor,

except to the extent set out in such certificates.

* 1. Samples
     1. The Subcontractor must:
        1. obtain each sample or range of samples required by the Subcontract; and
        2. submit the sample or range of samples it obtains to the Contractor’s Representative in accordance with the program it is to prepare under clause 10.2.
     2. The Contractor’s Representative may:
        1. review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Subcontractor; and
        2. within the number of days specified in the Subcontract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples if, in the reasonable opinion of the Contractor’s Representative, the sample or range of samples does not comply with the requirements of the Subcontract.
     3. If any sample or range of samples is rejected, the Subcontractor must submit an amended or substituted sample or range of samples to the Contractor’s Representative.
     4. The Subcontractor must not commence construction of any part of the Subcontract Works to which the sample or range of samples which it has submitted to the Contractor’s Representative applies unless the Contractor’s Representative has had the number of days specified in the Subcontract Particulars to review the sample or range of samples and has not rejected the sample or range of samples.
     5. Without limiting the Contractor’s obligations and liability to the Commonwealth under the Managing Contractor Contract:
        1. the Contractor’s Representative does not assume or owe any duty of care to the Subcontractor to review, or in reviewing, the sample or range of samples submitted by the Subcontractor for errors, omissions or compliance with the Subcontract; and
        2. no review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Subcontractor or any other direction by the Contractor’s Representative about, or any other act or omission by the Contractor’s Representative or otherwise by or on behalf of the Contractor in relation to, the sample or range of samples will:
           1. relieve the Subcontractor from, or alter or affect, the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity; or
           2. prejudice the Contractor’s rights against the Subcontractor whether under the Subcontract or otherwise at law or in equity.

1. SITE
   1. Subcontractor to Inform Itself

The Subcontractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

* + 1. assessing the risks which it is assuming under the Subcontract; and
    2. ensuring that the Subcontract Price contains sufficient allowances to protect it against any of these risks eventuating.
  1. Site and Other Information

Without limiting clause 7.7 the:

* + 1. Contractor has made available to the Subcontractor before the Award Date, or may make available to the Subcontractor on or after the Award Date, certain information, data and documents obtained by the Contractor, either itself or from the Commonwealth for the purpose of the MCC Works or the Subcontract Works, including from investigations either it or the Commonwealth carried out as to the conditions on, in, under or in the vicinity of the Site insofar as such information, data and documents are relevant to the Subcontract Works;
    2. Contractor does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Subcontractor;
    3. Subcontractor acknowledges that such information, data and documents do not form part of the Subcontract and that clause 7.7 applies to the information, data and documents; and
    4. Subcontractor acknowledges and agrees that, to the extent permitted by law, it will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with such information, data and documents.
  1. Notice of Latent Condition

Clauses 7.3 and 7.4 apply unless the Subcontract Particulars state that they do not apply.

* + 1. If the Subcontractor considers it has encountered or found a Latent Condition, it must immediately give the Contractor’s Representative notice in writing.
    2. The Contractor’s Representative must, within 14 days of receipt of the Subcontractor’s notice under paragraph (a):
       1. notify the Subcontractor of its determination whether a Latent Condition has been encountered or found; and
       2. instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the Latent Condition.
  1. Subcontractor’s Entitlement
     1. If the Contractor’s Representative determines that a Latent Condition has been encountered or found, the Subcontractor will be entitled to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under clause 7.3(a) which arise directly from the Latent Condition and the Contractor’s Representative’s instruction under clause 7.3(b)(ii), as determined by the Contractor’s Representative.
     2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a Latent Condition or the Contractor’s Representative’s instruction under clause 7.3(b)(ii), other than under paragraphs (a)(i) and (a)(ii).
  2. Site Access
     1. The Contractor:
        1. is not obliged to:
           1. provide the Subcontractor with sole access to the Site; or
           2. carry out any work or provide any facilities to the Subcontractor (other than as stated in the Subcontract) which may be necessary to enable the Subcontractor to obtain adequate access to carry out the Subcontractor’s Activities; and
        2. must use reasonable endeavours to ensure that any Other Contractors engaged by the Contractor or the Commonwealth comply with the reasonable requirements of the Subcontractor as to matters concerning industrial relations, insurance and work health and safety.
     2. The Subcontractor acknowledges and agrees that the Commonwealth and the Contractor may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Subcontractor.
     3. The Contractor may from time to time impose such reasonable restrictions upon the Subcontractor’s right of access as may be reasonably necessary to facilitate the work being carried out by Other Contractors and the Subcontractor must observe, and carry out the Subcontractor’s Activities subject to, such reasonable restrictions.
  3. Subcontractor’s Obligation to Provide Access

In carrying out the Subcontractor’s Activities, the Subcontractor must:

* + 1. minimise disruption or inconvenience to the Commonwealth, the Contractor, Other Contractors and any person authorised by the Commonwealth, the MCC Contract Administrator, the Contractor or the Contractor’s Representative to occupy, use, operate, maintain or access the Site in their occupation, use, operation or maintenance of or access to any part of the Site, including any occupation, use, operation or maintenance of or access to part of the Subcontract Works or a Stage under clause 13.5;
    2. at all reasonable times give the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative, Other Contractors and any person authorised by the Commonwealth, the MCC Contract Administrator, the Contractor or the Contractor’s Representative access to the Subcontract Works, the Site or any areas off-Site where the Subcontractor’s Activities are being carried out; and
    3. provide the Commonwealth, the MCC Contract Administrator, the Contractor and the Contractor’s Representative with every reasonable facility necessary for the supervision, examination, inspection and testing of the Subcontractor’s Activities or the Subcontract Works.
  1. Non-Reliance

The Subcontractor:

* + 1. warrants that it did not in any way rely upon:
       1. any information, data, representation, statement or document made by or provided to the Subcontractor by the Contractor or anyone on behalf of the Contractor (including any information, data and documents provided under clause 7.2(a)); or
       2. the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,

for the purposes of entering into the Subcontract, except to the extent that any such information, data, representation, statement or document forms part of the Subcontract;

* + 1. warrants that it enters into the Subcontract and will carry out the Subcontractor’s Activities based on its own investigations, interpretations, deductions, information and determinations; and
    2. acknowledges and agrees that the Contractor has entered into the Subcontract relying upon the warranties in paragraphs (a) and (b).

1. CONSTRUCTION
   1. Description of Subcontract Works

Subject to clause 6.11, the Subcontractor must construct the Subcontract Works in accordance with:

* + 1. the Subcontract Works Description and any Design Documentation issued by the Contractor’s Representative under clause 8.8 (if Option 1 of that clause applies);
    2. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, any Design Documentation prepared by the Subcontractor in accordance with the requirements of the Subcontract, and which the Subcontractor is entitled to use for construction purposes under clause 6.3;
    3. any direction of the Contractor’s Representative given or purported to be given under a provision of the Subcontract, including any Variation directed by the Contractor’s Representative by a document titled "Variation Order"; and
    4. the other requirements of the Subcontract.
  1. All Work Included
     1. The Subcontractor has allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Subcontractor’s Activities, whether or not expressly mentioned in the Subcontract Works Description or any Design Documentation.
     2. Any such Plant, Equipment and Work, materials and other work:
        1. must be undertaken and provided by the Subcontractor; and
        2. forms part of the Subcontractor’s Activities and will not entitle the Subcontractor to make a Claim except as otherwise provided for in the Subcontract.
  2. Statutory Requirements

In carrying out the Subcontractor’s Activities, the Subcontractor must:

* + 1. unless otherwise specified in the Subcontract Particulars, comply with all applicable Statutory Requirements;
    2. apply for and obtain all Approvals other than those specified in the Subcontract Particulars;
    3. give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Subcontract obligations; and
    4. promptly give the Contractor’s Representative copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Subcontractor’s Activities or the Subcontract Works issues to the Subcontractor.
  1. Change in Statutory Requirements or Variance with Subcontract
     1. If:
        1. there is any change in a Statutory Requirement after the Award Date; or
        2. a Statutory Requirement is at variance with the Subcontract,

then if it is discovered by:

* + - 1. the Subcontractor, then the Subcontractor must promptly give the Contractor’s Representative notice in writing. After receipt of a notice from the Subcontractor, the Contractor’s Representative must within 14 days of receipt of the notice instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the change or variance; or
      2. the Contractor, then the Contractor’s Representative must promptly give the Subcontractor notice in writing together with an instruction as to the course it must adopt insofar as the Subcontractor's Activities are affected by the change or variance.
    1. Subject to paragraph (c), the Subcontractor will be entitled to:
       1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
       2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under paragraph (a) which arise directly from the change or variance and the Contractor’s Representative’s instruction under paragraph (a)(iii) or (iv), as determined by the Contractor’s Representative.
    2. The Subcontract Price will be decreased by any saving made by the Subcontractor which arise directly from the change or variance and the Contractor’s Representative’s instruction under paragraph (a)(iii) or (iv), as determined by the Contractor’s Representative.
    3. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the change or variance or the Contractor’s Representative’s instruction under paragraph (a), other than under paragraph (b)(i) and (ii).
  1. Subcontracting

The Subcontractor:

* + 1. must not without the prior written approval of the Contractor’s Representative, subcontract any work specified in the Subcontract Particulars except to a subsubcontractor specified in the Subcontract Particulars;
    2. will:
       1. not be relieved of any of its liabilities or obligations under the Subcontract, including those under clause 2.2; and
       2. remain responsible for all subsubcontractors and for all work which is or may be subcontracted, as if it was itself executing the work,

whether or not any subsubcontractors default or otherwise fail to observe any of the requirements of the relevant subsubcontract;

* + 1. will be vicariously liable to the Contractor for all acts, omissions and defaults of its subsubcontractors (and those of the employees and agents of its subsubcontractors) relating to, or in any way connected with, the Subcontractor’s Activities;
    2. must ensure that each subsubcontract contains provisions:
       1. which bind the subsubcontractor to participate in any novation required by the Contractor under clause 14.5(a)(ii); and
       2. as otherwise required by the Subcontract; and
    3. must, if requested by the Contractor’s Representative: 
       1. execute;
       2. procure the relevant subsubcontractor to execute; and
       3. deliver to the Contractor’s Representative,

a Subsubcontractor Deed of Covenant or Consultant Deed of Covenant, duly completed with all relevant particulars:

* + - 1. as a condition precedent to seeking the prior written approval of the Contractor’s Representative under paragraph (a); or
      2. when such approval is not required, within the time required by the Contractor’s Representative and in any event before commencement of work by the relevant subsubcontractor.

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

* 1. Collateral Warranties
     1. The Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage specified in the Subcontract Particulars, procure and provide the Contractor with the warranties specified in the Subcontract Particulars:
        1. from the relevant subsubcontractor undertaking or supplying the work or item the subject of the warranty;
        2. in the form of the Collateral Warranty; and
        3. for the minimum warranty periods stated in the Subcontract Particulars.
     2. No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth or the Contractor (as the case may be) against the Contractor, the Subcontractor or the subsubcontractors (as the case may be) under the Subcontract or otherwise at law or in equity.
     3. If the Subcontractor is unable to or fails for any reason to provide any Collateral Warranty required by the Subcontract:
        1. the Subcontractor is deemed to have provided the Collateral Warranty itself on like terms;
        2. the Commonwealth or the Contractor (as the case may be) will be entitled to elect to take an assignment of all the right, title and interest in the Subcontractor’s rights against the subsubcontractor in relation to the Subcontractor’s Activities; and
        3. for the purpose of subparagraph (ii), the Subcontractor irrevocably appoints the Commonwealth or the Contractor (as the case may be) as its lawful attorney to execute any instrument necessary to give effect to the assignment.
     4. No assignment under clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth or the Contractor against the Subcontractor or the subsubcontractor under the Subcontract or otherwise at law or in equity.
  2. Provisional Sum Work
     1. For each item of Provisional Sum Work, the Contractor’s Representative will give the Subcontractor an instruction either deleting the item of Provisional Sum Work from the Subcontract or requiring the Subcontractor to proceed with the item of Provisional Sum Work.
     2. If an item of Provisional Sum Work is deleted from the Subcontract:
        1. the Subcontract Price will be reduced by the amount allowed for the item of Provisional Sum Work specified in the Subcontract Particulars;
        2. the Contractor may engage an Other Contractor to carry out the item of Provisional Sum Work; and
        3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the deletion of the item of Provisional Sum Work.
  3. Design for Provisional Sum Work to be Prepared by Contractor - Option 1
     1. If the Subcontractor is instructed to proceed with an item of Provisional Sum Work, the Contractor’s designers will progressively prepare the Design Documentation for the item of Provisional Sum Work.
     2. The Subcontractor must attend such design and other meetings as required by the Contractor’s Representative to assist these designers in preparing the Design Documentation for the Provisional Sum Work and to advise upon:
        1. buildability issues and the choice of materials to be incorporated in the Subcontract Works; and
        2. the sufficiency and completeness of the Design Documentation.

8.8 Design for Provisional Sum Work to be Prepared by Subcontractor - Option 2

* + 1. If the Subcontractor is instructed to proceed with an item of Provisional Sum Work, the Subcontractor will progressively prepare the Design Documentation for the item of Provisional Sum Work.
    2. The Subcontractor must inform the Contractor’s Representative when the Design Documentation is being discussed at design and other meetings and the Contractor’s Representative may attend all such meetings.
  1. Tendering Provisional Sum Work

Where the Subcontractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Contractor’s Representative, be carried out under subsubcontracts entered into by the Subcontractor as follows:

* + 1. after the Design Documentation for the item of Provisional Sum Work has been prepared (and, if prepared by the Subcontractor, is in accordance with the requirements of the Subcontract and the Subcontractor is entitled to use it for construction purposes under clause 6.3), or the Subcontractor is otherwise instructed to proceed with the item of Provisional Sum Work, the Subcontractor must invite tenders:
       1. from at least 3 persons as either specified in the Subcontract Particulars or proposed by the Subcontractor and approved by the Contractor’s Representative; and
       2. on the terms of a subsubcontract containing similar terms to the Subcontract and approved by the Contractor’s Representative (for that purpose, each form of subsubcontract specified in the Subcontract Particulars is approved);
    2. the Subcontractor must give the Contractor’s Representative such details of each tender as the Contractor’s Representative may require;
    3. the Subcontractor must recommend to the Contractor’s Representative which tender it believes should be accepted and, if the tender is not the lowest priced tender, it must give reasons why the lowest priced tender is not recommended; and
    4. the Subcontractor must then enter into a subsubcontract with a tenderer as instructed by the Contractor’s Representative.
  1. Subcontract Price Adjustment for Tendered Provisional Sum Work

After the Subcontractor is instructed to enter into a subsubcontract for an item of Provisional Sum Work under clause 8.9:

* + 1. the Subcontract Price will, if the amount tendered by the tenderer with whom the Subcontractor is instructed to enter into the subsubcontract is more or less than the amount specified in the Subcontract Particulars for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.12; and
    2. any Variation to that work will be dealt with under clause 11.
  1. Subcontract Price Adjustment for Other Provisional Sum Work

If the Contractor’s Representative directs that an item of Provisional Sum Work is not to be tendered under clause 8.9, the Subcontract Price will be adjusted for the item of Provisional Sum Work by the difference between:

* + 1. the amount specified in the Subcontract Particulars for that item of Provisional Sum Work; and
    2. either:
       1. an amount agreed by the parties; or
       2. failing agreement, an amount determined by the Contractor’s Representative under clause 11.3(b) or 11.3(c)(ii) as if the item of Provisional Sum Work were a Variation.
  1. Further Allowance for Provisional Sum Work

If, after each and every item of Provisional Sum Work has been deleted from the Subcontract under clause 8.7, tendered under clause 8.9 or priced under clause 8.11, the total net increase to the Subcontract Price after all adjustments under clauses 8.7, 8.10 and 8.11 exceeds the percentage specified in the Subcontract Particulars of the total amount specified for Provisional Sum Work, the Subcontract Price will be further increased by the percentage specified in the Subcontract Particulars of the amount by which the total net increase to the Subcontract Price exceeds the percentage specified in the Subcontract Particulars of the total amount specified in the Subcontract Particulars for Provisional Sum Work.

* 1. Co-operation with Other Contractors

Without limiting clause 8.16(a)(iii), the Subcontractor must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co-operate with Other Contractors;
    3. carefully co-ordinate and interface the Subcontractor’s Activities with the work carried out or to be carried out by Other Contractors; and
    4. carry out the Subcontractor’s Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.
  1. Setting Out

The Subcontractor must:

* + 1. set out the Subcontract Works in accordance with the requirements of the Subcontract; and
    2. carry out any survey which may be necessary for this purpose.
  1. Survey

The Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage specified in the Subcontract Particulars, submit to the Contractor’s Representative a certificate signed by a licensed surveyor stating that:

* + 1. the whole of the Subcontract Works or the Stage are within any particular boundaries stipulated in the Subcontract except to the extent that the Subcontract Works or Stage are specifically required by the Subcontract to be outside those boundaries; and
    2. if required by the Subcontract Works Description, structural elements of the Subcontract Works or the Stage are within the tolerances specified.
  1. Work Health and Safety

The Subcontractor must:

* + 1. ensure that in carrying out the Subcontractor’s Activities:
       1. it complies with all Statutory Requirements and other requirements of the Subcontract in respect of work health and safety, including the applicable WHS Legislation;
       2. where the applicable WHS Legislation does not prescribe a duty referred to in this Subcontract as one the Subcontractor must comply with, it complies with the duty contained in the Commonwealth WHS Legislation;
       3. it complies with the duty under the WHS Legislation to consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
       4. it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
       5. it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives or any earlier time that an inspector directs, unless:
          1. it is to assist an injured person or remove a deceased person;
          2. it is to make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site;
    2. without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, notify the MCC Contract Administrator and the Contractor’s Representative in respect of:
       1. notifiable incidents within the meaning of the WHS Legislation, immediately;
       2. work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
       3. all other work health and safety matters arising out of or in connection with the Subcontractor’s Activities and the Subcontract Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 3.10;
    3. for the purposes of paragraphs (a)(iv) and (b) above, in respect of any notifiable incident:
       1. immediately provide the MCC Contract Administrator and the Contractor’s Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
       2. promptly provide the MCC Contract Administrator and the Contractor’s Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;
       3. promptly provide the MCC Contract Administrator and the Contractor’s Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
       4. within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the MCC Contract Administrator and the Contractor’s Representative with a summary of the related investigations, actions to be taken and any impact on the Subcontract that may result from the notifiable incident;
    4. if applicable, maintain accreditation under the WHS Accreditation Scheme at all times whilst carrying out the Subcontractor's Activities and comply with all conditions of the WHS Accreditation Scheme;
    5. carry out the Subcontractor's Activities safely and in a manner that does not put the health and safety of persons at risk;
    6. carry out the Subcontractor's Activities in a manner that protects property;
    7. comply with any direction issued by the MCC Contract Administrator or the Contractor's Representative to change its manner of working or to cease working if the MCC Contract Administrator or the Contractor's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Subcontractor's Activities;
    8. institute systems to:
       1. obtain regular written assurances from each Other Contractor and subsubcontractor about their ongoing compliance with the WHS Legislation; and
       2. provide, in a format specified by the Contractor’s Representative, the written assurances regarding the Subcontractor’s ongoing compliance with the WHS Legislation:
          1. on a monthly basis in the reports under clause 3.10;
          2. on a quarterly basis (when requested by the Contractor’s Representative); and
          3. as otherwise directed by the Contractor’s Representative;
    9. provide the written assurances obtained under paragraph (h) to the Contractor’s Representative in accordance with paragraph (h);
    10. without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, within 10 days of receipt provide to the Contractor’s Representative copies of all:
        1. formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Subcontractor or subsubcontractor relating to work health and safety matters;
        2. formal notices issued by a health and safety representative of the Subcontractor or subsubcontractor, under or in compliance with the applicable WHS Legislation; and
        3. formal notices, written communications and written undertakings given by the Subcontractor or subsubcontractor to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,

arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works;

* + 1. exercise a duty of the utmost good faith to the Contractor and the Commonwealth in carrying out the Subcontractor’s Activities to enable the Contractor and the Commonwealth to discharge their duties under the WHS Legislation;
    2. ensure all subsubcontracts include provisions equivalent to the obligations of the Subcontractor in clause 8.16;
    3. ensure that, if any Statutory Requirement requires that a:
       1. person:
          1. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
       2. workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    4. not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (m) are met;
    5. immediately notify the Contractor’s Representative and the MCC Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
    6. without limiting the Subcontractor’s obligations under the Subcontract (including paragraph (c) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth, provide all information or copies of documentation held by the Subcontractor or a subsubcontractor to the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Contractor or the Commonwealth to enable the Contractor and the Commonwealth to comply with their respective obligations under the WHS Legislation;
    7. if requested by the Contractor’s Representative or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contractor’s Representative before the Subcontractor or any subsubcontractor commences such work;
    8. where the Subcontractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contractor’s Representative as a condition precedent to Completion and before the expiry of the Defects Liability Period information concerning:
       1. the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
       2. the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
       3. any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured;
    9. if the Subcontractor is responsible for design, ensure the Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
    10. ensure that it:
        1. reviews the Asbestos Management Plan and the Defence Asbestos Register prior to commencing any physical construction works at the Site; and
        2. complies with the Asbestos Management Plan at all times whilst carrying out the Subcontractor's Activities and the Subcontract Works, including by:
           1. ensuring its subcontractors and personnel have access to and review the Asbestos Management Plan and the Defence Asbestos Register, prior to commencing any physical construction works at the Site;
           2. ensuring it engages appropriately licensed Asbestos removalist subcontractors to carry out any Asbestos Related Activities;
           3. maintaining records of all Asbestos training provided to all subcontractors and personnel and providing these to the Contractor's Representative upon request; and
           4. promptly providing the Contractor's Representative with:

all documentation associated with Asbestos Related Activities (including clearance certificates, air monitoring results and tip fee receipts); and

all relevant information confirming all instances of Asbestos Related Activities;

* + 1. not use Asbestos or ACM in carrying out the Subcontractor’s Activities;
    2. not use, install or incorporate Asbestos or ACM into the Subcontract Works;
    3. provide a certificate to the Contractor’s Representative in a form satisfactory to the Contractor’s Representative as a condition precedent to Completion which states that:
       1. all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) used, installed or incorporated into the Subcontract Works are entirely (meaning 100%) free of Asbestos and ACM; and
       2. the Subcontractor has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Subcontractor’s Activities and the Subcontract Works;
    4. without limiting paragraph (w), if any imported materials, goods, products, equipment and plant have or has been used, installed or incorporated into the Subcontract Works, the Subcontractor must provide to the Contractor’s Representative as a condition precedent to Completion:
       1. sample test reports; and
       2. test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method,

in relation to the imported materials, goods, products, equipment or plant which have or has been used, installed or incorporated into the Subcontract Works; and

* + 1. if the Subcontractor is a designer of a structure or part of a structure for the purposes of the WHS Legislation, the Subcontractor must provide to the Contractor’s Representative, with each submission of Design Documentation under clause 6.2, a written report that specifies the hazard relating to the design of the structure (or part) which, as far as the Subcontractor is reasonably aware:
       1. create a risk to health or safety to those carrying out construction work on the structure (or part); and
       2. are associated only with that particular design.
  1. Plant, Equipment and Work

The Subcontractor must not remove from the Site any Plant, Equipment and Work without the Contractor’s Representative’s prior written approval except for the purpose of achieving Completion as contemplated under clause 8.18(b).

* 1. Cleaning Up

The Subcontractor must:

* + 1. in carrying out the Subcontractor’s Activities, keep the Site and the Subcontract Works clean and tidy and free of refuse; and
    2. as a condition precedent to Completion, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Subcontract Works or the Stage.
  1. The Environment

The Subcontractor must:

* + 1. ensure that in carrying out the Subcontractor’s Activities:
       1. other than to the extent identified in writing by the Contractor’s Representative, it complies with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment;
       2. it does not cause or contribute to any Environmental Incident;
       3. without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water or cause or contribute to any Contamination emanating from the Site;
       4. it immediately notifies the Contractor’s Representative of:
          1. any non-compliance with the requirements of clause 8.19;
          2. any breach of a Statutory Requirement for the protection of the Environment;
          3. any Environmental Incident; or
          4. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
       5. its subsubcontractors comply with the requirements in clause 8.19; and
    2. clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works, whether or not it has complied with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment.
  1. Urgent Protection
     1. The Contractor may take any action necessary to protect the Subcontract Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Subcontractor must take but does not take.
     2. The costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor in taking such action will be a debt due from the Subcontractor to the Contractor.
  2. Valuable, Archaeological or Special Interest Items
     1. Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Contractor.
     2. Where such an item is found on or in the Site, the Subcontractor must:
        1. immediately give the Contractor’s Representative notice in writing;
        2. not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
        3. ensure that the item is protected until the nature of the item has been competently determined.
     3. The Contractor’s Representative must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the finding of the item.
     4. The Subcontractor will be entitled to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contractor’s Representative’s instruction under paragraph (c), as determined by the Contractor’s Representative.
     5. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the finding of the item or the Contractor’s Representative's instruction under paragraph (c), other than under paragraph (d).
  3. The Contractor May Act
     1. The Contractor may, either itself or by a third party, carry out an obligation under the Subcontract which the Subcontractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Subcontract.
     2. The costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor in so carrying out such a Subcontractor obligation will be a debt due from the Subcontractor to the Contractor.
  4. Access Hours

Unless otherwise agreed in writing by the Subcontractor and the Contractor’s Representative, the access hours applicable to the Subcontractor’s Activities to be carried out on Site are those specified in the Subcontract Particulars.

* 1. Imported Items
     1. Clause 8.24 does not apply unless the Subcontract Particulars state that it applies.
     2. The Subcontract Price will be adjusted in respect of any imported item required for the Subcontract Works as specified in the Subcontract Particulars for which there has been an exchange rate fluctuation between the rate:
        1. lodged by the Subcontractor in its tender for the Subcontractor's Activities as set out in the Subcontract Particulars; and
        2. prevailing at the date upon which the Subcontractor pays the applicable subsubcontractor for the imported item.
     3. In these circumstances, the Subcontract Price will be adjusted by the difference in the cost of the imported item (in Australian dollars) calculated using the information lodged by the Subcontractor in its tender as set out in the Subcontract Particulars on the basis of the exchange rate:
        1. so lodged by the Subcontractor in its tender; and
        2. prevailing at the date upon which the Subcontractor makes a payment to the applicable subsubcontractor for the imported item.
     4. The exchange rate in paragraph (c)(ii) will be that quoted by the same bank from which the exchange rate in paragraph (c)(i) was obtained.
     5. Any imported items (whether subject to adjustment under clause 8.24 or not) will not be subject to adjustment for rise and fall in costs.
  2. Salvaged Materials

Subject to clause 8.21, unless expressly stated to the contrary in the Subcontract or directed by the Contractor’s Representative, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Subcontract Works are the property of the Subcontractor.

* 1. Project Signboards
     1. Clause 8.26 does not apply unless the Subcontract Particulars state that it applies.
     2. The Subcontractor must provide the number of project signboards specified in the Subcontract Particulars, each of which must:
        1. be in the dimensions specified in the Subcontract Particulars; and
        2. set out:
           1. the name of the project;
           2. the names of the parties to the Subcontract;
           3. the name of the Contractor’s Representative;
           4. a general description of the Subcontract Works;
           5. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
           6. a contact name and phone number for the Subcontractor;
           7. the Date for Completion;
           8. the location of the Site office (if any);
           9. an 'Acknowledgement of Country' in accordance with the requirements set out in the website specified in the Subcontract Particulars; and
           10. any additional information:

specified in the Subcontract Particulars; or

required by the Contractor’s Representative.

* + 1. The Subcontractor must, within 14 days of the commencement of the Subcontractor’s Activities on Site, submit the proposed location, layout and content of the project signboards to the Contractor’s Representative for approval.
    2. Once approved by the Contractor’s Representative, the Subcontractor must:
       1. fix the project signboards in the locations approved by the Contractor’s Representative;
       2. maintain the project signboards until the last Date of Completion; and
       3. dismantle and remove the project signboards within 7 days of the last Date of Completion.
  1. Measurements and Dimensions

Without limiting clause 8.14:

* + 1. the Subcontractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Subcontractor’s Activities;
    2. the layout of plant, equipment, ductwork, pipework and cabling shown in the Subcontract Works Description (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Subcontractor’s Activities must be obtained and checked by the Subcontractor; and
    3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Subcontractor’s failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.27.
  1. Commonwealth’s Actions
     1. Under the Managing Contractor Contract:
        1. the Commonwealth may, either itself or by a third party, carry out an obligation under the Managing Contractor Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Managing Contractor Contract; and
        2. the costs, losses, expenses and damages suffered or incurred by the Commonwealth in so carrying out such a Managing Contractor Contract obligation will be a debt due from the Contractor to the Commonwealth.
     2. The Subcontractor must indemnify the Contractor against any liability of the kind referred to in paragraph (a)(ii) to the extent that the liability arises out of or in connection with an obligation under the Subcontract which the Subcontractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Subcontract.
  2. Pandemic Adjustment Event
     1. If either party considers that there has been a Pandemic Adjustment Event, then the party discovering it must promptly give the Contractor's Representative and the other party notice in writing, together with detailed particulars of the relevant event and such other information as the Contractor's Representative may require.
     2. The Contractor's Representative must, within 14 days of receipt of a notice under paragraph (a), notify the Subcontractor of its determination whether a Pandemic Adjustment Event has occurred.
     3. Where the Contractor's Representative has determined a Pandemic Adjustment Event has occurred, the Contractor's Representative may, without being under any obligation to do so, instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor's Activities are affected by the Pandemic Adjustment Event, including to prepare (and thereafter comply with) a plan satisfactory to the Contractor's Representative specifying the steps that the Subcontractor will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Subcontractor's Activities and the Subcontract Works.
     4. If a Pandemic Adjustment Event occurs:
        1. subject to paragraph (f), the Subcontractor will be entitled to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
           2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Contractor's Representative under paragraph (c), as determined by the Contractor's Representative;
        2. subject to paragraph (f), the Subcontract Price will be decreased by any savings made (or which would have been made if the Subcontractor had taken all reasonable steps to maximise savings) by the Subcontractor which arise directly from the Pandemic Adjustment Event or any instruction of the Contractor's Representative under paragraph (c), as determined by the Contractor's Representative; and
        3. the Subcontractor must comply with any direction of the Contractor's Representative in relation to the Pandemic Adjustment Event.
     5. To the extent permitted by law:
        1. the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 8.29; and
        2. without limiting subparagraph (i), the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event or any instruction of the Contractor's Representative under paragraph (c), other than under paragraph (d)(i).
     6. The Contractor's Representative:
        1. will reduce any entitlement the Subcontractor would have otherwise had under subparagraph (d)(i)B to the extent that the Subcontractor has failed to take all reasonable steps to:
           1. avoid or overcome any adverse effects of the Pandemic Adjustment Event (including by implementing and complying with its obligations under the Subcontract); or
           2. minimise any additional cost to the Contractor in respect of the Pandemic Adjustment Event; and
        2. will take into account, for the purposes of paragraph (d)(ii), the extent that the Subcontractor has failed to take all reasonable steps to maximise any savings to the Contractor in respect of the Pandemic Adjustment Event.

1. QUALITY
   1. Workmanship, Materials and Other Requirements

The Subcontractor must in carrying out the Subcontractor’s Activities:

* + 1. use workmanship:
       1. of:
          1. the standard prescribed in the Subcontract; or
          2. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Subcontract Works and which is at least to the same standard as that found in the development specified in the Subcontract Particulars; and
       2. which is fit for its purpose;
    2. use materials:
       1. which:
          1. comply with the requirements of the Subcontract; or
          2. if not fully described in the Subcontract, are new and consistent with the best industry standards for work of a nature similar to the Subcontract Works and which are at least to the same standard as those found in the development specified in the Subcontract Particulars; and
       2. of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Subcontract Works; and
    3. comply with the requirements of the Subcontract and, to the extent they are not inconsistent, the requirements of the Building Works Manual, the National Construction Code and all relevant standards of Standards Australia.
  1. Project Plans
     1. The Subcontractor:
        1. must carry out the Subcontractor’s Activities in accordance with, and otherwise implement, the Project Plans; and
        2. for the purposes of subparagraph (i), must:
           1. prepare Project Plans based, where applicable, on the draft Project Plans lodged by the Subcontractor in its tender for the Subcontractor’s Activities, and otherwise in accordance with the requirements of the Subcontract, and submit them to the Contractor’s Representative so as to ensure that there is no delay or disruption to the Subcontractor’s Activities and in any event no later than the number of days specified in the Subcontract Particulars after the Award Date for each Project Plan;
           2. not commence any of the Subcontractor’s Activities to which any Project Plan applies, unless the Contractor’s Representative has had the number of days specified in the Subcontract Particulars for each Project Plan to review the Project Plan and has not rejected the Project Plan;
           3. if any Project Plan is rejected, submit an amended Project Plan to the Contractor’s Representative;
           4. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Subcontractor’s Activities and in any event in accordance with the requirements of the Subcontract to the satisfaction of the Contractor’s Representative;
           5. after each Project Plan has been finalised:

regularly review, update and amend each Project Plan in accordance with the process set out in each Project Plan (and otherwise at least on each anniversary of the Award Date);

update or amend a Project Plan on request of the Contractor’s Representative; and

continue to correct any defects in or omissions from a Project Plan (whether identified by the Contractor’s Representative or the Subcontractor),

and submit an updated or amended Project Plan to the Contractor’s Representative, after which:

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

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

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

reviews, updates, amendments and submissions of each Project Plan;

audits or other monitoring of each Project Plan; and

training and awareness programs and communications provided to Subcontractor and subsubcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

* + 1. The Contractor must promptly provide the Subcontractor with a copy of amendments to any Contractor's Project Plan insofar as they are relevant to the Subcontractor's Activities or a Project Plan.
    2. The Subcontractor will not be relieved from compliance with any of its obligations under the Subcontract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the requirements of any Project Plan;
       2. any direction by the Contractor’s Representative concerning a Project Plan or the Subcontractor’s compliance or non-compliance with a Project Plan;
       3. any audit or other monitoring by the Contractor’s Representative or anyone else acting on behalf of the Contractor of the Subcontractor’s compliance with a Project Plan; or
       4. any failure by the Contractor’s Representative, or anyone else acting on behalf of the Contractor, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contractor’s Representative or other person.
  1. Contractor’s Representative’s Right to Inspect

The Contractor’s Representative may at any time inspect the Subcontractor’s Activities or the Subcontract Works.

The Subcontractor acknowledges and agrees that:

* + 1. the Contractor’s Representative owes no duty to the Subcontractor to:
       1. inspect the Subcontractor’s Activities or the Subcontract Works; or
       2. review construction for errors, omissions or compliance with the requirements of the Subcontract if it does so inspect; and
    2. no inspection of the Subcontractor’s Activities or the Subcontract Works or review of construction by the Contractor’s Representative will in any way lessen or otherwise affect:
       1. the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity; or
       2. the Contractor’s rights against the Subcontractor whether under the Subcontract or otherwise at law or in equity.
  1. Inspections and Tests
     1. The Subcontractor must carry out all inspections and tests required by the Subcontract or directed by the Contractor’s Representative.
     2. All inspections and tests are to be carried out in accordance with the procedure:
        1. specified in the Subcontract; or
        2. if no procedure exists, as reasonably directed by the Contractor’s Representative.
  2. Costs of Inspections and Tests

If:

* + 1. the Contractor’s Representative directs the Subcontractor to carry out an inspection or test which:
       1. is not otherwise required by the Subcontract; or
       2. does not relate to a Defect in respect of which the Contractor’s Representative gave an instruction under clause 9.6; and
    2. the results of the inspection or test show the work is in accordance with the Subcontract,

the Subcontractor will be entitled to have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly from the inspection or test, as determined by the Contractor’s Representative.

To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the inspection or test, other than under this clause 9.5.

* 1. Defects

Subject to paragraphs (b) and (c), the Subcontractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Subcontract Works or a Stage, the Contractor’s Representative discovers or believes there is a Defect, the Contractor’s Representative may give the Subcontractor an instruction specifying the Defect and doing one or more of the following:

* + 1. requiring the Subcontractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
    2. requiring the Subcontractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
    3. advising the Subcontractor that the Contractor will accept the work, or any part of it, despite the Defect.
  1. Correction of Defect or Variation
     1. If an instruction is given under clause 9.6(a) or (b), the Subcontractor must correct the Defect or carry out the Variation:
        1. within the time specified in the Contractor’s Representative’s instruction; and
        2. if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Subcontract Works or the Stage as is reasonably possible.
     2. If the Subcontractor fails to comply with paragraph (a), the Contractor may (in its absolute discretion and without prejudice to any other rights it may have) itself correct, or engage an Other Contractor to correct, the Defect and the cost of such correction will be a debt due from the Subcontractor to the Contractor.
  2. Claim for Correction of Defect

Where an instruction is given under clause 9.6(a) and clause 9.7(b) does not apply:

* + 1. the Subcontractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Subcontractor is not responsible; and
    2. where the Subcontractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a direction by the Contractor’s Representative and clause 11.3 applied.
  1. Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

* + 1. the Subcontractor is not responsible for the Defect (or the relevant part) the:
       1. Subcontract Price will be adjusted in accordance with clause 11.3; and
       2. Subcontractor will be entitled to an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; or
    2. the Subcontractor is responsible for the Defect (or the relevant part):
       1. the Contractor’s Representative will determine the:
          1. value of the Variation in accordance with clause 11.3; and
          2. cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied;
       2. the Subcontract Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
          1. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Subcontract Price will be increased by the excess; or
          2. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the Subcontract Price will be decreased by the difference and will be a debt due from the Subcontractor to the Contractor; and
       3. the Subcontractor will not be entitled to claim an extension of time to any Date for Completion.
  1. Acceptance of Work

If:

* + 1. an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and
    2. the Subcontractor is responsible for the Defect (or the relevant part),

the amount determined by the Contractor’s Representative which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Subcontractor to the Contractor.

* 1. Extension of Defects Liability Period

If:

* + 1. the Contractor’s Representative gives the Subcontractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and
    2. the Subcontractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Subcontract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

* 1. Common Law Rights not Affected

Neither the Contractor’s rights, nor the Subcontractor’s liability, whether under the Subcontract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor’s Representative by clause 9 or any other provision of the Subcontract;
    2. the failure by the Contractor or the Contractor’s Representative to exercise any such rights; or
    3. any instruction of the Contractor’s Representative under clause 9.6.
  1. HOTO Process

Without limiting clause 8.16(a)(iii), the Subcontractor must:

* + 1. fully co-operate with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
    2. without limiting paragraph (a):
       1. carry out all Subcontractor HOTO Obligations;
       2. ensure that all Subcontractor HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Requirements;
       3. comply with:
          1. all applicable HOTO Requirements; and
          2. all commissioning, handover and takeover requirements described in the Subcontract, including the requirements in Annexure 1;
       4. as and when required by the Contractor’s Representative, provide the Contractor with such other specific assistance as may be required by the Contractor to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
       5. as and when required by the Contractor’s Representative, meet with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors for the purpose of ensuring that the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors have sufficient Project Documents to enable the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors to:
          1. occupy, use, operate and maintain the Subcontract Works or the Stage; and
          2. perform such other activities as may be required by the Contractor or the Commonwealth in respect of the Subcontract Works or the Stage.
  1. Defects Records and Reports
     1. Without limiting clause 9.6, the Subcontractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects.
     2. The Subcontractor must provide a report to the Contractor’s Representative in a form satisfactory to the Contractor’s Representative:
        1. before the Date of Completion:
           1. with its reports under clause 3.10; and
           2. as a condition precedent to Completion; and
        2. after the Date of Completion:
           1. with its reports under clause 3.10; and
           2. within 14 days after the end of the Defects Liability Period,

which sets out:

* + - 1. details of all calls, attendances, recommendations and actions taken in respect of each Defect;
      2. recommendations for the future maintenance of the Subcontract Works;
      3. any work health and safety matters; and
      4. any other matters specified in the Subcontract Particulars or required by the Contractor’s Representative.
  1. Quality Assurance

The Subcontractor:

* + 1. must implement the quality assurance process, system or framework in its Quality Plan;
    2. without limiting clause 6.12, must allow the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative or anyone else acting on behalf of the Contractor or the Commonwealth access to the quality assurance process, system or framework of the Subcontractor and its subsubcontractors so as to enable auditing or other monitoring; and
    3. will not be relieved from compliance with its obligations under the Subcontract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the quality assurance requirements of the Subcontract;
       2. any direction by the Contractor’s Representative or the MCC Contract Administrator concerning the Subcontractor’s quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;
       3. any audit or other monitoring by the Contractor’s Representative or the MCC Contract Administrator, or anyone else acting on behalf of the Contractor or the Commonwealth, of the Subcontractor’s compliance with the quality assurance process, system or framework; or
       4. any failure by the Contractor’s Representative or the MCC Contract Administrator, or anyone else acting on behalf of the Contractor or the Commonwealth, to detect any Subcontractor’s Activities or aspects of the Subcontract Works which are not in accordance with the requirements of the Subcontract including where any such failure arises from any negligence on the part of the Contractor’s Representative, the MCC Contract Administrator or other person.

1. TIME
   1. Progress and Time for Completion

The Subcontractor must:

* + 1. regularly and diligently progress the Subcontractor’s Activities; and
    2. achieve Completion of the Subcontract Works or each Stage by the relevant Date for Completion.
  1. Programming
     1. The Contractor must:
        1. on the Award Date, provide the Subcontractor with a copy of the Contractor’s Program insofar as it is relevant to the Subcontractor’s Activities; and
        2. thereafter, promptly provide the Subcontractor with a copy of amendments to the Contractor’s Program insofar as they are relevant to the Subcontractor’s Activities.
     2. The Subcontractor must:
        1. within 14 days of the Award Date prepare a program of the Subcontractor’s Activities which must contain the details required by the Subcontract or which the Contractor’s Representative otherwise reasonably directs;
        2. update the program periodically, at least at intervals of no less than that specified in the Subcontract Particulars, to record and take account of:
           1. actual progress of the Subcontractor's Activities to the date which is two working days prior to the date on which the update is provided;
           2. changes to the program and the Contractor’s Program; and
           3. delays which may have occurred, or which are likely to occur, including any for which the Subcontractor is granted an extension of time under clause 10.8;
        3. give the Contractor’s Representative copies of all programs; and
        4. provide all programs in a format compatible with the software specified in the Subcontract Particulars.
     3. The Contractor's Representative may review and comment on any program given under this clause 10.2.
  2. Subcontractor Not Relieved

Any review of, comment upon or any failure to review or comment upon, a program by the Contractor’s Representative will not:

* + 1. relieve the Subcontractor from or alter its obligations under the Subcontract, especially (without limitation) the obligation to achieve Completion of the Subcontract Works or each Stage by the relevant Date for Completion;
    2. evidence or constitute the granting of an extension of time or an instruction by the Contractor’s Representative to accelerate, disrupt, prolong or vary any or all of the Subcontractor’s Activities; or
    3. affect the time for the carrying out of the Contractor’s or Contractor’s Representative’s Subcontract obligations.
  1. Acceleration by Subcontractor

If the Subcontractor chooses to accelerate progress then despite clause 3.3:

* + 1. neither the Contractor nor the Contractor’s Representative will be obliged to take any action to assist or enable the Subcontractor to achieve Completion of the Subcontract Works or each Stage before any Date for Completion; and
    2. the time for the carrying out of the Contractor’s or the Contractor’s Representative’s obligations will not be affected.
  1. Delays, Including Delays Entitling Claim for Extension of Time
     1. If the Subcontractor becomes aware of any occurrence that is likely to delay it in carrying out the Subcontractor's Activities it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contractor’s Representative’s in writing of the occurrence and the likely delay.
     2. If the Subcontractor has been delayed in carrying out the Subcontractor's Activities:
        1. prior to the Date for Completion of the Subcontract Works or a Stage, by an Act of Prevention or a cause specified in the Subcontract Particulars in a manner which has delayed, or is likely to delay, the Subcontractor in achieving Completion of the Subcontract Works or the Stage; or
        2. after the Date for Completion of the Subcontract Works or a Stage, by an Act of Prevention in a manner which has delayed, or is likely to delay, the Subcontractor in achieving Completion of the Subcontract Works or the Stage,

the Subcontractor may claim an extension of time.

* 1. Claim for Extension of Time

To claim an extension of time the Subcontractor must:

* + 1. not later than 28 days after the commencement of the delay to the carrying out of the Subcontractor's Activities, submit a written claim to the Contractor’s Representative for an extension to the relevant Date for Completion which:
       1. gives detailed particulars of the delay and the occurrence causing the delay; and
       2. states the number (not exceeding 28) of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Completion in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
    2. if the delay to the carrying out of the Subcontractor's Activities continues beyond 28 days from the commencement of that delay, and the Subcontractor wishes to claim an extension of time in respect of any further period, submit a further written claim to the Contractor’s Representative:
       1. every 28 days after the last date for submitting the first written claim, provided however that the final written claim must be submitted not later than 7 days after the end of the delay to the carrying out of the Subcontractor's Activities; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

Subject to clause 10.13, it is a condition precedent to the Subcontractor’s entitlement to an extension of time that the:

* + 1. Subcontractor gives the written claim required by clause 10.6 as required by that clause;
    2. cause of the delay to the Subcontractor's Activities was beyond the reasonable control of the Subcontractor;
    3. Subcontractor must have actually been, or be likely to be, delayed in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii);
    4. Subcontractor must not have been given an instruction under clause 10.12; and
    5. Contractor is entitled to grant the extension of time under clause 10.9 of the Managing Contractor Contract.
  1. Extension of Time
     1. If the conditions precedent in clause 10.7 have been satisfied, the relevant Date for Completion will be extended by (subject to paragraph (b)) a reasonable period determined by the Contractor’s Representative and notified to the Subcontractor within 21 days of the Subcontractor’s written claim under clause 10.6.
     2. The period determined by the Contractor’s Representative under clause 10.8 cannot exceed the period approved by the MCC Contract Administrator under clause 10.9 of the Managing Contractor Contract.
     3. In determining a reasonable period under paragraph (a), the Contractor’s Representative must not include any period of delay in respect of which the Subcontractor:
        1. contributed to the delay; or
        2. failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.
  2. Unilateral Extension of Time
     1. Whether or not the Subcontractor has made, or is entitled to make, a claim for an extension of time under clause 10, the Contractor’s Representative may (in its absolute discretion, but subject to clause 10.9 of the Managing Contractor Contract) at any time and from time to time by written notice to the Subcontractor and the Contractor, unilaterally extend any Date for Completion.
     2. The Subcontractor acknowledges that clause 10.9 does not give the Subcontractor any rights.
  3. Delay Damages
     1. Clause 10.10 applies unless the Subcontract Particulars state that it does not apply.
     2. The Subcontractor will be entitled to be paid the extra costs reasonably incurred by the Contractor up to the maximum daily amount specified in the Subcontract Particulars for each day by which the Date for Completion of the Subcontract Works or a Stage is extended due to a breach of the Subcontract by the Contractor.
     3. The amount determined under this clause 10.10 will be a limitation upon the Contractor’s liability to the Subcontractor for any delay or disruption which:
        1. the Subcontractor encounters in carrying out the Subcontractor’s Activities; and
        2. arises out of or in connection with the breach of the Subcontract by the Contractor,

and, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any such delay or disruption, other than under clause 10.8 or clause 10.10.

* 1. Suspension
     1. The Contractor’s Representative:
        1. may instruct the Subcontractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Subcontractor’s Activities; and
        2. is not required to exercise the Contractor’s Representative’s power under subparagraph (i) for the benefit of the Subcontractor.
     2. If a suspension under clause 10.11 arises as a result of:
        1. the Subcontractor’s failure to carry out its obligations in accordance with the Subcontract, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the suspension; or
        2. a cause other than the Subcontractor’s failure to carry out its obligations in accordance with the Subcontract, an instruction to suspend under clause 10.11 will entitle the Subcontractor to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
           2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor as a direct result of the suspension, as determined by the Contractor’s Representative.

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

* + 1. Except to the extent permitted by the relevant Security of Payment Legislation, the Subcontractor may only suspend the Subcontractor’s Activities when instructed to do so under clause 10.11.
  1. Instruction to Accelerate

If the Subcontractor gives the Contractor’s Representative a written claim under clause 10.6, the Contractor’s Representative may:

* + 1. instruct the Subcontractor to accelerate the Subcontractor’s Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Completion of the Subcontract Works or the Stage by the relevant Date for Completion; and
    2. give such an instruction whether or not the cause of delay for which the Subcontractor has given its written claim under clause 10.6 otherwise entitles the Subcontractor to an extension of time to any relevant Date for Completion.
  1. Partial Acceleration

If the Contractor’s Representative gives the Subcontractor an instruction to accelerate under clause 10.12 requiring it to accelerate the Subcontractor’s Activities and it only applies to part of the delay, the Subcontractor’s entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Subcontractor to accelerate to overcome the delay.

* 1. Acceleration

If the Contractor’s Representative gives an instruction to the Subcontractor under clause 10.12:

* + 1. the Subcontractor must accelerate the Subcontractor’s Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Subcontract Works or the Stage by the relevant Date for Completion;
    2. if the Subcontractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Subcontractor will be entitled to be paid:
       1. the extra costs reasonably incurred by the Subcontractor as a direct result of accelerating the Subcontractor’s Activities; and
       2. that percentage of the amount under subparagraph (i) specified in the Subcontract Particulars; and
    3. subject to clause 10.13, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.12, other than under paragraph (b).
  1. Contractor’s Rights to Liquidated Damages Not Affected

The Contractor’s rights to

* + 1. liquidated damages under clause 13.7; or
    2. be indemnified under clause 13.8,

for a failure by the Subcontractor to achieve Completion of the Subcontract Works or a Stage by any relevant Date for Completion are not affected by the Contractor’s Representative giving the Subcontractor an instruction to accelerate under clause 10.12.

1. VARIATIONS
   1. Variation Price Request
      1. At any time prior to the Date of Completion (but without limiting clauses 5.3 and 9.6), the Contractor’s Representative may issue a document titled "Variation Price Request" to the Subcontractor which will set out details of a proposed Variation which the Contractor is considering.
      2. The Subcontractor must immediately take all action required under any relevant subsubcontract in relation to each subsubcontractor that would be involved in carrying out the proposed Variation.
      3. Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contractor’s Representative) the Subcontractor must provide the Contractor’s Representative with a written notice in which the Subcontractor sets out the:
         1. adjustment (if any) to the Subcontract Price to carry out the proposed Variation; and
         2. effect (if any) which the proposed Variation will have on the then current program, including each Date for Completion.
   2. Variation Order

Whether or not the Contractor’s Representative has issued a Variation Price Request under clause 11.1, at any time prior to the Date of Completion (but without limiting clauses 5.3 and 9.6), the Contractor’s Representative may instruct the Subcontractor to carry out a Variation by a written document titled "**Variation Order**" in which the Contractor’s Representative will state one of the following:

* + 1. the proposed adjustment to the Subcontract Price set out in the Subcontractor’s notice under clause 11.1 (if any) is agreed and the Subcontract Price will be adjusted accordingly;
    2. any adjustment to the Subcontract Price will be determined under clauses 11.3(b) and 11.3(c); or
    3. the Variation is to be carried out as daywork and any adjustment to the Subcontract Price will be determined under clause 11.3(d).

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

* 1. Valuation of Variation

Subject to clauses 9.9(b), 11.9 and 11.10, the Subcontract Price will be increased or decreased for all Variations which have been the subject of a direction by the Contractor’s Representative:

* + 1. as agreed under clause 11.2(a);
    2. if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Contractor’s Representative determines that those rates and prices are applicable to or it is reasonable to use them for valuing the Variation, to which will be added:
       1. the following percentage or percentages of the amount determined:
          1. where the adjustment to the Subcontract Price is to be an increase, the percentages specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
          2. where the adjustment to the Subcontract Price is to be a decrease, the percentage specified in the Subcontract Particulars for off-site overheads and profit; and
       2. any reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor;
    3. to the extent paragraph (b) does not apply, by a reasonable amount:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Contractor’s Representative,

to which will be added:

* + - 1. the following percentage or percentages of the amount determined:
         1. where the adjustment to the Subcontract Price is to be an increase, the percentages specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
         2. where the adjustment to the Subcontract Price is to be a decrease, the percentage specified in the Subcontract Particulars for off-site overheads and profit; and
      2. any reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor; or
    1. by the amount determined by the Contractor’s Representative under clause 11.6.
  1. Omissions

If a Variation the subject of a direction by the Contractor’s Representative omits any part of the Subcontract Works, the Contractor may thereafter carry out this omitted work either itself or by engaging Other Contractors.

* 1. Daywork

If the Subcontractor is given an instruction under clause 11.2(c) or clause 12.23(d) to carry out work as daywork, the Subcontractor must:

* + 1. carry out the daywork in an efficient manner; and
    2. after the instruction, provide the Contractor’s Representative with a written report each day signed by the Subcontractor which:
       1. records particulars of all resources used by the Subcontractor for the execution of the daywork; and
       2. includes the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the daywork.

The Contractor’s Representative may direct the manner in which such matters are to be recorded.

* 1. Valuation of Daywork

In determining the value of work which the Contractor’s Representative instructed was to be carried out as daywork, the Contractor’s Representative will have regard to:

* + 1. the amount of wages and allowances paid or payable by the Subcontractor at:
       1. the rates pertaining at the Site at the time as established by the Subcontractor to the reasonable satisfaction of the Contractor’s Representative; or
       2. other reasonable rates approved by the Contractor’s Representative;
    2. the percentage specified in the Subcontract Particulars of the wages paid or payable under paragraph (a);
    3. the amount of hire charges in respect of plant approved by the Contractor’s Representative for use on the work in accordance with the hiring rates and conditions:
       1. agreed between the Contractor’s Representative and the Subcontractor; or
       2. failing agreement, reasonably determined by the Contractor’s Representative;
    4. the reasonable amounts paid for services, subcontracts and professional fees; and
    5. the actual cost to the Subcontractor at the Site of all materials supplied and required for the work,

to which will be added:

* + 1. the percentages of the amounts determined under paragraphs (a) - (e) specified in the Subcontract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; and
    2. the reasonable costs incurred by the Subcontractor as a direct result of the Variation delaying the Subcontractor.
  1. Subcontractor Variation Request

The Subcontractor may, for its convenience, request the Contractor’s Representative to direct a Variation. Any such request must be in writing and must contain the following details:

* + 1. a description of the Variation;
    2. the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Contractor including the amount;
    3. any benefits which will flow to the Commonwealth from the Variation; and
    4. the effect which the Variation will have upon the future cost of operating and maintaining the Subcontract Works.
  1. Contractor’s Representative’s Determination

After a request is made by the Subcontractor in accordance with clause 11.7, the Contractor’s Representative will, in the Contractor’s Representative’s absolute discretion, give a written notice to the Subcontractor:

* + 1. rejecting the request; or
    2. approving the request either conditionally or unconditionally.

The Contractor’s Representative will not be obliged to exercise the Contractor’s Representative’s discretion for the benefit of the Subcontractor.

* 1. Subcontractor Variation Request Approved by Contractor’s Representative

If the Contractor’s Representative issues a written notice under clause 11.8 approving the Subcontractor’s request under clause 11.7:

* + 1. unless otherwise agreed, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Variation;
    2. if the Subcontractor’s request offered to share savings in cost with the Contractor, the Subcontract Price will be reduced by or adjusted in accordance with the Subcontractor’s offer; and
    3. the Subcontractor will be responsible for all parts of the Subcontract Works which are in any way affected by the Variation.
  1. Managing Contractor Contract Variation

Where:

* + 1. a Variation the subject of a direction by the Contractor’s Representative arises out of or in connection with a Variation under the Managing Contractor Contract; or
    2. any work which is otherwise to be treated and valued as a Variation under clause 11.3 is work,

which the Contractor is required to carry out under the terms of the Managing Contractor Contract (whether itself or through the Subcontractor) and for which the Contractor:

* + 1. is entitled to additional payment under the Managing Contractor Contract; or
    2. would otherwise have been entitled to additional payment under the Managing Contractor Contract had it done everything required under the Managing Contractor Contract to preserve its entitlement,

then any increase in the Subcontract Price under clause 11.3 will be limited to the extent to which (as the case may be) the amount of:

* + 1. the Contractor’s entitlement; or
    2. the entitlement the Contractor would otherwise have had,

to additional payment, is attributable to the Subcontractor’s Activities relevant to the Variation or work (as the case may be) less any amount attributable to (and payable directly to the Contractor under the Managing Contractor Contract on account of) the Contractor’s non-time related on-site overheads and preliminaries, off‑site overheads and profit and delay costs relating to the Variation or work (as the case may be).

1. PAYMENT
   1. Payment Obligation

Subject to clause 12.15 and to any other right to set‑off which the Contractor may have, the Contractor will pay the Subcontractor:

* + 1. the Subcontract Price; and
    2. any other amounts which are payable by the Contractor to the Subcontractor under the Subcontract.
  1. Payment Claims

The Subcontractor must give the Contractor’s Representative claims for payment on account of the Subcontract Price and all other amounts then payable by the Contractor to the Subcontractor under the Subcontract:

* + 1. at the times specified in the Subcontract Particulars until Completion or termination of the Subcontract (whichever is earlier);
    2. unless terminated earlier, after Completion or the Defects Liability Period, within the time required by clause 12.9 or 12.11;
    3. in the format set out in the Schedule of Collateral Documents or in any other format which the Contractor’s Representative reasonably requires;
    4. which are based on the Table of Variation Rates and Prices or the Schedule of Rates to the extent these are relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Subcontract Price; and
       2. all other amounts then payable by the Contractor to the Subcontractor under the Subcontract; and
    6. which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Subcontractor:
       1. to enable the Contractor’s Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Contractor to the Subcontractor under the Subcontract; and
       2. including any such documentation or information which the Contractor’s Representative may by written notice from time to time require the Subcontractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
  1. Certification to Accompany Submission of Payment Claim

The Subcontractor must, with each payment claim under clause 12.2, certify to the Contractor's Representative that it has:

* + 1. if a request has been made under clause 2.2(c), complied with clause 2.2(c);
    2. complied with clause 4.1;
    3. if a request has been made under clause 4.4, complied with clause 4.4;
    4. complied with clause 5.5;
    5. if clause 6.13 applies, complied with clause 6.13;
    6. if a request has been made under clause 8.5(e), complied with clause 8.5(e);
    7. complied with clause 8.16;
    8. complied with clause 10.2;
    9. complied with clause 12.16; and
    10. complied with clause 23.
  1. Payment Statement

The Contractor’s Representative:

* + 1. must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or
    2. may, if the Subcontractor fails to submit any such claim in accordance with clause 12.2, at any time,

give the Subcontractor (with a copy to the Contractor), on behalf of the Contractor, a payment statement which is in the form set out in the Schedule of Collateral Documents and which states:

* + 1. the payment claim to which it relates (if any);
    2. the amount previously paid to the Subcontractor on account of the Subcontract Price and otherwise in accordance with the Subcontract;
    3. the amount (if any) which the Contractor’s Representative believes to be then payable by the Contractor to the Subcontractor on account of the Subcontract Price and otherwise in accordance with the Subcontract, and which the Contractor proposes to pay to the Subcontractor; and
    4. if the amount in paragraph (e) is less than the amount claimed in the payment claim:
       1. the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
       2. if the reason for the difference is that the Contractor has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contractor’s Representative will not constitute:

* + 1. approval of the Subcontractor’s Activities or the Subcontract Works, nor will it be taken as an admission or evidence that the part of the Subcontractor’s Activities or the Subcontract Works covered by the payment statement has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Contractor expressly waives such requirements in respect of the payment claim the subject of the payment statement;
    3. an admission or evidence of the value of the Subcontractor’s Activities or the Subcontract Works or that the Subcontractor’s Activities or the Subcontract Works comply with the Subcontract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Contractor or the Contractor’s Representative of the Subcontractor's performance or compliance with the Subcontract.
  1. Payment
     1. If Security is by way of Retention Moneys, then the Contractor may deduct the percentage stated in the Subcontract Particulars of every payment until it has accrued the percentage of the Subcontract Price stated in the Subcontract Particulars.
     2. Within 3 business days of the Subcontractor receiving a payment statement under clause 12.4, the Subcontractor must give the Contractor’s Representative, with a copy to the email address set out in the Subcontract Particulars, a tax invoice for the amount stated as then payable by the Contractor to the Subcontractor in the payment statement.
     3. Subject to clause 12.17(c), within the number of business days specified in the Subcontract Particulars of the Contractor receiving a payment statement under clause 12.4, the Contractor will pay the Subcontractor the amount stated as then payable by the Contractor to the Subcontractor in the payment statement.
  2. Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

* + 1. approval of the Subcontractor’s Activities or the Subcontract Works, nor will it be taken as an admission or evidence that the part of the Subcontractor’s Activities or the Subcontract Works covered by the payment has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Contractor expressly waives such requirements in respect of the payment claim the subject of the payment;
    3. an admission or evidence of the value of the Subcontractor’s Activities or the Subcontract Works or that the Subcontractor’s Activities or the Subcontract Works comply with the Subcontract;
    4. an admission or evidence of liability; or
    5. otherwise, any approval, admission or evidence by the Contractor or the Contractor’s Representative of the Subcontractor’s performance or compliance with the Subcontract,

but is only to be taken as payment on account.

* 1. Unfixed Goods and Materials
     1. Unfixed goods or materials will not be included in the value of work in a payment statement under clause 12.4 unless:
        1. the Contractor’s Representative is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Subcontractor to comply with its obligations under the Subcontract;
        2. the Subcontractor gives the Contractor’s Representative with a payment claim under clause 12.2:
           1. additional Approved Security equal to the amount claimed for the unfixed goods and materials; and
           2. such evidence as may be required by the Contractor’s Representative that title to the unfixed goods and materials will vest in the Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract in respect of the unfixed goods and materials;
        3. the unfixed goods and materials are clearly marked as the property of the Commonwealth and are on the Site or available for immediate delivery to the Site; and
        4. the unfixed goods and materials are properly stored in a place approved by the Contractor’s Representative.
     2. Upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract in respect of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.
  2. Release of Additional Approved Security

If the Subcontractor has given the Contractor additional Approved Security for payment for unfixed goods and materials, the Contractor must release such security to the Subcontractor when those goods and materials are incorporated into the Subcontract Works.

* 1. Completion Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor’s Representative) after the issue of a Notice of Completion for the Subcontract Works or a Stage, the Subcontractor must give the Contractor’s Representative:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Subcontractor claims from the Contractor on account of the Subcontract Price and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Subcontractor claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + - 1. in the case of the Subcontract Works, occurred prior to the Date of Completion of the Subcontract Works; or
      2. in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.9 are in addition to the other notices which the Subcontractor must give to the Contractor’s Representative under the Subcontract in order to preserve its entitlements to make any such Claims.
    2. Without limiting the previous paragraph, the Subcontractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.
  1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.9 has passed, the Subcontractor releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + 1. in the case of the Subcontract Works, occurred prior to the Date of Completion of the Subcontract Works; or
    2. in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.9 which is given to the Contractor’s Representative within the time required by, and in accordance with the terms of, clause 12.9.

* 1. Final Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor’s Representative) of the end of the Defects Liability Period, the Subcontractor must give the Contractor’s Representative:
        1. a payment claim which complies with clause 12.2 and which must include all amounts which the Subcontractor claims from the Contractor on account of the Subcontract Price and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Subcontractor claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + - 1. in the case of the Subcontract Works, occurred during the Defects Liability Period for the Subcontract Works; or
      2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.
    1. The payment claim and notice required under clause 12.11 are in addition to the other notices which the Subcontractor must give to the Contractor’s Representative under the Subcontract in order to preserve its entitlements to make any such Claims.
    2. Without limiting the previous paragraph, the Subcontractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.
  1. Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Subcontractor releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract which:

* + 1. in the case of the Subcontract Works, occurred during the Defects Liability Period for the Subcontract Works; or
    2. in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause12.11 which is given to the Contractor’s Representative within the time required by, and in accordance with the terms of, clause 12.11.

* 1. Interest
     1. The Contractor will pay simple interest at the rate specified in the Subcontract Particulars on any:
        1. amount stated as then payable by the Contractor in a payment statement under clause 12.4, but which is not paid by the Contractor within the time required by the Subcontract; and
        2. damages (excluding any delay damages payable under clause 10.10).
     2. This will be the Subcontractor’s sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
  2. Correction of Payment Statements

The Contractor’s Representative may, in any payment statement:

* + 1. correct any error in any previous payment statement; and
    2. modify any previous payment statement,

given by the Contractor’s Representative.

* 1. Right of Set-Off

The Contractor may:

* + 1. deduct from moneys otherwise due to the Subcontractor:
       1. any debt or other moneys due from the Subcontractor to the Contractor (including liquidated damages payable under clause 13.7); and
       2. any claim to money which the Contractor asserts in good faith against the Subcontractor whether for damages or otherwise under the Subcontract or otherwise at law or in equity arising out of or in connection with the Subcontractor’s Activities or the Subcontract Works; and
    2. without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from:
       1. any amount which may be or thereafter become payable to the Subcontractor by the Contractor in respect of any Variation the subject of a Variation Order under clause 11.2; or
       2. without limiting the unconditional nature of the Security, the Security.
  1. Payment of Workers and Subsubcontractors

The Subcontractor must with each payment claim submitted under clause 12.2 provide the Contractor’s Representative with a duly completed declaration in the form set out in the payment claim (in the format set out in the Schedule of Collateral Documents) for each applicable jurisdiction in which the Subcontractor's Activities were carried out during the relevant period.

* 1. GST
     1. Subject to paragraph (b), where any supply arises out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
     2. Where an amount is payable to the Supplier for a supply arising out of or in connection with the Subcontract, the Subcontractor’s Activities or the Subcontract Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier’s behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
     3. As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
     4. If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
        1. is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
        2. is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
     5. In clause 12.17, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. Security of Payment Legislation
     1. The Subcontractor agrees with the Contractor that:
        1. a payment claim submitted to the Contractor’s Representative under clause 12.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Contractor’s Representative as agent for the Contractor;
        2. the Contractor’s Representative will give payment statements and carry out all other functions of the Contractor under the relevant Security of Payment Legislation as the agent of the Contractor (without affecting the Contractor's right to carry out those functions itself);
        3. to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the “reference dates” are those of the dates prescribed in clauses 12.2(a) and 12.2(b) on which the Subcontractor has satisfied the requirements of clause 12.3; and
        4. a reference to a “payment statement” is also a reference to a “payment schedule” for the purposes of the relevant Security of Payment Legislation.
     2. Failure by the Contractor’s Representative to state in a payment statement issued under the relevant Security of Payment Legislation or otherwise an amount which the Contractor is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Contractor to the Subcontractor will not prejudice:
        1. the Contractor’s Representative’s ability or power to state in a subsequent payment statement an amount which the Contractor is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Contractor to the Subcontractor; or
        2. the Contractor’s right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Subcontract or otherwise at law or in equity.
     3. The Subcontractor agrees that the amount stated in the payment statement as then payable by the Contractor to the Subcontractor under clause 12.4(e) is, subject to clause 12.16, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the “progress payment” calculated in accordance with the terms of the Subcontract and which the Subcontractor is entitled to be paid in respect of the Subcontract.
     4. The Subcontractor irrevocably chooses the person specified in the Subcontract Particulars as, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation and to the extent that the relevant Subcontractor’s Activities are to be carried out in:
        1. the Northern Territory, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer;
        2. Western Australia, the appointed adjudicator or the adjudicator (as the case may be) or, where there is no appointed adjudicator or adjudicator, the prescribed appointor or authorised nominating authority (as the case may be); or
        3. any other State or Territory (other than Queensland) in which Security of Payment Legislation applies, the authorised nominating authority.
     5. The Subcontractor must not at any time, without the written consent of the Contractor, divulge or suffer or permit its servants, subsubcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation (in this paragraph, the **Information**).

For the avoidance of doubt:

* + - 1. to the extent permitted by law, the Subcontractor’s obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
      2. notwithstanding the Subcontractor’s obligations in respect of the Information, the Contractor has absolute discretion to divulge or permit its servants, subsubcontractors or agents to divulge to any person the Information;
      3. the Contractor may divulge or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Subcontractor or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and
      4. any Information which the Contractor provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to the Contractor’s right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.
  1. Accounting Records

The Subcontractor must keep accurate and up to date accounting records including books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or papers which show all details in relation to:

* + 1. all Variations; and
    2. without limiting paragraph (a), all amounts paid to the Subcontractor on account of the Subcontract Price and otherwise in accordance with the Subcontract.
  1. Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Subcontractor must, with each payment claim under clause 12.2, provide the Contractor’s Representative with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all work completed since the Contractor’s previous payment to the Subcontractor.

* 1. Facilities and Infrastructure Accounting

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to bring all completed facilities and infrastructure to account, as a condition precedent to Completion, the Subcontractor must provide a cost report to the Contractor’s Representative which sets out:

* + 1. details of the Subcontract Price and all other amounts payable under the Subcontract paid by the Contractor to the Subcontractor in respect of the Subcontract Works or the Stage;
    2. the matters specified in the Subcontract Particulars; and
    3. any other matters required by the Contractor’s Representative.
  1. Quantities in Schedule of Rates

If a Schedule of Rates exists, the items of work and quantities in the Schedule of Rates are estimated and not guaranteed. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the items of work or the quantities being incorrect in that they:

* + 1. contain an incorrect quantity;
    2. contain an item which should not have been included; or
    3. omit an item which should have been included.
  1. Limits of Accuracy in Schedule of Rates

If a Schedule of Rates exists and the:

* + 1. actual quantity of an item required to carry out the Subcontractor’s Activities is greater or less than the quantity shown in the Schedule of Rates;
    2. Contractor has accepted a rate for the item referred to in paragraph (a); and
    3. actual quantity of the item referred to in paragraph (a) is outside the limits of accuracy specified in the Subcontract Particulars,

the rate will only apply to the quantities within those limits of accuracy and quantities outside those limits of accuracy will:

* + 1. if so instructed by the Contractor’s Representative, be carried out by the Subcontractor as daywork; or
    2. otherwise, have their value:
       1. agreed between the parties; or
       2. failing agreement, determined by the Contractor’s Representative using reasonable rates.

1. Completion
   1. Subcontractor to Notify
      1. Nothing in clause 13 limits the Subcontractor’s obligations, or the Contractor’s or the Contractor’s Representative’s rights, under clause 9.13.
      2. The Subcontractor must give the Contractor’s Representative written notice 28 days, and then again 14 days, before it anticipates achieving Completion.
   2. Contractor’s Representative to Inspect

The Contractor’s Representative must:

* + 1. promptly, and in any event no later than 14 days after receiving the Subcontractor’s second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Subcontract Works or the Stage; and
    2. if:
       1. satisfied that Completion has been achieved, issue a notice to the Contractor and the Subcontractor:
          1. stating the date upon which the Contractor’s Representative determines Completion was achieved; and
          2. containing a list of any minor Defects of the type described in paragraph (a) of the definition of “Completion” in clause 1.1; or
       2. not satisfied that Completion has been achieved, issue a notice so advising the Subcontractor and the Contractor.

If the Contractor’s Representative issues a notice under paragraph (b)(ii), the Subcontractor must:

* + 1. proceed to bring the Subcontract Works or the Stage to Completion; and
    2. when it considers it has achieved Completion, give the Contractor’s Representative written notice to that effect (after which clause 13.2 will reapply).
  1. Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Subcontractor to the Contractor’s Representative under clause 13.1(b) or 13.2 is not given by the Subcontractor yet the Contractor’s Representative is of the opinion that Completion has been achieved, the Contractor’s Representative may issue a Notice of Completion under clause 13.2(b)(i).

* 1. Take Over Upon Completion

Upon the issue of a Notice of Completion, the Subcontractor must:

* + 1. hand over the Subcontract Works or the Stage to the Contractor; and
    2. correct all Defects listed in the Notice of Completion as soon as possible.
  1. Part of the Subcontract Works or a Stage
     1. The Subcontractor must, if written notice is given to the Subcontractor by the Contractor’s Representative, allow the Commonwealth or the Contractor to occupy, use, operate or maintain (or arrange for Other Contractors to occupy, use, operate or maintain) any part of the Subcontract Works or a Stage although the whole of the Subcontract Works or the Stage has not reached Completion.
     2. If any such notice is given by the Contractor’s Representative, the Contractor must allow the Subcontractor reasonable access to the part of the Subcontract Works or the Stage referred to in the notice and being occupied, used, operated or maintained to enable the Subcontractor to bring the Subcontract Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part to Completion.
     3. Without limiting paragraph (a), the Contractor’s Representative may, at any time by written notice to the Subcontractor, direct:
        1. that any part of the Subcontract Works or any part of a Stage is to be a new Stage notwithstanding the whole of the Subcontract Works or a Stage has not reached Completion; and
        2. the Date for Completion for any new Stage or Stages.
     4. A notice under paragraph (a) or (c) will not limit or affect the obligations of the Subcontractor under the Subcontract, including the obligation of the Subcontractor to achieve Completion of the Subcontract Works or the relevant Stage of which the area being occupied used, operated or maintained forms part by the relevant Date for Completion.
  2. Effect of Notice of Completion

A Notice of Completion will not:

* + 1. constitute approval of the Subcontractor’s Activities, the Subcontract Works or the Stage, nor will it be taken as an admission or evidence that the Subcontractor’s Activities, the Subcontract Works or the Stage have or has been satisfactorily carried out in accordance with the Subcontract;
    2. constitute an admission or evidence that the Subcontractor’s Activities, the Subcontract Works or the Stage comply or complies with the Subcontract;
    3. otherwise, constitute any approval, admission or evidence by the Contractor or the Contractor’s Representative of the Subcontractor’s performance or compliance with the Subcontract; or
    4. prejudice any rights or remedies of the Contractor or the Contractor’s Representative under the Subcontract or otherwise at law or in equity.
  1. Liquidated Damages
     1. If the Date of Completion of the Subcontract Works or a Stage has not occurred by the relevant Date for Completion for the Subcontract Works or the Stage, the Subcontractor must pay liquidated damages at the rate specified in the Subcontract Particulars for every day after the Date for Completion until the Date of Completion or the Subcontract is terminated, whichever is first.
     2. This amount is an agreed genuine pre‑estimate of the Contractor’s damages if the Date of Completion does not occur by the relevant Date for Completion, but is exclusive of damages which the Contractor will suffer if the Contractor incurs a liability to the Commonwealth as contemplated by clause 13.8.

The amount payable under clause 13.7 will be a debt due from the Subcontractor to the Contractor.

* 1. Liability to the Commonwealth

In addition to any other liability under the Subcontract (including the liability under clause 13.7), the Subcontractor must indemnify the Contractor against any costs, losses, expenses or damages (whether liquidated or unliquidated) which the Contractor pays or is liable to pay the Commonwealth under the Managing Contractor Contract or otherwise, to the extent that such payment or liability arises out of or in connection with the Date of Completion not occurring by the relevant Date for Completion.

1. TERMINATION
   1. Preservation of Rights

Subject to clause 14.6, nothing in clause 14 or that the Contractor does or fails to do pursuant to clause 14 will prejudice any right or remedy of the Contractor (including the recovery of damages) where the Subcontractor breaches (including repudiates) the Subcontract.

* 1. Subcontractor Default

The Contractor may give a written notice under clause 14.3 to the Subcontractor if the Subcontractor is in breach of the Subcontract.

* 1. Contents of Notice of Default

A notice under clause 14.3 must state:

* + 1. that it is a notice under clause 14.3;
    2. the failure or breach relied upon; and
    3. that the Contractor requires the Subcontractor to remedy the failure or breach within the number of days specified in the Subcontract Particulars of receiving the notice.
  1. Termination for Insolvency or Breach

If:

* + 1. an Insolvency Event occurs to the Subcontractor, or where the Subcontractor comprises two or more persons, to any one of those persons;
    2. the Subcontractor does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Subcontract Particulars of receiving the notice under clause 14.3;
    3. an instruction has been given under clause 9.6(a) or (b), the Subcontractor fails to comply with clause 9.7(a); or
    4. the Subcontractor fails to comply with any of clauses 18.13(b)(i), 18.13(b)(ii), 18.16, 20 or 21,

then the Contractor may by written notice to the Subcontractor immediately (and without having to first give a notice under clause 14.3, except in the case of paragraph (b)) terminate the Subcontract.

* 1. Contractor’s Entitlements after Termination by Contractor

Subject to clause 14.1, if the Contractor terminates the Subcontract under clause 14.4, or if the Subcontractor repudiates the Subcontract and the Contractor otherwise terminates the Subcontract:

* + 1. the Contractor will:
       1. be entitled to take over and use, or require the Subcontractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Subcontract Works;
       2. be entitled to require the Subcontractor to novate to the Contractor or the Contractor’s nominee, any or all subsubcontracts between the Subcontractor and its subsubcontractors as required by the Contractor;
       3. to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Subcontractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
       4. be entitled to recover from the Subcontractor all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with such termination; and
    2. the Subcontractor must comply with clause 20.4 (including by handing over to the Contractor’s Representative copies of all Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Subcontract.

* 1. Subcontractor’s Entitlements after Termination by Subcontractor
     1. If the Contractor repudiates the Subcontract and the Subcontractor terminates the Subcontract, the Subcontractor will:
        1. be entitled to payment of an amount determined in accordance with clause 14.8 as if the Contractor had terminated the Subcontract under clause 14.7; and
        2. not be entitled to a quantum meruit.
     2. Clause 14.6 will survive the termination of the Subcontract.
  2. Termination for Convenience

Without prejudice to any right or remedy of the Contractor under the Subcontract or otherwise at law or in equity, the Contractor may:

* + 1. at any time for its sole convenience, and for any reason, by written notice to the Subcontractor terminate the Subcontract effective from the time stated in the Contractor’s notice or if no such time is stated, at the time the notice is given to the Subcontractor; and
    2. thereafter (at its absolute discretion) complete the uncompleted part of the Subcontractor’s Activities and the Subcontract Works either itself or by engaging Other Contractors.
  1. Subcontractor’s Entitlements after Termination for Convenience by Contractor

If the Contractor terminates the Subcontract under clause 14.7, the Subcontractor:

* + 1. will be entitled to payment of the following amounts, as determined by the Contractor’s Representative:
       1. for work carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Subcontractor submitted a payment claim for work carried out to the date of termination;
       2. the cost of goods or materials reasonably ordered by the Subcontractor for the Subcontract Works for which the Subcontractor is legally bound to pay provided that:
          1. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
          2. title in the goods and materials will vest in the Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract in respect of those goods and materials; and
       3. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Subcontractor’s Activities; and
    2. must:
       1. take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
       2. comply with clause 20.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).

The amounts to which the Subcontractor is entitled under clause 14.8 will be a limitation upon the Contractor’s liability to the Subcontractor arising out of or in connection with the termination of the Subcontract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)(i)) and, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the termination of the Subcontract, other than for the amount payable under clause 14.8.

Clause 14.8 will survive the termination of the Subcontract by the Contractor under clause 14.7 or by the Subcontractor following repudiation by the Contractor.

* 1. Termination of Managing Contractor Contract
     1. Nothing in clause 14.9 limits the Contractor’s rights or the Subcontractor’s obligations under any Subcontractor Deed of Covenant entered into by the Subcontractor under clause 2.2(c).
     2. If the Managing Contractor Contract is terminated at any time for any reason, the Contractor may:
        1. terminate the Subcontract by notice in writing to the Subcontractor; or
        2. without the consent of the Subcontractor, novate the Subcontract by assigning the Contractor’s rights and obligations under the Subcontract to the Commonwealth or a person nominated by the Commonwealth.
     3. If the Subcontract is novated under paragraph (b)(ii), the Subcontractor must upon demand by the Contractor execute any instrument required by the Contractor to give effect to the novation.
  2. Consequences Following Managing Contractor Contract Termination
     1. If the Subcontract is terminated under clause 14.9(b)(i) or in accordance with any Subcontractor Deed of Covenant entered into by the Subcontractor under clause 2.2(c), then the Subcontractor:
        1. will be entitled to the payment of the following amounts as determined by the Contractor’s Representative:
           1. for work carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Subcontractor submitted a payment claim for work carried out to the date of termination;
           2. the cost of goods or materials reasonably ordered by the Subcontractor for the Subcontract Works for which the Subcontractor is legally bound to pay provided that:

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

title in the goods and materials will vest in the Commonwealth upon payment by the Commonwealth to the Contractor under the Managing Contractor Contract in respect of those goods and materials; and

* + - * 1. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Subcontractor’s Activities; and
      1. must:
         1. take all steps possible to mitigate the costs referred to in subparagraphs (i)B and (i)C; and
         2. comply with clause 20.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Subcontractor to the date of termination (whether complete or not)).
    1. The amount to which the Subcontractor is entitled under clause 14.10 will be a limitation upon the Contractor’s liability to the Subcontractor arising out of or in connection with the termination of the Subcontract under clause 14.9 and the Subcontractor will not be entitled to make, nor will the Contractor be liable upon, any Claim arising out of or in connection with the termination of the Subcontract other than for the amount payable under clause 14.10.
    2. Clauses 14.9 and 14.10 will survive termination of the Subcontract by the Contractor under clause 14.9.

1. DISPUTES
   1. Notice of Dispute
      1. If a dispute or difference arises between the Subcontractor and the Contractor (or the Contractor’s Representative) in respect of any fact, matter or thing arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract, or either party’s conduct before the Subcontract, the dispute or difference must be determined in accordance with the procedure in clause 15.
      2. Where such a dispute or difference arises, either party may give a notice in writing to the other party specifying:
         1. the dispute or difference;
         2. particulars of the party’s reasons for being dissatisfied; and
         3. the position which the party believes is correct.
   2. Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contractor’s Representative under one of the clauses specified in the Subcontract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 15.2 is to be conducted by:
        1. the independent industry expert specified in the Subcontract Particulars; or
        2. where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Subcontract Particulars.
     2. If the expert appointed under clause 15.3:
        1. is unavailable;
        2. declines to act;
        3. does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
        4. does not enter into the Expert Determination Agreement or other agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under clause 15.3; or
        5. does not make a determination within the time required by clause 15.8,

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

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

An expert determination conducted under clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

* 1. Procedure for Determination

The expert will:

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

The expert must:

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

Each party will:

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

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 15 within 28 days from the acceptance by the expert of his or her appointment.

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

The determination of the expert:

* + 1. must be in writing;
    2. will be substituted for the relevant direction of the Contractor’s Representative unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
    3. will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.
  1. Executive Negotiation
     1. If:
        1. clause 15.2 applies, and a notice of appeal is given under clause 15.10; or
        2. clause 15.2 does not apply,

the dispute or difference is to be referred to the Executive Negotiators.

* + 1. The Executive Negotiators must within:
       1. 21 days of:
          1. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
          2. otherwise, the notice of appeal given under clause 15.10; or
       2. such longer period of time as the Executive Negotiators may agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

* 1. Arbitration Agreement

If, within:

* + 1. 21 days of:
       1. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
       2. otherwise, the notice of appeal given under clause 15.10; or
    2. such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

* + 1. or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
    2. cannot resolve the dispute or difference; or
    3. have not reached agreement upon a procedure to resolve the dispute or difference,

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

* 1. Arbitration
     1. Arbitration pursuant to clause 15.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 15.13.
     2. The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
     3. The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
     4. The parties agree that:
        1. they have entered into the arbitration agreement under clause 15.12 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to clause 15.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
        3. in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
     5. One arbitrator will be appointed.
     6. All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
     7. Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
     8. The oral hearing will be conducted as follows:
        1. the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
        2. the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
        3. oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
        4. the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
        5. not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
        6. in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
     9. Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.
  2. Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation of any Australian jurisdiction which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 15.

* 1. MCC Dispute Procedures
     1. Under the Managing Contractor Contract, disputes and differences between the Contractor and the Commonwealth and the Contractor and the MCC Contract Administrator are required to be determined in accordance with certain procedures which include expert determination, executive negotiation and arbitration.
     2. Within 7 days of the Award Date, the Contractor must provide the Subcontractor with a copy of the provisions in the Managing Contractor Contract setting out the MCC Dispute Procedures.
     3. The Subcontractor agrees that certain disputes and differences of the kind referred to in clause 15.1 will be determined under the MCC Dispute Procedures as set out in clauses 15.16 - 15.18 in lieu of the procedures set out in clauses 15.2 - 15.14.
  2. Managing Contractor Contract Disputes

If:

* + 1. the Subcontractor gives a notice under clause 15.1;
    2. the dispute or difference relates, in whole or in part, to either:
       1. an alleged breach of the Subcontract by the Contractor, which, assuming the breach has actually occurred, has been caused, or contributed to, by an act or omission (including breach of the Managing Contractor Contract) of the Commonwealth; or
       2. a direction given by the Contractor’s Representative relating to a particular subject matter, in circumstances where a direction has been given by the MCC Contract Administrator to the Contractor relating, in whole or in part, to that subject matter, or otherwise relates, in whole or in part, to any other fact, matter or circumstance arising out of or in connection with the Managing Contractor Contract; and
    3. the Contractor is not barred from making, or has not waived its entitlement to make, a Claim against the Commonwealth in respect of the act, omission or direction,

the Contractor may within 7 days of receipt of the notice give a notice to the Subcontractor stating that clause 15.17 applies in relation to the dispute or difference.

* 1. Procedure for Managing Contractor Contract Disputes

If a notice is given under clause 15.16 stating that clause 15.17 applies:

* + 1. subject to clause 15.18, the Contractor must:
       1. take such steps as are reasonably necessary to progress the Subcontractor’s dispute or difference under the MCC Dispute Procedures;
       2. regularly consult with the Subcontractor to ascertain its views as to the progression of the Subcontractor’s dispute or difference; and
       3. use its best endeavours to ensure that the Subcontractor’s views, where relevant, are put to any expert or arbitrator appointed under the MCC Dispute Procedures or any court which may hear any matter relating to the Subcontractor’s dispute or difference as between the Contractor and the Commonwealth; and
    2. the Subcontractor must:
       1. comply with the Contractor’s reasonable requirements relating to the conduct of the MCC Dispute Procedures or any relevant court proceedings insofar as they relate to the Subcontractor’s dispute or difference;
       2. indemnify the Contractor against all costs and expenses incurred by the Contractor in complying with paragraph (a); and
       3. from time to time as required by the Contractor, lodge with the Contractor reasonable cash or other security against the costs and expenses referred to in subparagraph (b)(ii).
  1. Further Procedures

Where clause 15.17 applies, the following provisions also apply:

* + 1. the Contractor must not without the prior consent of the Subcontractor (acting reasonably) agree to a settlement with the Commonwealth or any other relevant person of the Subcontractor’s dispute or difference; and
    2. where a determination is made by an expert, an arbitrator or a court in relation to the Subcontractor’s dispute or difference as between the Commonwealth and the Contractor:
       1. if the determination is not final and binding upon the Contractor:
          1. the Contractor is not obliged to appeal against that determination unless the Subcontractor gives a notice to the Contractor requiring such an appeal:

within such time as to reasonably enable the Contractor to comply with any relevant requirements relating to the time for commencement of such appeals; and

which contains any particulars required to reasonably enable the Contractor to progress the appeal in accordance with any relevant requirements; and

* + - * 1. the parties will be bound by and are to give effect to the determination including any findings as to law or fact unless and until it is reversed, overturned or otherwise changed on appeal as between the Commonwealth and the Contractor; and
      1. if the determination is final and binding upon the Contractor, the parties:
         1. will be bound by and are to give effect to the determination including any findings as to law or fact; and
         2. release each other from any Claim which they may have arising out of or in connection with the subject matter of the Subcontractor’s dispute or difference insofar as the determination relates to the dispute or difference.
  1. Continuation of Subcontractor’s Activities

Despite the existence of a dispute or difference between the parties the Subcontractor must:

* + 1. continue to carry out the Subcontractor’s Activities and the Subcontract Works; and
    2. otherwise comply with its obligations under the Subcontract.

1. NOTICES
   1. Notice of Variation

If a direction by the Contractor’s Representative, other than a Variation Order under clause 11.2, constitutes or involves a Variation, the Subcontractor must, if it wishes to make a Claim against the Contractor arising out of or in connection with the direction:

* + 1. within 7days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contractor’s Representative that it considers the direction constitutes or involves a Variation;
    2. within 21 days after giving the notice under paragraph (a), submit a written claim to the Contractor’s Representative which includes the details required by clause 16.3(b); and
    3. continue to carry out the Subcontractor’s Activities and the Subcontract Works in accordance with the Subcontract and all directions of the Contractor’s Representative, including any direction in respect of which notice has been given under clause 16.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 10.6;
    2. payment under clause 12.2 of the original Subcontract Price specified in the Subcontract Particulars; or
    3. a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Subcontractor must give the Contractor’s Representative the notices required by clause 16.3 if it wishes to make a Claim against the Contractor in respect of any direction by the Contractor’s Representative or any other fact, matter or thing (including a breach of the Subcontract by the Contractor) under, arising out of or in connection with the Subcontractor’s Activities, the Subcontract Works or the Subcontract, including anything in respect of which:

* + 1. it is otherwise given an express entitlement under the Subcontract; or
    2. the Subcontract expressly provides that:
       1. amounts are to be added to the Subcontract Price; or
       2. otherwise, the Subcontract Price will be increased or adjusted,

as determined by the Contractor’s Representative.

* 1. Prescribed Notices

The notices referred to in clause 16.2 are:

* + 1. a written notice within 21 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
       1. that the Subcontractor proposes to make a Claim; and
       2. the direction or other fact, matter or thing upon which the Claim will be based; and
    2. a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
       1. detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
       2. the legal basis for the Claim, whether based on a term of the Subcontract or otherwise, and if based on a term of the Subcontract, clearly identifying the specific term;
       3. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
       4. details of the amount claimed and how it has been calculated in sufficient detail to permit verification.
  1. Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Subcontractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contractor’s Representative, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

* 1. Time Bar

If the Subcontractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

* + 1. the Contractor will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Subcontractor; and
    2. the Subcontractor will be absolutely barred from making any Claim against the Contractor,

arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 16.1-16.5 will limit the operation or effect of any other provision of the Subcontract which requires the Subcontractor to give notice to the Contractor’s Representative in order to preserve an entitlement to make a Claim against the Contractor.

* 1. Address for Service

Any notice to be given or served under or arising out of a provision of the Subcontract must:

* + 1. be in writing;
    2. be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 14 and 15 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
       1. specified in the Subcontract Particulars; or
       2. last notified in writing to the party giving or serving the notice,

for the party to whom or upon which the notice is to be given or served;

* + 1. be signed by the party giving or serving the notice or (on the party’s behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
    2. in the case of notices sent by email:
       1. be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
       2. include the words “This is a notice under clause 16.7 of the Subcontract” in the subject field of the email.
  1. Receipt of Notices
     1. Subject to paragraph (b), a notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
        1. delivery by hand, on delivery;
        2. prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
        3. prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
        4. email, the earlier of:
           1. delivery to the email address to which it was sent; and
           2. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the “sent” email.
     2. In the case of notices under clauses 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
        1. the date the notice sent by email is taken to be received; or
        2. the date the notice delivered by hand or sent by prepaid express post is taken to be received,

as determined in accordance with paragraph (a).

1. WHOLE OF LIFE
   1. Design and Construction

Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must:

* + 1. design the parts of the Subcontract Works which the Subcontract requires it to design; and
    2. construct the Subcontract Works,

in a manner which maximises the achievement of the WOL Objectives.

* 1. Consultation

The Subcontractor must meet with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors at such times as the Contractor’s Representative may require from time to time to:

* + 1. review the progress of the design and construction of the Subcontract Works against the WOL Objectives; and
    2. consult with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the WOL Objectives.
  1. WOL Proposals

Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must at all times in carrying out the Subcontractor’s Activities:

* + 1. use its best endeavours to identify and recommend to the Contractor’s Representative reasonably available proposals for maximising the achievement of the WOL Objectives; and
    2. consult with the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors, as to:
       1. proposals which it is considering making under paragraph (a); and
       2. possible proposals under paragraph (a) identified by the Contractor.
  1. Post Occupancy Evaluation

The Contractor’s Representative may:

* + 1. at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Subcontract Works; and
    2. without limiting paragraph (a):
       1. inspect the Subcontract Works to review the extent to which the Subcontractor has maximised the achievement of the WOL Objectives in the design and construction of the Subcontract Works; and
       2. issue a report to the Commonwealth, the Contractor and the Subcontractor:
          1. stating the extent to which the Subcontractor has maximised the achievement of the WOL Objectives in the design and construction of the Subcontract Works; and
          2. containing a list ofany aspects of the Subcontract Works which do not conform with the requirements of the Subcontract.

The Subcontractor:

* + 1. must consult with the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor’s Representative and Other Contractors, and must provide such other assistance as is reasonably necessary, for the purposes of the Contractor’s Representative carrying out the requirements in paragraphs (a) and (b); and
    2. acknowledges and agrees that the results of the post occupancy evaluation may be taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
  1. Rights and Obligations Not Affected

Neither the Contractor’s rights or remedies, nor the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor’s Representative by clause 17 or the failure by the Contractor or the Contractor’s Representative to exercise any such rights;
    2. the obligations imposed upon the Subcontractor by clause 17 or the Subcontractor’s compliance with those obligations; or
    3. any direction of the Contractor’s Representative under or purported to be given under the Subcontract, including any comment or direction upon or review, acceptance or rejection of:
       1. any advice, recommendation or other assistance provided by the Subcontractor under clause 17; or
       2. any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.4.

1. GENERAL
   1. Workplace Gender Equality

The Subcontractor must:

* + 1. comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth); and
    2. not enter into a subsubcontract made in connection with the Subcontract with a subsubcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
  1. Indigenous Procurement Policy
     1. The Subcontractor must use its reasonable endeavours to increase its:
        1. purchasing from Indigenous Enterprises; and
        2. employment of Indigenous Australians,

in carrying out the Subcontractor’s Activities, in accordance with the Indigenous Procurement Policy.

* + 1. The Subcontractor must:
       1. comply with the Indigenous Participation Plan; and
       2. submit a written report to the Contractor via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan, as follows:
          1. at least quarterly; and
          2. within 7 days of the expiry of the last Defects Liability Period (**End of DLP Report**).
    2. The Subcontractor must set out in the End of DLP Report:
       1. whether the Subcontractor:
          1. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
          2. complied with the Indigenous Participation Plan; and
       2. if the Subcontractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
    3. Throughout the carrying out of the Subcontractor's Activities, the Subcontractor is responsible for managing the Subcontractor's access to the IPP Contractor Portal including by managing the:
       1. enabling of its authorised personnel's access; and
       2. disabling of its authorised personnel's access,

and must promptly notify the Contractor's Representative of such enabling and disabling and any other matters relating to access to the IPP Contractor Portal.

* + 1. If the Contractor's Representative considers, in its absolute discretion at any time during the carrying out of the Subcontractor's Activities, that it has concerns in relation to the Subcontractor's:
       1. compliance with the Indigenous Participation Plan; or
       2. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Contractor's Representative may direct the Subcontractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.

* + 1. The Subcontractor:
       1. must comply with all directions issued by the Contractor's Representative in relation to the Subcontractor's implementation of the Indigenous Participation Plan; and
       2. will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any direction of the Contractor's Representative under subparagraph (i).
    2. Notwithstanding any other clause of this Subcontract, the Subcontractor acknowledges and agrees that the reports it submits under paragraph (b)(ii):
       1. will be recorded in a central database accessible by the Contractor and the Commonwealth and may be made publicly available;
       2. will not be Commercial-In-Confidence Information for the purposes of clause 19; and
       3. may be used by the Commonwealth for any purpose, including being taken into account for evaluation of in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
  1. Defence's Security Alert System
     1. Nothing that the Subcontractor is or may be required to do under clause 18.3 will derogate from, or otherwise limit, the Subcontractor’s obligations under the Subcontract.
     2. The Subcontractor must be, and must ensure that its subsubcontractors are, fully familiar with the requirements of Defence's Security Alert System.
     3. The Subcontractor must, and must ensure that its subsubcontractors:
        1. attend any security briefing requested by the Contractor’s Representative from time to time; and
        2. participate in any rehearsal of Defence's Security Alert System directed by the Contractor’s Representative from time to time.
     4. In carrying out the Subcontractor’s Activities, the Subcontractor must, and must ensure that its subsubcontractors, comply with the requirements of Defence's Security Alert System:
        1. at the level specified in the Subcontract Particulars; and
        2. at any alternative level (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time.
     5. If there is any change to Defence's Security Alert System level specified in the Subcontract Particulars (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time after the Award Date:
        1. the Contractor’s Representative will notify the Subcontractor of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Subcontractor as to the course it is to adopt insofar as the Subcontractor’s Activities are affected by the change to the level (or individual measure from a higher level to meet a specific threat or threats); and
        2. subject to subparagraph (iii), the Subcontractor will be entitled to have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor which arise directly from the change and the Contractor’s Representative’s instruction under subparagraph (i), as determined by the Contractor’s Representative; or
        3. the Subcontract Price will be decreased by any saving made by the Subcontractor after the giving of the notice under subparagraph (i) which arise directly from the change and the Contractor’s Representative’s instruction under subparagraph (i), as determined by the Contractor’s Representative.
     6. The amount (if any) under paragraph (e)(ii) will be a limitation on the Contractor’s liability to the Subcontractor arising out of or in connection with the:
        1. change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats); and
        2. Contractor’s Representative’s instruction,

and, to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats) or the Contractor's Representative's instruction under paragraph (e)(i), other than under paragraph (e)(ii).

* 1. IT Equipment
     1. Without limiting the Subcontractor’s obligations under the Subcontract, the Subcontractor warrants that:
        1. each item of IT Equipment:
           1. is free of defects in materials and workmanship;
           2. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Equipment in the Subcontract or in any documentation accompanying that IT Equipment; and
           3. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Equipment and other parts of the Subcontract Works, will not be adversely affected by the date; and
        2. no virus will be introduced into the Commonwealth’s nor the Contractor’s systems as a result of the supply by the Subcontractor of any IT Equipment or as a result of any other act or omission of the Subcontractor arising out of or in connection with carrying out the Subcontractor’s Activities and the Subcontract Works.
     2. Without limiting clause 8.6, the Subcontractor must assign to the Contractor or the Commonwealth (as directed), the benefits of warranties given by any supplier from whom the Subcontractor sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Subcontractor becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to clause 18.4 does not in any way relieve the Subcontractor of the obligation to comply with warranties given by the Subcontractor under the Subcontract.
  2. Privacy
     1. The Subcontractor must:
        1. comply with its obligations under the Privacy Act;
        2. comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Subcontract, as if it were an agency as defined in the Privacy Act;
        3. use Personal Information received, created or held by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract only for the purposes of fulfilling its obligations under the Subcontract;
        4. not disclose Personal Information received, created or held by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract without the prior written approval of the Contractor’s Representative;
        5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contractor’s Representative;
        6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contractor’s Representative in relation to the management of Personal Information in connection with the Subcontract;
        7. ensure that any person whom the Subcontractor allows to access Personal Information which is received, created or held by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
        8. comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
        9. ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract are, at the expiration or earlier termination of the Subcontract, at the Contractor’s Representative’s election, to be either returned to the Contractor or deleted or destroyed in the presence of a person duly authorised by the Contractor’s Representative to oversee such deletion or destruction;
        10. agree to the naming or other identification of the Subcontractor in reports by the Federal Privacy Commissioner;
        11. ensure that any subsubcontract made in connection with the Subcontract contains enforceable obligations requiring the subsubcontractor to comply with the Subcontractor’s obligations arising out of clause 18.5, as if the subsubcontractor were the Subcontractor;
        12. enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contractor’s Representative may give;
        13. not use Personal Information collected by the Subcontractor for the purposes of, under, arising out of or in connection with the Subcontract for, or in any way relating to, any direct marketing purpose; and
        14. indemnify the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
            1. a breach of the obligations of the Subcontractor under clause 18.5;
            2. a breach of a subsubcontractor’s obligations under a subsubcontract as contemplated by subparagraph (xi);
            3. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Subcontractor or a subsubcontractor; or
            4. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Subcontractor or a subsubcontractor in breach of an obligation of confidence.
     2. For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Contractor to settle a complaint arising out of or in connection with a breach of clause 18.5.
     3. The Subcontractor must immediately notify the Contractor's Representative in writing if the Subcontractor:
        1. becomes aware of a breach of the obligations under clause 18.5 by itself or by a subsubcontractor;
        2. becomes aware of a breach of a subsubcontractor’s obligations under a subsubcontract as contemplated by paragraph (a)(xi);
        3. becomes aware that a disclosure of Personal Information may be required by law; or
        4. is approached or contacted by, or becomes aware that a subsubcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     4. The Subcontractor acknowledges that, in addition to the requirements of clause 18.5, the Subcontractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
     5. Nothing in clause 18.5 limits any of the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity.
     6. In clause 18.5, **received** includes collected.
  3. Moral Rights
     1. The Subcontractor must:
        1. to the extent permitted by law and for the benefit of the Contractor, ensure that each of the Subcontractor and subsubcontractor personnel engaged by the Subcontractor in the production or creation of Project Documents or the Subcontract Works gives genuine consent in writing to the use of the Project Documents or the Subcontract Works (as applicable) for the Specified Acts, notwithstanding that such use would otherwise be an infringement of their Moral Rights; and
        2. provide copies of such consents to the Contractor's Representative on request at such times as the Contractor's Representative may require.
     2. In this clause 18.6, **Specified Acts** means:
        1. falsely attributing the authorship of any Project Document or the Subcontract Works, or any content in a Project Document or the Subcontract Works (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
        2. materially altering the style, format, colours, content or layout of a Project Document or the Subcontract Works and dealing in any way with the altered Project Document or Subcontract Works;
        3. reproducing, communicating, adapting, publishing or exhibiting any Project Document or the Subcontract Works; and
        4. adding any additional content or information to a Project Document or the Subcontract Works.
  4. Freedom of Information
     1. The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
     2. The Subcontractor acknowledges that Commonwealth requirements and policies will require certain identifying details of the Subcontract to be made available to the public via the internet.
  5. Long Service Leave

Clause 18.8 only applies if the Long Service Leave Legislation applies to the Subcontractor’s Activities.

* + 1. Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, the Subcontractor must comply with its obligations under the Long Service Leave Legislation.
    2. If required by the Long Service Leave Legislation, the Subcontractor must pay any levy, charge, contribution or associated amount in respect of the Subcontractor’s Activities.
    3. Any amount paid by the Subcontractor under paragraph (b) is deemed to be included in the Subcontract Price and the Subcontractor will have no Claim against the Contractor arising out of or in connection with its obligations under clause 18.8 or the Long Service Leave Legislation.
  1. Assignment
     1. The Subcontractor must not, without the prior written approval of the Contractor and except on such terms and conditions notified by the Contractor, assign, mortgage, charge or encumber the Subcontract or any part or any benefit or moneys or interest under the Subcontract.
     2. For the purpose of but without limiting paragraph (a), an assignment of the Subcontract will be deemed to have occurred where there has been a Change of Control.
  2. Publicity

Without limiting clause 20, the Subcontractor must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Subcontractor’s Activities, the MCC Works or the Subcontract Works for publication in the media without the prior written approval of the Contractor’s Representative; and
    2. refer any enquiries from the media concerning the Subcontractor’s Activities, the MCC Works or the Subcontract Works to the Contractor’s Representative.
  1. Building Works Manual and National Construction Code Certification

Without limiting clauses 6.13, 8.3, 8.4 and 9.1(c), the Subcontractor must provide to the Contractor’s Representative written certification from an Accredited Building Surveyor:

* + 1. at the time it submits any Design Documentation to the Contractor’s Representative under clause 6.2 - that the Design Documentation submitted at that time complies with the Building Works Manual and the National Construction Code; and
    2. as a condition precedent to Completion - that the Subcontract Works comply or the Stage complies (as the case may be) with the Building Works Manual and the National Construction Code,

except to the extent of any dispensation granted by the Assistant Secretary Environment and Engineering and identified in the certification. To the extent that there is any inconsistency between the Building Works Manual and the National Construction Code, the Building Works Manual prevails.

* 1. Applicable Standards
     1. The Subcontractor acknowledges that the Subcontract identifies:
        1. the Australian standards which are applicable to the Subcontractor's Activities and the Subcontract Works; or
        2. in the absence of an applicable Australian standard, the relevant international standards which are applicable to the Subcontractor's Activities and the Subcontract Works,

and that it must comply with all relevant standards of Standards Australia to the extent required by clause 9.1(c) (collectively, the **Applicable Standards**).

* + 1. Without limiting the Subcontractor's obligations under this Subcontract, the Subcontractor must comply with the Applicable Standards in performing the Subcontractor's Activities and executing the Subcontract Works.
    2. The Contractor’s Representative may, at any time, request that the Subcontractor provides:
       1. a certificate which certifies that the Design Documentation, the Subcontract Works or any Stage (as the case may be) complies with the Applicable Standards; and
       2. a corresponding certificate from each relevant subsubcontractor which certifies that (to the extent then applicable) all design carried out by that subsubcontractor or the Subcontract Works or any Stage executed by that subsubcontractor (as the case may be) complies with the Applicable Standards.
    3. The Subcontractor acknowledges that the Commonwealth may exercise any of its rights under this Subcontract (including under clause 6.12) to carry out periodic auditing of the Subcontractor's compliance with clause 18.12.
  1. Shadow Economy Procurement Connected Policy
     1. Clause 18.13 does apply unless the Subcontract Particulars state that it does not apply.
     2. The Subcontractor:
        1. warrants that at the Award Date it holds all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy; and
        2. must hold all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy at all times during the Subcontractor's Activities and the Subcontract Works and, on request by the Contractor’s Representative, provide to the Contractor’s Representative a copy of any such STR.
     3. The Subcontractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Subcontractor becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Subcontractor is:** | **Additional STRs required arising from changed circumstance:** |
| 1. a partner acting for and on behalf of a partnership | a valid and satisfactory STR in respect of any additional partner that becomes directly involved in the delivery of the Subcontract. |
| 1. a trustee acting in its capacity as trustee of an Australian or foreign trust | a valid and satisfactory STR in respect of any new trustee appointed to the trust. |
| 1. a joint venture participant | a valid and satisfactory STR in respect of any new:   * + - 1. participant in the joint venture; and       2. joint venture operator if the new operator is not already a participant in the joint venture. |
| 1. a member or head company of a Consolidated Group | a valid and satisfactory STR in respect of any new head company of the Consolidated Group. |
| 1. a member of a GST Group | a valid and satisfactory STR in respect of any new representative for the GST Group. |

* + 1. The Subcontractor must provide the Contractor with copies of the STRs referred to in paragraph (c) within 5 business days after a written request by the Contractor.
    2. For the purposes of the Subcontract, an STR is taken to be:
       1. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
       2. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.
  1. Commonwealth Publication and Reporting Requirements

The Subcontractor acknowledges that the Commonwealth and the Contractor are and will be subject to a number of Commonwealth requirements and policies which support internal and external scrutiny of Commonwealth tendering and contracting processes and the objectives of transparency, accountability and value for money including requirements to:

* + 1. publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of $10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);
    2. report and post on the internet a list of contracts valued at $100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
    3. report and post on the internet information about contracts in other ways pursuant to other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.
  1. Modern Slavery
     1. The Subcontractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Subcontract, including in the operations and supply chains used in the carrying out of the Subcontractor's Activities.
     2. The Subcontractor must ensure the Subcontractor's key people under clause 3.6 and other personnel responsible for managing the operations and supply chains used in the performance of the Subcontractor's Activities have undertaken suitable training to be able to identify and report Modern Slavery.
     3. If at any time the Subcontractor becomes aware of Modern Slavery practices arising in connection with the Subcontract, including in the operations and supply chains used in the carrying out of the Subcontractor's Activities, the Subcontractor must:
        1. promptly notify the Contractor’s Representative of the Modern Slavery practices and provide any relevant information requested by the Contractor’s Representative;
        2. as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
        3. regularly update the Contractor’s Representative of the steps taken by it in accordance with subparagraph (ii).
     4. For the purposes of this clause 18.15, **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
  2. Compliance with the Commonwealth Supplier Code of Conduct
     1. The Subcontractor must comply with, and ensure that its officers, employees, agents and subsubcontractors comply with, the Code in connection with the performance of the Subcontract.
     2. The Subcontractor must:
        1. periodically monitor and assess its, and its officers', employees' and agents', compliance with the Code; and
        2. on request from the Contractor's Representative, promptly provide information regarding:
           1. the policies, frameworks or systems it has established to monitor and assess compliance with the Code; and
           2. the Subcontractor's compliance with paragraph (a).
     3. The Subcontractor must immediately notify the Contractor's Representative in writing upon becoming aware of any breach of paragraph (a). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
     4. Where the Contractor's Representative identifies a possible breach of paragraph (a), it may notify the Subcontractor in writing, and the Subcontractor must, within three days of receiving the notice, either:
        1. where the Subcontractor considers a breach has not occurred - advise the Contractor's Representative that there has not been a breach and provide information supporting that determination; or
        2. where the Subcontractor considers that a breach has occurred - notify the Contractor's Representative under paragraph (c) and otherwise comply with its obligations under this clause 18.16.
     5. Notwithstanding paragraph (d), the Contractor's Representative may notify the Subcontractor in writing that it considers that the Subcontractor has breached paragraph (a), in which case the Subcontractor must notify the Contractor's Representative in writing under paragraph (c) and otherwise comply with its obligations under this clause 18.16.
     6. Nothing in this clause 18.16 or the Code limits, reduces or derogates from the Subcontractor's other obligations under the Subcontract. The Contractor's rights under this clause 18.16 are in addition to and do not otherwise limit any other rights the Contractor may have under the Subcontract. The performance by the Subcontractor of its obligations under this clause 18.16 will be at no additional cost to the Contractor.
     7. The Subcontractor acknowledges and agrees that the Subcontractor's compliance with the Code may be taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
     8. For the purposes of this clause 18.16, **Code** means the Commonwealth Supplier Code of Conduct dated 1 July 2024, available at https://www.finance.gov.au/government/procurement/commonwealth-supplier-code-conduct/commonwealth-supplier-code-conduct, as amended from time to time.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION

Clause 19 does not apply unless the Subcontract Particulars state that it applies.

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

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

* + 1. The Contractor’s obligation in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
       1. disclosed by the Contractor to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with the Subcontract;
       2. disclosed by the Contractor to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Contractor’s management, reporting or auditing requirements under the Managing Contractor Contract;
       3. disclosed by the Contractor to any responsible Minister or any Ministerial adviser or assistant;
       4. disclosed by the Contractor to any House or Committee of the Parliament of the Commonwealth of Australia;
       5. disclosed to any Commonwealth department, agency or authority by virtue of or in connection with:
          1. its functions, or statutory or portfolio responsibilities; or
          2. the Managing Contractor Contract;
       6. authorised or required by law to be disclosed; or
       7. in the public domain otherwise than due to a breach of paragraph (a).

1. INFORMATION SECURITY
   1. DISP Membership

The Subcontractor must:

* + 1. at its cost have obtained as at the Award Date and thereafter maintain for the term of the Subcontract the level of DISP membership specified in the Subcontract Particulars in accordance with Control 16.1 of the DSPF; and
    2. comply with any other direction or requirement of the Contractor's Representative in relation to the DISP.
  1. Confidential Information and Information Security
     1. The Subcontractor acknowledges and agrees that:
        1. the Confidential Information is confidential to the Contractor and that any unauthorised use or disclosure of the Confidential Information may cause loss or damage to the Contractor; and
        2. part of the Confidential Information may be Sensitive and Classified Information.
     2. Except as expressly provided in this clause 20.2, the Subcontractor 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 Subcontractor may disclose Confidential Information where such disclosure is required by law provided that the Subcontractor:
        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 Contractor's Representative in writing of such requirement and provides such details as would enable the Contractor 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 paragraph (e)(ii)B, the Subcontractor may disclose Confidential Information to:
        1. an employee, officer, agent, legal adviser, insurer, subsubcontractor or proposed subsubcontractor of the Subcontractor who needs to know the Confidential Information to enable the Subcontractor to perform its obligations under the Subcontract; and
        2. such other persons, provided the Subcontractor has obtained the prior written approval of the Contractor's Representative (including on such conditions as the Contractor's Representative may impose in its absolute discretion),

provided that the Subcontractor must ensure that:

* + - 1. all such persons strictly comply with equivalent obligations as are imposed on the Subcontractor by this clause 20 in respect of all Confidential Information disclosed to them; and
      2. in the case of disclosure to a subsubcontractor or proposed subsubcontractor and prior to making any disclosure, the Subcontractor has entered into a written agreement with the relevant person, which:
         1. imposes equivalent obligations as are imposed on the Subcontractor by this Subcontract in respect of all Confidential Information disclosed to them; and
         2. is expressed to be made for the benefit of the Subcontractor, the Contractor and the Commonwealth.
    1. The Subcontractor 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 notified by the MCC Contract Administrator or the Contractor’s Representative, the Contractor or the Commonwealth including in respect of any Security or Confidentiality Incident; and
       2. without limiting paragraph (d) or subparagraph (i), ensure:
          1. that persons performing the roles specified in the Subcontract Particulars hold and maintain a security clearance at or above the level specified in the Subcontract Particulars;
          2. that no Sensitive and Classified Information is released to any third party, without the prior written approval of the originator through the Contractor's Representative (including on such conditions as the Contractor's Representative may impose in its absolute discretion); and
          3. all subsubcontracts include provisions equivalent to the obligations of the Subcontractor in this clause 20.
    2. Without limiting the Subcontractor's strict obligations under paragraph (e)(i), the security classification of the information and assets accessible to the Subcontractor in connection with the Subcontract is anticipated to be at or below the level specified in the Subcontract Particulars, provided that if the Subcontractor is required to access information and assets above the specified level, this will be deemed to be a change in Statutory Requirements for the purposes of clause 8.4.
    3. Within such period as the Contractor's Representative may direct, the Subcontractor must, in accordance with the other terms of the direction, provide:
       1. evidence of the Subcontractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 20; and
       2. a statutory declaration in a form and from an authorised officer satisfactory to the Contractor's Representative (acting reasonably) in respect of the Subcontractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 20.
  1. Security or Confidentiality Incidents

The Subcontractor must:

* + 1. detect all actual or potential Security or Confidentiality Incidents;
    2. immediately notify the Contractor's Representative and the Contractor if it becomes aware of any actual or potential Security or Confidentiality Incident;
    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; and
    4. take all other steps as may be notified by the MCC Contract Administrator or the Contractor's Representative, the Contractor or the Commonwealth under clause 20.2(e)(i)B in respect of the Security or Confidentiality Incident or as necessary to comply with an Information Security Requirement.
  1. Return and Retention of Confidential Information
     1. Subject to paragraph (b), the Subcontractor must return to the Contractor or destroy all documents in its possession, power or control which contain any Confidential Information:
        1. in accordance with the Information Security Requirements; and
        2. without limiting subparagraph (i), where the Confidential Information is no longer required for the purposes of the Subcontract.
     2. Subject to ongoing compliance with the other requirements of this clause 20 in respect of confidentiality and information security, the Subcontractor may retain Confidential Information in its records if retention is required to comply with the Information Security Requirements or any other Statutory Requirement, insurance obligation or otherwise with the prior written approval of the Contractor's Representative (including on such conditions as the Contractor's Representative may impose in its absolute discretion).
     3. If the Subcontractor is aware that documents containing the Confidential Information are beyond its possession or control, then the Subcontractor must provide 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 paragraphs (a) and (b) as applicable.
  2. Release and Indemnity

The Subcontractor:

* + 1. must bear, and releases the Contractor in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor or any other person or entity arising out of or in connection with a Security or Confidentiality Incident or the exercise of any of the Contractor's Representative's or the Contractor’s absolute discretions under clause 20; and
    2. indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with a Security or Confidentiality Incident.

1. STRATEGIC NOTICE EVENT
   1. Subcontractor’s Warranty on Award Date

The Subcontractor warrants that, on the Award Date, it is not aware of any Strategic Notice Event.

* 1. Subcontractor to Give Notice

If, at any time, the Subcontractor becomes aware of any Strategic Notice Event, the Subcontractor must, as soon as reasonably practicable, notify the MCC Contract Administrator and the Contractor’s Representative, providing details, to the extent such details are known by or reasonably available to the Subcontractor, of:

* + 1. the Strategic Notice Event, including:
       1. whether the Subcontractor 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 Subcontractor became aware of the Strategic Notice Event; and
       3. whether any of the Subcontractor's key people, other personnel engaged in connection with the Subcontractor's Activities or any officers or employees of any subsubcontractors were involved; and
    2. the steps which the Subcontractor 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 Contractor or the Commonwealth.
  1. Contractor Rights Upon Occurrence of Strategic Notice Event

Without limiting any other right or remedy of the Contractor or the Commonwealth (under the Subcontract or otherwise at law or in equity), if:

* + 1. the Subcontractor:
       1. notifies the MCC Contract Administrator and the Contractor's Representative under clause 21.2; or
       2. has given a false warranty in any respect under clause 21.1 or has failed to strictly comply with clause 21; or
    2. the Contractor otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Strategic Notice Event,

the Contractor may (in its absolute discretion) and either itself, or through the Contractor's Representative, do any one or more of the following:

* + 1. notify the Subcontractor 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 Subcontractor; and
       2. steps which the Subcontractor 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 Contractor or the Commonwealth,

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

* + 1. regardless of whether or not the Subcontractor has received a notice under paragraph (c), notify the Subcontractor that the Subcontractor may continue to perform the Subcontractor's Activities, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Subcontractor preparing and implementing a Strategic Notice Event Remediation Plan in accordance with clause 21.4; and
    2. regardless of whether or not the Contractor has notified the Subcontractor under paragraphs (c) or (d), take into account the occurrence of a Strategic Notice Event at any time, including when:
       1. deciding whether to consent to the subcontracting of any of the Subcontractor's Activities or the Subcontract Works (including where required under clause 8.5(a));
       2. conducting performance reviews, providing a direction to remove a person from the Site or the Subcontractor's Activities (including in accordance with clause 3.7), or exercising any rights of the Contractor in relation to access, audit or the treatment of documentation under or in connection with the Subcontract (including in accordance with clause 6.12); and
       3. deciding whether to exercise any rights in relation to termination or to omit parts of the Subcontract Works by Variation Order.
  1. Strategic Notice Event Remediation Plan
     1. If notified by the Contractor under clause 21.3(d), the Subcontractor must prepare and submit a draft Strategic Notice Event Remediation Plan to the Contractor's Representative for approval within 10 business days of the Contractor's notice (or longer period agreed in writing by the Contractor's Representative).
     2. A draft Strategic Notice Event Remediation Plan prepared by the Subcontractor under paragraph (a) must include the following information:
        1. how the Subcontractor will address the Strategic Notice Event to minimise the impact of the Strategic Notice Event on the Subcontractor's Activities and the Subcontract Works;
        2. confirmation that the implementation of the Strategic Notice Event Remediation Plan will not in any way impact on the compliance by the Subcontractor with its other obligations under the Subcontract;
        3. how the Subcontractor will seek to ensure that any events of a similar nature to the Strategic Notice Event do not occur again;
        4. if the Strategic Notice Event involves a Material Change, how the Material Change will impact the Subcontractor's original agreement with the Contractor; and
        5. any other matter reasonably requested by the Contractor.
     3. The Contractor's Representative will review the draft Strategic Notice Event Remediation Plan and either approve it or provide the Subcontractor with the details of any changes that are required. The Subcontractor must make any changes reasonably requested by the Contractor's Representative and resubmit the draft Strategic Notice Event Remediation Plan to the Contractor's Representative within 5 business days of the request (or longer period agreed in writing by the Contractor's Representative). This paragraph (c) will apply to any resubmitted draft Strategic Notice Event Remediation Plan.
     4. Without limiting its other obligations under the Subcontract, the Subcontractor must:
        1. comply with each Strategic Notice Event Remediation Plan as approved by the Contractor's Representative; and
        2. provide such reports and other information about the Subcontractor's progress in implementing the Strategic Notice Event Remediation Plan as may be reasonably requested by the Contractor's Representative.
  2. Additional Obligations in respect of Known or Suspected Fraud or Corruption

Without limiting the Subcontractor's other obligations under this clause 21, the Subcontractor must:

* + 1. proactively:
       1. take all necessary measures to prevent, detect and investigate any known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Subcontract or the Subcontractor's Activities (including all measures directed by the Contractor's Representative);
       2. take all necessary corrective action to mitigate any loss or damage to the Contractor and the Commonwealth resulting from known or suspected Fraud or Corruption to the extent that the Fraud or Corruption was caused or contributed to by the Subcontractor or any of its officers, employees, subsubcontractors or agents and put the Contractor and the Commonwealth in the position it would have been in if the Fraud or Corruption had not occurred (including all corrective action directed by the Contractor's Representative); and
       3. take all reasonable steps to ensure that any of its officers, employees, subsubcontractors or agents that report any known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Subcontract or the Subcontractor's Activities are protected from reprisals; and
    2. provide all assistance reasonably required in respect of any investigation undertaken by the Contractor, or the Commonwealth or any third party investigator appointed by either of them in respect of the known or suspected Fraud or Corruption.
  1. Release

The Subcontractor must bear, and releases the Contractor in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Subcontractor or any other person or entity arising out of or in connection with the Strategic Notice Event or the exercise of any of the Contractor's Representative's or the Contractor’s absolute discretions under clause 21.

* 1. Subcontractor's Compliance
     1. Nothing in this clause 21 requires the Subcontractor 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 Subcontractor 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 Subcontractor, or any Related Body Corporate of the Subcontractor, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Subcontractor must disclose the information to the Contractor's Representative promptly after disclosure is made to the stock exchange or body.
     2. Notwithstanding any restriction that may apply in respect of specific information, such as that described in paragraph (a), the Subcontractor must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 21 is achieved.

1. FINANCIAL VIABILITY
   * 1. The Subcontractor:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2:
           1. it has the financial viability necessary to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage and otherwise meet its obligations under the Subcontract (including the payment of all subsubcontractors (in accordance with paragraph (b)); and
           2. each subsubcontractor engaged in the Subcontractor’s Activities, the Subcontract Works or each Stage has the financial viability necessary to perform its activities in accordance with the relevant subsubcontract; and
        2. acknowledges and agrees that the Contractor has entered into the Subcontract and if applicable has made payments to the Subcontractor under clause 12.5, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 22.
     2. The Subcontractor must pay all subsubcontractors in accordance with the payment terms in all subsubcontracts.
     3. The Subcontractor must keep the Contractor’s Representative fully and regularly informed as to all financial viability matters which could adversely affect:
        1. the Subcontractor’s ability to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage or otherwise meet its obligations under the Subcontract; and
        2. a subsubcontractor’s ability to perform its activities in accordance with the relevant subsubcontract,

including any potential or actual change in:

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

to provide the Contractor’s Representative and any independent financial adviser engaged by the Contractor with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Contractor, the Contractor’s Representative and the independent financial adviser engaged by the Contractor for the purpose of demonstrating that:

* + - * 1. the Subcontractor has the financial viability necessary to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage and otherwise meet its obligations under the Subcontract (including the payment of all subsubcontractors in accordance with paragraph (b)); or
        2. a subsubcontractor has the financial viability necessary to perform its activities in accordance with the relevant subsubcontract.
    1. If the Contractor considers (in its absolute discretion) that there could be or has been a change in:
       1. the Subcontractor’s financial viability; or
       2. a subsubcontractor’s financial viability,

which could adversely affect:

* + - 1. the Subcontractor’s ability to perform the Subcontractor’s Activities, achieve Completion of the Subcontract Works or each Stage or otherwise meet its obligations under the Subcontract; or
      2. a subsubcontractor’s ability to perform its activities in accordance with the relevant subsubcontract,

the Contractor’s Representative may (in its absolute discretion) direct the Subcontractor to take such steps as the Contractor considers necessary to secure the performance of the Subcontractor’s Activities, the Completion of the Subcontract Works or each Stage and the meeting of its obligations under the Subcontract, including requiring the Subcontractor to:

* + - 1. provide additional Approved Security in the form and for an amount required by the Contractor;
      2. provide a deed of guarantee and undertaking in the form required by the Contractor;
      3. establish a trust account for the payment of subsubcontractors on the terms (including any trust deed) required by the Contractor;
      4. provide a Subcontractor Deed of Covenant; or
      5. provide Collateral Warranties.
    1. If the Contractor’s Representative gives a direction under paragraph (e), then the Subcontractor must take such steps as the Contractor considers necessary to better secure a subsubcontractor’s ability to perform its activities in accordance with the relevant subsubcontract, including any of the steps notified by the Contractor.
    2. The Subcontractor acknowledges and agrees that:
       1. nothing in clause 22 will limit, reduce, or otherwise affect any of the rights of the Contractor under the Subcontract or otherwise at law or in equity; and
       2. clause 22 does not give the Subcontractor (or any subsubcontractor) any rights.
    3. Unless otherwise approved by the Contractor's Representative, the Subcontractor must ensure that each subsubcontract includes provisions equivalent to the obligations of the Subcontractor in clause 22.

1. ESTATE INFORMATION
   1. Subcontractor Estate Information Obligations
      1. The Subcontractor must:
         1. carry out and fulfil all Subcontractor Estate Information Obligations; and
         2. ensure that all Subcontractor Estate Information Obligations are carried out:
            1. within any applicable timeframe prescribed by the Subcontract or the Defence Estate Information Management Requirements; and
            2. in relation to the obligations contained in Annexure 1, in a manner and at a rate which will give the Contractor's Representative a reasonable opportunity to review the relevant Estate Information within the period of time within which the Contractor's Representative may review the relevant Estate Information in accordance with Annexure 1.
      2. The Subcontractor warrants that all Estate Information assessed, created, managed, updated and recorded in accordance with this clause 23 will be:
         1. prepared and completed in accordance with the requirements of the Subcontract; and
         2. complete, fit for purpose and free from errors and omissions.
   2. No Obligation to Review
      1. The Contractor's Representative does not assume or owe any duty of care to the Subcontractor to review, or in reviewing, any Estate Information submitted by the Subcontractor for errors, omissions or compliance with the Subcontract.
      2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Estate Information prepared by the Subcontractor or any other direction by the Contractor's Representative about, or any other act or omission by the Contractor's Representative or otherwise by or on behalf of the Commonwealth in relation to, any Estate Information will:
         1. relieve the Subcontractor from, or alter or affect, the Subcontractor's obligations under the Subcontract or otherwise at law or in equity; or
         2. prejudice the Contractor's rights against the Subcontractor under the Subcontract or otherwise at law or in equity.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Subcontract Particulars | | | | | | | |
| CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS | | | | | | | |
| **Completion - additional conditions precedent to Completion**:(Clause 1.1) | |  | | | | | |
| **Contractor**: (Clause 1.1) | |  | | | | | |
| **Contractor’s Environmental Management and Sustainability Plan**: (Clause 1.1) | |  | | | | | |
| **Contractor’s Project Lifecycle and HOTO Plan**: (Clause 1.1) | |  | | | | | |
| **Contractor's Project Plans (additional):** (Clause 1.1) | |  | | | | | |
| **Contractor’s Quality Plan**: (Clause 1.1) | |  | | | | | |
| **Contractor’s Representative**: (Clause 1.1) | |  | | | | | |
| **Contractor’s Site Management Plan**: (Clause 1.1) | |  | | | | | |
| **Contractor’s Work Health and Safety Plan**: (Clause 1.1) | |  | | | | | |
| **Date for Completion**: (Clause 1.1) | | Where there are no Stages, for the Subcontract Works is: | | | | | |
| Where there are Stages, for each Stage is: | | | | | |
| **Stage** | | | | **Date for Completion** | |
|  | | | |  | |
|  | | | |  | |
|  | | | |  | |
| **Defects Liability Period**: (Clause 1.1) | |  | | | | | |
| **Defence Asbestos Register**: (Clause 1.1) | |  | | | | | |
| **EMOS Contractor**: (Clause 1.1) | |  | | | | | |
| **Environmental Management and Sustainability Plan** **(additional)**:  (Clause 1.1) | | ***[CONTRACTOR TO INCLUDE (AMONG OTHER THINGS) ANY ADDITIONAL MATTERS ARISING FROM ITS SUPPLIER ENVIRONMENTAL SUSTAINABILITY PLAN UNDER THE MANAGING CONTRACTOR CONTRACT]*** | | | | | |
| **Environmental Objectives** **(additional)**:  (Clause 1.1) | |  | | | | | |
| **Environmental Requirements** **(additional)**: (Clause 1.1) | |  | | | | | |
| **Executive Negotiators**: (Clause 1.1) | | **Contractor**:  **Subcontractor**: [To be inserted following selection of the successful Tenderer] | | | | | |
| **Managing Contractor Contract**: (Clause 1.1) | |  | | | | | |
| **MCC Contract Administrator**: (Clause 1.1) |  |  | | | | | |
| **MCC Works**:(Clause 1.1) |  |  | | | | | |
| **Pandemic Adjustment Event (additional):**  (Clause 1.1) |  |  | | | | | |
| **Preliminary Design Solution (if any)**:(Clause 1.1) |  |  | | | | | |
| **Project Plans** **(additional)**: (Clause 1.1) |  | If clause [9] of the Special Conditions applies, Method of Work Plan for Airfield Activities.  ***[CONTRACTOR TO INSERT ANY ADDITIONAL PLANS REQUIRED]*** | | | | | |
| **Provisional Sum Work**: (Clauses 1.1, 8.9, 8.10, 8.11 and 8.12) |  | **Work or Goods** | | | | **Amount** | |
|  | | | | $ | |
|  | | | | $ | |
|  | | | | $ | |
| **Total:** | | | | $ | |
| **Quality Manager**:(Clause 1.1) |  | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Quality Objectives** **(additional)**: (Clause 1.1) |  |  | | | | | |
| **Quality Plan** **(additional)**: (Clause 1.1) |  |  | | | | | |
| **Schedule of Collateral Documents**: (Clause 1.1) |  | 1. Approved Security (Unconditional Undertaking) 2. Collateral Warranty 3. Consultant Deed of Covenant 4. Consultant Design Certificate 5. Subcontractor Deed of Covenant 6. Subcontractor Design Certificate 7. Subsubcontractor Deed of Covenant 8. Subsubcontractor Design Certificate 9. Deed of Guarantee and Undertaking 10. Payment Claim 11. Payment Statement 12. Expert Determination Agreement | | | | | |
| **Schedule of Rates**:(Clause 1.1) |  |  | | | | | |
| **Site**:(Clause 1.1) |  |  | | | | | |
| **Site Management Plan** **(additional)**: (Clause 1.1) |  |  | | | | | |
| **Stages** **of the Subcontract Works**: (Clause 1.1) |  |  | | | | | |
| **Subcontract** - **other documents forming part of the** **Subcontract**: (Clause 1.1) |  |  | | | | | |
| **Subcontract Price:** (Clause 1.1) |  | (a) a lump sum of $ ; and  (b) where a Schedule of Rates exists, the amount calculated by multiplying the quantity of work carried out which is covered by the Schedule of Rates by the rate or price in the Schedule of Rates for that work,  neither of which is, unless elsewhere stated, subject to rise and fall in costs. | | | | | |
| **Subcontract Works**: (Clause 1.1) |  |  | | | | | |
| **Subcontractor**:(Clause 1.1) |  |  | | | | | |
| **Subcontractor’s Representative**: (Clause 1.1) |  | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Table of Variation Rates and Prices**: (Clause 1.1) |  | [To be inserted following selection of the successful Tenderer] | | | | | |
| **WOL Objectives** **(additional)**: (Clause 1.1) |  |  | | | | | |
| **Work Health and Safety Plan** **(additional)**: (Clause 1.1) |  |  | | | | | |
| **Governing law**:(Clause 1.3(a)) |  |  | | | | | |
| CLAUSE 2 - COMMENCEMENT |  |  | | | | | |
| **Other conditions precedent to Site access**: (Clause 2.3(a)(i)C) |  |  | | | | | |
| **Date for commencement on Site**:(Clause 2.3(a)(ii)) | |  | | | | | | |
| CLAUSE 3 - PERSONNEL |  |  | | | | | |
| **Contractor’s Representative’s representatives and their functions**: (Clause 3.4) |  | **Representative** | | | | **Function(s)** | |
|  | | | |  | |
|  | | | |  | |
| **Subcontractor’s key people**: (Clause 3.6(a)) |  | **Person** | | | | **Position** | |
| [To be inserted following selection of the successful Tenderer] | | | | [To be inserted following selection of the successful Tenderer] | |
| [To be inserted following selection of the successful Tenderer] | | | | [To be inserted following selection of the successful Tenderer] | |
| CLAUSE 4 - SECURITY | | | | | | | |
| **Security to be provided by the Subcontractor**: (Clauses 1.1 and 4.1) |  | ***[NOTE THAT THE FORM OF SECURITY MUST BE SPECIFIED. DELETE WHICHEVER OPTION DOES NOT APPLY]***  **Approved Security**  Where there are no Stages, for the Subcontract Works is:  $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount).  Where there are Stages, for each Stage:  ***[WHERE SECURITY IS TO BE PROVIDED FOR EACH STAGE, CONTRACTOR TO CONSIDER CUMULATIVE TOTAL AMOUNT OF THE SECURITY BEING REQUESTED. IF A PERCENTAGE AMOUNT IS REQUIRED, CONSIDER INSERTING THE WORDS "REFERABLE TO THE STAGE" AFTER THE WORDS "SUBCONTRACT PRICE"]*** | | | | | |
| **Stage** | | | | **Amount** | |
|  | | | | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | |
|  | | | | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | |
|  | | | | $ or % of the Subcontract Price (in the form of two Approved Securities, each for 50% of this amount). | |
| ***[OR]***  **Retention Moneys**, which (if there are Stages) is held in respect of the Subcontract Works only and not in respect of each Stage. | | | | | |
| CLAUSE 5 - RISKS AND INSURANCE |  |  | | | | | |
| **Insurance policies required to be effected by the Contractor**: (Clause 5.4) |  | ***[LEVELS OF INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT]***  **Construction Risks Insurance**  Amount of Cover:  (a) $ (the Subcontract Price if no amount is specified);  (b) $ or % of the Subcontract Price to cover the costs of demolition and removal of debris;  (c) $ or % of the Subcontract Price to cover the Contractor’s consultant fees;  (d) $ for the value of materials or things to be supplied by the Contractor; and  (e) % of the total of the amounts in (a) to (d) to cover escalation costs.  **Public Liability Insurance**  If written on an occurrence basis:  Amount of Cover: $ for each and every occurrence for public liability claims  If written on a claims made basis:  Amount of Cover $ per claim and $ in the aggregate. | | | | | |
|  | **Other Insurances:**  ***[OTHER SPECIFIED INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT]*** | | | | | |
| **Insurance policies required to be obtained by the Subcontractor**:(Clauses 5.5(a) and 5.5(c)) |  | ***[CONTRACTOR AND CONTRACTOR’S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM THE CONTRACTOR'S INSURANCE BROKER.***  ***WHERE THE CONTRACTOR INTENDS TO INCLUDE INDICATIVE LEVELS OF INSURANCE, THE WORDS "[To be inserted following selection of the successful Tenderer, indicatively $[INSERT AMOUNT]]" AND THE RELEVANT AMOUNT SHOULD BE INCLUDED.***  ***WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT]***  **Workers Compensation Insurance**  Amount of Cover: Amount of Cover prescribed by Statutory Requirement in the State or Territory in which the Subcontractor’s Activities are performed or the Subcontractor’s employees perform work, are employed or normally reside.  **Employers’ Liability Insurance**  Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Subcontractor’s Activities would purchase which must not be less than $ .  **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | |
|  | **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate.  **Other Insurances:** (Clause 5.5(a)(iv))  ***[CONTRACTOR AND CONTRACTOR’S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED EG TRANSIT INSURANCE FOR KEY ITEMS TRANSPORTED TO THE SITE, PRODUCT LIABILITY INSURANCE, MOTOR VEHICLE INSURANCE, INDUSTRIAL SPECIAL RISKS INSURANCE ETC]*** | | | | | |
| **Minimum amount of subsubcontractors’ Professional Indemnity Insurance or Errors and Omissions Insurance**: (Clause 5.5(g)) |  | **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate  **Errors and Omissions Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | |
| **Run-off period for Public Liability Insurance (if written on a claims made basis)**: (Clause 5.7(b)) |  | Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years. | | | | | |
| **Run-off period for Errors and Omissions Insurance or Professional Indemnity Insurance**: (Clause 5.7(d)) |  | Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years. | | | | | |
| **Maximum aggregate liability of the Subcontractor to the Contractor:**  (Clause 5.12) |  | $ | | | | | |
| CLAUSE 6 - DESIGN AND DOCUMENTATION | | | | | | | |
| **Number of days for review**:(Clauses 6.3(a)(ii) and 6.3(c)) |  | days | | | | | |
| **Number of copies of Design Documentation to be submitted by the Subcontractor to the Contractor’s Representative**: (Clause 6.5) |  |  | | | | | |
| **Design Documentation hard copy requirements**: (Clause 6.5(a)) |  | Compatible with Autocad 14 To scale Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contractor’s Representative) | | | | | |
| **Design Documentation electronic copy requirements**: (Clause 6.5(b)) |  | Compatible with Autocad 14 CD-ROM or as determined by the Contractor’s Representative | | | | | |
| **Order of precedence of Subcontract documents in the case of any ambiguity, discrepancy or inconsistency**: (Clause 6.11(a)) |  | 1. Formal Agreement 2. Conditions of Subcontract 3. Special Conditions 4. Subcontract Particulars 5. Subcontract Works Description 6. Any other documents forming part of the Subcontract (as specified in the relevant item under clause 1.1 in these Subcontract Particulars) 7. Design Documentation which the Subcontractor is entitled to use under clause 6.3(c) 8. Project Plans | | | | | |
| **Number of days for sample review**: (Clauses 6.14(b)(ii) and 6.14(d)) |  | days | | | | | |
| CLAUSE 7 - SITE |  |  | | | | | |
| **Applicability of Latent Condition clauses**:(Clauses 7.3 and 7.4) |  | Clauses 7.3 - 7.4 ***[DO/DO NOT]*** apply. (Clauses 7.3 and 7.4 apply unless otherwise stated) | | | | | |
| CLAUSE 8 - CONSTRUCTION |  |  | | | | | |
| **Statutory Requirements with which the Subcontractor does not need to comply**: (Clause 8.3(a)) |  |  | | | | | |
| **Approvals which the Subcontractor is not to obtain**: (Clause 8.3(b)) |  | ***[TO THE EXTENT THE CONTRACTOR WILL BE RESPONSIBLE FOR OBTAINING AN APPROVAL AFTER THE AWARD DATE, THE CONTRACTOR AND CONTRACTOR'S REPRESENTATIVE SHOULD CONSULT WITH ITS LEGAL ADVISER IN RESPECT OF ANY REQUIRED SPECIAL CONDITION]*** | | | | | |
| **Work which requires approval to subcontract or which must be let to one of the named subsubcontractors**: (Clause 8.5(a)) |  | **Work or Goods** | | | | **Subsubcontractors** | |
|  | | | |  | |
|  | | | |  | |
| **Stages for which Collateral Warranties are required**: (Clause 8.6) |  |  | | | | | |
| **Collateral Warranties required to be procured by the Subcontractor from subsubcontractors and provided to the Contractor**: (Clause 8.6) |  | As set out in Annexure 1 | | | | | |
| **Option for responsibility for preparation of design for Provisional Sum Work**: (Clause 8.8) |  | ***[OPTION 1/OPTION 2]*** applies. (Option 1 applies unless otherwise stated) | | | | | |
| **Subcontractor to invite tenders for Provisional Sum Work from the following tenderers**: (Clause 8.9(a)(i)) |  | **Work** | | | | **Tenderers** | |
|  | | | |  | |
| **Form of subsubcontract approved for Provisional Sum Work**: (Clause 8.9(a)(ii)) |  |  | | | | | |
| **Percentage excess entitling additional profit and attendance**: (Clause 8.12) |  | (20% unless otherwise stated) | | | | | |
| **Percentage for additional profit and attendance for Provisional Sum Work exceeding the total amount for Provisional Sum Work by the stated percentage**: (Clause 8.12) |  | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Stages for which a certificate signed by a licensed surveyor is required as condition precedent to Completion**: (Clause 8.15) |  |  | | | | | |
| **Access hours for Subcontractor’s Activities on Site**:(Clause 8.23) |  |  | | | | | |
| **Imported items**:(Clause 8.24) |  | Clause 8.24 ***[DOES/DOES NOT]*** apply.  (Clause 8.24 does not apply unless otherwise stated)  ***[IF CLAUSE 8.24 APPLIES, INSERT DETAILS OF IMPORTED ITEMS TO WHICH CLAUSE 8.24 WILL APPLY]*** | | | | | |
| **Exchange rate lodged by the Subcontractor in its tender:**  (Clause 8.24(b)(i)) |  | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Project signboards:** (Clause 8.26) |  | Clause 8.26 ***[DOES/DOES NOT]*** apply.  (Clause 8.26 does not apply unless otherwise stated) | | | | | |
| **Number of project signboards**: (Clause 8.26(a)) |  |  | | | | | |
| **Project signboard dimensions**:(Clause 8.26(b)(i)) |  |  | | | | | |
| **Project signboard (Acknowledgement of Country):**  (Clause 8.26(b)(ii)I) |  | https://www.defence.gov.au/acknowledgment-of-country | | | | | |
| **Project signboard information (additional)**: (Clause 8.26(b)(ii)J) |  |  | | | | | |
| CLAUSE 9 - QUALITY | | | | | | | |
| **Reference development for purpose of determining minimum standards for workmanship and materials**: (Clause 9.1) |  |  | | | | | |
| **Number of days for submission of Project Plans**:  (Clause 9.2(a)(ii)A) |  | Environmental Management and Sustainability Plan: | | | | days | |
|  |
| Estate Information Provision Plan: | | | | days | |
| Project Lifecycle and HOTO Plan: | | | | days | |
| Quality Plan: | | | | days | |
| Site Management Plan: | | | | days | |
| Work Health and Safety Plan: | | | | days | |
| **Other *[SPECIFY]*** | | | | days | |
| **Number of days for review of Project Plans**: (Clause 9.2(a)(ii)B) | |  | | Environmental Management and Sustainability Plan: | | | days | |
| Estate Information Provision Plan: | | | days | |
| Project Lifecycle and HOTO Plan | | | days | |
| Quality Plan: | | | days | |
| Site Management Plan: | | | days | |
| Work Health and Safety Plan: | | | days | |
| **Other: *[SPECIFY]*** | | | days | |
| **Period by which Defects Liability Period will be extended following rectification of a Defect or Completion of a Variation to overcome a Defect**: (Clause 9.11) |  | |  | | | | |
| **Defects records and reports (additional)**: (Clause 9.14(b)(vi)) |  | |  | | | | |
| CLAUSE 10 - TIME | | | | | | | |
| **Maximum intervals between program updates by Subcontractor**: (Clause 10.2(b)(ii)) | | |  | | | | |
| **Program format to be compatible with**:(Clause 10.2(b)(iv)) | | | ***[PRIMAVERA SURETRAK/MICROSOFT PROJECT]*** or approved equivalent | | | | |
| **Additional causes of delay entitling Subcontractor** **to claim an extension of time**:(Clause 10.5(b)(i)) | | | 1. Statewide industrial disputation or other industrial disputation caused by the Commonwealth, which in neither case is caused or contributed to by the Subcontractor or any subsubcontractor of the Subcontractor 2. A change or variance in respect of a Statutory Requirement after the Award Date 3. A Contractor Risk 4. If clauses 7.3 - 7.4 apply, a Latent Condition 5. Valuable, archaeological or special interest items found on or in the Site 6. If clause 1 of the Special Conditions applies, Latent Hazardous Substances, Asbestos, ACM or GHS Material 7. A Pandemic Adjustment Event 8. A bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Subcontractor’s Activities | | | | |
| **Delay damages**:(Clause 10.10) | | | Clause 10.10 ***[DOES/DOES NOT]*** apply. (Clause 10.10 applies unless otherwise stated)  If clause 10.10 applies:  Where there are no Stages, the daily cap is:  $ per working day | | | | |
| If there are Stages, the daily cap is: | | | | |
| **Stage** | | | **Maximum delay damages** | |
|  | | | $ per working day | |
|  | | | $ per working day | |
|  | | | $ per working day | |
|  | | | $ per working day | |
| **Percentage of extra costs reasonably incurred due to acceleration**: (Clause 10.14(b)(ii)) | | | [To be inserted following selection of the successful Tenderer]% (5% unless otherwise stated) | | | | |
| CLAUSE 11 - VARIATIONS | | | | | | | |
| **Percentage adjustments for valuing a Variation**:(Clauses 11.3(b)(i), 11.3(c)(iii) and 11.6(f)) | | | [To be inserted following selection of the successful Tenderer]% of amount determined for off-site overheads and profit  [To be inserted following selection of the successful Tenderer]% of amount determined for non-time related on-site overheads and preliminaries | | | | |
| **Percentage of wages**:(Clause 11.6(b)) | | | [To be inserted following selection of the successful Tenderer]% | | | | |
| CLAUSE 12 - PAYMENT | | | | | | | |
| **Times for submission of payment claims by the Subcontractor to the Contractor’s Representative**: (Clause 12.2(a)) | | | Monthly on the day of each month | | | | |
| **Percentage of Retention Moneys**: (Clause 12.5(a)) | | | (unless otherwise stated the following retention percentages apply: the Contractor may deduct 10% from each payment until 5% of the Subcontract Price is retained as retention moneys) | | | | |
| **Email address for copy of tax invoice:**  (Clause 12.5(b)) | | |  | | | | |
| **Number of business days for payment**:(Clause 12.5(c)) | | | To the extent that the relevant part of the Subcontractor’s Activities is carried out in:   1. Queensland, New South Wales or the Australian Capital Territory: 5; or 2. any other State or Territory: 10. | | | | |
| **Interest rate**:(Clause 12.13) | | | In the case of:   1. damages - the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contractor’s Representative; or 2. late payments - the greater of:    * 1. the rate in paragraph (1); and      2. the rate of interest prescribed under any applicable Security of Payment Legislation. | | | | |
| **Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority**: (Clause 12.18(d)) | | | To the extent that the relevant part of the Subcontractor’s Activities is carried out in:   1. the Northern Territory, the Resolution Institute of the Northern Territory Chapter; 2. Western Australia, the Resolution Institute of the Western Australian Chapter; 3. Victoria, any one of the following:    * 1. Resolution Institute, Victorian Chapter;      2. Building Adjudication Victoria Inc; or      3. Rialto Adjudications Pty Ltd; or 4. any other State or Territory (save for Queensland), the Resolution Institute of the Chapter in that State or Territory. | | | | |
| **Facilities and infrastructure accounting (additional)**:(Clause 12.21(b)) | | |  | | | | |
| **Limits of accuracy for quantities in Schedule of Rates**:(Clause 12.23(c)) | | | Upper Limit:  (115% unless otherwise stated)  Lower Limit:  (85% unless otherwise stated) | | | | |
| CLAUSE 13 - COMPLETION | | | | | | | |
| **Liquidated damages payable by Subcontractor when Date of Completion occurs after Date for Completion**: (Clause 13.7) | | | If there are no Stages, for the Subcontract Works is:  $ per day.  If there are Stages, for each Stage is: | | | | |
| **Stage** | | **Liquidated Damages** | | |
|  | | $ per day | | |
|  | | $ per day | | |
| CLAUSE 14 - TERMINATION | | | | | | | |
| **Number of days to remedy breach**:(Clauses 14.3(c) and 14.4(b)) | | | days | | | | |
| CLAUSE 15 - DISPUTES | | | | | | | |
| **Directions to be subject of an expert determination if disputed**: (Clause 15.2) | | | Directions under clauses: 2.4(a)(ii), 4.2, 7.3(b)(i), 7.4(a)(ii), 8.4(b)(ii), 8.4(c), 8.21(d)(ii), 8.29, 9.5, 9.9(b)(i), 9.10, 10.8, 10.11(b)(ii)B, 11.3(b), 11.3(c)(ii), 11.3(d), 11.6, 12.4, 12.23(e)(ii), 13.2(b)(ii), 14.8(a), 18.3(e)(ii) and 18.3(e)(iii) and if clause 1 of the Special Conditions applies, clause 1.1(b)(i) of the Special Conditions and clause 1.2(b) of the Special Conditions. | | | | |
| **Industry expert who will conduct expert determinations**:(Clause 15.3(a)(i)) | | |  | | | | |
| **Nominating authority for industry expert**: (Clause 15.3(a)(ii)) | | | (The President for the time being of the Resolution Institute unless otherwise specified) | | | | |
| CLAUSE 16 - NOTICES | | | | | | | |
| **Address and email address, for the giving or serving of notices, upon**: (Clause 16.7(b)(i)) | | | **Contractor**:  Address (not PO Box):  Email address:  Attention:  **Contractor’s Representative**:  Address (not PO Box):  Email address:  Attention:  **Subcontractor**:  Address (not PO Box): [To be inserted following selection of the successful Tenderer]  Email address: [To be inserted following selection of the successful Tenderer]  Attention: [To be inserted following selection of the successful Tenderer] | | | | |
| CLAUSE 18 - GENERAL | | | | | | | |
| **Defence's Security Alert System level**:(Clause 18.3(d)(i)) | | | (“Aware” if not otherwise specified) | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 18.13) | | | Clause 18.13 ***[DOES/DOES NOT]*** apply.  (Clause 18.13 does apply unless otherwise stated)  ***[CLAUSE 18.13*** ***WILL APPLY WHERE THE SUBCONTRACT PRICE IS VALUED (OR ESTIMATED) TO BE OVER $4 MILLION (INCLUSIVE OF GST)]*** | | | | |
| CLAUSE 19 - COMMERCIAL-IN-CONFIDENCE INFORMATION | | | | | | | |
| **Commercial-in-Confidence Information**: (Clause 19) | | | Clause 19 [does/does not] apply.  [To be inserted following selection of the successful Tenderer]  (Clause 19 does not apply unless otherwise stated) | | | | |
| **Information which is Commercial-in-Confidence Information**: (Clause 19) | | | **Specific Information** | **Justification** | | | **Period of confidentiality** |
| [To be inserted following selection of the successful Tenderer] | [To be inserted following selection of the successful Tenderer] | | | [To be inserted following selection of the successful Tenderer] |
| CLAUSE 20 - INFORMATION SECURITY | | | | | | | |
| **DISP membership**: (Clause 20.1(a)) | | | DISP membership ***[IS/IS NOT]*** required.  Where DISP membership is required:  ***[REFER TO CONTROL 16.1 OF THE DSPF (AVAILABLE AT https://www.defence.gov.au/business-industry/industry-governance/defence-security-principles-framework) FOR GUIDANCE AS TO WHEN DISP MEMBERSHIP SHOULD BE REQUIRED AND THE RELEVANT LEVELS FOR EACH DOMAIN]*** | | | | |
| **DISP Membership / Security Domain** | | **Level** | | |
| Governance | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED) NOTING THAT, IN ACCORDANCE WITH CONTROL 16.1 OF THE DSPF, THIS MUST EQUAL THE HIGHEST LEVEL REQUIRED FOR THE OTHER THREE DOMAINS BELOW. INSERT "NOT APPLICABLE" IN THIS AND BELOW ROWS IF DISP MEMBERSHIP IS NOT REQUIRED]*** | | |
| Personnel Security | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Physical Security | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Information / Cyber Security | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| **Minimum level of security clearance and roles required to hold such clearance**:(Clause 20.2(e)(ii)A) | | | **Role** | | **Minimum level of security clearance** | | |
|  | |  | | |
| **Anticipated highest security classification of information and assets**: (Clause 20.2(f)) | | |  | | | | |

1. - Estate information
2. REVIEW BY CONTRACTOR'S REPRESENTATIVE
   * 1. The Contractor's Representative may:
        1. review any Estate Information and any other documents prepared and submitted by the Subcontractor under and in accordance with this Annexure 1 (**Annexure 1 Estate Information**), or any resubmitted Annexure 1 Estate Information; and
        2. within 14 days, or such longer period as the Contractor's Representative may reasonably require, as notified in writing to the Subcontractor:
           1. approve the Annexure 1 Estate Information; or
           2. reject the Annexure 1 Estate Information if in the Contractor's Representative's reasonable opinion the Annexure 1 Estate Information does not comply with the requirements of the Subcontract.
     2. If any Annexure 1 Estate Information is rejected, the Subcontractor must promptly (and in any event within 14 days) resubmit amended Annexure 1 Estate Information to the Contractor's Representative and paragraph (a) will reapply until the Contractor's Representative approves the relevant Annexure 1 Estate Information.
     3. Clause 23.2 of the Conditions of Subcontract will apply to any review by the Contractor's Representative in accordance with this clause 1.
     4. Without limiting any other provision of the Subcontract, and notwithstanding any approval by the Contractor's Representative under paragraph (a), where an error, defect or omission in the Annexure 1 Estate Information is identified, the Subcontractor must revise and resubmit the relevant Annexure 1 Estate Information as directed by the Contractor's Representative, and paragraph (a) will reapply.
3. "AS-CONSTRUCTED" DRAWINGS AND DOCUMENTS

The Subcontractor must:

* + 1. by no later than the date on which the Subcontractor provides its 28 day notice of anticipated Completion to the Contractor's Representative under clause 13.1(b) of the Conditions of Subcontract, prepare and submit the complete sets of the draft drawings and documents in respect of the Subcontract Works or the Stage (**Draft As-Constructed Documents**) to the Contractor's Representative for its review under clause 1(a) as follows:

***[STANDARD DISCIPLINES AND AS-CONSTRUCTED DRAWINGS/DOCUMENTS ARE INCLUDED IN THE TABLE BELOW. CONTRACTOR AND CONTRACTOR'S REPRESENTATIVE TO CONSIDER AND REMOVE THOSE NOT APPLICABLE TO THE PROJECT/SUBCONTRACTOR'S ACTIVITIES AND INCLUDE ANY ADDITIONAL DISCIPLINES AND AS-CONSTRUCTED DRAWINGS/DOCUMENTS REQUIRED]***

| **Discipline** | **As-Constructed Drawings and Documents - General** | **As Constructed Drawings and Documents - Subcontract Works or Stage specific requirements** |
| --- | --- | --- |
| *Multi-discipline* | * updated Master Site Plan (to reflect the Subcontract Works or a Stage) in accordance with the Spatial Data Management Plan and so as to show any change or modification to all infrastructure and asset features; and * surveys of the Subcontract Works or a Stage prepared in accordance with, and to the standard required by, the Spatial Data Management Plan; | ***[INSERT STAGE/S (IF APPLICABLE) AND ANY ADDITIONAL REQUIREMENTS]*** |
| *Architectural* | * building plans and floor plans, including floor types; and * provision of (or amendment to) Spaces Plan in accordance with the Spatial Data Management Plan; | ***[INSERT]*** |
| *Landscape* | * plans; * cabling/systems layout; * underground cabling/systems layout; * as-constructed metering strategy; * separate landscape management/planting drawings specifying Grassed Areas, Garden Beds, Monuments or other important built assets as specified by Estate Class 2 'I.LA' in the Estate Register Information Model (ERIM) available on the Defence Website as amended or replaced from time to time; and * separate document for landscape sustainment support; | ***[INSERT]*** |
| *Engineering Services Civil* | * underground infrastructure systems layout; * bulk earthworks plan; * roads & paths plan; and * ***[INSERT OTHER RELEVANT PLANS]***; | ***[INSERT]*** |
| *Engineering Services Structural* | * structural and sectional plans, elevations and details; | ***[INSERT]*** |
| *Engineering Services Hydraulic* | * building plans and floor plans; * cabling/systems layout; * underground cabling/systems layout; * circuit/single line/ P&ID (Piping & Instrumentation Diagram) schematic layout diagrams; and * as-constructed metering strategy; | ***[INSERT]*** |
| *Engineering Services Mechanical* | * building plans and floor plans; * cabling/systems layout; * underground cabling/systems layout; * circuit/single line/P&ID (Piping & Instrumentation Diagram) schematic layout diagrams; and * as-constructed metering strategy; | ***[INSERT]*** |
| *Engineering Services Electrical* | * building plans and floor plans; * wiring diagrams; * cabling/systems layout; * underground cabling/systems layout; * lighting and power layout, including emergency lighting and emergency power layout; * main switchboard layout; * main switchboard schematic drawings; * main switchboard circuit index; * lightning protection; * distribution board layout; * distribution board circuit index; * sub mains cabling layout; * earthing systems; * metering strategy; * update to Whole of Base HV Electrical Single Line Diagrams; and * LV Single Line Diagrams; | ***[INSERT]*** |
| *Engineering Services Communications* | * building plans and floor plans; * wiring diagrams; * cabling/systems layout; * underground cabling/systems layout; * network schematic diagrams and building service layout diagram; * cabinet layout diagram and cable patching register; * IP address register, Site/cabinet/key register; * User and Group register, audit and change logs, security settings; * room operating parameter requirements notice; and * critical recovery/restoration software files, standard operating environment configuration settings; | ***[INSERT]*** |
| *Engineering Services Security* | * building plans and floor plans; * wiring diagrams; * cabling/systems layout; * underground cabling/systems layout; * network schematic diagrams and building service layout diagram; * cabinet layout diagram and cable patching register; * IP address register, Site/cabinet/key register; * User and Group register, audit and change logs, security settings; and * critical recovery/restoration software files, standard operating environment configuration settings; | ***[INSERT]*** |
| *Engineering Services Fire* | * building plans and floor plans; * wiring diagrams; * fire detector layout; * wiring diagram for the fire alarm control panel; * cabling/systems layout; * underground cabling/systems layout; * P&ID (Piping & Instrumentation Diagram) documentation for wet fire suppression services; and * building system layout plan for wet suppression services; | ***[INSERT]*** |
| ***[OTHER DISCIPLINES - SPECIFY]*** | ***[INSERT]*** | ***[INSERT]*** |

* + 1. without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, as a condition precedent to Completion of the Subcontract Works or a Stage:
       1. update as necessary to reflect the completed Subcontract Works or Stage and resubmit the Draft As-Constructed Documents to the Contractor's Representative for review under clause 1(a), with any amendments to be clearly indicated;
       2. once approved by the Contractor's Representative, submit the final, approved versions of the Draft As-Constructed Documents to the Contractor's Representative (**Final As-Constructed Documents**); and
       3. at the same time the Subcontractor submits the Final As-Constructed Documents, provide a complete and accurate:
          1. new or updated (as applicable) metadata record for each drawing and document; and
          2. metadata record for each updated Master Site Plan dataset,

in accordance with the requirements of the Spatial Data Management Plan;

* + 1. without limiting paragraphs (a) and (b), ensure that the Draft As-Constructed Documents and Final As-Constructed Documents:
       1. are provided electronically in accordance with the Spatial Data Management Plan, or such other format directed by the Contractor's Representative;
       2. are prepared in accordance with:
          1. the Spatial Data Management Plan and the requirements contained in the EGIS; and
          2. the requirements of the Subcontract; and
       3. have the words "As-Constructed" printed in the following locations:
          1. if a document, immediately above the title and reference; and
          2. if a drawing, immediately above the title and drawing number block at the bottom right hand corner of the drawing and immediately to the left of the drawing number block at the top left hand corner of the drawing, parallel to and outside the left hand border of the drawing; and
    2. for each of the Draft As-Constructed Documents and the Final As-Constructed Documents provide to the Contractor's Representative a comprehensive document and drawing index setting out all documents and drawings prepared by the Subcontractor and by its subsubcontractors.

For the purposes of this clause 2:

* + 1. the terms **Master Site Plan** and **Spaces Plan** have the same meaning as in the Spatial Data Management Plan; and
    2. **EGIS** means the "Estate Governance & Integrity System" available on the Defence Website as amended or replaced from time to time.

1. COLLATERAL WARRANTIES
   * 1. Without limiting the definition of "Completion" in clause 1.1 and clause 8.6 of the Conditions of Subcontract the Subcontractor must, as a condition precedent to Completion of the Subcontract Works or a Stage, provide the Contractor's Representative with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

| **Description** | **Minimum Warranty Period (from the Date of Completion of the Subcontract Works or the Stage)** |
| --- | --- |
| Access Floor | ***[INSERT]*** years |
| Aircraft Aprons, Flexible and Rigid Pavements and Seals | ***[INSERT]*** years |
| Benches and Cupboards and Associated Joinery | ***[INSERT]*** years |
| Carpentry | ***[INSERT]*** years |
| Carpet | ***[INSERT]*** years |
| Communications Systems | ***[INSERT]*** years |
| Concrete Toppings and Repairs | ***[INSERT]*** years |
| Drainage | ***[INSERT]*** years |
| Doors | ***[INSERT]*** years |
| Electrical Services | ***[INSERT]*** years |
| Electrical Building and Distribution Services | ***[INSERT]*** years |
| External Coating Systems | ***[INSERT]*** years |
| External Lighting | ***[INSERT]*** years |
| External Non-Structural Concrete | ***[INSERT]*** years |
| External Signage (sign writing and lettering) | ***[INSERT]*** years |
| External Signage (excluding sign writing and lettering) | ***[INSERT]*** years |
| Façade | ***[INSERT]*** years |
| Fire Services | ***[INSERT]*** years |
| Floor and Pavement Markings (internal) | ***[INSERT]*** years |
| Floor and Pavement Markings (external) | ***[INSERT]*** years |
| Furniture Fittings and Equipment | ***[INSERT]*** years |
| Gates and Fences | ***[INSERT]*** years |
| Gantries | ***[INSERT]*** years |
| Hardened Structures | ***[INSERT]*** years |
| Hardware | ***[INSERT]*** years |
| High Ropes Structure and Equipment | ***[INSERT]*** years |
| Internal Signage | ***[INSERT]*** years |
| Kitchen Equipment | ***[INSERT]*** years |
| Mechanical Services | ***[INSERT]*** years |
| Membrane Roofing and Tanking | ***[INSERT]*** years |
| Metal Roof and Walling | ***[INSERT]*** years |
| Noise Attenuation Structures | ***[INSERT]*** years |
| Painting | ***[INSERT]*** years |
| Partitions | ***[INSERT]*** years |
| Piling and foundations | ***[INSERT]***years |
| Plumbing | ***[INSERT]*** years |
| Resilient finishes, e.g. Vinyl | ***[INSERT]*** years |
| Security | ***[INSERT]*** years |
| Sewers | ***[INSERT]*** years |
| Stormwater Drainage | ***[INSERT]*** years |
| Structural Concrete | ***[INSERT]*** years |
| Structural Steel | ***[INSERT]*** years |
| Sun Control Louvres | ***[INSERT]*** years |
| Supervisory / Data Services | ***[INSERT]*** years |
| Suspended Ceilings | ***[INSERT]*** years |
| Tiling | ***[INSERT]*** years |
| Toilet Partitions | ***[INSERT]*** years |
| Water Supply Services | ***[INSERT]*** years |
| Windows and Glazing | ***[INSERT]*** years |
| Vehicle Pavement and Seals | ***[INSERT]*** years |
| ***[THE CONTRACTOR AND THE CONTRACTOR'S REPRESENTATIVE MUST CONSIDER AND SPECIFY COLLATERAL WARRANTY DESCRIPTIONS AND PERIODS APPROPRIATE FOR THE SUBCONTRACT WORKS. THE ABOVE ARE PROVIDED BY WAY OF EXAMPLE ONLY]*** | ***[INSERT]*** years |

1. OPERATION AND MAINTENANCE MANUALS

The Subcontractor must:

* + 1. ensure that operation and maintenance manuals are prepared or updated (as applicable) in accordance with the O&MM Instructions and any other requirements of the Subcontract and so as to ensure that such manuals detail specific operation and maintenance information for each aspect of the Subcontract Works or the Stage;
    2. obtain and co-ordinate the provision of information by its subsubcontractors as is necessary for the preparation or updating (as applicable) of the operation and maintenance manuals that it is required to prepare or update in accordance with paragraph (a);
    3. by no later than the date on which the Subcontractor provides its 28 day notice of anticipated Completion to the Contractor's Representative under clause 13.1(b) of the Conditions of Subcontract, provide draft operation and maintenance manuals in accordance with paragraph (a) (**Draft Operation and Maintenance Manuals**) to the Contractor's Representative for review under clause 1(a); and
    4. without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, as a condition precedent to Completion of the Subcontract Works or a Stage:
       1. update as necessary to reflect the completed Subcontract Works or the Stage and resubmit the Draft Operation and Maintenance Manuals to the Contractor's Representative for review under clause 1(a), with any amendments to be clearly indicated; and
       2. once approved by the Contractor's Representative, submit the final versions of the Draft Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) to the Contractor's Representative.

For the purposes of this clause 4:

* + 1. catalogues, sales brochures and other documents giving general information in respect of aspects of the Subcontract Works or the Stage will not be acceptable;
    2. all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Subcontract Works or the Stage; and
    3. all manuals must be prepared in accordance with the “Instructions for Operations and Maintenance Manuals (O&MM) for Defence Facilities” available on the Defence Website, as amended or replaced from time to time (**O&MM Instructions**), including that one operation and maintenance manual is to be provided or updated for each building and base infrastructure system within the project.

1. TRAINING

The Subcontractor must:

* + 1. in accordance with its approved Estate Information program (as contained in the Estate Information Provision Plan), prepare and submit a detailed draft outline of a comprehensive training program in respect of the occupation, use, operation and maintenance of each element of the Subcontract Works or the Stage to the Contractor's Representative;
    2. without limiting the definition of "Completion" in clause 1.1 of the Conditions of Subcontract, as a condition precedent to Completion of the Subcontract Works or a Stage:
       1. obtain and co-ordinate all documents and information to be included in the training program, including documents and information provided by subsubcontractors;
       2. during commissioning of the Subcontract Works or the Stage, plan, manage and deliver the comprehensive training program in respect of all operational and maintenance aspects of the Subcontract Works or the Stage for the number of and each category of persons as required by the Contractor's Representative, including (where applicable) training on how to instruct other staff by way of a “train the trainer” approach;
       3. carry out such training:
          1. using trained instructors, fully experienced in respect of all operational and maintenance aspects of the Subcontract Works or the Stage;
          2. using the Final Operation and Maintenance Manuals produced by the Subcontractor, with copies of such manuals to be made available during the training to all trainees; and
       4. provide the Contractor's Representative with copies of all documents, information and training materials necessary to enable ongoing training in respect of all operational and maintenance aspects of the Subcontract Works or the Stage; and
    3. ensure that such training and training program is prepared and conducted in accordance with, and in the manner and at times required by, the Project Lifecycle and HOTO Plan.

1. - SPECIAL CONDITIONS

***[THE CONTRACTOR AND THE CONTRACTOR’S REPRESENTATIVE ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE SUBCONTRACT (TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT). THE CONTRACTOR AND THE CONTRACTOR’S REPRESENTATIVE ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED]***

1. LATENT HAZARDOUS SUBSTANCE, ASBESTOS, ACM OR GHS MATERIAL
   1. Notice of Latent Hazardous Substances, Asbestos, ACM or GHS Material
      1. If in carrying out the Subcontractor's Activities the Subcontractor considers that it has encountered or found Latent Hazardous Substances, Asbestos, ACM or GHS Material, it must:
         1. immediately give the Contractor’s Representative notice in writing;
         2. not disturb the substance or the material under any circumstances other than where such disturbance is necessary to comply with subparagraph (iv);
         3. cordon off the relevant area preventing access by all unauthorised persons and install a warning sign informing of the suspected Latent Hazardous Substances, Asbestos, ACM or GHS Material; and
         4. ensure that all persons are protected from exposure to the substance or material (including in accordance with the WHS Legislation) until the nature of the substance or material has been competently determined.
      2. The Contractor’s Representative must within 14 days of receipt of the Subcontractor’s notice under paragraph (a)(i):
         1. notify the Subcontractor of its determination of whether Latent Hazardous Substances, Asbestos, ACM or GHS Material has been encountered or found; and
         2. instruct the Subcontractor as to the course it must adopt insofar as the Subcontractor’s Activities are affected by the Latent Hazardous Substances, Asbestos, ACM or GHS Material.
   2. Subcontractor's Entitlement

If the Contractor’s Representative determines that Latent Hazardous Substances, Asbestos, ACM or GHS Material have been encountered or found, the Subcontractor will be entitled to:

* + 1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Subcontract; and
    2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under clause 1.1(a)(i) which arise directly from the Latent Hazardous Substances, Asbestos, ACM or GHS Material and the Contractor’s Representative’s instruction under clause 1.1(b)(ii) valued as a Variation in accordance with clause 11.3 of the Conditions of Subcontract.

To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any Latent Hazardous Substances, Asbestos, ACM or GHS Material or the Contractor’s Representative’s instruction under clause 1.1(b)(ii), other than under paragraphs (a) and (b).

* 1. Subcontractor's Obligations

Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, if:

* + 1. the Subcontractor’s Activities include identifying, surveying, treating, removing, monitoring or doing any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material; or
    2. the Contractor’s Representative has otherwise instructed the Subcontractor under clause 1.1(b)(ii) to identify, survey, treat, remove, monitor or do any other matter or thing in respect of Hazardous Substances, Asbestos, ACM or GHS Material,

the Subcontractor must comply with the requirements of the WHS Legislation, any applicable Code of Practice and any other Statutory Requirements applicable in the State or Territory in which the Subcontract Works are situated relating to such substances and materials.

* 1. Definitions and interpretation
     1. If clauses 7.3 and 7.4 of the Conditions of Subcontract apply, this clause 1 takes precedence over clauses 7.3 and 7.4 of the Conditions of Subcontract.
     2. For the purposes of clause 1:
        1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
        2. **Dangerous Goods** has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
        3. **GHS** means the Globally Harmonised System of Classification and Labelling of Chemicals published by the United Nations, as amended from time to time and as modified by the relevant WHS Legislation.
        4. **GHS Material** means material suspected of containing or likely to contain a substance defined or listed in the GHS.
        5. **Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) and includes:
           1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
           2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
           3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
           4. Schedule 11 Hazardous Chemicals;
           5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
           6. Schedule 15 Chemicals; and
           7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        6. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
        7. **Latent Hazardous Substances, Asbestos, ACM or GHS Material** means Hazardous Substances, Asbestos, ACM or GHS Material in, on or in the vicinity of the Site which differ materially from the Hazardous Substances, Asbestos, ACM or GHS Material which should have been anticipated by a prudent, competent and experienced contractor if it had done the things that the Subcontractor is:
           1. deemed to have done under clause 7.1 of the Conditions of Subcontract; or
           2. required to do by the Subcontract.
        8. **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.
        9. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        10. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
        11. **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

1. USE OF HAZARDOUS SUBSTANCES (INCLUDING HAZARDOUS CHEMICALS)
   1. The Contractor
      1. The Commonwealth and the Contractor seek to ensure that:
         1. workers and other persons are not exposed to Hazardous Substances as a consequence of activities conducted on Commonwealth Premises and from work carried out as part of their businesses or undertakings, unless the Hazardous Substances are managed in accordance with subparagraph (ii); or
         2. risks to health and safety concerning Hazardous Substances are managed in accordance with the WHS Legislation.
      2. To the extent that the Contractor is legally required to do so, the Contractor will notify the Subcontractor of Hazardous Substances known to it to be within:
         1. Commonwealth Premises relevant to the Subcontractor’s Activities and the Subcontract Works; or
         2. any other Commonwealth or Contractor property (including plant and equipment) provided to the Subcontractor for the purposes of the Subcontractor’s Activities and the Subcontract Works.
   2. The Subcontractor
      1. The Subcontractor acknowledges Hazardous Substances may be present within:
         1. Commonwealth Premises relevant to the Subcontractor’s Activities and the Subcontract Works; or
         2. any other Commonwealth or Contractor property (including plant and equipment) provided to the Subcontractor for the purposes of the Subcontractor’s Activities and the Subcontract Works.
      2. Without limiting paragraph (d), the Subcontractor must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Subcontractor’s Activities or incorporated into the Subcontract Works to the Contractor’s Representative as soon as possible after the Award Date (and in any event no later than 30 days prior to the proposed Hazardous Substance being used in the Subcontractor’s Activities or incorporated into the Subcontract Works).
      3. Without limiting paragraph (b), the Subcontractor must:
         1. prepare a register of each Hazardous Substance to be:
            1. used in the Subcontractor’s Activities;
            2. incorporated into the Subcontract Works;
            3. held or stored by the Subcontractor on Site; or
            4. transported by the Subcontractor to or from the Site or in or through Commonwealth Premises,

(**Hazardous Substance Register**);

* + - 1. provide the Hazardous Substance Register to the Contractor’s Representative prior to the Subcontractor:
         1. handling or storing the Hazardous Substance on Site; or
         2. transporting the Hazardous Substance to or from Site or in or through Commonwealth Premises;
      2. provide the Contractor’s Representative with an updated the Hazardous Substance Register:
         1. on each occasion that it is updated by the Subcontractor; and
         2. otherwise as requested by the Contractor’s Representative;
      3. without limiting subparagraph (i), provide a Safety Data Sheet (**SDS**) in the form required by the Contractor for entry into the ChemAlert database for each Hazardous Substance to be:
         1. used in the Subcontractor’s Activities; or
         2. incorporated into the Subcontract Works;
      4. provide the SDS prepared under subparagraph (iv) and any other information concerning the risks and hazards associated with the Hazardous Substance to the Contractor’s Representative prior to the Hazardous Substance being used in the Subcontractor's Activities or incorporated into the Subcontract Works;
      5. provide the Contractor’s Representative any updated SDS from the manufacturer, importer or supplier of each relevant Hazardous Substance:
         1. on each occasion an updated SDS is provided by the manufacturer, importer or supplier of the relevant Hazardous Substance; and
         2. otherwise as requested by the Contractor’s Representative;
      6. without limiting subparagraphs (i) - (vi) prepare information in the form required by the Contractor in accordance with the WHS Legislation (including any applicable information regarding use, handling, storage, locations, maximum storage quantities and volumes) for entry into the ChemAlert database for each Hazardous Substance to be:
         1. used in the Subcontractor’s Activities;
         2. incorporated into the Subcontract Works; or
         3. used, handled or stored on Commonwealth Premises,

(**ChemAlert Information**);

* + - 1. provide the ChemAlert Information prepared under subparagraph (vii) to the Contractor’s Representative:
         1. in its reports under clause 3.10 of the Conditions of Subcontract; and
         2. otherwise as requested by the Contractor’s Representative;
      2. update the ChemAlert Information and provide the updated ChemAlert Information to the Contractor’s Representative:
         1. in its reports under clause 3.10 of the Conditions of Subcontract; and
         2. otherwise as requested by the Contractor’s Representative; and
      3. do all things necessary to assist the Contractor’s Representative to enter the SDS, ChemAlert Information and all other information into the ChemAlert database.
    1. The Subcontractor must not use, handle or store a Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 2.3(d) in connection with the Subcontractor's Activities or the Subcontract Works, without the prior written consent of the Contractor’s Representative.
    2. Without limiting paragraph (b), in its request for consent under paragraph (d), the Subcontractor must provide:
       1. details of the Hazardous Substance and the relevant category under clause 2.3(d);
       2. details of the purpose, use, handling or storage of each Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 2.3(d); and
       3. for each Hazardous Substance which falls within one or more of the following categories:
          1. clause 2.3(d)(i) or 2.3(d)(ii), a copy of all Approvals for use, handling or storage;
          2. clause 2.3(d)(v) or 2.3(d)(vii), details of how the health of workers using, handling or storing such Hazardous Chemical will be monitored in accordance with WHS Legislation; and
          3. clause 2.3(d)(vi), a copy of:

all notices given to a relevant regulator; and

all licences required to be held by the Subcontractor or subsubcontractor,

in relation to use, storage or handling;

* + 1. Without limiting clause 8.16 of the Conditions of Subcontract or any other provision of the Subcontract, the Subcontractor must:
       1. comply with any applicable Code of Practice;
       2. ensure that all documentation (including all Design Documentation and other Project Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) identifies the nature of the hazard and risk (including those risks which may remain after Completion and after the end of the last Defects Liability Period);
       3. ensure that all goods incorporated into the Subcontract Works comply with WHS Legislation and any Statutory Requirements relating to Hazardous Substances;
       4. ensure that all Hazardous Substances used in connection with the Subcontractor’s Activities or incorporated into the Subcontract Works are correctly labelled and packaged in accordance with WHS Legislation and Statutory Requirements;
       5. notify the Contractor’s Representative within 14 days of becoming aware of any non-hazardous substance which could be substituted for the Hazardous Substance without significant detriment to the performance of the Subcontractor’s Activities or the Subcontract Works; and
       6. be able to demonstrate compliance with this paragraph (f) at the request of the Contractor’s Representative.
    2. Without limiting clause 8.16 of the Conditions of Subcontract, the Subcontractor is responsible for all Hazardous Substances used or incorporated into the Subcontract Works by subsubcontractors.
  1. Definitions

For the purposes of clause 2:

* + 1. **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
    2. **Commonwealth Premises** means any of the following that is owned or occupied by the Commonwealth:
       1. an area of land or any other place (whether or not it is enclosed or built on);
       2. a building or other structure; or
       3. a vehicle, vessel or aircraft.
    3. **Dangerous Goods** has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
    4. **Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) and includes:
       1. prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       2. restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
       3. hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
       4. Schedule 11 Hazardous Chemicals;
       5. hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
       6. Schedule 15 Chemical; and
       7. lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).
    5. **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
    6. **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act* *1989* (Cth) or any regulations made under that Act.
    7. **Schedule 11 Hazardous Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* *2011* (Cth).
    8. **Schedule 15 Chemical** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* *2011* (Cth).
    9. **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act* *1989* (Cth) or in any regulations made under that Act.

1. DRAWINGS

Without limiting the Subcontractor’s obligations under the Subcontract or otherwise at law or in equity, all drawings which the Subcontractor is required to provide under the Subcontract must be prepared by competent draftspersons in accordance with:

* + 1. the standard prescribed in the Subcontract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Subcontract Works);
    2. all Statutory Requirements;
    3. the directions of the Contractor’s Representative; and
    4. to the extent that they are not inconsistent with the requirements of the Subcontract, the requirements of all relevant standards of Standards Australia.

1. DILAPIDATION SURVEY
   * 1. Prior to commencing the Subcontractor’s Activities on the Site, the Subcontractor must carry out a comprehensive survey of the location and condition of existing structures, roads, carparks, access paths, footpaths, trees, services, ***[and]*** other civil works ***[and INSERT ANY OTHER AREAS/FEATURES TO BE INCLUDED IN THE SURVEY]*** on and around the Site. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Subcontractor, the Contractor’s Representative may attend for the carrying out of the survey.
     2. The survey must include a comprehensive photographic record of existing conditions prior to the Subcontractor having access to the Site.
     3. A copy of the survey and the photographic record is to be provided to the Contractor’s Representative by no later than ***[INSERT]*** days after the Contractor gives the Subcontractor access to the Site.
2. PRIOR WORK
   * 1. Where the proper execution of the Subcontractor’s Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**), the Subcontractor must:
        1. inspect the Prior Work as soon as is practicable after the Contractor gives the Subcontractor access to the Site under clause 2.3(a)of the Conditions of Subcontract;
        2. if it discovers any defect or matter in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Subcontractor’s Activities, immediately notify the Contractor’s Representative in writing providing:
           1. full particulars of the defect or matter identified; and
           2. the reasons for the opinion formed by it in respect to the defect or matter identified; and
        3. not commence or continue with the execution of any part of the Subcontractor’s Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
     2. On receipt of the Subcontractor’s notice, the Contractor’s Representative will investigate the Prior Work the subject of the notice and:
        1. if the Contractor’s Representative agrees with the Subcontractor - issue a direction to the Subcontractor and value any work carried out by the Subcontractor by reason of that direction as a Variation under clause 11.3 of the Conditions of Subcontract; or
        2. if the Contractor’s Representative disagrees with the Subcontractor - issue an instruction to the Subcontractor to commence or continue with the Subcontractor’s Activities.
     3. If the Subcontractor fails to:
        1. inspect the Prior Work as required by clause 5(a)(i); or
        2. notify the Contractor’s Representative of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Subcontractor’s Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Subcontractor’s Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Subcontractor’s Activities will be performed by the Subcontractor at its own expense.

1. JOINING UP

Where the method of joining up of old and new work is not specified in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract, the cutting away and joining up must be carried out by the Subcontractor in a manner approved by the Contractor’s Representative and made good in all trades to match existing adjacent work.

1. EXISTING SERVICES AND STRUCTURES
   * 1. The Subcontractor may only modify or remove existing structures or services within the Site in accordance with the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract.
     2. The Subcontractor must obtain the prior written approval from the Contractor’s Representative in relation to the timing of any connection, disconnection or interference with existing structures and services.
     3. Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Subcontractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract or should have been shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract, is evident on the Site or has been notified in writing by the Contractor’s Representative to the Subcontractor, the Subcontractor is responsible for the cost of any necessary repair or relocation in the event of damage.
     4. The Subcontractor must notify the Contractor’s Representative immediately upon the discovery of services or obstructions not shown in the Subcontract Works Description and any Design Documentation the Subcontractor is entitled to use under clause 6.3(c) of the Conditions of Subcontract or identified by inspection.
     5. The Subcontractor must immediately notify the Contractor’s Representative in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Subcontractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
     6. The Subcontractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Subcontract Works and must comply with the requirements of the Commonwealth, the Contractor, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during construction or maintenance of the Subcontract Works.
2. ITEMS TO BE SUPPLIED BY THE CONTRACTOR

The items specified in the Schedule to clause 8 will be supplied by the Contractor without charge to the Subcontractor for use in the execution of the Subcontractor’s Activities subject to the following conditions:

* + 1. the Subcontractor must submit a written request for any such items and, on receiving the Contractor’s Representative’s written authority, must take delivery of the items at ***[INSERT TIME AND PLACE]***;
    2. before taking delivery of any such items, the Subcontractor must ensure that they are in a satisfactory condition and in the quantities specified and the Subcontractor has all relevant information in respect of the installation, construction or commissioning of such items;
    3. to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the replacement of any items that the Subcontractor claims to be defective or deficient in quantity;
    4. the Subcontractor is responsible for the safety of all such items until they are incorporated in the Subcontract Works; and
    5. the Contractor does not represent or warrant that the quantities specified in clause 8 are adequate for the Subcontractor’s Activities and the supply of any additional quantities must be arranged by the Subcontractor at its cost.

**Schedule of Items**

**Item Quantity**

***[INSERT] [INSERT]***

1. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES
   * 1. Without limiting clause 9.2 of the Conditions of Subcontract, the Subcontractor must prepare and implement, by no later than ***[INSERT EG 14 days]*** after the Award Date and as a condition precedent to the Subcontractor being given access to the Site, a “Method of Work Plan for Airfield Activities” for all aspects of the Subcontractor’s Activities and the Subcontract Works (**Method of Work Plan for Airfield Activities**).
     2. The Method of Work Plan for Airfield Activities must incorporate Site specific management and control procedures and must set out in adequate detail all procedures the Subcontractor will implement to manage the Subcontractor’s Activities on and near the Site, including:
        1. submission of the Method of Work Plan for Airfield Activities to the Contractor’s Representative;
        2. the establishment of the Site;
        3. access to the Site;
        4. security passes for the Site;
        5. personnel and vehicle identification and control on the Site;
        6. control of personnel including a point of contact from the Subcontractor;
        7. liaison with the Contractor, the Commonwealth and Other Contractors;
        8. Approvals prior to carrying out Subcontract Works;
        9. rubbish, dust and debris control;
        10. Foreign Object Damage (**FOD**) control;
        11. noise management;
        12. fencing;
        13. security of the Subcontract Works;
        14. hours of work;
        15. traffic management;
        16. safety procedures;
        17. fuel and hazardous material storage;
        18. issues associated with military exercises and military expeditions; and
        19. issues associated with aircraft movements.
2. OPERATING AIRFIELD
   * 1. The Subcontractor must ensure that the Subcontractor’s Activities and the Subcontract Works do not compromise aircraft operations or the safety of aircraft.
     2. Without limiting clause 8.16(a)(iii) of the Conditions of Subcontract and as part of the Subcontractor’s Activities, the Subcontractor must liaise with the Contractor and the Contractor’s Representative as required to co-ordinate the Subcontractor’s Activities and the Subcontract Works with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.
3. NATIONAL HERITAGE PLACE
   * 1. The Subcontractor must ensure that, in carrying out the Subcontractor’s Activities:
        1. it does not take any action that has, will have or is likely to have a significant impact on the National Heritage Values of a National Heritage Place; and
        2. it does not act inconsistently with or contravene:
           1. a management plan for a National Heritage Place made under the EPBC Act; or
           2. the National Heritage Management Principles under the EPBC Act.
     2. For the purposes of clause 11:
        1. **EPBC Act** means the Environment Protection and Biodiversity Conservation Act 1999 (Cth);
        2. **National Heritage Management Principles** means National Heritage management principles within the meaning of the EPBC Act;
        3. **National Heritage Place** means a National Heritage place within the meaning of the EPBC Act; and
        4. **National Heritage Values** means National Heritage values within the meaning of the EPBC Act.
4. COMMONWEALTH HERITAGE PLACE
   * 1. The Subcontractor must ensure that, in carrying out the Subcontractor’s Activities:
        1. it does not take any action that has, will have or is likely to have a significant impact on the Commonwealth Heritage Values of a Commonwealth Heritage Place; and
        2. it does not act inconsistently with or contravene:
           1. a management plan for a Commonwealth Heritage Place made under the EPBC Act; or
           2. the Commonwealth Heritage Management Principles under the EPBC Act.
     2. For the purposes of clause 12:
        1. **Commonwealth Heritage Management Principles** means Commonwealth Heritage management principles within the meaning of the EPBC Act;
        2. **Commonwealth Heritage Place** means a Commonwealth Heritage place within the meaning of the EPBC Act;
        3. **Commonwealth Heritage Values** means Commonwealth Heritage values within the meaning of the EPBC Act; and
        4. **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act* *1999* (Cth).
5. HERITAGE ACT REQUIREMENTS (VICTORIA)
   1. Prior to Commencement of Work

Prior to commencing the Subcontractor’s Activities, the Subcontractor must carry out a search of the Heritage Register and Heritage Inventory to ascertain whether the Site (or any area within the Site) is listed on the Heritage Register or Heritage Inventory.

* 1. Permits and Consents

Without limiting clause 8.3 of the Conditions of Subcontract, the Subcontractor must:

* + 1. obtain Approvals required under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Subcontractor’s Activities; and
    2. comply with conditions of any such Approval in carrying out the Subcontractor’s Activities, including the engagement and supervision of any archaeological work by a qualified archaeologist.
  1. Heritage Security and Other Costs
     1. Subject to paragraph (b), the Subcontractor must:
        1. if security (as contemplated by section 103 of the Heritage Act) is required to be provided in relation to the Site, provide the amount (as amended from time to time by the Heritage Department) of the security to the Heritage Department; and
        2. give all notices and pay all fees and other amounts required to be paid under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Subcontractor’s Activities.
     2. The parties agree that the:
        1. amount of the security (as contemplated by section 103 of the Heritage Act)used or retained by the Heritage Department and not returned to the Subcontractor in accordance with the Heritage Act; and
        2. extra costs reasonably incurred by the Subcontractor in complying with clause 13and the Heritage Act (if any),

will be reimbursed by the Contractor to the Subcontractor.

* + 1. Any amount which the Subcontractor claims under paragraph (b)(i) must be included in its payment claim in accordance with clause 12.11of the Conditions of Subcontract.
    2. Any amount to be reimbursed by the Contractor in accordance with paragraph (b) will be reduced to the extent that the Subcontractor has caused or in any way contributed to (including as a result of failing to fulfil its obligations under the Heritage Act) the security (as contemplated by section 103 of the Heritage Act) being used or retained or the costs being increased.
  1. Definitions

For the purposes of clause 13:

* + 1. **Heritage Act** means the *Heritage Act 2017* (Vic);
    2. **Heritage Department** means the “Heritage Council” established under the Heritage Act (or such other Department of the State of Victoria which administers the Heritage Act);
    3. **Heritage Inventory** means the “Heritage Inventory” established under the Heritage Act; and
    4. **Heritage Register** means the Heritage Register established under the Heritage Act.

1. CIVIL LIABILITY ACT (WESTERN AUSTRALIA)

In clause 15.14 of the Conditions of Subcontract, insert the following sentence at the end of the paragraph:

Further, all of the provisions comprising Part 1F of the *Civil Liability Act* *2002* (WA) are hereby expressly excluded from application to the Subcontract.

1. PRELIMINARY DESIGN SOLUTION

Without limiting the Subcontractor's obligations elsewhere in the Subcontract, the Subcontractor acknowledges and agrees that:

* + 1. prior to the Award Date, ***[IT HAS/THE CONTRACTOR'S/COMMONWEALTH’S CONSULTANTS HAVE]*** prepared the Preliminary Design Solution;
    2. it bears all risks howsoever they may arise as a result of the use by it of the Preliminary Design Solution;
    3. the use of the Preliminary Design Solution by the Subcontractor does not affect any of its warranties or other obligations under the Subcontract or entitle it to make any Claim against the Contractor, arising out of, or in any way in connection with, such use;
    4. if the Subcontract Works are designed and constructed in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), the Subcontract Works will comply with the requirements of the Subcontract Works Description and satisfy all other requirements of the Subcontract; and
    5. it must design and construct the Subcontract Works in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), except to the extent where a Variation necessitates a consequential change to the Preliminary Design Solution in which case the Subcontractor must notify the Contractor's Representative of such change.

1. INSURANCE AMENDMENTS WHERE THE SUBCONTRACTOR IS A SELF-INSURED LICENSEE

*[RETAIN THIS SPECIAL CONDITION IF ANY OF THE TENDERERS/SUBCONTRACTORS ARE OR ARE LIKELY TO BE SELF-INSURED LICENSEES. THE CONTRACTOR'S REPRESENTATIVE SHOULD REFER TO THE LIST OF SELF-INSURED LICENSEES AVAILABLE AT* https://www.srcc.gov.au/current-self-insurers/list-of-current-and-former-self-insurers *TO DETERMINE WHETHER ANY OF THE SHORTLISTED TENDERERS ARE SELF-INSURED (IF A REGISTRATION OF INTEREST PROCESS HAS BEEN CONDUCTED). IF A REGISTRATION OF INTEREST PROCESS HAS NOT BEEN CONDUCTED, THIS CLAUSE SHOULD BE RETAINED. IF IN DOUBT, SEEK DIRECTION FROM THE CONTRACTOR'S LEGAL ADVISER. THE CONTRACTOR’S REPRESENTATIVE SHOULD ALSO NOTE THAT THE CROSS-REFERENCES TO THE CLAUSES OF THE SUBCONTRACT AND TO THE SUBCONTRACT PARTICULARS WILL NEED TO BE CHECKED, UPDATED AND AMENDED AS APPROPRIATE]*

* 1. Amendments to clause 1.1

“Workers Compensation Insurance” in clause 1.1 of the Conditions of Subcontract is deleted and replaced as follows:

**Workers Compensation Insurance**

A policy of insurance or a self-insurer’s authorisation or licence in the form prescribed by the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations* *2019* (Cth) or Statutory Requirement in the State or Territory in which the Subcontractor’s Activities are performed or the Subcontractor’s employees perform work, are employed or normally reside to insure against or make provision for the liability of the Subcontractor to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment.

* 1. Amendments to clause 5.5

Clause 5.5 of the Conditions of Subcontract is deleted and replaced as follows:

**5.5 Subcontractor Insurance Obligations**

The Subcontractor must:

* + 1. ensure that it obtains and maintains the authorisations and or licences required in all relevant jurisdictions to conduct itself as a self insurer for the purposes of Workers Compensation liabilities including comply with the requirements of the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations 2019* (Cth) or Statutory Requirement in the State or Territory in which an employee of the Subcontractor or of a subsubcontractor performs work, is employed or normally resides (and including Employers’ Liability Insurance if applicable);
    2. comply with its legal obligations to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment;
    3. indemnify, to the extent permitted by law, the Contractor in respect of any statutory liability to the Subcontractor’s employees;
    4. ensure that each of its subsubcontractors has Workers Compensation Insurance to the extent required by law, and Employers' Liability Insurance (if the relevant Subcontractor's Activities are performed or the subsubcontractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia), covering the subsubcontractor in respect of its statutory and common law liability to employees;
    5. from the Award Date cause to be effected and maintained or otherwise have the benefit of:
       1. Workers Compensation Insurance;
       2. if the Subcontractor's Activities are performed or the Subcontractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia, Employers' Liability Insurance;
       3. if the Subcontract requires the Subcontractor to design any part of the Subcontract Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars; and
       4. such other insurances on such terms as are specified in the Subcontract Particulars,

each of which must be:

* + - 1. for the amounts specified in the Subcontract Particulars;
      2. with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
      3. on terms which are satisfactory to the Contractor’s Representative (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Subcontract Particulars, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Subcontractor’s Activities;
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Subcontractor's Activities are being carried out; and
       3. includes a run-off period as referred to in the Subcontract Particulars;
    2. promptly provide the Contractor’s Representative with evidence satisfactory to the Contractor’s Representative that:
       1. it has complied with clause [5.5]; and
       2. each insurance required under clause [5.5] is current and complies with clause [5.5],

as required by the Contractor’s Representative from time to time;

* + 1. ensure that:
       1. if the:
          1. insurer gives the Subcontractor notice of expiry, cancellation or rescission of any required insurance policy; or
          2. Safety Rehabilitation and Compensation Commission or other relevant authority, body or other organisation under any Statutory Requirement gives the Subcontractor notice of expiry, cancellation or rescission of the self-insurer’s authorisation or licence,

the Subcontractor as soon as possible informs the Contractor in writing that the notice has been given and effects replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contractor’s Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract; and

* + - 1. if the Subcontractor cancels, rescinds or fails to renew any:
         1. required insurance policy; or
         2. self-insurer’s authorisation or licence,

the Subcontractor as soon as possible obtains replacement insurance as required by the Subcontract and informs the Contractor in writing as soon as possible of the identity of the replacement insurer or details of the relevant self-insurer’s authorisation or licence and provides such evidence as the Contractor’s Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Subcontract;

* + 1. ensure that it:
       1. does not do, permit to do, or omit to do anything whereby any insurance may be prejudiced;
       2. complies at all times with the terms of each insurance policy;
       3. if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
       4. punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contractor’s Representative copies of receipts for payment of premiums if and when requested by the Contractor’s Representative. Any increase in premium is the responsibility of, and must be borne by, the Subcontractor;
       5. renews any required insurance policy or self-insurer’s authorisation or licence if it expires during the relevant period, unless appropriate replacement insurance is obtained;
       6. immediately notifies the Contractor’s Representative (in writing) if the Subcontractor fails to renew any required insurance policy or pay a premium;
       7. does not cancel or allow an insurance policy or self-insurer’s authorisation or licence to lapse during the period for which it is required by the Subcontract without the prior written consent of the Contractor’s Representative;
       8. immediately notifies the Contractor’s Representative (in writing) of any event which may result in a required insurance policy or self-insurer’s authorisation or licence lapsing, being cancelled or rescinded; and
       9. complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies and self-insurer’s authorisation or licence;
       10. does everything reasonably required by the Contractor and the Contractor’s Representative to enable the Contractor and the Commonwealth to claim and to collect or recover, money due under any of the insurances; and
       11. maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
    2. ensure that any subcontractors that perform any design work forming part of the Subcontractor’s Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Subcontractor under clause [5.5] for the amounts specified in the Subcontract Particulars; and
    3. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Subcontractor under clause [5.5]. Any excess borne by the Contractor will be a debt due from the Subcontractor to the Contractor.

For the purpose of paragraph (g), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement), a self-insurer’s authorisation or licence and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause [5.5].

The obtaining of insurance as required under clause [5.5] will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Subcontractor under the Subcontract or otherwise at law or in equity.

* 1. Amendments to clause 5.6

Clause 5.6 of the Conditions of Subcontract is deleted and replaced as follows:

**5.6 Failure to Insure or Satisfy Requirements**

* + 1. If the Subcontractor fails to comply with clause [5.5] (including any failure to cause to be effected and maintained or otherwise have the benefit of the insurance required by clause [5.5], provide evidence satisfactory to the Contractor’s Representative in accordance with clause [5.5(d)] or satisfy all requirements of being a self-insurer or exempt employer), the Contractor may, in its absolute discretion and without prejudice to any other rights it may have, take out the relevant insurance and the cost will be a debt due from the Subcontractor to the Contractor.
    2. The Subcontractor must take all necessary steps to assist the Contractor in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), “**all necessary steps**” includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contractor’s Representative or anyone else acting on behalf of the Contractor.
  1. Amendments to clause 5.8

Clause 5.8 of the Conditions of Subcontract is deleted and replaced as follows:

**5.8 Notice of Potential Claim**

The Subcontractor must:

* + 1. as soon as possible inform the Contractor in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer’s authorisation or licence required under clause 5.5 or any claim actually made against the Subcontractor or the Contractor which may be covered by an insurance policy or self-insurer’s authorisation or licence required under clause 5.5;
    2. keep the Contractor informed of all significant developments concerning the claim, except in circumstances where the Contractor is making a claim against the Subcontractor; and
    3. ensure that its subsubcontractors similarly inform the Subcontractor and the Contractor in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer’s authorisation or licence required by the Subcontract or any claim actually made against the Subcontractor, the subsubcontractor or the Contractor which may be covered by an insurance policy or self-insurer’s authorisation or licence required by the Subcontract,

provided that, in respect of Professional Indemnity Insurance, the Subcontractor:

* + 1. subject to paragraph (e), is not required to provide details of individual claims; and
    2. must notify the Contractor if the estimated total combined value of claims made against the Subcontractor and claims which may arise from circumstances reported by the Subcontractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Subcontract.

1. MAINTENANCE DURING DEFECTS LIABILITY PERIOD

The Subcontractor must ensure that during the Defects Liability Period for the Subcontract Works or each Stage such planned and unplanned maintenance is carried out:

* + 1. as required by the Project Lifecycle and HOTO Plan; and
    2. as is otherwise necessary to ensure that the Subcontract Works are, or each Stage is, throughout and at the end of the Defects Liability Period in a condition fit for the purposes set out in, or reasonably to be inferred from, the Subcontract Works Description.

1. CHILD SAFETY

*[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE SUBCONTRACTOR AND ITS OFFICERS, EMPLOYEES, AGENTS, SUBSUBCONTRACTORS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE SUBCONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE SUBCONTRACTOR IS CARRYING OUT ACTIVITIES THAT MAY BE PROVIDED ON A SCHOOL’S PREMISES EVEN WHERE INTERACTING WITH CHILDREN IS NOT A PART OF THE SUBCONTRACTED ACTIVITIES]*

* + 1. If any part of the Subcontractor’s Activities involves the Subcontractor employing or engaging a person (whether as an officer, employee, agent, subsubcontractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Subcontractor’s Activities or any part of the Subcontractor’s Activities, the Subcontractor agrees:
       1. without limiting its other obligations under the Subcontract, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Subcontractor’s Activities, including mandatory reporting and working with children checks however described; and
       2. if requested, provide the Commonwealth at the Subcontractor’s cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.
    2. When child safety obligations may be relevant to a subsubcontract made in connection with the Subcontract, the Subcontractor must ensure that any such subsubcontract entered into by the Subcontractor for the purposes of fulfilling the Subcontractor’s obligations under the Subcontract imposes on the subsubcontractor the same obligations regarding child safety that the Subcontractor has under the Subcontract. Each subsubcontract must also require the same obligations (where relevant) to be included by the subsubcontractor in any secondary subsubcontracts.

1. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

*[IF THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY APPLIES TO THE MANAGING CONTRACTOR CONTRACT, THE CONTRACTOR SHOULD OBTAIN ITS OWN ADVICE IN RELATION TO THIS SPECIAL CONDITION AND ENSURE THAT IT IS SUITABLE FOR COMPLIANCE WITH ITS RELEVANT OBLIGATIONS]*

* 1. This PT PCP Subcontract

*[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE SUBCONTRACT IS A PT PCP SUBCONTRACT (AS DEFINED IN THE MANAGING CONTRACTOR CONTRACT) AND THE CONTRACTOR SHOULD ADAPT IT AS REQUIRED TO COMPLY WITH THE REQUIREMENTS SET OUT IN THE MANAGING CONTRACTOR CONTRACT AND BE OTHERWISE CONSISTENT WITH THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY. IF THIS SUBCONTRACT IS A REPORTING ENTITY SUBCONTRACT, THIS CLAUSE SHOULD BE PRESERVED, AND THE ADDITIONAL TEXT IN PARAGRAPH (A) SHOULD BE INCLUDED]*

* + 1. The Payment Times Procurement Connected Policy ***[applies/does not apply]*** to this Subcontract. ***[IF THIS SUBCONTRACT IS NOT A PT PCP SUBCONTRACT, INCLUDE - Paragraphs (b) to (f) of this clause 19.1 of the Special Conditions will not apply when the Payment Times Procurement Connected Policy does not apply to this Subcontract.]***
    2. Notwithstanding clause 12.5of the Conditions of Subcontract (and the corresponding Subcontract Particular), the Contractor will pay the Subcontractor:
       1. subject to paragraph (c), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
       2. subject paragraph (d), for payments made by the Contractor after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (d) and (e).
    3. Paragraph (b)(i) does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in paragraph (b)(i).
    4. The Contractor is not required to pay any interest in accordance with paragraph (b)(ii) if either:
       1. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under the Managing Contractor Contract; or
       2. the amount of interest payable is less than $100 (GST inclusive).
    5. Interest payable under paragraph (b)(ii):
       1. will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Contractor effects payment; and
       2. will be paid at the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment.
    6. The Subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of paragraph (b).
  1. Downstream Reporting Entity Subcontract

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE SUBCONTRACT IS A REPORTING ENTITY SUBCONTRACT (AS DEFINED IN THE MANAGING CONTRACTOR CONTRACT) AND THE CONTRACTOR SHOULD ADAPT IT AS REQUIRED TO COMPLY WITH THE REQUIREMENTS SET OUT IN THE MANAGING CONTRACTOR CONTRACT AND BE OTHERWISE CONSISTENT WITH THE PAYMENT TIMES PROCUREMENT CONNECTED POLICY]***

* + 1. If the Subcontractor enters into a PT PCP Subcontract, it must include provisions equivalent to those in clause 19.1(a) to (f) of the Special Conditions and state that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract.
    2. If the Subcontractor enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract must include:
       1. provisions equivalent to those in clause 19.1(a) to (f) of the Special Conditions and state that the Payment Times Procurement Connected Policy applies to that Reporting Entity Subcontract; and
       2. obligations equivalent to this paragraph (b) (such that the obligations in this paragraph (b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
  1. Definitions
     1. For the purposes of clause 19 of the Special Conditions:
        1. **Correctly Rendered Invoice** means an invoice which is:
           1. rendered in accordance with all of the requirements of the Subcontract; and
           2. for amounts that are correctly calculated and due for payment and payable under the Subcontract.
        2. **Payment Times Procurement Connected Policy** means the Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended or replaced from time to time.
        3. **PT PCP Policy Team** means the relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.
        4. **PT PCP Subcontract** means a subcontract between a Reporting Entity (having the meaning in the *Payment Times Reporting Act 2020* (Cth), as amended or replaced from time to time), and another party (**Other Party**) where:
           1. the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Subcontract;
           2. both parties are carrying on business in Australia; and
           3. the component of the subcontract for the provision of goods or services for the purposes of the Subcontract has a total value of less than, or is reasonably estimated to not exceed, $1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to $1,000,000 (GST inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

* + - * 1. subcontracts entered into prior to the Reporting Entities' tender response for the Subcontractor's Activities and the Subcontract Works;
        2. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
        3. subcontracts for the purposes of:

procuring and consuming goods or services overseas; or

procuring real property, including leases and licences.

* + - 1. **Reporting Entity Subcontract** means a subcontract between the Subcontractor and another party to provide goods or services directly or indirectly to the Subcontractor for the purposes of the Subcontract where the value of such goods or services are estimated to exceed $4,000,000 (GST inclusive), and **Reporting Entity Subcontractor** has a corresponding meaning.

1. INDEXATION OF PORTION OF SUBCONTRACT PRICE

***[THIS CLAUSE IS INTENDED TO BE USED WHERE IT IS ANTICIPATED THAT COMPLETION OF THE SUBCONTRACT WORKS WILL OCCUR AT LEAST 12 MONTHS AFTER THE AWARD DATE. IF IT IS PROPOSED THAT THIS CLAUSE NOT BE USED, GUIDANCE SHOULD BE SOUGHT FROM THE MCC CONTRACT ADMINISTRATOR]***

* + 1. The parties acknowledge and agree that:
       1. the Labour Component and the Materials Component will be adjusted for indexation on the basis as set out in this clause; and
       2. other than as set out in this clause, and to the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim for any indexation of the Subcontract Price or the other amounts payable under the Subcontract, including in respect of the period prior to the Initial Adjustment Date.
    2. The Labour Component and the Materials Component will be adjusted on and from the Initial Adjustment Date for each Adjustment Period in accordance with the following formula:

Where:

|  |  |
| --- | --- |
| IA = | Indexation Amount. |
| CIL = | The index number for labour applicable to the last month of the relevant Adjustment Period, as set out in the “Wage Price Index” (Australian Bureau of Statistics (**ABS**) Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction). |
| BIL = | Base index number for labour, being the “Wage Price Index” (ABS Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction) applicable as at the Award Date. |
| LC = | In respect of an Adjustment Period, the aggregate of the amount the Subcontractor was paid, or entitled to be paid, by the Contractor in respect of that Adjustment Period for the applicable portion of the Labour Component. |
| CIM = | The index number for materials applicable to the last month of the relevant Adjustment Period, as set out in the “Producer Price Indexes, Australia” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction Australia). |
| BIM = | Base index number for materials, being the “Producer Price Indexes, Australia” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction Australia) as at the Award Date. |
| MC = | In respect of an Adjustment Period, the aggregate of the amount the Subcontractor was paid, or entitled to be paid, by the Contractor in respect of that Adjustment Period for the applicable portion of the Materials Component. |

* + 1. The Subcontractor may claim the Indexation Amount for an Adjustment Period in the payment claim submitted by the Subcontractor in accordance with clause 12.2 of the Conditions of Subcontract in the later of the month immediately after:
       1. the month in which the CIL and CIM applicable to that Adjustment Period have been published; and
       2. the expiry of the applicable Adjustment Period,

and the Subcontract Price will be increased by each Indexation Amount.

* + 1. If, in respect of an Adjustment Period, there is a negative amount determined from the above formula, then there will be no adjustment in respect of that Adjustment Period.
    2. If an index is discontinued or the basis on which an index is calculated is altered, then an index referred to in paragraph (b) will be replaced by an index that most closely corresponds with that original index as agreed between the parties or, failing agreement, as determined by the Contractor’s Representative.
    3. For the purposes of this clause 20:
       1. a term defined in the table in paragraph (b) has the meaning given to it in that table;
       2. **Adjustment Period** means:
          1. the period from the Initial Adjustment Date until the end of the Quarter in which the Initial Adjustment Date occurred, provided that the first Adjustment Period may have a duration of less than a full Quarter; and
          2. thereafter, each subsequent Quarter until all of the Subcontract Works have reached Completion or earlier termination of the Subcontract, provided that the last Adjustment Period may have a duration of less than a full Quarter;
       3. **Indexation Amount** means, in respect of an Adjustment Period, the amount calculated in accordance with paragraph (b), rounded to two decimal places;
       4. **Initial Adjustment Date** means the date that is 12 months from the Award Date; ***[NOTE: THIS DEFINITION SHOULD NOT BE CHANGED UNLESS PRIOR APPROVAL IS OBTAINED FROM THE MCC CONTRACT ADMINISTRATOR]***
       5. **Labour Component** means an amount equal to the sum of the following:
          1. ***[INSERT]***% of the original Subcontract Price specified in the Subcontract Particulars; and ***[NOTE: THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE SUBCONTRACT PRICE ATTRIBUTABLE TO LABOUR AGREED WITH THE MCC CONTRACT ADMINISTRATOR. THE TOTAL COMBINED PERCENTAGE OF THE LABOUR COMPONENT AND MATERIAL COMPONENT DOES NOT NEED TO EQUAL 100%, NOTING THAT THE SUBCONTRACT PRICE WILL LIKELY CONTAIN OTHER COMPONENTS (E.G. ON ACCOUNT OF THE SUBCONTRACTOR'S PROFIT, SECURITY AND INSURANCE COSTS)]***
          2. ***[INSERT]***% of the Variation Adjustments; ***[NOTE: THIS PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]***
       6. **Materials Component** means an amount equal to the sum of the following:
          1. ***[INSERT]***% of the original Subcontract Price specified in the Subcontract Particulars; and ***[NOTE: THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE SUBCONTRACT PRICE ATTRIBUTABLE TO MATERIALS AGREED WITH THE MCC CONTRACT ADMINISTRATOR]***
          2. ***[INSERT]***% of the Variation Adjustments; ***[NOTE: THIS PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]***
       7. **Quarter** means a calendar quarter commencing on 1 January, 1 April, 1 July and 1 October in each year; and
       8. **Variation Adjustment** means the aggregate of all adjustments to the Subcontract Price in respect of all Variations agreed or determined under clause 11.3 of the Conditions of Subcontract, excluding:
          1. any adjustment to the Subcontract Price referable to any Subcontractor's Activities carried out before the Initial Adjustment Date; and
          2. if applicable, the additional amounts under clause 11.3(b)(i) and (ii) or 11.3(c)(iii) and (iv).

1. JOINT AND SEVERAL LIABILITY

***[THIS CLAUSE IS ONLY TO BE USED WHERE THE SUBCONTRACTOR IS COMPRISED OF A JOINT VENTURE]***

The Subcontractor acknowledges and agrees:

* + 1. that the joint and several liability of each entity comprising the Subcontractor, and the Subcontractor's obligations under this Subcontract, will not be qualified or otherwise limited by any matter whatsoever including as a result of, and notwithstanding, the operation of any provision in any joint venture or other agreement between the entities comprising the Subcontractor entered into for the purposes of tendering for or performing the Subcontractor's Activities or the Subcontract Works or otherwise in connection with this Subcontract; and
    2. that the Contractor has entered into this Subcontract in reliance upon the Subcontractor's acknowledgement and agreement in paragraph (a).

1. UXO CONTAINING AREA - ENGAGEMENT OF UXO SUBCONTRACTOR

***[THIS CLAUSE IS ONLY TO BE USED IF THERE IS A RISK OF THE SITE CONTAINING UXO. IN SUCH CIRCUMSTANCES THE CONTRACTOR/CONTRACTOR'S REPRESENTATIVE SHOULD CONSULT WITH THE MCC CONTRACT ADMINISTRATOR FOR FURTHER GUIDANCE]***

* 1. General

Without limiting the Subcontractor's obligations under the Subcontract or otherwise at law or in equity, as a condition precedent to the Subcontractor commencing the Subcontract Works or a Stage, the Subcontractor must:

* + 1. engage a UXO Subcontractor for the purposes of undertaking activities in accordance with this clause 22; and
    2. following completion of the UXO Subcontractor’s engagement as contemplated by this clause 22, provide to the Contractor's Representative a report issued by the UXO Subcontractor:
       1. detailing:
          1. the location of any UXO identified by the UXO Subcontractor as present on or at the Site (if any); and
          2. if relevant, all investigative activities carried out and Safety Protocols implemented by the UXO Subcontractor in accordance with this clause 22;
       2. certifying (to the extent applicable) that the activities carried out in accordance with this clause 22 comply with:
          1. the Defence Unexploded Ordnance Management Manual; and
          2. all applicable Statutory Requirements (including those concerning work, health and safety); and
       3. containing any other information requested by the Contractor's Representative.
  1. Provision of UXO Information for the Site and Determination of Course of Action
     1. Prior to the UXO Subcontractor commencing any activities in accordance with this clause 22, the Subcontractor must ensure it provides to the UXO Subcontractor all available historical information in its possession or that can be reasonably obtained regarding the Site (and the possible presence of UXO on or at the Site) in order for the UXO Subcontractor to carry out the following activities in accordance with the Defence Unexploded Ordnance Management Manual (as applicable):
        1. complete a UXO Risk Assessment;
        2. complete a UXO Assessment Survey; and
        3. determine the risk of UXO being present on the Site.
     2. If, having reviewed the information provided by the Subcontractor in accordance with paragraph (a) (whether it has completed a UXO Risk Assessment or not), the UXO Subcontractor considers a UXO Assessment Survey is required to determine the risk of UXO being present on or at the Site, the Subcontractor must contact the Contractor to facilitate the UXO Subcontractor accessing the Site to conduct a UXO Assessment Survey.
  2. Management of UXO Risks on the Site

If, following completion of a UXO Risk Assessment or UXO Assessment Survey the UXO Subcontractor determines the Subcontractor can safely carry out the Subcontract Works on the Site by implementing Safety Protocols, the Subcontractor must:

* + 1. comply with:
       1. all Safety Protocols, so far as is reasonably practicable; and
       2. the UXO Risk Management Plan implemented for the Site (if any) in accordance with the Defence Unexploded Ordnance Management Manual and any other relevant documentation;
    2. ensure it consults with all persons on the Site regarding the:
       1. UXO risks identified and communicated to the Subcontractor by the UXO Subcontractor;
       2. Safety Protocols; and
       3. UXO Risk Management Plan (if any) and any other relevant documentation;
    3. ensure all persons on the Site comply with the Safety Protocols and UXO Risk Management Plan (if any), so far as is reasonably practicable; and
    4. consult with the UXO Subcontractor to ensure that all Safety Protocols are regularly reviewed and updated.
  1. Innocuous Material Found During UXO Assessment Survey
     1. If, upon completing a UXO Assessment Survey, the UXO Subcontractor identifies potential UXO present on or at the Site as innocuous material (including Explosive Ordnance Materiel), the Subcontractor must ensure the UXO Subcontractor safely removes and disposes of the innocuous material from the Site, in accordance with all Statutory Requirements.
     2. If the UXO Subcontractor removes innocuous material from the Site in accordance with paragraph (a), the Subcontractor must ensure that it obtains a UXO Clearance Certificate from the UXO Subcontractor.
  2. Site Containing UXO
     1. In the event the UXO Subcontractor identifies UXO present on or at the Site whilst carrying out investigative actions in accordance with this clause 22 that it considers is a risk to the health and safety of persons present on or at the Site (or persons who will carry out works on the Site), such that removal of the UXO is required, the Subcontractor must ensure the UXO Subcontractor:
        1. immediately verbally notifies the Subcontractor, the Contractor's Representative and a representative of the Defence Estate at which the Site is located;
        2. within 24 hours of the verbal notification under subparagraph (i), provides written notice to the Subcontractor, Contractor's Representative and the Contractor setting out specific details of the identified UXO present on or at the Site;
        3. does not attempt to handle, remove, dispose of, destroy or demolish any identified UXO;
        4. immediately implements control measures that prevent persons, other than those authorised by the Contractor, accessing the area of the Site containing the identified UXO; and
        5. ensures all persons and any Plant, Equipment and Work are kept clear and protected from exposure to the identified UXO.
     2. Without limiting paragraph (a), the Contractor's Representative must, within 14 days of the receipt of the notice under paragraph (a)(ii) instruct the Subcontractor as to the course of action it must adopt insofar as the Subcontractor's Activities are affected by the presence of UXO at or on the Site.
     3. Following the identified UXO being removed from the Site (by the Contractor, UXO Subcontractor or the Contractor's nominated representatives in accordance with the notice issued in accordance with paragraph (b)), the Subcontractor must obtain a UXO Clearance Certificate from the entity who removed the UXO at the Site.
  3. Notice of UXO After Commencement of the Subcontract Works or a Stage
     1. If, having complied with its obligations under clauses 22.1 to 22.5 and having commenced carrying out the Subcontract Works at the Site, the Subcontractor considers it has possibly identified UXO on or at the Site following a:
        1. UXO Subcontractor determining the Subcontract Works or a Stage can be carried out safely in accordance with clause 22.3; or
        2. UXO Clearance Certificate being obtained in accordance with clause 22.4(b) or 22.5(c),

it must:

* + - 1. immediately verbally notify the Contractor's Representative and the Contractor (including a representative of the Defence Estate at which the Site is located);
      2. within 24 hours of the verbal notification under subparagraph (iii), provide written notice to the Contractor's Representative and the Contractor setting out specific details of the UXO identified as present on or at the Site;
      3. not attempt to handle, remove, dispose of, destroy or demolish the identified UXO;
      4. immediately implement control measures that prevent persons, other than those authorised by the Contractor, accessing the area of the Site containing the identified UXO; and
      5. ensure all persons, as well as any Plant, Equipment and Work in operation at the Site are kept clear and protected from exposure to the identified UXO.
    1. The Contractor's Representative must, within 14 days of the receipt of the notice under paragraph (a)(iv):
       1. notify the Subcontractor and the Contractor of its determination as to whether UXO has been identified on or at the Site; and
       2. instruct the Subcontractor as to the course of action it must adopt insofar as the Subcontractor's Activities are affected by the presence of UXO at or on the Site.
  1. Subcontractor's Entitlement
     1. If the Contractor's Representative determines in accordance with clause 22.6(b)(i) that UXO has been identified at or on the Site and the Subcontractor has otherwise complied with its obligations under clauses 22.1 to 22.6, the Subcontractor will be entitled to:
        1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Subcontract; and
        2. have the Subcontract Price increased by the extra costs reasonably incurred by the Subcontractor after the giving of the notice under clause 22.6(a)(iv) which arise directly from the UXO and the Contractor's Representative's instruction under clause 22.6(b)(ii), as determined by the Contractor's Representative.
     2. To the extent permitted by law, the Subcontractor will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with any UXO or the Contractor's Representative's instruction under clause 22.6(b)(ii), other than under paragraphs (a)(i) and (a)(ii).
  2. Definitions and interpretation

For the purposes of clause 22:

* + 1. **Abandoned Explosive Ordnance** means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned Explosive Ordnance may or may not have been primed, fuzed, armed or otherwise prepared for use;
    2. **Defence Unexploded Ordnance Management Manual** means the Defence Unexploded Ordnance Management Manual dated September 2022 available on the Defence Website, as amended or replaced from to time;
    3. **Discarded Military Munitions** means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal;
    4. **Explosive Ordnance Materiel** means the general term to describe any materiel that forms, or has formed, part of an item of explosive ordnance. Explosive Ordnance Materiel refers to all by-products resulting from the functioning of munitions. This includes, but is not limited to, fragments of exploded/destroyed military munitions, shell casings, projectiles (including expended ejection munitions), fuze remnants, mortar tails, practice munitions, inert training munitions;
    5. **Safety Protocols** means any risk elimination strategies, risk mitigation strategies and control measures (as applicable) identified by the UXO Subcontractor and implemented at the Site to ensure that the Subcontract Works can be carried out safely;
    6. **UXO** means explosive ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design or for any other cause. For the purpose of this clause 22, the term ‘UXO’ is used to describe UXO, Discarded Military Munitions and Abandoned Explosive Ordnance where contextually appropriate;
    7. **UXO Assessment Survey** means a survey designed to determine, assess and report on the following (but is not limited to):
       1. whether an area is affected by UXO;
       2. the boundaries of the affected area;
       3. the densities of UXO, including the locations and characteristics of impact areas, within the affected area; and
       4. the residual depths, types and natures of UXO and inert ordnance-related items within the affected area;
    8. **UXO Clearance Certificate** means a certificate obtained in accordance with clause 22.4(b) or 22.5(c):
       1. verifying that a UXO search has been conducted;
       2. detailing if any innocuous material has been removed from a Site;
       3. detailing any necessary remediation activities completed if UXO has been identified at the Site; and
       4. confirming that the risk of UXO contamination on the Site has been eliminated or minimised, so far as reasonably practicable;
    9. **UXO Risk Assessment** means a preliminary or detailed risk assessment (as described in the Defence Unexploded Ordnance Management Manual) conducted by the UXO Subcontractor to determine the likelihood of the presence of UXO on the Site and the risks to the Subcontractor in carrying out the Subcontract Works;
    10. **UXO Risk Management Plan** means the plan developed by the UXO Subcontractor detailing the proposed approach for treating UXO risks on the Site, as described in the Defence Unexploded Ordnance Management Manual; and
    11. **UXO Subcontractor** means a panel member under the:
        1. Unexploded Ordnance Management and Advice (only to be used by the Subcontractor as directed by the Contractor or the Contractor's Representative where the likelihood of any remediation at the Site is low and no physical works are to be carried out by the UXO Subcontractor, and solely a UXO Risk Assessment is required);
        2. Unexploded Ordnance Survey and Safety Services; or
        3. Unexploded Ordnance Remediation,

service categories of the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering.

1. - Subcontract Works Description
2. - Indigenous PARTICIPATION Plan