

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME and description of works AND SERVICES, as applicable]*

DESIGN SERVICES SUBCONTRACT

(FOR USE WITH DEFENCE MAnAGING CONTRACTOR CONTRACT)

*[LAST AMENDED: 10 MARCH 2025 - PLEASE REMOVE PRIOR TO PUBLICATION OF TENDER DOCUMENTS]*

Table of Contents

[FORMAL AGREEMENT 1](#_Toc191474124)

[CONDITIONS OF SUBCONTRACT 3](#_Toc191474125)

[1. Glossary of terms, interpretation AND MISCELLANEOUS 3](#_Toc191474126)

[1.1 Glossary of Terms 3](#_Toc191474127)

[1.2 Interpretation 28](#_Toc191474128)

[1.3 Miscellaneous 30](#_Toc191474129)

[2. Role of the consultant 32](#_Toc191474130)

[2.1 Engagement 32](#_Toc191474131)

[2.2 Standard of Care 32](#_Toc191474132)

[2.3 Authority to Act 32](#_Toc191474133)

[2.4 Knowledge of the Contractor's Requirements 32](#_Toc191474134)

[2.5 Notice of Matters Impacting on the Services or the MCC Works 32](#_Toc191474135)

[2.6 Co‑operation with Other Contractors 33](#_Toc191474136)

[2.7 Access to Consultant's Premises 33](#_Toc191474137)

[2.8 Conflict of Interest 33](#_Toc191474138)

[2.9 Subcontracting 33](#_Toc191474139)

[2.10 Statutory Requirements 33](#_Toc191474140)

[2.11 Change in Statutory Requirements or Variance with Subcontract 34](#_Toc191474141)

[2.12 Consultant Deed of Covenant and Novation 34](#_Toc191474142)

[2.13 The Environment 34](#_Toc191474143)

[2.14 Commonwealth’s Actions 35](#_Toc191474144)

[2.15 Pandemic Adjustment Event 35](#_Toc191474145)

[3. Role of the CONTRACTOR 37](#_Toc191474146)

[3.1 Information and Services 37](#_Toc191474147)

[3.2 Additional Information 37](#_Toc191474148)

[3.3 Access to the Site 37](#_Toc191474149)

[4. Personnel 38](#_Toc191474150)

[4.1 Contractor's Representative 38](#_Toc191474151)

[4.2 Replacement of Contractor's Representative 38](#_Toc191474152)

[4.3 Parties' Conduct 38](#_Toc191474153)

[4.4 Key People for the Services 38](#_Toc191474154)

[4.5 Removal of Persons 38](#_Toc191474155)

[4.6 Monthly Meeting 38](#_Toc191474156)

[4.7 Consultant's Monthly Report 39](#_Toc191474157)

[5. Insurance 42](#_Toc191474158)

[5.1 Consultant Insurance Obligations 42](#_Toc191474159)

[5.2 Contractor Insurance Obligations 43](#_Toc191474160)

[5.3 Failure to Insure 44](#_Toc191474161)

[5.4 Period of Insurance 44](#_Toc191474162)

[5.5 Notice of Potential Claim 45](#_Toc191474163)

[5.6 Cross Liability 45](#_Toc191474164)

[5.7 Insurances Secondary 45](#_Toc191474165)

[5.8 Exclusion of Consequential Loss and Limitation on Liability 46](#_Toc191474166)

[6. DESIGN AND Documentation 47](#_Toc191474167)

[6.1 Consultant's Documentation Program 47](#_Toc191474168)

[6.2 Consultant's Design 47](#_Toc191474169)

[6.3 Contractor's Representative May Review Design Documentation 47](#_Toc191474170)

[6.4 No Obligation to Review 47](#_Toc191474171)

[6.5 Copies of Design Documentation 47](#_Toc191474172)

[6.6 Licence over Project Documents 48](#_Toc191474173)

[6.7 Intellectual Property Warranties 48](#_Toc191474174)

[6.8 Intellectual Property Rights 48](#_Toc191474175)

[6.9 Contractor Material 49](#_Toc191474176)

[6.10 Resolution of Ambiguities 49](#_Toc191474177)

[6.11 Access to Premises and Project Documents 49](#_Toc191474178)

[6.12 Measurements and Dimensions 50](#_Toc191474179)

[6.13 Design Certification 50](#_Toc191474180)

[6.14 Samples 50](#_Toc191474181)

[6.15 Work Health and Safety 51](#_Toc191474182)

[7. Quality 55](#_Toc191474183)

[7.1 Quality Assurance 55](#_Toc191474184)

[7.2 Non-Complying Services 55](#_Toc191474185)

[7.3 Reperformance of the Non-complying Services 55](#_Toc191474186)

[7.4 Project Plans 56](#_Toc191474187)

[7.5 Drawings 57](#_Toc191474188)

[8. Time 58](#_Toc191474189)

[8.1 Progress 58](#_Toc191474190)

[8.2 Programming 58](#_Toc191474191)

[8.3 Consultant Not Relieved 58](#_Toc191474192)

[8.4 Suspension 59](#_Toc191474193)

[8.5 Delays, Including Delays Entitling Claim in Extension of Time 59](#_Toc191474194)

[8.6 Claim for Extension of Time 59](#_Toc191474195)

[8.7 Conditions Precedent to Extension 60](#_Toc191474196)

[8.8 Extension of Time 60](#_Toc191474197)

[8.9 Unilateral Extension of Time 60](#_Toc191474198)

[8.10 Acceleration 61](#_Toc191474199)

[9. PLANNING PHASE AND DELIVERY PHASE 62](#_Toc191474200)

[9.1 Planning Phase and Delivery Phase 62](#_Toc191474201)

[9.2 Updated Delivery Phase Fee Proposal 62](#_Toc191474202)

[9.3 Approval (or otherwise) of Updated Delivery Phase Fee Proposal and adjustment of Fees for the Delivery Phase 64](#_Toc191474203)

[9.4 Notice to Proceed (or not Proceed) with Delivery Phase Services 65](#_Toc191474204)

[10. Variations 67](#_Toc191474205)

[10.1 Variation Price Request 67](#_Toc191474206)

[10.2 Variation Order 67](#_Toc191474207)

[10.3 Valuation of Variation 67](#_Toc191474208)

[10.4 Table of Variation Rates and Prices 67](#_Toc191474209)

[10.5 Omissions 68](#_Toc191474210)

[11. Payment 69](#_Toc191474211)

[11.1 Payment Obligation 69](#_Toc191474212)

[11.2 Payment Claims 69](#_Toc191474213)

[11.3 Certification to Accompany Submission of Payment Claim 69](#_Toc191474214)

[11.4 Payment Statement 70](#_Toc191474215)

[11.5 Payment 70](#_Toc191474216)

[11.6 Payment on Account 71](#_Toc191474217)

[11.7 Completion Payment Claim and Notice 71](#_Toc191474218)

[11.8 Release after Completion Payment Claim and Notice 71](#_Toc191474219)

[11.9 Interest 71](#_Toc191474220)

[11.10 Correction of Payment Statements 72](#_Toc191474221)

[11.11 Right of Set-Off 72](#_Toc191474222)

[11.12 Payment of Workers 72](#_Toc191474223)

[11.13 GST 72](#_Toc191474224)

[11.14 Security of Payment Legislation 73](#_Toc191474225)

[11.15 Accounting Records 74](#_Toc191474226)

[11.16 Cost Allocation Advice 74](#_Toc191474227)

[11.17 Facilities and Infrastructure Accounting 74](#_Toc191474228)

[11.18 Milestone Fee Payment Schedule 74](#_Toc191474229)

[12. Termination 75](#_Toc191474230)

[12.1 Preservation of Rights 75](#_Toc191474231)

[12.2 Consultant Default 75](#_Toc191474232)

[12.3 Contents of Notice of Default 75](#_Toc191474233)

[12.4 Termination for Insolvency or Breach 75](#_Toc191474234)

[12.5 Contractor's Entitlements after Termination by Contractor 75](#_Toc191474235)

[12.6 Consultant's Entitlements after Termination by Consultant 76](#_Toc191474236)

[12.7 Termination for Convenience 76](#_Toc191474237)

[12.8 Consultant’s Entitlements after Termination for Convenience by Contractor 76](#_Toc191474238)

[12.9 Termination of Managing Contractor Contract 77](#_Toc191474239)

[12.10 Consequences Following Managing Contractor Contract Termination 77](#_Toc191474240)

[13. DisputeS 78](#_Toc191474241)

[13.1 Notice of Dispute 78](#_Toc191474242)

[13.2 Expert Determination 78](#_Toc191474243)

[13.3 The Expert 78](#_Toc191474244)

[13.4 Not Arbitration 78](#_Toc191474245)

[13.5 Procedure for Determination 79](#_Toc191474246)

[13.6 Disclosure of Interest 79](#_Toc191474247)

[13.7 Costs 79](#_Toc191474248)

[13.8 Conclusion of Expert Determination 79](#_Toc191474249)

[13.9 Expert Determination Agreement 79](#_Toc191474250)

[13.10 Determination of Expert 79](#_Toc191474251)

[13.11 Executive Negotiation 80](#_Toc191474252)

[13.12 Arbitration Agreement 80](#_Toc191474253)

[13.13 Arbitration 80](#_Toc191474254)

[13.14 MCC Dispute Procedures 81](#_Toc191474255)

[13.15 MCC Disputes 82](#_Toc191474256)

[13.16 Procedure for MCC Disputes 82](#_Toc191474257)

[13.17 Further Procedures 82](#_Toc191474258)

[13.18 Proportionate Liability 83](#_Toc191474259)

[13.19 Continuation of Services 83](#_Toc191474260)

[14. Notices 84](#_Toc191474261)

[14.1 Notice of Variation 84](#_Toc191474262)

[14.2 Notices of Other Claims 84](#_Toc191474263)

[14.3 Prescribed Notices 84](#_Toc191474264)

[14.4 Continuing Events 85](#_Toc191474265)

[14.5 Time Bar 85](#_Toc191474266)

[14.6 Other Provisions Unaffected 85](#_Toc191474267)

[14.7 Address for Service 85](#_Toc191474268)

[14.8 Receipt of Notices 86](#_Toc191474269)

[15. Whole of Life 87](#_Toc191474270)

[15.1 General 87](#_Toc191474271)

[15.2 Consultation 87](#_Toc191474272)

[15.3 WOL Proposals 87](#_Toc191474273)

[15.4 HOTO Process 87](#_Toc191474274)

[15.5 Post Occupancy Evaluation 88](#_Toc191474275)

[15.6 Rights and Obligations Not Affected 88](#_Toc191474276)

[16. General 90](#_Toc191474277)

[16.1 Workplace Gender Equality 90](#_Toc191474278)

[16.2 Indigenous Procurement Policy 90](#_Toc191474279)

[16.3 Defence's Security Alert System 90](#_Toc191474280)

[16.4 IT Equipment 91](#_Toc191474281)

[16.5 Privacy 91](#_Toc191474282)

[16.6 Moral Rights 92](#_Toc191474283)

[16.7 Freedom of Information 93](#_Toc191474284)

[16.8 Long Service Leave 93](#_Toc191474285)

[16.9 Assignment 93](#_Toc191474286)

[16.10 Publicity 94](#_Toc191474287)

[16.11 Building Works Manual and National Construction Code Certification 94](#_Toc191474288)

[16.12 Applicable Standards 94](#_Toc191474289)

[16.13 Shadow Economy Procurement Connected Policy 94](#_Toc191474291)

[16.14 Commonwealth Publication and Reporting Requirements 95](#_Toc191474292)

[16.15 Modern Slavery 96](#_Toc191474293)

[16.16 Compliance with the Commonwealth Supplier Code of Conduct 96](#_Toc191474294)

[17. COMMERCIAL-IN-CONFIDENCE INFORMATION 98](#_Toc191474295)

[18. INFORMATION SECURITY 99](#_Toc191474296)

[18.1 DISP Membership 99](#_Toc191474297)

[18.2 Confidential Information and Information Security 99](#_Toc191474298)

[18.3 Security or Confidentiality Incidents 100](#_Toc191474299)

[18.4 Return and Retention of Confidential Information 100](#_Toc191474300)

[18.5 Release and Indemnity 101](#_Toc191474301)

[19. Strategic Notice Event 102](#_Toc191474302)

[19.1 Consultant's Warranty on Award Date 102](#_Toc191474303)

[19.2 Consultant to Give Notice 102](#_Toc191474304)

[19.3 Contractor Rights Upon Occurrence of Strategic Notice Event 102](#_Toc191474305)

[19.4 Strategic Notice Event Remediation Plan 103](#_Toc191474306)

[19.5 Additional Obligations in respect of Known or Suspected Fraud or Corruption 103](#_Toc191474307)

[19.6 Release 104](#_Toc191474308)

[19.7 Consultant's Compliance 104](#_Toc191474309)

[20. FINANCIAL VIABILITY 105](#_Toc191474310)

[21. ESTATE INFORMATION 106](#_Toc191474311)

[21.1 Consultant Estate Information Obligations 106](#_Toc191474312)

[21.2 No Obligation to Review 106](#_Toc191474313)

[SUBCONTRACT PARTICULARS 107](#_Toc191474314)

[Annexure 1 - Brief 117](#_Toc191474315)

[Annexure 2 - SPECIAL CONDITIONS 118](#_Toc191474316)

[Annexure 3 - MILESTONE FEE PAYMENT SCHEDULE 128](#_Toc191474317)

[Annexure 4 - table of variation RATES and prices 130](#_Toc191474318)

FORMAL AGREEMENT

The Subcontract is made on day of

**Parties** **The contractor specified in the Subcontract Particulars** (**Contractor**)

**The consultant specified in the Subcontract Particulars** (**Consultant**)

A. The Commonwealth of Australia (**Commonwealth**) and the Contractor entered into the Managing Contractor Contract for the design and construction of the MCC Works.

B. The Contractor wishes to subcontract certain obligations under the Managing Contractor Contract in relation to design to the Consultant under the Subcontract.

C. The Contractor and the Consultant promise to carry out and complete their respective obligations in accordance with the:

(a) attached Conditions of Subcontract; and

(b) other documents referred to in the definition of "Subcontract" in clause 1.1 of the Conditions of Subcontract.

D. 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.

**SIGNED as an agreement**

***[S 127 OF CORPORATIONS ACT]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Contractor** in accordance with section 127 of the *Corporations Act* *2001* (Cth): |  |  |  |
|  |  |  |  |
| 1. Signature of director |  |  | 1. Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| 1. Full name of director who states that they are a director of the **Contractor** |  |  | 1. 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 **Consultant** in accordance with section 127 of the *Corporations Act* *2001* (Cth): |  |  |  |
|  |  |  |  |
| 1. Signature of director |  |  | 1. Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| 1. Full name of director who states that they are a director of the **Consultant** |  |  | 1. 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 **Consultant** |

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Consultant** 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 CONSULTANT]***

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 Contractor, the MCC Contract Administrator, 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,
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 Services or the MCC Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Services or the MCC Works; or
   2. occupy, use, maintain or operate the completed MCC Works, to the extent that the Services are relevant to such obtaining or satisfaction.

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.

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 Consultant.

Brief

1. The brief in Annexure 1.

Building Works Manual

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

Claim

1. Includes any claim for an increase in the Fee, 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 Services, the MCC 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.

Commonwealth

1. Commonwealth of Australia.

Commonwealth Procurement Rules

1. The Commonwealth Procurement Rules issued under section 105B(1) of the *Public Governance, Performance and Accountability Act* *2013* (Cth).

Completion

1. The point in time when, in respect of a Milestone:
   1. the Design Documentation has been completed in accordance with the Subcontract;
   2. the Services have been completed in accordance with the Subcontract;
   3. the Consultant has satisfied all Consultant HOTO Obligations and other obligations (including applicable Consultant Estate Information Obligations) (if any) which must be satisfied in respect of that Milestone in accordance with the HOTO Requirements;
   4. all documents and other information (if any) required in respect of that Milestone have been submitted to the Contractor’s Representative in accordance with the Subcontract; and
   5. without limiting the foregoing, the Consultant 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 Consultant 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 Services or the MCC Works, which:
        1. by its nature is confidential; or
        2. the Consultant 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 Consultant 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 Consultant 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 18; or
     3. has been independently developed or acquired by the Consultant.

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).

Consultant

1. The person specified in the Subcontract Particulars.

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.

Consultant Estate Information Obligation

1. Means 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 Consultant including (as applicable to the Services) those allocated to a Data Supplier.

Consultant HOTO Obligation

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

Consultant's Representative

1. The person specified in the Subcontract Particulars or any other person from time to time appointed as the Consultant's Representative in accordance with clause 4.4.

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 Material

1. All material provided to the Consultant by the Contractor, including documents provided in accordance with clause 6 and any other documents, equipment, machinery and data (stored by any means).

Contractor's Design Management Plan

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

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 Design Management Plan;
   2. Contractor's Environmental Management and Sustainability Plan;
   3. Contractor's Project Lifecycle and HOTO Plan;
   4. Contractor's Quality Plan;
   5. Contractor's Site Management Plan;
   6. Contractor's Work Health and Safety Plan; and
   7. 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 4.2 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.

Corruption

1. 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 MCC Works or a Stage (as defined in the Managing Contractor Contract).

Date for Completion

1. The date or period of time (if any) specified in the Subcontract Particulars for Completion of a Milestone, as adjusted under the Subcontract.

Date for Delivery Phase Agreement

1. The date (if any) specified in the Subcontract Particulars, as may be adjusted under clause 9.

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 Services or the MCC 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 Services or the MCC Works.

Defence Strategic Interest Issue

1. Any issue arising out of or in relation to the Subcontract, the Services or the Consultant (or any Related Body Corporate of the Consultant) 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 Consultant 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.

Delivery Phase

The period (if any) commencing on the date specified in the notice issued under clause 9.4(a) (or, if no date is specified, the date of such notice) until the earlier of the:

* 1. date the Delivery Phase Services have been completed in accordance with the Subcontract; and
  2. date of termination of the Subcontract.

1. **Delivery Phase Agreement Minutes**
2. Has the meaning in clause 9.3(a)(iii).

Delivery Phase Fee

1. The Indicative Delivery Phase Fee adjusted under clause 9.3(a)(iii) (if at all) and set out in the Delivery Phase Agreement Minutes issued under clause 9.3(a)(iv), as adjusted, subject to clause 14.5 (if applicable), under the Subcontract.

Delivery Phase Fee Proposal

The Delivery Phase Fee Proposal (if any) specified in the Subcontract Particulars.

Delivery Phase Services

1. The services described in, or reasonably to be inferred from, the Subcontract as Delivery Phase Services, including those Services described in the Brief.

Design Documentation

1. All design documentation required to be brought into existence by the Consultant as part of, or for the purpose of, carrying out the Services (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 form.
2. **Design Management Plan**
3. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail the procedures and processes the Consultant will undertake in order to plan and manage the design of the parts of the MCC Works which the Subcontract requires it to design. The Design Management Plan must not be inconsistent with the Contractor's Design Management Plan and must address, at a minimum, the matters set out in the Subcontract Particulars.

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.
2. **DSPF**
3. 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 Contractor from time to time to replace that person.

Employers’ Liability Insurance

1. A policy of insurance covering the liability of the Consultant 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 Services 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 Services or the MCC Works.

Environmental Management and Sustainability Plan

1. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail the procedures the Consultant will implement to manage the Services from an environmental perspective to:
   1. ensure compliance with the Environmental Requirements and Statutory Requirements; and
   2. maximise the achievement of the Environmental Objectives.

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 Consultant personnel (including the Consultant’s key people under clause 4.4(a)(i)) 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 Services and the MCC Works;
  6. the training and awareness programmes provided to Consultant personnel regarding the Environment;
  7. the procedure for preparing (including tailoring) and finalising the Environmental Management and Sustainability Plan under clause 7.4;
  8. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Services and the MCC 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 Services and the MCC Works;
  9. the procedure for regularly reviewing, updating and amending the Environmental Management and Sustainability Plan under clause 7.4 (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 Services and the MCC Works);
  10. the procedure for regular auditing or other monitoring of Consultant 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 Services and the MCC Works;
  11. all matters in the Smart Infrastructure Handbook and the Sustainable Procurement Guide;
  12. the additional matters specified in the Subcontract Particulars; and
  13. 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 Services;
   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.

Estate Information

1. Information and data created in connection with and relating to the design and construction of the MCC Works or a Stage (as defined in the Managing Contractor Contract) or otherwise relating to each element of the MCC Works or a Stage (as defined in the Managing Contractor Contract) and that part of the Defence Estate upon which they are constructed.

Estate Information Provision Plan

1. The plan prepared by the Consultant and finalised under clause 7.4 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 Consultant will implement to manage the assessment, provision, creation, recording and updating of Estate Information in accordance with this Contract;
   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 21.1; and
   6. include any other materials required by the:
      1. Subcontract;
      2. Contractor's Representative; or
      3. 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.

Fee

1. If:
   1. clause 9 does not apply, the amount set out in the Subcontract Particulars as adjusted, subject to clause 14.5 (if applicable), under the Subcontract; or
   2. clause 9 applies, the sum of the Planning Phase Fee and the Delivery Phase Fee (if any).

Financial Representative

1. Means the Consultant’s chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Consultant.

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

1. 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 MCC Works or a Stage (as defined in the Managing Contractor Contract) to enable the occupation, use, operation and maintenance of the MCC Works or the Stage (as defined in the Managing Contractor Contract) by the Commonwealth and Other Contractors including the:
   1. commissioning of the MCC Works or the Stage (as defined in the Managing Contractor Contract) (including the inspection and testing process);
   2. handover of the MCC Works or the Stage (as defined in the Managing Contractor Contract) to the Commonwealth; and
   3. occupation, use, operation and maintenance of the MCC Works or the Stage (as defined in the Managing Contractor Contract) 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.

Indicative Delivery Phase Fee

1. The amount (if any) specified in the Subcontract Particulars.

Indigenous Enterprise

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

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 Consultant 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 Consultant 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 Consultant 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 Consultant;
   4. where the Consultant is an individual person or a partnership including an individual person, the Consultant:
      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 Consultant 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.

IT Equipment

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

Long Service Leave Legislation

1. 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 for the design and construction of the MCC Works.

Material Change

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

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 Consultant.

MCC Dispute Procedures

1. The dispute resolution procedures under the Managing Contractor Contract referred to in the first paragraph of clause 13.14.

MCC Works

1. The physical works 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).

Milestone

1. A milestone described in the Subcontract Particulars.

Milestone Fee Payment Schedule

1. The milestone fee payment schedule (if any) set out in Annexure 3, as adjusted from time to time in accordance with clause 11.18, setting out:
   1. the instalments in which the Fee (or any part of the Fee) will be payable; and
   2. the Milestones which must be achieved by the Consultant for each instalment to become payable (failing which the Contractor's entitlement to be paid the relevant instalment of the Fee will not arise until such time as the applicable milestone is achieved).

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 MCC 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.

Other Contractor

1. Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person (including the EMOS Contractor) engaged to do work other than the Consultant.
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); or
  2. such other events as may be specified in the Subcontract Particulars,

in each case which directly impacts the supply of labour, equipment, materials or services required for the carrying out of the Services.

Personal Information

1. Has the meaning given in the Privacy Act.

Planning Phase

1. The period commencing on the Award Date and continuing until the earlier of:
   1. if applicable, the date of commencement of the Delivery Phase;
   2. if a notice is issued under clause 9.4(b), the date the Planning Phase Services have been completed in accordance with the Subcontract; and
   3. the date of termination of the Subcontract.

Planning Phase Fee

1. The amount specified in the Subcontract Particulars as adjusted, subject to clause 14.5 (if applicable), under the Subcontract.

Planning Phase Services

1. The services described or reasonably to be inferred from the Subcontract as Planning Phase Services, including those Services described in the Brief.

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 Consultant in carrying out the Services.

Project Documents

1. Means:
   1. Design Documentation;
   2. Project Plans;
   3. Approvals;
   4. IT Equipment to the extent relating to software;
   5. the documents which the Consultant is obliged to maintain under clause 11.15; and
   6. without limiting paragraphs (a) - (e), any other data, documents, drawings, records, programs and information (including Estate Information and information relating to the Consultant's compliance with the WHS Legislation) and material:
      1. produced; or
      2. provided, or required to be provided, to the Contractor or the Contractor's Representative,

under, for the purposes of, arising out of or in connection with the Subcontract, the Services or the MCC Works by, for or on behalf of the Consultant.

Project Lifecycle and HOTO Plan

1. The plan prepared by the Consultant in accordance with, and for the purposes of, the HOTO Requirements and finalised under clause 7.4, 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. Design Management Plan;
   2. Environmental Management and Sustainability Plan;
   3. Estate Information Provision Plan;
   4. Project Lifecycle and HOTO Plan;
   5. Quality Plan;
   6. Site Management Plan;
   7. Work Health and Safety Plan; and
   8. additional plans specified in the Subcontract Particulars and finalised by the Consultant under clause 7.4(a)(ii),
2. as updated or amended under clause 7.4.

Public Liability Insurance

1. A policy of liability insurance covering the:
   1. Consultant for its 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 Consultant,
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 Services.
3. This policy is not required to cover liabilities or losses insured under Workers Compensation Insurance, Employers’ Liability Insurance or Professional Indemnity 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 Services in accordance with clause 4.4.

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 Services;
   2. prevent and minimise adverse quality impacts during the Services (including non-complying Services before, at and after Completion) and Defects (or similar term used or defined in the Managing Contractor Contract) before, at and after Completion (as defined in the Managing Contractor Contract);
   3. optimise the value for money achieved by the Commonwealth in respect of the Services; and
   4. achieve the additional objectives specified in the Subcontract Particulars.

Quality Plan

1. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail the procedures the Consultant will implement to manage the Services 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.
2. 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 Consultant’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 Consultant personnel (including the Quality Manager and the Consultant’s key people under clause 4.4(a)(i)) 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 Services;
   6. the training and awareness programmes provided to Consultant personnel regarding quality;
   7. the procedure for preparing (including tailoring) and finalising the Quality Plan to meet the requirements of the Subcontract under clause 7.4 (including how the Consultant will ensure maximum consistency between the Consultant’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 7.4;
   9. the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Services, 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 Services;
   10. the procedure for regular auditing or other monitoring of Consultant 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 Services;
   11. the additional matters specified in the Subcontract Particulars; and
   12. any other matters required by the:
       1. Subcontract; or
       2. Contractor’s Representative.

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Defence Design Services 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.

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. *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 Services or otherwise relates to the Consultant or any Related Body Corporate of the Consultant; 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 Consultant 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 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 Consultant 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.

Services

1. The services described in, or reasonably to be inferred from, the Brief and comprising (if the Services are phased) the Planning Phase Services and (subject to clause 9) the Delivery Phase Services.

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.
2. **Significant Event**
3. Means:
   1. any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Consultant (or any officers, employees or agents) 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 Consultant (or any officers, employees or agents) that may adversely impact on compliance with Commonwealth policy and legislation or the Contractor's or the Commonwealth’s reputation.

Site

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

Site Management Plan

1. The plan prepared by the Consultant and finalised under clause 7.4, which must set out in adequate detail all procedures the Consultant will implement to manage the Services 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 Consultant personnel (including the Consultant’s Representative and the Consultant’s key people under clause 4.4(a)(i)) regarding management of the Services 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 any Other Contractor 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 Services;
   4. procedures for access to:
      1. Commonwealth property (including any Defence location); and
      2. the Site,

by Consultant 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, the 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 Consultant personnel in respect of Commonwealth property and the Site;
  2. procedures for (as applicable):
     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 Services;
  3. if the Services 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 7.4;
  5. the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 7.4 (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 Services);
  6. the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Services, 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 Services;
  7. the procedure for regular auditing or other monitoring of Consultant 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 Services;
  8. the procedure for managing the effects of the Pandemic on the carrying out of the Services;
  9. the additional matters specified in the Subcontract Particulars; and
  10. 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

1. 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.

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 Services and the MCC 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.
2. **Strategic Notice Event**
3. 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 Services.
4. **Strategic Notice Event Remediation Plan**

The plan (if any) prepared by the Consultant and finalised under clause 19.4.

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 Brief; 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".
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 (if any) in Annexure 4, containing rates and prices to be used for the purposes of valuing Variations under clause 10.3.
2. **Updated Delivery Phase Fee Proposal**

The updated Delivery Phase Fee Proposal prepared and submitted by the Consultant under and in accordance with clause 9.2(a).

Variation

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

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 MCC Works over the whole life of the MCC Works, including the costs of designing and constructing the MCC Works prior to Completion (as defined in the Managing Contractor Contract) and occupying, using, operating and maintaining the MCC Works after Completion (as defined in the Managing Contractor Contract).

WOL Objectives

1. Means balancing the:
   1. WOL Cost;
   2. useful life of the MCC Works;
   3. reliability and availability of the MCC Works throughout their useful life;
   4. operability and maintainability of the MCC Works throughout their useful life;
   5. value for money achieved by the Commonwealth from the design, construction, use, occupation, operation and maintenance of the MCC Works;
   6. opportunity to reduce resource use during the occupation, use, operation and maintenance of the MCC 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 Consultant and finalised under clause 7.4 (which is either Subcontract specific or Site specific) and which must set out in adequate detail the procedures the Consultant will implement to manage the Services 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 6.15(o) and (p).
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 Services;
   2. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Services are being undertaken regarding consulting, co-operating and co-ordinating activities where the PCBU(s) at the workplace and the Consultant 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 Services 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 6.15(c);
   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. 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 Commonwealth prior to Completion (as defined in the Managing Contractor Contract) and prior to the expiry of the Defects Liability Period (as defined in the Managing Contractor Contract);
   7. procedures and arrangements for the management of work health and safety generally, including: 
      1. details of the Consultant’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 6.15(e) regarding compliance with the WHS Legislation by the Consultant and Other Contractors;
   9. procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 7.4 (including as a consequence of any review of hazards, risks and control measures regarding the Services and any notifiable incident or systemic risk management failure);
   10. details of the project and Subcontract specific hazards and risks identified by the Consultant and the Consultant's approach to the management of these hazards and risks including how the Consultant will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
       1. prior to commencing the Services; and
       2. during the delivery of the Services;
   11. the approach the Consultant 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 Services, incorporated into the MCC Works, stored by the Consultant at the workplace or transported by the Consultant to or from the workplace;
   12. the actions the Consultant 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 Services;
   13. the procedures the Consultant will adopt to audit or otherwise monitor and verify its 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);
   14. the procedures the Consultant 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 MCC Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 6.15(n));
   15. any additional matters specified in the Subcontract Particulars; and
   16. 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 Services are performed or the Consultant's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Consultant 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 11.5),

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 8.8 and 8.9, any:
       1. extension of time stated in days; or
       2. reference to "day",

will exclude public holidays and include only those days which are stated in the Consultant's then current program under clause 8.2 as working days;

* + 1. for the purposes of clauses 11.4, 11.5, 16.13 and 19, to the extent that the Services are to be 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. where a clause contains two options, the option specified in the Subcontract Particulars will apply;
    5. 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; and
    6. unless agreed or notified in writing by the Contractor's Representative or the date of the standard or reference document is specified in the Brief, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the submission of the relevant Design Documentation.

If requested by the Contractor's Representative, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Design Documentation available to the Contractor's Representative;

* + 1. for the purposes of clauses 2.11(b), 2.13(b), 2.15(d)(i)B, 8.10(c) and 16.3(e)(ii) a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Consultant as a direct result of the applicable event delaying the Consultant;
    2. requirements contained in the Brief, whether or not they include the expression "the Consultant must" or “the Consultant shall” or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise; and
    3. where an absolute discretion is conferred on the Contractor or the Contractor's Representative:
       1. neither the Contractor nor the Contractor's Representative is required to exercise such discretion for the benefit of the Consultant; 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 13.1 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 Consultant must indemnify the Contractor against:
        1. any liability to or claim by a third party including any Other Contractor; and
        2. all costs, expenses, losses, damages and liabilities suffered or incurred by the Contractor,

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

* + 1. All obligations to indemnify under the Subcontract survive termination of the Subcontract on any basis.
    2. Unless expressly stated to the contrary in the Subcontract, the Consultant must perform the Services at its cost.
    3. 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 Consultant by other means.

1. Role of the consultant
   1. Engagement

The Consultant must carry out the Services in accordance with the Subcontract.

* 1. Standard of Care

The Consultant:

* + 1. must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
    2. must:
       1. ensure that the Design Documentation complies with the requirements of the Subcontract; and
       2. use its best endeavours to ensure that the Design Documentation will be fit for the purposes as set out in, or reasonably to be inferred from, the Brief;
    3. must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Contractor notified to the Consultant; and
    4. must exercise the utmost good faith in the best interests of the Contractor and keep the Contractor fully and regularly informed as to all matters affecting or relating to the Services and the MCC Works.
  1. Authority to Act
     1. Other than as expressly authorised, the Consultant has no authority to, and must not:
        1. enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Contractor; or
        2. take any act or step to bind or commit the Contractor in any manner, whether as a disclosed agent of the Contractor or otherwise.
     2. The Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Contractor.
  2. Knowledge of the Contractor's Requirements

The Consultant must:

* + 1. inform itself of the Contractor's requirements for the Services and the MCC Works;
    2. refer to the Contractor Material and the Contractor's Program; and
    3. consult the Contractor during the Services and the MCC Works.
  1. Notice of Matters Impacting on the Services or the MCC Works

Without limiting clauses 14.1 - 14.5, if the Consultant becomes aware of any matter which:

* + 1. is likely to change or which has changed the scope, timing or cost of the Services or the MCC Works;
    2. affects or may affect the Contractor's Program or the Consultant's then current program under clause 8.2;
    3. involves any error, omission or defect in any continuing or completed aspect of the Services; or
    4. involves any Defect (or similar term used or defined in the Managing Contractor Contract) in any continuing or completed aspect of the MCC Works,

the Consultant must promptly give written notice of that matter to the Contractor's Representative containing, as far as practicable in the circumstances:

* + 1. particulars of the change, error, omission or defect;
    2. its likely effect; and
    3. the Consultant's recommendation as to how to minimise its effect upon the scope, timing and cost of the Services and the MCC Works.
  1. Co‑operation with Other Contractors

Without limiting clause 6.15(a)(iii), the Consultant must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co-operate with Other Contractors;
    3. carefully co-ordinate and integrate the Services with the work carried out or to be carried out by Other Contractors;
    4. carry out the Services so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors; and
    5. without limitation, provide whatever advice, support and co‑operation is reasonable to facilitate the work carried out or to be carried out by Other Contractors.
  1. Access to Consultant's Premises

Without limiting clause 6.11, the Consultant must at all reasonable times:

* + 1. give to the Contractor's Representative, or to any persons authorised in writing by the Contractor's Representative, access to premises occupied by the Consultant where Services are being carried out; and
    2. permit those persons referred to in paragraph (a) to inspect the carrying out of the Services and any Design Documentation or other Project Documents.
  1. Conflict of Interest

The Consultant warrants that:

* + 1. at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Subcontract; and
    2. if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
       1. notify the Contractor's Representative immediately in writing of that conflict or risk; and
       2. take all steps required by the Contractor's Representative to avoid or minimise the conflict of interest or risk of conflict of interest.
  1. Subcontracting

The Consultant must not subcontract any Services.

* 1. Statutory Requirements

In carrying out the Services, the Consultant must:

* + 1. unless otherwise specified in the Subcontract Particulars, comply with all applicable Statutory Requirements;
    2. apply for and obtain all Approvals 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 Services or the MCC Works issues to the Consultant.
  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 Consultant, the Consultant must promptly give the Contractor's Representative notice in writing. After receipt of the notice from the Consultant, the Contractor’s Representative must, within 14 days of receipt of the notice, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the change or variance; or
      2. the Contractor, the Contractor’s Representative must promptly give the Consultant notice in writing together with an instruction as to the course it must adopt insofar as the Services are affected by the change or variance.
    1. Subject to paragraph (c), the Consultant will be entitled to have the Fee increased by any extra costs reasonably incurred by the Consultant 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 Fee will be decreased by any savings made by the Consultant 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 Consultant 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).
  1. Consultant Deed of Covenant and Novation
     1. If requested by the Contractor's Representative, the Consultant must execute a Consultant Deed of Covenant, duly completed with all relevant particulars, within the period specified by the Contractor's Representative in such request and deliver the executed Consultant Deed of Covenant to the Contractor's Representative.
     2. The parties acknowledge that if the Commonwealth provides a written notice to the parties requiring novation of the Subcontract to the Commonwealth (or its nominee) in accordance with the Consultant Deed of Covenant, then the Subcontract will be deemed to have been novated in accordance with the Consultant Deed of Covenant.
  2. The Environment
     1. The Consultant must:
        1. ensure that in carrying out the Services:
           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 subsubparagraph B, 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:

any non-compliance with the requirements of clause 2.13;

any breach of a Statutory Requirement for the protection of the Environment;

any Environmental Incident; or

the receipt of any notice, order or communication received from an authority for the protection of the Environment; and

* + - 1. clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in connection with the Services, whether or not it has complied with all Statutory Requirements and other requirements of the Subcontract for the protection of the Environment.
    1. To the extent that the requirement to clean up and restore the Environment under paragraph (a)(ii) arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with all Statutory Requirements and other requirements of the Subcontract, the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant which arise directly from the cleaning up and restoration of the Environment under clause 2.13, as determined by the Contractor’s Representative.
  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 Consultant 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 Consultant 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 Consultant and the Contractor 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 Consultant as to the course it must adopt insofar as the Services 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 Consultant will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Services and the MCC Works.
     4. If a Pandemic Adjustment Event occurs:
        1. subject to paragraph (f), the Consultant will be entitled to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 8.8; and
           2. have the Fee increased by the extra costs reasonably incurred by the Consultant 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 Fee will be decreased by any savings made (or which would have been made if the Consultant had taken all reasonable steps to maximise savings) by the Consultant 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 Consultant 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 2.15; and
        2. without limiting subparagraph (i), the Consultant 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 Consultant would have otherwise had under paragraph (d)(i)B to the extent that the Consultant 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 Consultant has failed to take all reasonable steps to maximise any savings to the Contractor in respect of the Pandemic Adjustment Event.

1. Role of the CONTRACTOR
   1. Information and Services

The Contractor must as soon as practicable make available to the Consultant:

* + 1. all relevant information, documents and particulars relating to the MCC Works and to the Contractor's requirements for the MCC Works, including the Contractor's Program; and
    2. details of the budget for the MCC Works, as relevant to the Services.
  1. Additional Information

If:

* + 1. the Consultant, in its reasonable opinion, considers that any additional information, documents or particulars are needed to enable it to carry out the Services; and
    2. the additional information, documents or particulars are not provided by the Contractor under the Subcontract or by an Other Contractor,

then:

* + 1. the Consultant must give notice in writing to the Contractor's Representative of the details of the additional information, documents or particulars and the reasons why they are required; and
    2. the Contractor must, if the Contractor's Representative believes that the additional information, documents or particulars are needed by the Consultant, use its best endeavours to arrange the provision of the additional information, documents or particulars.
  1. Access to the Site

Subject to:

* + 1. the Managing Contractor Contract;
    2. any other agreement or arrangement with a party other than the Consultant (including any Other Contractor);
    3. the Environmental Management and Sustainability Plan, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 7.4;
    4. the Consultant having provided to the Contractor's Representative evidence satisfactory to the Contractor's Representative under clause 5.1(d) that the Consultant has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.1; and
    5. any other conditions specified in the Subcontract Particulars or elsewhere in the Subcontract,

the Contractor must:

* + 1. as soon as practicable, provide the Consultant with access to the Site upon which the MCC Works are to be constructed; and
    2. arrange access to any other property which may be necessary for the Consultant to carry out the Services.

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 Consultant 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 Consultant of that appointment.
      2. Any substitute Contractor's Representative appointed under clause 4.2 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 Consultant under the Subcontract, the Contractor and Consultant must co-operate with each other in carrying out their obligations under the Subcontract.

* 1. Key People for the Services
     1. The Consultant must:
        1. employ those people specified in the Subcontract Particulars, including the Consultant's Representative and Quality Manager in the jobs specified in the Subcontract Particulars;
        2. subject to subparagraph (iii), not replace the people referred to in subparagraph (i) without the Contractor's Representative's prior written approval; and
        3. if any of the people referred to in subparagraph (i) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Contractor's Representative of at least equivalent experience, ability and expertise.
     2. A direction is deemed to be given to the Consultant if it is given to the Consultant’s Representative.
  2. Removal of Persons
     1. The Contractor's Representative may by notice in writing instruct the Consultant to remove any person from the Site or the Services who in the reasonable opinion of the Contractor's Representative is guilty of misconduct or is incompetent or negligent.
     2. The Consultant must ensure that this person is not again involved in the Services.
  3. Monthly Meeting
     1. The Consultant 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 4.7 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.
  4. Consultant's Monthly Report

At least 7 days prior to each meeting under clause 4.6, the Consultant 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 Services and the MCC Works including: 
       1. key activities, meetings and other events in the previous month;
       2. the status of all Design Documentation (including any alternative solutions or dispensations being pursued);
       3. the status of all Approvals;
       4. photographs of the Services and the MCC Works; and
       5. any deviations from the Contractor's program under clause 8.2;
    2. detailed particulars of all: 
       1. payment claims, payment statements and payments;
       2. Variation Price Requests, responses, Variation Orders and proposed adjustments to the Fee;
       3. written claims and notices given and received under clause 8 in respect of delays and extensions of time;
       4. other Claims made by the Consultant (including in respect of Statutory Requirements and the resolution of ambiguities under clause 6.10);
       5. calls, attendances, recommendations and actions taken in respect of non-conforming Services (in accordance with clause 7.3);
       6. calls, attendances, recommendations and actions taken in respect of all Defects (or similar term used or defined in the Managing Contractor Contract);
       7. disputes under clause 13; and
       8. notices under clause 14.1 or 14.2;
    3. detailed particulars of any risks, opportunities, issues or matters which in the Consultant’s opinion:
       1. are significantly impacting; or
       2. have the potential to significantly impact,

the Services or the MCC 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 6.15, 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 7.4);
       2. details of all proactive risk management measures implemented by the Consultant to prevent systemic work health and safety issues, incidents or accidents during the Services;
       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 (or similar term used or defined in the Managing Contractor Contract);
       4. without limiting the Consultant’s obligations to notify the MCC Contract Administrator and the Contractor’s Representative under:
          1. clause 6.15(c)(i) and (d), summary data regarding notifiable incidents; and
          2. clause 6.15(c)(ii) and (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. quality assurance requirements, including the Quality Plan;
       2. Site-related requirements, including the Site Management Plan;
       3. commissioning and handover requirements, including the Project Lifecycle and HOTO Plan;
       4. environmental requirements, including the Environmental Management and Sustainability Plan;
       5. information security requirements, including clause 18; and
       6. any other security requirements,

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

* + 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. Insurance
   1. Consultant Insurance Obligations

The Consultant 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. Professional Indemnity Insurance;
       3. if the Services are performed, or the Consultant's employees perform work, are employed or normally reside, in any jurisdiction outside Australia, Employers' Liability Insurance; 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, to the extent permitted by law the insurance extends to provide indemnity to the Contractor as the Consultant's principal in respect of any statutory and common law liability to the Consultant's employees;
    2. in relation to the Professional Indemnity Insurance, ensure the insurance:
       1. has a retroactive date of no later than the commencement of the Services; and
       2. is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services 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 5.1; and
       2. each insurance required under clause 5.1 is current and complies with clause 5.1,

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

* + 1. ensure that:
       1. if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant 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 Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant 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 Consultant 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; and
    3. bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Consultant under this clause 5.1. Any excess borne by the Contractor will be a debt due from the Consultant 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 Requirements) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.1.

The obtaining of insurance as required under clause 5.1 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Consultant under the Subcontract or otherwise at law or in equity.

* 1. Contractor Insurance Obligations
     1. The Contractor must:
        1. from the Award Date cause to be effected and maintained or otherwise have the benefit of Public Liability Insurance and the other insurance (if any) specified in the Subcontract Particulars; and
        2. promptly provide the Consultant with evidence satisfactory to the Consultant that the insurances required under subparagraph (i) are current, as required by the Consultant from time to time.
     2. The insurance referred to in paragraph (a)(i) is subject to the exclusions, conditions and excesses noted on the policy or policies and the Consultant must:
        1. satisfy itself of the nature and extent of the Contractor's insurance; and
        2. if required by the Consultant, 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 Consultant wants to insure against or cover.

* 1. Failure to Insure
     1. If the Consultant fails to comply with clause 5.1, 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 Consultant to the Contractor.
     2. The Consultant 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 Consultant is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.1 and the insurance the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.2 must be maintained:

* + 1. in the case of Public Liability Insurance:
       1. written on an occurrence basis, until the completion of the Services; 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 (as defined in the Managing Contractor Contract); and
          2. completion of the Services;
    2. in the case of Workers Compensation Insurance and Employers' Liability Insurance, until the latest of the:
       1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract); and
       2. completion of the Services; and
    3. in the case of Professional Indemnity 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 (as defined in the Managing Contractor Contract); and
       2. completion of the Services.
  1. Notice of Potential Claim

The Consultant must:

* + 1. as soon as possible inform the Contractor's Representative in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.1 or any claim actually made against the Consultant or the Contractor which may be covered by an insurance policy required under clause 5.1; and
    2. keep the Contractor informed of all significant developments concerning the claim, except in circumstances where the Contractor is making a claim against the Consultant,

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

* + 1. subject to paragraph (d), 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 Consultant and claims which may arise from circumstances reported by the Consultant 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. Cross Liability
     1. Clause 5.6 does not apply to Professional Indemnity Insurance or Workers Compensation Insurance.
     2. Where the Subcontract requires insurance to provide cover to more than one insured, the Consultant 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 Consultant under the Subcontract before enforcing any of its rights or remedies under the indemnities referred to in this Subcontract or generally.
     2. The Consultant 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 Consultant 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 Consultant 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 Consultant:
        1. for any deliberate breach or repudiation of the Subcontract;
        2. under the indemnities in clauses 1.3(f)(i), 6.8(b), 16.5(a)(xii) and 18.5(b);
        3. for Fraud;
        4. to the extent that:
           1. payments are received by the Consultant; or
           2. the Consultant 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 Consultant or the Consultant would have been entitled to be indemnified under such insurance policy or policies but for:

* + - * 1. the failure of the Consultant 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 Consultant (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 Consultant 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 5.8 to deny liability on the basis that the party has no liability to the Contractor; and
      1. for fines or penalties incurred by the Contractor arising from the Services.
    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 Consultant arising from an act or omission of the Contractor.
    2. For the purposes of this clause 5.8 **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 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. Consultant's Documentation Program

The Consultant must as part of the program it is to prepare under clause 8.2, 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. Consultant's Design

The Consultant must:

* + 1. design the parts of the MCC Works which the Subcontract requires it to design in accordance with the Brief, 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 (in its absolute discretion):
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Consultant; and
        2. within the number ofdays specified in the Subcontract Particulars of the submission by the Consultant of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation.
     2. If any Design Documentation is rejected, the Consultant must submit amended Design Documentation to the Contractor's Representative.
  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 Consultant to review, or in reviewing, the Design Documentation submitted by the Consultant 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 Consultant 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 Consultant from, or alter or affect, the Consultant's obligations under the Subcontract or otherwise at law or in equity; or
       2. prejudice the Contractor's rights against the Consultant whether 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 Consultant 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. Licence over Project Documents

The Consultant 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 upon the Project Document being:
       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 Services or the MCC Works by, for or on behalf of the Consultant;

* + 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 MCC 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 Consultant warrants that:

* + 1. the Consultant 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 Consultant must:

* + 1. ensure that the Services 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. Contractor Material
     1. The Contractor Material will remain the property of the Contractor.
     2. The Contractor must inform the Consultant of any Contractor Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
     3. Without limiting clause 18, the Consultant will be responsible for the protection, maintenance and return of the Contractor Material in its possession.
  2. 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 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 Brief and any other requirement of the Subcontract (including any other requirement of the Brief), 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 Consultant, then the Consultant must promptly give the Contractor's Representative notice in writing. After receipt of a notice from the Consultant, the Contractor's Representative must within 14 days of receipt of the notice, instruct the Consultant as to the course it must adopt; or
       2. the Contractor, the Contractor’s Representative must promptly give the Consultant 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 Consultant must:

* + 1. at the request of the Commonwealth or the Contractor's Representative at any time during the Services and the period of 10 years following the latest of the:
       1. end of the last Defects Liability Period (as defined in the Managing Contractor Contract); and
       2. completion of the Services,

provide and make available:

* + - 1. access to its premises and make the Project Documents available for inspection by the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor;
      2. such copies of the Project Documents as the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor 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 or anyone else acting on behalf of the Commonwealth or the Contractor; and
      4. any officers, employees or agents for interviews with the Contractor's Representative or anyone else acting on behalf of the Commonwealth or the Contractor; and
    1. within the time required by the Contractor's Representative prior to Completion (as defined in the Managing Contractor Contract), deliver to the Contractor's Representative a copy of the installed version of each item of software comprising the IT Equipment incorporated in the MCC Works or a Stage (as defined in the Managing Contractor Contract) 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.
  1. Measurements and Dimensions

Unless expressly stated to the contrary in the Subcontract or directed by the Contractor's Representative:

* + 1. the Consultant must obtain and check all relevant measurements and dimensions on the Site before proceeding with the Services;
    2. the layout of plant, equipment, duct work, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimensions information concerning the Site required to carry out the Services must be obtained and checked by the Consultant; and
    3. to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the Consultant’s failure to obtain and check measurements and dimension information concerning the Site as required by clause 6.12.
  1. Design Certification

Without limiting the Contractor's obligations to the Commonwealth under the Managing Contractor Contract and the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must, with each submission of Design Documentation under clause 6.2, payment claim under clause 11.2 and prior to Completion (as defined in the Managing Contractor Contract), provide the Contractor's Representative with a certificate in the form of the Consultant Design Certificate which certifies that (to the extent then applicable):

* + 1. the Design Documentation complies with:
       1. subject to clause 2.10(a), all Statutory Requirements (including the WHS Legislation); and
       2. the requirements of the Subcontract; and
    2. the MCC Works comply or the Stage (as defined in the Managing Contractor Contract) complies with the Design Documentation which has not been rejected by the Contractor's Representative under clause 6.3,

except to the extent set out in such certificate.

* 1. Samples
     1. The Consultant 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 8.2.
     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 Consultant; 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 Consultant must submit an amended or substituted sample or range of samples to the Contractor's Representative.
     4. 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 Consultant to review, or in reviewing, the sample or range of samples submitted by the Consultant 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 prepared by the Consultant 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 Consultant from, or alter or affect, the Consultant's obligations whether under the Subcontract or otherwise at law or in equity; or
           2. prejudice the Contractor’s rights against the Consultant under the Subcontract or otherwise at law or in equity.
  2. Work Health and Safety

The Consultant must:

* + 1. ensure that in carrying out the Services:
       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 Contract as one the Consultant 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, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site 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. carry out the Services to ensure the health and safety of persons is not put at risk;
    3. without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, notify the Contractor's Representative and the MCC Contract Administrator 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 Services or the MCC 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 4.7;
    4. for the purposes of paragraphs (a)(iv) and (c) above, in respect of any notifiable incident:
       1. immediately provide the Contractor’s Representative and the MCC Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
       2. promptly provide the Contractor’s Representative and the MCC Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
       3. promptly provide the Contractor’s Representative and the MCC Contract Administrator 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 Contractor’s Representative and the MCC Contract Administrator with a summary of the related investigations, actions to be taken, and any impact on the Subcontract that may result from the notifiable incident;
    5. institute systems to:
       1. obtain regular written assurances from each Other Contractor 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 Consultant's ongoing compliance with the WHS Legislation:
          1. on a monthly basis in the reports under clause 4.7;
          2. on a quarterly basis (when requested by the Contractor’s Representative); and
          3. as otherwise directed by the Contractor’s Representative;
    6. provide the written assurances obtained under paragraph (e) to the Contractor’s Representative in accordance with paragraph (e);
    7. without limiting the Consultant’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 Consultant relating to work health and safety matters;
       2. formal notices issued by a health and safety representative of the Consultant under or in compliance with the applicable WHS Legislation; and
       3. formal notices, written communications and written undertakings given by the Consultant 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 Services;

* + 1. exercise a duty of the utmost good faith to the Contractor and the Commonwealth in carrying out the Services to enable the Contractor and the Commonwealth to discharge their duties under the WHS Legislation;
    2. ensure that, if any Statutory Requirement requires that:
       1. a 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. a 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;
    3. not direct or allow a person to carry out work, or use plant or a substance (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (i) are met;
    4. 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;
    5. without limiting the Consultant’s obligations under the Subcontract (including paragraph (d) 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 Commonwealth or the Contractor, provide all information or copies of documentation held by the Consultant to the Contractor’s Representative, the MCC Contract Administrator or anyone else acting on behalf of the Commonwealth or the Contractor to enable the Contractor and the Commonwealth to comply with their obligations under the WHS Legislation;
    6. 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 Consultant commences such work;
    7. where the Consultant is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contractor’s Representative prior to Completion (as defined in the Managing Contractor Contract) and before the expiry of the Defects Liability Period (as defined in the Managing Contractor Contract) 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;
    8. ensure that the Design Documentation addresses the asbestos related risks identified by the Consultant from its review of the Asbestos Management Plan and Defence Asbestos Register;
    9. with each submission of Design Documentation under clause 6.2, provide the Contractor's Representative with a record of the risks identified by the Consultant from its review of the Asbestos Management Plan and Defence Asbestos Register and details of how the Design Documentation addresses those risks;
    10. ensure that the Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
    11. not use Asbestos or ACM in carrying out the Services;
    12. ensure that the Design Documentation does not provide for Asbestos or ACM to be used in (or incorporated into) the MCC Works;
    13. with each submission of Design Documentation under clause 6.2, provide the Contractor's Representative with a certificate in a form satisfactory to the Contractor's Representative which states that:
        1. all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) described in the Design Documentation to be used in (or incorporated into) the MCC Works are entirely (meaning 100%) free of Asbestos and ACM; and
        2. the Consultant has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Services;
    14. without limiting paragraph (t), if any imported materials, goods, products, equipment and plant described in the Design Documentation are to be used in (or incorporated into) the MCC Works, the Consultant must provide to the Contractor's Representative with each submission of Design Documentation under clause 6.2:
        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 to be used in (or incorporated into) the MCC Works; and

* + 1. if the Consultant is a designer of a structure (or part of a structure) for the purposes of the WHS Legislation, the Consultant must provide to the Contractor's Representative with each submission of Design Documentation under clause 6.2, a written report that specifies the hazards relating to the design of the structure (or part) which, as far as the Consultant 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. Quality
   1. Quality Assurance

The Consultant:

* + 1. must implement the quality assurance process, system or framework in its Quality Plan;
    2. without limiting clause 6.11, must allow the Contractor's Representative or anyone else acting on behalf of the Contractor access to the quality assurance process, system or framework of the Consultant 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 concerning the Consultant's quality assurance process, system or framework or its compliance or non-compliance with the quality assurance process, system or framework;
       3. any audit or other monitoring by the Contractor's Representative or anyone else acting on behalf of the Contractor of the Consultant's compliance with the process, system or framework; or
       4. any failure by the Contractor's Representative, or anyone else acting on behalf of the Contractor, to detect any Services 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 or other person.
  1. Non-Complying Services

If the Contractor's Representative discovers or believes that any Services have not been performed in accordance with the Subcontract, the Contractor's Representative may give the Consultant a direction specifying the non-complying Services and doing one or more of the following:

* + 1. requiring the Consultant to:
       1. reperform the non-complying Services and specifying the time within which this must occur; and
       2. take all such steps as are reasonably necessary to:
          1. mitigate the effect on the Contractor of the failure to carry out the Services in accordance with the Subcontract; and
          2. put the Contractor (as closely as possible) in the position in which it would have been if the Consultant had carried out the Services in accordance with the Subcontract; or
    2. advising the Consultant that the Contractor will accept the non-complying Services despite the non-compliance.
  1. Reperformance of the Non-complying Services

If a direction is given under clause 7.2(a), the Consultant must reperform the non-complying Services:

* + 1. within the time specified in the Contractor's Representative's direction; and
    2. if after the Date for Completion, so as to minimise the delay and disruption to the Services or the MCC Works.
  1. Project Plans
     1. The Consultant:
        1. must carry out the Services 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 Consultant in its tender for the Services, 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 Services 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 Services 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 Services 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; and

if clause 9 applies, prior to the Date for Delivery Phase Agreement;

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 Consultant),

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

the Consultant 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 Consultant personnel in respect of each Project Plan (including each updated or amended Project Plan).

* + 1. The Contractor must promptly provide the Consultant with a copy of amendments to any Contractor's Project Plan insofar as they are relevant to the Services or a Project Plan.
    2. The Consultant 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 Consultant'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 Consultant'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. Drawings

Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, all drawings which the Consultant 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 MCC 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. Time
   1. Progress

The Consultant must:

* + 1. regularly and diligently progress the Services; and
    2. subject to clause 8.10, achieve Completion of each Milestone by its Date for Completion.
  1. Programming
     1. The Contractor must:
        1. on the Award Date, provide the Consultant with a copy of the Contractor’s Program insofar as it is relevant to the Services; and
        2. thereafter, promptly provide the Consultant with a copy of amendments to the Contractor’s Program insofar as they are relevant to the Services.
     2. The Consultant must:
        1. within 14 days of the Award Date, prepare a program of the Services 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 Services to the date which is two working days prior to the date on which the update is provided;
           2. changes to the program;
           3. changes to the Contractor's Program; and
           4. delays which may have occurred, including any for which the Consultant is granted an extension of time under clause 8.8;
        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. If clause 9 applies (and without limiting paragraph (b)(ii)), the Consultant must, prior to the Date for Delivery Phase Agreement, update the program for any changes in the Delivery Phase Services and submit the updated program to the Contractor’s Representative for review by no later than the date notified in writing by the Contractor’s Representative.
     4. The Contractor's Representative may review and comment on any program given under this clause 8.2.
  2. Consultant 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 Consultant from or alter its obligations under the Subcontract especially (without limitation) the obligation to achieve Completion of each Milestone by its 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 Services; or
    3. affect the time for the carrying out of the Contractor's or Contractor's Representative's Subcontract obligations.
  1. Suspension
     1. The Contractor's Representative:
        1. may instruct the Consultant to suspend and, after a suspension has been instructed, to re‑commence, the carrying out of all or a part of the Services; and
        2. is not required to exercise the Contractor's Representative's power under subparagraph (i) for the benefit of the Consultant.
     2. If a suspension under clause 8.4 arises as a result of:
        1. the Consultant's failure to carry out its obligations in accordance with the Subcontract, to the extent permitted by law, the Consultant 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 Consultant's failure to carry out its obligations in accordance with the Subcontract, an instruction to suspend under clause 8.4 will entitle the Consultant to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 8.8; and
           2. have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of the suspension, as determined by the Contractor's Representative.

The Consultant 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 Consultant 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 Consultant may only suspend the Services when instructed to do so under clause 8.4.
  1. Delays, Including Delays Entitling Claim for Extension of Time
     1. If the Consultant becomes aware of any occurrence that is likely to delay it in carrying out the Services it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contractor’s Representative in writing of the occurrence and the likely delay.
     2. If the Consultant has been delayed in carrying out the Services:
        1. prior to the Date for Completion of a Milestone by an Act of Prevention or a Pandemic Adjustment Event in a manner which has delayed, or is likely to delay, the Consultant in achieving Completion of the Milestone; or
        2. after the Date for Completion of a Milestone by an Act of Prevention in a manner which has delayed, or is likely to delay, the Consultant in achieving Completion of the Milestone,

the Consultant may claim an extension of time.

* 1. Claim for Extension of Time

To claim an extension of time, the Consultant must:

* + 1. not later than 28 days after the commencement of the delay to the performance of the Services, 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 8.7(c); and
    2. if the delay to the performance of the Services continues beyond 28 days from the commencement of the delay, and the Consultant 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 performance of the Services; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

It is a condition precedent to the Consultant's entitlement to an extension of time that the:

* + 1. Consultant must give the written claim required by clause 8.6 as required by that clause;
    2. cause of the delay to the Services was beyond the reasonable control of the Consultant;
    3. Consultant must have actually been, or be likely to be, delayed in the manner set out in clause 8.5(b);
    4. Consultant must not have been given a direction under clause 8.10(a) with which it has been able to comply; 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 8.7 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 Contractor and the Consultant within 21 days of the Consultant's written claim under clause 8.6.
     2. The period determined by the Contractor’s Representative under clause 8.8 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 Consultant:
        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 Consultant has made, or is entitled to make, a claim for an extension of time under clause 8, the Contractor may (in its absolute discretion) at any time and from time to time by written notice to the Consultant, unilaterally extend any Date for Completion.
     2. The Consultant acknowledges that clause 8.9 does not give the Consultant any rights.
  3. Acceleration
     1. The Contractor's Representative may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a date earlier than the Date for Completion (**Accelerated Date for Completion**).
     2. If a direction is given by the Contractor's Representative under paragraph (a), the Consultant must:
        1. use its best endeavours to:
           1. accelerate the performance of the Services; and
           2. otherwise do all things necessary,

to achieve Completion of the Milestone by the Accelerated Date for Completion; and

* + - 1. keep the Contractor's Representative fully and regularly informed of the progress of the Services against the Accelerated Date for Completion.
    1. The Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of complying with paragraph (b).
    2. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with a direction by the Contractor's Representative under paragraph (a), other than under paragraph (c).
    3. If the Consultant does not achieve Completion of a Milestone by its Accelerated Date for Completion, the Consultant must nevertheless:
       1. use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Date for Completion; and
       2. in any event, achieve Completion of the Milestone no later than its Date for Completion.

1. PLANNING PHASE AND DELIVERY PHASE

Clause 9 applies unless the Subcontract Particulars state that it does not apply.

* 1. Planning Phase and Delivery Phase
     1. The Consultant acknowledges and agrees that the Contractor has divided the Services into two distinct phases, being the:
        1. Planning Phase; and
        2. subject to this clause 9, the Delivery Phase.
     2. The Consultant acknowledges and agrees that the purpose of this division is to:
        1. allow for various departmental, government, parliamentary and other approvals required for the MCC Works to be achieved;
        2. enable the Contractor to be satisfied (in its absolute discretion) that it will maximise value for money for the Commonwealth and the Contractor to have the Consultant proceed with the Delivery Phase Services; and
        3. give the Contractor an opportunity to elect (in its absolute discretion) not to proceed with the Consultant to the Delivery Phase.
     3. The Consultant acknowledges and agrees that as a result of the matters described in paragraph (b):
        1. there may not be a Delivery Phase;
        2. even if there is Delivery Phase, the Consultant may not be engaged to carry out the Delivery Phase Services; and
        3. there may be periods of inactivity of various durations in and between the Planning Phase and Delivery Phase,

whether as a result of a delay in any notice or direction under clause 9.2, 9.3, 9.4 or otherwise. Such periods of inactivity will not amount to a suspension under clause 8.4 and, to the extent permitted by law, the Consultant will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with such periods of inactivity.

* + 1. Notwithstanding paragraph (c)(iii), the Consultant must ensure that, in and between the Planning Phase and Delivery Phase (if any), it retains appropriate, suitably qualified personnel available to perform the Services required by the Contractor.
  1. Updated Delivery Phase Fee Proposal
     1. Prior to the Date for Delivery Phase Agreement, the Consultant must prepare and submit to the Contractor's Representative for approval an Updated Delivery Phase Fee Proposal for the Delivery Phase Services, which is based on the Delivery Phase Fee Proposal and must, as a minimum:
        1. include a resource plan for the Delivery Phase Services, which is based on the minimum resource plan included in the Delivery Phase Fee Proposal, and identifies in detail: 
           1. the Delivery Phase Services which an expert professional provider of the Delivery Phase Services would anticipate and provide for in its resource plan for the Delivery Phase Services (including identifying in detail all changes (if any) to the Delivery Phase Services required as a result of design development, cost planning and programming carried out in the Planning Phase);
           2. all changes (if any) to the resources required for the Delivery Phase Services as a result of:

changes (if any) to the Delivery Phase Services identified in subsubparagraph A; or

otherwise, design development, cost planning and programming carried out in the Planning Phase;

* + - 1. identify in detail:
         1. proposed adjustments (if any) to the:

Indicative Delivery Phase Fee, including a detailed cost breakdown of each part or discipline of the Delivery Phase Services and all disbursements; and

Milestone Fee Payment Schedule (if a Milestone Fee Payment Schedule applies in the Delivery Phase) including, to the extent that payments will be monthly in the Delivery Phase, a detailed explanation of proposed adjustments (if any) to cashflow for the Delivery Phase (for evaluation and cost planning purposes only); and

* + - * 1. how the Consultant has calculated the adjustment (if any) to the Indicative Delivery Phase Fee and Milestone Fee Payment Schedule (if any) by reference to the Delivery Phase Fee Proposal; and
      1. be prepared having regard to all relevant considerations, including:
         1. the Delivery Phase Fee Proposal;
         2. the paramount importance to the Commonwealth and the Contractor of balancing between minimising the cost of the Services and achieving Completion (on the one hand) and optimising the level of resources provided by the Consultant for the performance of the Delivery Phase Services (on the other hand);
         3. demonstrably maximising value for money for the Commonwealth and the Contractor and complying with the Commonwealth Procurement Rules; and
         4. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subsubparagraphs A - C, which the Contractor's Representative may from time to time notify to the Consultant in writing; and
      2. include all such other matters as the Contractor's Representative may require in writing.
    1. As part of the process of preparing an Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal under paragraph (c)(i)) for the approval of the Contractor's Representative under paragraph (a), the Consultant must undertake genuine and good faith negotiations with the Contractor's Representative to reach agreement as to the matters set out in the Updated Delivery Phase Fee Proposal, including:
       1. the resource plan for the Delivery Phase Services and details contemplated in clause 9.2(a)(i);
       2. the adjustment (if any) to the Indicative Delivery Phase Fee, as a result of any design development, cost planning and programming carried out by the Consultant in the Planning Phase; and
       3. if a Fee Payment Schedule applies in the Delivery Phase, the adjustment (if any) required to the Fee Payment Schedule,

in each case having regard to the Delivery Phase Fee Proposal and, in the case of the adjustment (if any) to the Indicative Delivery Phase Fee, the Table of Variation Rates and Prices.

* + 1. The Consultant must:
       1. if any Updated Delivery Phase Fee Proposal submitted by the Consultant is rejected by the Contractor's Representative (in its absolute discretion), promptly prepare and submit a revised Updated Delivery Phase Fee Proposal; and
       2. take all possible steps necessary to ensure that the proposed Delivery Phase Fee in its Updated Delivery Phase Fee Proposal does not exceed the Indicative Delivery Phase Fee, including all such reasonable steps directed by the Contractor's Representative.
  1. Approval (or otherwise) of Updated Delivery Phase Fee Proposal and adjustment of Fees for the Delivery Phase
     1. If the Contractor's Representative (in its absolute discretion):
        1. approves any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal) submitted by the Consultant in accordance with clause 9.2(a) or 9.2(c)(i) (as the case may be); and
        2. reaches agreement on all of the matters in clause 9.2(b),

the Contractor's Representative will:

* + - 1. record the agreement in the form of minutes set out in the Schedule of Collateral Documents (**Delivery Phase Agreement Minutes**), including the lump sum Delivery Phase Fee and any Milestone Fee Payment Schedule for the Delivery Phase; and
      2. provide the finalised Delivery Phase Agreement Minutes to the Consultant.
    1. The Consultant acknowledges that, for the purpose of determining whether or not to approve any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal) submitted by the Consultant the:
       1. Contractor's Representative may engage a third party to perform an external audit of any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal); and
       2. Consultant must:
          1. co‑operate with the Contractor's Representative and any third parties required by the Contractor's Representative;
          2. provide such other documents and information as the Contractor's Representative may require for the purposes of such external audit under subparagraph (i); and
          3. provide such other documents and information as the Contractor's Representative may require.
    2. If the Contractor's Representative (in its absolute discretion) does not:
       1. approve any Updated Delivery Phase Fee Proposal (or revised Updated Delivery Phase Fee Proposal); or
       2. reach agreement with the Consultant on all of the matters in clause 9.2(b),

by the Date for Delivery Phase Agreement, then the Contractor may (in its absolute discretion) elect to issue a notice under clause 9.4(b).

* + 1. If the Contractor's Representative provides finalised Delivery Phase Agreement Minutes to the Consultant under paragraph (a):
       1. the Consultant must sign the Delivery Phase Agreement Minutes and return them to the Contractor's Representative by the date required by the Contractor's Representative;
       2. the Commonwealth will execute the Delivery Phase Agreement Minutes on the same day that it issues a notice under clause 9.4(a); and
       3. subject to clause 9.4, the parties' rights and obligations under the Subcontract will be subject to the matters agreed, as recorded in the Delivery Phase Agreement Minutes.
  1. Notice to Proceed (or not Proceed) with Delivery Phase Services
     1. If the Consultant has signed and returned the Delivery Phase Agreement Minutes to the Contractor's Representative under clause 9.3(d), the Contractor may (in its absolute discretion) elect to issue a notice in writing directing the Consultant to proceed with the Delivery Phase Services and the Consultant must immediately commence to perform the Delivery Phase Services.
     2. If:
        1. various departmental, government, parliamentary and other approvals required for the MCC Works are not achieved;
        2. clause 9.3(c) applies;
        3. the Contractor is not satisfied (in its absolute discretion):
           1. that it will maximise value for money for the Commonwealth and the Contractor to have the Consultant proceed with the Delivery Phase Services; or
           2. with the Services provided by the Consultant; or
        4. the Contractor has elected (in its absolute discretion) not to proceed with the Consultant to the Delivery Phase,

then the Contractor may (in its absolute discretion) elect to issue a notice in writing directing the Consultant not to proceed with the Delivery Phase Services.

* + 1. If the Contractor issues a notice under paragraph (b), the Consultant:
       1. will be entitled to payment of the Planning Phase Fee due and payable for the Planning Phase Services completed in accordance with the Subcontract before the issue of the notice;
       2. will not be entitled to:
          1. perform the Delivery Phase Services; or
          2. payment of the Delivery Phase Fee or any other portion of the Fee;
       3. to the extent permitted by law, will not be entitled to make (nor will the Contractor be liable upon) any Claim arising out of or in connection with the notice, the Subcontract or the Delivery Phase Services, other than for the amount payable under subparagraph (i); and
       4. must:
          1. comply with clause 18.4 (including by handing over to the Contractor's Representative copies of Project Documents prepared by the Consultant before the issue of the notice (whether complete or not));
          2. co-operate with the Contractor, the Contractor's Representative and any third parties required by the Contractor's Representative;
          3. provide such other documents and information as the Contractor's Representative may require; and
          4. take all other steps necessary to ensure that the Contractor is able to re-tender or procure the performance of the Delivery Phase Services.
    2. If the Contractor issues a notice under paragraph (b), the Contractor may (in its absolute discretion):
       1. re-tender the performance of the Delivery Phase Services (whether with or without obtaining a tender from the Consultant) or procure the performance of the Delivery Phase Services in any other manner which the Contractor may (in its absolute discretion) determine; and
       2. use the Project Documents for the purpose of re-tendering or procuring the performance of the Delivery Phase Services under subparagraph (i).
    3. The issue of a notice under paragraph (b) will not limit or affect the Consultant’s obligations or liabilities under the Subcontract nor prejudice the right of the Contractor to exercise any right or remedy (including recovery of damages, whether while electing to keep the Subcontract on foot or after termination) which it may have where the Consultant breaches the Subcontract, whether under the Subcontract or otherwise at law or in equity.
    4. The Contractor may (in its absolute discretion) at any time and from time to time unilaterally extend the Date for Delivery Phase Agreement by notice in writing to the Consultant. The Consultant acknowledges that paragraph (f) does not give the Consultant any rights.

1. Variations
   1. Variation Price Request
      1. At any time prior to completion of the Services the Contractor's Representative may issue a document titled "**Variation Price Request**" to the Consultant which will set out details of a proposed Variation which the Contractor is considering.
      2. 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 Consultant must provide the Contractor's Representative with a written notice in which the Consultant sets out the:
         1. adjustment (if any) to the Fee 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 10.1, at any time the Contractor's Representative may at any time prior to completion of the Services instruct the Consultant 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 Fee set out in the Consultant's notice under clause 10.1 (if any) is agreed and the Fee will be adjusted accordingly; or
    2. any adjustment to the Fee will be determined under clauses 10.3(b) and 10.3(c).

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

The Fee 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 10.2(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; or
    3. to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
       1. agreed between the parties; or
       2. failing agreement, determined by the Contractor's Representative.
  1. Table of Variation Rates and Prices

Where the rates and prices in the Table of Variation Rates and Prices are used under clause 10.3(b), the rates and prices will be deemed to cover:

* + 1. all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Consultant's obligations under the Subcontract; and
    2. all costs which will be incurred by the Consultant arising out of or in connection with the Variation.
  1. Omissions

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

1. Payment
   1. Payment Obligation

Subject to clause 11.11 and to any other right to set‑off which the Contractor may have, the Contractor will pay the Consultant:

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

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

* + 1. at the times specified in the Subcontract Particulars until completion of the Services or termination of the Subcontract (whichever is earlier);
    2. unless terminated earlier, after completion of the Services, within the time required by clause 11.7;
    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 to the extent it is relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Fee; and
       2. all other amounts then payable by the Contractor to the Consultant 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 Consultant:
       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 Consultant 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 Consultant 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 Consultant must, with each payment claim under clause 11.2, certify to the Contractor's Representative that it has:

* + 1. if a request has been made under clause 2.12, complied with clause 2.12;
    2. complied with clause 5.1;
    3. complied with clause 6.13;
    4. complied with clause 6.15;
    5. complied with clause 8.2;
    6. complied with clause 11.12;
    7. complied with clause 11.16; and
       1. complied with clause 21.
  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 11.2; or
    2. may, if the Consultant fails to submit any such claim in accordance with clause 11.2, at any time,

give the Consultant (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 Consultant on account of the Fee 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 Consultant on account of the Fee and otherwise in accordance with the Subcontract and which the Contractor proposes to pay to the Consultant; 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 any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 11.2 and 11.3 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 Services or that the Services 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 Consultant's performance or compliance with the Subcontract.
  1. Payment
     1. Within 3 business days of the Consultant receiving a payment statement under clause 11.4, the Consultant 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 Consultant in the payment statement.
     2. Subject to clause 11.13(c), within the number of business days specified in the Subcontract Particulars of the Contractor receiving a payment statement under clause 11.4, the Contractor will pay the Consultant the amount stated as then payable by the Contractor to the Consultant in the payment statement.
  2. Payment on Account

Any payment of moneys under clause 11.5 will not constitute:

* + 1. approval of the Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment has been satisfactorily carried out in accordance with the Subcontract;
    2. a waiver of the requirements of clauses 11.2 and 11.3 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 Services or that the Services 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 Consultant's performance or compliance with the Subcontract,

but is only to be taken as payment on account.

* 1. Completion Payment Claim and Notice
     1. Within 28 days (or such longer period agreed in writing by the Contractor's Representative) of completion of the Services, the Consultant must give the Contractor's Representative:
        1. a payment claim which complies with clause 11.2 and which must include all amounts which the Consultant claims from the Contractor on account of the Fee and all other amounts payable under the Subcontract; and
        2. notice of any other amounts which the Consultant claims from the Contractor,

in respect of any fact, matter or thing arising out of or in connection with the Services or the Subcontract which occurred prior to completion of the Services.

* + 1. The payment claim and notice required under paragraph (a) are in addition to the other notices which the Consultant 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 Consultant cannot include in this payment claim or notice any Claims which are barred by clause 14.5.
  1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 11.7 has passed, the Consultant releases the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Services or the Subcontract which occurred prior to completion of the Services, except any Claim:

* + 1. included in a payment claim or notice under clause 11.7 which is given to the Contractor's Representative within the time required by, and in accordance with the terms of, clause 11.7; or
    2. directly arising as a result of a Claim made by a third party against the Consultant which could not have been reasonably foreseen by the Consultant at the time of submitting the payment claim and notice under clause 11.7.
  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 by the Contractor's Representative in a payment statement under clause 11.4, but which is not paid by the Contractor within the time required by the Subcontract; and
        2. damages.
     2. This will be the Consultant'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 Consultant:
       1. any debt or other moneys due from the Consultant to the Contractor; and
       2. any claim to money which the Contractor asserts in good faith against the Consultant whether for damages or otherwise under the Subcontract or otherwise at law or in equity arising out of or in connection with the Services or the MCC 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 any amount which may be or thereafter become payable to the Consultant by the Contractor in respect of any Variation the subject of a Variation Order under clause 10.2.
  1. Payment of Workers

The Consultant must with each payment claim submitted under clause 11.2 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 Services 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 or the Services 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 or the Services 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 11.13, 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 Consultant agrees with the Contractor that:
        1. a payment claim submitted to the Contractor's Representative under clause 11.2 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 11.2(a) and 11.2(b) on which the Consultant has satisfied the requirements of clause 11.3; 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 Consultant 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 Consultant; 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 Consultant agrees that the amount stated in the payment statement as then payable by the Contractor in a payment statement under clause 11.4 is, subject to clause 11.12, 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 Consultant is entitled to be paid in respect of the Subcontract.
     4. The Consultant 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 Services 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 Consultant must not at any time, without the written consent of the Contractor, divulge or suffer or permit its servants 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 Consultant's obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
      2. notwithstanding the Consultant's obligations in respect of the Information, the Contractor has absolute discretion to divulge or permit its servants, consultants or agents to divulge to any person the Information;
      3. the Contractor may divulge or permit its servants, consultants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Consultant 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 Consultant 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 Consultant on account of the Fee and otherwise in accordance with the Subcontract.
  1. Cost Allocation Advice

Without limiting clause 11.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Consultant must with each payment claim under clause 11.2, provide the Contractor's Representative with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all Services completed since the Contractor's previous payment to the Consultant.

* 1. Facilities and Infrastructure Accounting

Without limiting clause 11.2, for the purposes of assisting the Commonwealth to bring all completed facilities and infrastructure to account, prior to Completion (as defined in the Managing Contractor Contract), the Consultant must provide a cost report to the Contractor's Representative which sets out:

* + 1. details of the Fee and all other amounts payable under the Subcontract paid by the Contractor to the Consultant in respect of the MCC Works or a Stage (as defined in the Managing Contractor Contract);
    2. the matters specified in the Subcontract Particulars; and
    3. any other matters required by the Contractor's Representative.
  1. Milestone Fee Payment Schedule

If the Fee is adjusted under the Subcontract and a Milestone Fee Payment Schedule applies, the Milestone Fee Payment Schedule will be adjusted:

* + 1. as agreed between the parties; or
    2. failing agreement, as determined by the Contractor's Representative.

1. Termination
   1. Preservation of Rights

Subject to clause 12.6, nothing in clause 12 or that the Contractor does or fails to do pursuant to clause 12 will prejudice any right or remedy of the Contractor (including the recovery of damages) where the Consultant breaches (including repudiates) the Subcontract.

* 1. Consultant Default

The Contractor may give a written notice under clause 12.3 to the Consultant if the Consultant is in breach of the Subcontract.

* 1. Contents of Notice of Default

A notice under clause 12.3 must state:

* + 1. that it is a notice under clause 12.3;
    2. the failure or breach relied upon; and
    3. that the Contractor requires the Consultant 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 Consultant or, where the Consultant comprises two or more persons, to any one of those persons;
    2. the Consultant does not remedy a failure or breach the subject of a notice under clause 12.3 within the number of days specified in the Subcontract Particulars of receiving the notice under clause 12.3;
    3. a direction has been given under clause 7.2, the Consultant fails to comply with clause 7.3; or
    4. the Consultant fails to comply with any of clauses 16.13(b)(i), 16.13(b)(ii), 16.16, 18 or 19,

then the Contractor may by written notice to the Consultant immediately (and without having to first give a notice under clause 12.3 (except in the case of paragraph (b)) terminate the Subcontract.

* 1. Contractor's Entitlements after Termination by Contractor

Subject to clause 12.1, if the Contractor terminates the Subcontract under clause 12.4 or if the Consultant repudiates the Subcontract and the Contractor otherwise terminates the Subcontract:

* + 1. the Contractor will:
       1. to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Consultant, including any amount the subject of a payment claim under clause 11.2 or a payment statement under clause 11.4; and
       2. be entitled to recover from the Consultant 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 Consultant must comply with clause 18.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

Clause will survive the termination of the Subcontract.

* 1. Consultant's Entitlements after Termination by Consultant
     1. If the Contractor repudiates the Subcontract and the Consultant terminates the Subcontract, the Consultant will:
        1. be entitled to payment of an amount determined in accordance with clause 12.8 as if the Contractor had terminated the Subcontract under clause 12.7; and
        2. not be entitled to a quantum meruit.
     2. Clause 12.6 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 Consultant 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 Consultant; and
    2. thereafter (at its absolute discretion), complete the uncompleted part of the Services either itself or by engaging Other Contractors.
  1. Consultant’s Entitlements after Termination for Convenience by Contractor
     1. If the Contractor terminates the Subcontract under clause 12.7, the Consultant:
        1. will be entitled to payment of the following amounts, as determined by the Contractor's Representative:
           1. for Services carried out prior to the date of termination, the amount which would have been payable if the Subcontract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
           2. the cost of goods or materials reasonably ordered by the Consultant for the Services for which the Consultant 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 Contractor upon payment; and

* + - 1. must:
         1. take all steps possible to mitigate the costs referred to in subparagraph (i)B; and
         2. comply with clause 18.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).
    1. The amounts to which the Consultant is entitled under paragraph (a)(i) will be a limitation upon the Contractor's liability to the Consultant arising out of or in connection with the termination of the Subcontract (whether under clause 12.7 or deemed to be under clause 12.7 through the operation of clause 12.6(a)(i)) and, to the extent permitted by law, the Consultant 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 12.8.
    2. Clause 12.8 will survive the termination of the Subcontract by the Contractor under clause 12.7 or by the Consultant following repudiation by the Contractor.
  1. Termination of Managing Contractor Contract
     1. 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 Consultant; or
        2. without the consent of the Consultant, novate the Subcontract to the Commonwealth or a person nominated by the Commonwealth.
     2. If the Subcontract is novated under paragraph (a)(ii), the Consultant 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 12.9(a)(i), then the Consultant:
        1. will be entitled to the payment for work carried out prior to the date of termination in the amount (as determined by the Contractor's Representative) which would have been payable if the Subcontract had not been terminated and the Consultant submitted a payment claim for work carried out to the date of termination; and
        2. must comply with clause 18.4 (including by handing over to the Contractor’s Representative copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).
     2. The amounts to which the Consultant is entitled under clause 12.10 will be a limitation upon the Contractor's liability to the Consultant arising out of or in connection with the termination of the Subcontract under clause 12.9 and the Consultant will not be entitled to make a Claim against the Contractor arising out of or in connection with the termination of the Subcontract other than for the amount payable under paragraph (a)(i).
     3. Clauses 12.9 and 12.10 will survive termination of the Subcontract by the Contractor under clause 12.9.

1. DisputeS
   1. Notice of Dispute
      1. If a dispute or difference arises between the Consultant and the Contractor or between the Consultant and the Contractor's Representative in respect of any fact, matter or thing arising out of or in connection with the Services, the MCC 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 13.
      2. Where such a dispute or difference arises, either party may give a notice in writing to the Contractor's Representative and 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 13.1, the dispute or difference must be submitted to expert determination.

* 1. The Expert
     1. The expert determination under clause 13.2 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 13.3:
        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 13.9(b) within 14 days of his or her appointment under paragraph (a); or
        5. does not make a determination within the time required by clause 13.8,

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 13 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 13 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 13.11 and 13.12, 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 13.2 applies, and a notice of appeal is given under clause 13.10; or
        2. clause 13.2 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 13.2, the notice of dispute given under clause 13.1; or
          2. otherwise, the notice of appeal given under clause 13.10; 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 13.2, the notice of dispute given under clause 13.1; or
       2. otherwise, the notice of appeal given under clause 13.10; 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 13.13 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 13.13.
     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 13 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
        2. any arbitration conducted pursuant to clause 13.13 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. MCC Dispute Procedures

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.

Within 7 days of the Award Date, the Contractor must provide the Consultant with a copy of the provisions in the Managing Contractor Contract setting out the MCC Dispute Procedures.

The Consultant agrees that certain disputes and differences of the kind referred to in clause 13.1 will be determined under the MCC Dispute Procedures as set out in clauses 13.15 to 13.17 in lieu of the procedures set out in clauses 13.2 to 13.13.

* 1. MCC Disputes

If:

* + 1. the Consultant gives a notice under clause 13.1;
    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; 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 Consultant stating that clause 13.16 applies in relation to the dispute or difference.

* 1. Procedure for MCC Disputes

If a notice is given under clause 13.15 stating that clause 13.16 applies:

* + 1. subject to clause 13.17, the Contractor must:
       1. take such steps as are reasonably necessary to progress the Consultant's dispute or difference under the MCC Dispute Procedures;
       2. regularly consult with the Consultant to ascertain its views as to the progression of the Consultant's dispute or difference; and
       3. use its best endeavours to ensure that the Consultant'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 Consultant's dispute or difference as between the Contractor and the Commonwealth; and
    2. the Consultant 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 Consultant'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 paragraph (b)(ii).
  1. Further Procedures

Where clause 13.16 applies, the following provisions also apply:

* + 1. the Contractor must not without the prior consent of the Consultant agree to a settlement with the Commonwealth or any other relevant person of the Consultant's dispute or difference; and
    2. where a determination is made by an expert, an arbitrator or a court in relation to the Consultant's dispute or difference as between the Commonwealth and 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 Consultant 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 Consultant's dispute or difference insofar as the determination relates to the dispute or difference.
  1. 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 13.18.

* 1. Continuation of Services

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

* + 1. continue to carry out the Services; 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 10.2, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Contractor arising out of or in connection with the direction:

* + 1. within 7 days of receiving the direction and before commencing any services relating to 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 14.3(b); and
    3. continue to carry out the Services 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 14.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 8.6;
    2. payment under clause 11 of the original Fee specified in the Subcontract Particulars;
    3. a Variation instructed in accordance with clause 10.2 or to which clause 14.1 applies; or
    4. contribution or indemnity for loss or damage caused or contributed to by the negligence of the Contractor where a third party (other than a party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

the Consultant must give the Contractor's Representative the notices required by clause 14.3 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 Services 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 Fee; or
       2. otherwise the Fee will be increased or adjusted,

as determined by the Contractor's Representative.

* 1. Prescribed Notices

The notices referred to in clause 14.2 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 Consultant 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 14.1(b) or clause 14.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by clause 14.3(b) every 28 days after the written claim under clause 14.1(b) or 14.3(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 Consultant fails to comply with clause 14.1, 14.2, 14.3 or 14.4:

* + 1. the Contractor will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Consultant; and
    2. the Consultant 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 14.1 or 14.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 14.1 - 14.5 will limit the operation or effect of any other provision of the Subcontract which requires the Consultant 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 12 and 13 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 14.7 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 14.7 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 12 and 13, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 14.7(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 and the HOTO process
   1. General

Without limiting the Consultant's obligations under the Subcontract or otherwise at law or in equity, the Consultant must prepare the Design Documentation and carry out the Services in a manner which maximises the achievement of the WOL Objectives.

* 1. Consultation

The Consultant must meet with the Contractor’s Representative, the Contractor, the MCC Contract Administrator, the Commonwealth 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 Documentation and the Services against the WOL Objectives; and
    2. consult with the Contractor's Representative, the Contractor, the MCC Contract Administrator, the Commonwealth 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 Consultant’s obligations under the Subcontract or otherwise at law or in equity, the Consultant must at all times in preparing the Design Documentation and otherwise carrying out the Services:

* + 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 Contractor's Representative, the Contractor, the MCC Contract Administrator, the Commonwealth 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. HOTO Process

Without limiting clause 2.6, the Consultant 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 Consultant HOTO Obligations;
       2. ensure that all Consultant 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;
       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 MCC Works or the Stage (as defined in the Managing Contractor Contract); and
          2. perform such other activities as may be required by the Contractor in respect of the MCC Works or the Stage (as defined in the Managing Contractor Contract).
  1. Post Occupancy Evaluation
     1. 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 MCC Works; and
        2. without limiting subparagraph (i):
           1. inspect the MCC Works to review the extent to which the Consultant has maximised the achievement of the WOL Objectives in the design and construction of the MCC Works; and
           2. issue a report to the Commonwealth, the Contractor and the Consultant:

stating the extent to which the Consultant has maximised the achievement of the WOL Objectives in the design and construction of the MCC Works; and

containing a list of any aspects of the MCC Works which do not conform with the requirements of the Managing Contractor Contract, comparing the actual resource intensity performance to the predicted design performance target.

* + 1. The Consultant:
       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 necessary, for the purposes of the Contractor's Representative carrying out the requirements in paragraphs (a)(i) and (ii); and
       2. acknowledges and agrees that the Commonwealth and the Contractor may take the results of the post occupancy evaluation 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 Consultant's obligations under the Subcontract or otherwise at law or in equity, will be affected or limited by:

* + 1. the rights conferred upon the Contractor or Contractor's Representative by clause 15 or the failure by the Contractor or the Contractor's Representative to exercise any such rights;
    2. the obligations imposed upon the Consultant by clause 15 or the Consultant'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 Consultant under clause 15; or
       2. any post occupancy evaluation carried out (including any report prepared and finalised) under clause 15.5.

1. General
   1. Workplace Gender Equality

The Consultant must comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth).

* 1. Indigenous Procurement Policy

The Consultant must use its reasonable endeavours to increase its:

* + 1. purchasing from Indigenous Enterprises; and
    2. employment of Indigenous Australians,

in carrying out the Services, in accordance with the Indigenous Procurement Policy.

* 1. Defence's Security Alert System
     1. Nothing that the Consultant is or may be required to do under clause 16.3 will derogate from, or otherwise limit, the Consultant's obligations under the Subcontract.
     2. The Consultant must be fully familiar with the requirements of Defence's Security Alert System.
     3. The Consultant must:
        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 Services, the Consultant must 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 Consultant of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Consultant as to the course it is to adopt insofar as the Services 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 Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant 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 Fee will be decreased by any saving made by the Consultant 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 Consultant 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 Consultant 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 Contractor’s obligations under the Subcontract, the Consultant 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 MCC Works, will not be adversely affected by the date; and
        2. no virus will be introduced into the Contractor's or the Commonwealth's systems as a result of the supply by the Consultant of any IT Equipment or as a result of any other act or omission of the Consultant in connection with carrying out the Services.
     2. The Consultant must assign to the Contractor the benefits of warranties given by any supplier from whom the Consultant sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Consultant becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to clause 16.4 does not in any way relieve the Consultant of the obligation to comply with warranties given by the Consultant under the Subcontract.
  2. Privacy
     1. The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant allows to access Personal Information which is received, created or held by the Consultant 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 Consultant 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 Consultant in reports by the Federal Privacy Commissioner;
        11. not use Personal Information collected by the Consultant 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
        12. 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 Consultant under clause 16.5;
            2. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Consultant; or
            3. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Subcontract by the Consultant in breach of an obligation of confidence.
     2. For the purposes of paragraph (a)(xii), **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 16.5.
     3. The Consultant must immediately notify the Contractor in writing if the Consultant:
        1. becomes aware of a breach of the obligations under paragraph (a);
        2. becomes aware that a disclosure of Personal Information may be required by law; or
        3. is approached or contacted by the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     4. The Consultant acknowledges that, in addition to the requirements of clause 16.5, the Consultant 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 16.5 limits any of the Consultant's obligations under the Subcontract or otherwise at law or in equity.
     6. In clause 16.5, **received** includes collected.
  3. Moral Rights
     1. The Consultant must:
        1. to the extent permitted by law and for the benefit of the Contractor, ensure that each of the personnel engaged by the Consultant in the production or creation of Project Documents or the MCC Works gives genuine consent in writing to the use of the Project Documents or the MCC 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 16.6, **Specified Acts** means:
        1. falsely attributing authorship of any Project Document or the MCC Works, or any content in a Project Document or the MCC 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 MCC Works and dealing in any way with the altered Project Document or MCC Works;
        3. reproducing, communicating, adapting, publishing or exhibiting any Project Document or the MCC Works; and
        4. adding any additional content or information to a Project Document or the MCC 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 Consultant 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 16.8 only applies if the Long Service Leave Legislation applies to the Services.

* + 1. Without limiting the Consultant’s obligations under the Subcontract or otherwise at law or in equity, the Consultant must comply with its obligations under the Long Service Leave Legislation.
    2. If required by the Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
    3. Any amount paid by the Consultant under paragraph (b) is deemed to be included in the Fee and the Consultant will have no Claim against the Contractor arising out of or in connection with its obligations under clause 16.8 or the Long Service Leave Legislation.
  1. Assignment
     1. The Consultant 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 18, the Consultant must:

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

Without limiting clauses 2.10, 2.11 and 6.13, the Consultant 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;
    2. before issue of any Design Documentation for the purpose of engaging a Contractor - that the Design Documentation to be issued complies with the Building Works Manual and the National Construction Code; and
    3. prior to Completion (as defined in the Managing Contractor Contract) - that the MCC Works comply or the Stage (as defined in the Managing Contractor Contract) complies 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 Consultant acknowledges that the Subcontract identifies:
        1. the Australian standards which are applicable to the Services; or
        2. in the absence of an applicable Australian standard, the relevant international standards which are applicable to the Services,

and that it must comply with all relevant standards of Standards Australia to the extent required by clause 7.5(d) (collectively, the **Applicable Standards**).

* + 1. Without limiting the Consultant's obligations under this Subcontract, the Consultant must comply with the Applicable Standards in performing the Services.
    2. The Contractor’s Representative may, at any time, request that the Consultant provides a certificate which certifies that the Design Documentation complies or the Services comply with the Applicable Standards.
    3. The Consultant acknowledges that the Contractor may exercise any of its rights under this Subcontract (including under clause 6.11) to carry out periodic auditing of the Consultant's compliance with clause 16.12.
  1. Shadow Economy Procurement Connected Policy
     1. Clause 16.13 does apply unless the Subcontract Particulars state that it does not apply.
     2. The Consultant:
        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 Services and, on request by the Contractor’s Representative, provide to the Contractor’s Representative a copy of any such STR.
     3. The Consultant must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Consultant becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Consultant is:** | **Additional STRs required arising from changed circumstances:** |
| 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 Consultant 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 Consultant 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 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 Consultant 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 performance of the Services.
     2. The Consultant must ensure the Consultant's key people under clause 4.4 and other personnel responsible for managing the operations and supply chains used in the performance of the Services have undertaken suitable training to be able to identify and report Modern Slavery.
     3. If at any time the Consultant becomes aware of Modern Slavery practices arising in connection with the Subcontract, including in the operations and supply chains used in the performance of the Services, the Consultant 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 16.15, **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 Consultant must comply with, and ensure that its officers, employees and agents comply with, the Code in connection with the performance of the Subcontract.
     2. The Consultant 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 Consultant's compliance with paragraph (a).
     3. The Consultant 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 Consultant in writing, and the Consultant must, within three days of receiving the notice, either:
        1. where the Consultant 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 Consultant considers that a breach has occurred - notify the Contractor's Representative under paragraph (c) and otherwise comply with its obligations under this clause 16.16.
     5. Notwithstanding paragraph (d), the Contractor's Representative may notify the Consultant in writing that it considers that the Consultant has breached paragraph (a), in which case the Consultant must notify the Contractor's Representative in writing under paragraph (c) and otherwise comply with its obligations under this clause 16.16.
     6. Nothing in this clause 16.16 or the Code limits, reduces or derogates from the Consultant's other obligations under the Subcontract. The Contractor's rights under this clause 16.16 are in addition to and do not otherwise limit any other rights the Contractor may have under the Subcontract. The performance by the Consultant of its obligations under this clause 16.16 will be at no additional cost to the Contractor.
     7. The Consultant acknowledges and agrees that the Consultant'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 16.16, **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 17 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 Consultant 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 Consultant 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 Consultant 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;
       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 Consultant 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 Consultant 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 18.2, the Consultant 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 Consultant may disclose Confidential Information where such disclosure is required by law provided that the Consultant:
        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 and the Contractor 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 Consultant may disclose Confidential Information to:
        1. an employee, officer, agent, legal adviser or insurer of the Consultant who needs to know the Confidential Information to enable the Consultant to perform its obligations under the Subcontract; and
        2. such other persons, provided the Consultant 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 Consultant must ensure that all such persons strictly comply with equivalent obligations as are imposed on the Consultant by this clause 18 in respect of all Confidential Information disclosed to them.

* + 1. The Consultant 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 Contractor's Representative or the Contractor, 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; and
          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).
    2. Without limiting the Consultant's strict obligations under paragraph (e)(i), the security classification of the information and assets accessible to the Consultant in connection with the Subcontract is anticipated to be at or below the level specified in the Subcontract Particulars, provided that if the Consultant 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 2.11.
    3. Within such period as the Contractor's Representative or the Contractor may direct, the Consultant must, in accordance with the other terms of the direction, provide:
       1. evidence of the Consultant's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 18; and
       2. a statutory declaration in a form and from an authorised officer satisfactory to the Contractor (acting reasonably) in respect of the Consultant's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 18.
  1. Security or Confidentiality Incidents

The Consultant 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 Contractor's Representative or the Contractor under clause 18.2(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 Consultant 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 18 in respect of confidentiality and information security, the Consultant 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 Consultant is aware that documents containing the Confidential Information are beyond its possession or control, then the Consultant 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 Consultant:

* + 1. must bear, and releases the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant 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 18; 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. Consultant's Warranty on Award Date

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

* 1. Consultant to Give Notice

If, at any time, the Consultant becomes aware of any Strategic Notice Event, the Consultant 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 Consultant, of:

* + 1. the Strategic Notice Event, including:
       1. whether the Consultant 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 Consultant became aware of the Strategic Notice Event; and
       3. whether any of the Consultant's key people, other personnel engaged in connection with the Services; and
    2. the steps which the Consultant 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 (under the Subcontract or otherwise at law or in equity), if:

* + 1. the Consultant:
       1. notifies the MCC Contract Administrator and the Contractor’s Representative under clause 19.2; or
       2. has given a false warranty in any respect under clause 19.1 or has failed to strictly comply with clause 19.2; 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 Consultant 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 Consultant; and
       2. steps which the Consultant 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 and 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 Consultant has received a notice under paragraph (c), notify the Consultant that the Consultant may continue to perform the Services, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Consultant preparing and implementing a Strategic Notice Event Remediation Plan in accordance with clause 19.4; and
    2. regardless of whether or not the Contractor has notified the Consultant under paragraphs (c) or (d), take into account the occurrence of a Strategic Notice Event at any time, including when:
       1. conducting performance reviews, providing a direction to remove a person from the Site or the Services (including in accordance with clause 4.5) 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 6.11); and
       2. deciding whether to exercise any rights in relation to termination or to omit parts of the Services by Variation Order.
  1. Strategic Notice Event Remediation Plan
     1. If notified by the Commonwealth under clause 19.3(d), the Consultant 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 Consultant under paragraph (a) must include the following information:
        1. how the Consultant will address the Strategic Notice Event to minimise the impact of the Strategic Notice Event on the Services and the MCC Works;
        2. confirmation that the implementation of the Strategic Notice Event Remediation Plan will not in any way impact on the compliance by the Consultant with its other obligations under the Subcontract;
        3. how the Consultant 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 Consultant's original agreement with the Contractor; and
        5. any other matter reasonably requested by the Contractor.
     3. The Contract's Representative will review the draft Strategic Notice Event Remediation Plan and either approve it or provide the Consultant with the details of any changes that are required. The Consultant 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 Consultant 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 Consultant'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 Consultant's other obligations under this clause 19, the Consultant 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 Services (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 Consultant or any of its officers, employees 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 or agents that report any known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Subcontract or the Services are protected from reprisals; and
    2. provide all assistance reasonably required in respect of any investigation undertaken by the Contractor, 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 Consultant must bear, and releases the Contractor in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant 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 19.

* 1. Consultant's Compliance
     1. Nothing in this clause 19 requires the Consultant 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 Consultant 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 Consultant, or any Related Body Corporate of the Consultant, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Consultant 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 Consultant must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 19 is achieved.

1. FINANCIAL VIABILITY
   * 1. The Consultant:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Subcontract; and
        2. acknowledges and agrees that the Contractor has:
           1. entered into the Subcontract;
           2. if applicable, made payments to the Consultant under clause 11.5; and
           3. if applicable, elected to proceed to the Delivery Phase,

strictly on the basis of, and in reliance upon, the obligations and warranties set out in clause 20.

* + 1. The Consultant must keep the Contractor's Representative fully and regularly informed as to all financial viability matters which could adversely affect the Consultant’s ability to perform the Services, achieve Completion or otherwise meet its obligations under the Subcontract, including any potential or actual change in the Consultant’s financial viability.
    2. The Contractor's Representative may (in its absolute discretion) at any time request the Consultant to:
       1. provide the Contractor's Representative with a solvency statement in the form required by the Contractor with respect to the Consultant, properly completed and duly executed by the Consultant; and
       2. ensure its Financial Representative is 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 the Consultant has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Subcontract.
    3. If the Contractor considers (in its absolute discretion) that there could be or has been a change in the Consultant’s financial viability which could adversely affect the Consultant’s ability to perform the Services, achieve Completion or otherwise meet its obligations under the Subcontract, the Contractor’s Representative may (in its absolute discretion) direct the Consultant to take such steps as the Contractor considers necessary to secure the performance of the Services, Completion and the meeting of its obligations under the Subcontract, including requiring the Consultant to:
       1. provide a deed of guarantee and undertaking in the form required by the Contractor;
       2. provide the Consultant Deeds of Covenant; or
       3. provide collateral warranties in the form required by the Contractor.
    4. The Consultant acknowledges and agrees that:
       1. nothing in clause 20 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 20 does not give the Consultant any rights.

1. ESTATE INFORMATION
   1. Consultant Estate Information Obligations
      1. The Consultant must:
         1. carry out and fulfil all Consultant Estate Information Obligations;
         2. fully co-operate with, provide information to and do all other things to assist, the Contractor and the Other Contractors to comply with their Estate Information obligations (including as they relate to the Work Health and Safety Legislation);
         3. ensure that all Consultant Estate Information Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the Subcontract or the Defence Estate Information Management Requirements or as otherwise required by the Contractor's Representative; and
         4. without limiting the foregoing if requested by the Contractor's Representative, provide Project Documents and such other documents, drawings, recordings or other information required for the occupation, use, operation and maintenance of the MCC Works or each Stage (as defined in the Managing Contractor Contract) within the period specified by the Contractor's Representative in such request.
      2. The Consultant warrants that all Estate Information assessed, created, managed, updated and recorded in accordance with this clause 21 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 Consultant to review, or in reviewing, any Estate Information submitted by the Consultant 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 Consultant 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 Consultant from, or alter or affect, the Consultant's obligations under the Subcontract or otherwise at law or in equity; or
         2. prejudice the Contractor's rights against the Consultant 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) |  | | | | | |
| **Consultant:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Consultant's Representative:**  (Clause 1.1) | [To be inserted following selection of the successful Tenderer] | | | | | |
| **Contractor:**  (Clause 1.1) |  | | | | | |
| **Contractor's Design Management Plan:**  (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 (of a Milestone):**  (Clause 1.1) | **Milestones** | | | **Date for Completion** | | |
| ***[IF NO PHASES]*** | | |  | | |
|  | | |  | | |
| ***[IF TWO PHASES INSERT:]*** | | |  | | |
| **Planning Phase:** | | | | | |
|  | | |  | | |
|  | | |  | | |
| **Delivery Phase:** | | | | | |
|  | | |  | | |
|  | | |  | | |
| **Date for Delivery Phase Agreement:**  (Clause 1.1) | ***[IF CLAUSE 9 APPLIES, INSERT DATE FOR DELIVERY PHASE AGREEMENT. OTHERWISE, INSERT "NOT APPLICABLE"]*** | | | | | |
| **Defence Asbestos Register:**  (Clause 1.1) |  | | | | | |
| **Delivery Phase Fee Proposal:**  (Clause 1.1) | ***[WHERE CLAUSE 9 APPLIES, INSERT OR OTHERWISE INSERT "NOT APPLICABLE"]*** | | | | | |
| **Design Management Plan – matters to be addressed:**  (Clause 1.1) | ***[CONTRACTOR TO INCLUDE THE MATTERS TO BE ADDRESSED IN THE CONSULTANT'S DESIGN MANAGEMENT PLAN]*** | | | | | |
| **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:**  **Consultant:** [To be inserted following selection of the successful Tenderer] | | | | | |
| **Fee:** (Clause 1.1) | ***[IF NO PHASES]***  **Fee:** $ GST exclusive  ***[IF TWO PHASES:]*** | | | | | |
| **Planning Phase Fee:** | | | $ [To be inserted following selection of the successful Tenderer] GST exclusive | | |
| **Indicative Delivery Phase Fee:** | | | **$**[To be inserted following selection of the successful Tenderer] GST exclusive | | |
| **Managing Contractor Contract:**  (Clause 1.1) |  | | | | | |
| **MCC Contract Administrator:**  (Clause 1.1) |  | | | | | |
| **MCC Works:**  (Clause 1.1) |  | | | | | |
| **Milestones:**  (Clause 1.1) | ***[WHERE THERE IS NO MILESTONE FEE PAYMENT SCHEDULE, INSERT]***  ***[WHERE THERE IS A MILESTONE FEE PAYMENT SCHEDULE INSERT:***  ***As set out in the Milestone Fee Payment Schedule]*** | | | | | |
| **Pandemic Adjustment Event (additional):** (Clause 1.1) |  | | | | | |
| **Preliminary Design Solution (if any):**  (Clause 1.1) |  | | | | | |
| **Project Plans (additional):**  (Clause 1.1) | If clause [4] of the Special Conditions applies, Method of Work Plan for Airfield Activities.  ***[CONTRACTOR TO INSERT ANY ADDITIONAL PLANS REQUIRED]*** | | | | | |
| **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. Payment Claim  2. Payment Statement  3. Expert Determination Agreement  4. Consultant Deed of Covenant  5. Consultant Design Certificate  6. Delivery Phase Agreement Minutes | | | | | |
| **Site:**  (Clause 1.1) |  | | | | | |
| **Site Management Plan (additional):**  (Clause 1.1) |  | | | | | |
| **Subcontract - other documents forming part of the** **Subcontract:**  (Clause 1.1) |  | | | | | |
| **WOL Objectives (additional):**  (Clause 1.1) |  | | | | | |
| **Work Health and Safety Plan (additional):**  (Clause 1.1) |  | | | | | |
| **Governing law:**  (Clause 1.3(a)) |  | | | | | |
| **CLAUSE 2 - ROLE OF THE CONSULTANT** | | | | | | |
| **Statutory Requirements with which the Consultant does not need to comply:**  (Clause 2.10(a)) |  | | | | | |
| **Approvals which the Consultant is to obtain:**  (Clause 2.10(b)) |  | | | | | |
| **CLAUSE 3 - ROLE OF THE CONTRACTOR** | | | | | | |
| **Other conditions precedent to Site access:**  (Clause 3.3(e)) |  | | | | | |
| **CLAUSE 4 - PERSONNEL** | | | | | | |
| **Consultant's Key People:**  (Clause 4.4(a)(i)) | **Person** | | | | **Position** | |
| [To be inserted following selection of the successful Tenderer] | | | |  | |
| **CLAUSE 5 - INSURANCE** | | | | | | |
| **Insurance policies required to be obtained by the Consultant:**  (Clause 5.1) | ***[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 Services are performed or the Consultant's employees perform work, are employed or normally reside | | | | | |
| **Employers' Liability Insurance**  Amount of Cover: The amount that an expert professional provider of the Services would purchase, which must not be less than $ | | | | | |
| **Professional Indemnity Insurance**  Amount of Cover: $ per claim and $ in the aggregate | | | | | |
| **Other Insurances:** (Clause 5.1(a)(iv))  ***[CONTRACTOR AND CONTRACTOR’S REPRESENTATIVE TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED]*** | | | | | |
| **Insurance policies required to be effected by the Contractor:**  (Clause 5.2) | ***[LEVELS OF INSURANCES TO BE CONSISTENT WITH THE MANAGING CONTRACTOR CONTRACT]***  **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  ***[INSERT OTHERS]*** | | | | | |
| **Run-off period for Public Liability Insurance (if written on a claims made basis):**  (Clause 5.4(a)(ii)) | Where any part of the Services are carried out 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 Professional Indemnity Insurance:**  (Clause 5.4(c)) | Where any part of the Services are carried out 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 Consultant to the Contractor:**  (Clause 5.8) | $ | | | | | |
| **CLAUSE 6 - DESIGN AND DOCUMENTATION** | | | | | | |
| **Number of days for review:** (Clause 6.3(a)(ii)) | days | | | | | |
| **Number of copies of Design Documentation to be submitted by the Consultant 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 documents in the case of any ambiguity, discrepancy or inconsistency:**  (Clause 6.10(a)) | 1. Formal Agreement  2. Conditions of Subcontract  3. Special Conditions  4. Subcontract Particulars  5. Brief  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 has not been rejected under clause 6.3)  8. Project Plans | | | | | |
| **Number of days for sample review:**  (Clause 6.14(b)(ii)) | days | | | | | |
| **CLAUSE 7 - QUALITY** | | | | | | |
| **Number of days for submission of Project Plans:**  (Clause 7.4(a)(ii)A) | Design Management Plan: | | | days | | |
| 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 7.4(a)(ii)B) | Design Management Plan: | | | days | | |
| 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 | | |
| **CLAUSE 8 - TIME** | | | | | | |
| **Maximum intervals between**  **program updates by Consultant:**  (Clause 8.2(b)(ii)) |  | | | | | |
| **Program format to be compatible with:**  (Clause 8.2(b)(iv)) | ***[PRIMAVERA SURETRAK/MICROSOFT PROJECT]*** or approved equivalent | | | | | |
| **CLAUSE 9 - PLANNING PHASE AND DELIVERY PHASE** | | | | | | |
| **Planning Phase and Delivery Phase:**  (Clause 9) | Clause 9 ***[DOES/DOES NOT]*** apply  (Clause 9 applies unless otherwise stated) | | | | | |
| **CLAUSE 11 - PAYMENT** | | | | | | |
| **Times for submission of payment claims by the Consultant to Contractor's Representative:**  (Clause 11.2(a)) | Monthly on the day of each month  ***[OR, IF A MILESTONE FEE PAYMENT SCHEDULE APPLIES]***  In accordance with the Milestone Fee Payment Schedule | | | | | |
| **Email address for copy of tax invoice:**  (Clause 11.5(a)) |  | | | | | |
| **Number of business days for payment:**  (Clause 11.5(b)) | To the extent that the relevant part of the Services 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 11.9) | 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. 2. late payments - the greater of:   (a) the rate in paragraph (1); and  (b) the rate of interest prescribed under any applicable Security of Payment Legislation. | | | | | |
| **Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:**  (Clause 11.14(d)) | To the extent that the relevant part of the Services 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; or  3. Victoria, any one of the following:  (a) Resolution Institute, Victorian Chapter;  (b) Building Adjudication Victoria Inc; or  (c) 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 11.17(b)) |  | | | | | |
| **CLAUSE 12 - TERMINATION** | | | | | | |
| **Number of days to remedy breach:**  (Clauses 12.3(c) and 12.4(b)) | days | | | | | |
| **CLAUSE 13 - DISPUTE RESOLUTION** | | | | | | |
| **Directions to be subject of an expert determination:** (Clause 13.2) | Directions under clauses 2.11(b), 2.11(c), 2.13(a)(ii), 8.4(b)(ii)B, 8.8, 10.3(b), 10.3(c)(ii), 11.4, 11.18(b), 12.8(a)(i), 16.3(e)(ii) and 16.3(e)(iii). | | | | | |
| **Industry expert who will conduct expert determinations:**  (Clause 13.3(a)(i)) |  | | | | | |
| **Nominating authority for industry expert:**  (Clause 13.3(a)(ii)) | (The President for the time being of the Resolution Institute unless otherwise stated) | | | | | |
| **CLAUSE 14 - NOTICES** | | | | | | |
| **Address and email address, for the giving or serving of notices, upon:**  (Clause 14.7(b)(i)) | **Commonwealth**:  Address (not PO Box):  Email address:  Attention:  **MCC Contract Administrator**:  Address (not PO Box):  Email address:  Attention:  **Contractor**:  Address (not PO Box):  Email address:  Attention:  **Contractor's Representative**:  Address (not PO Box):  Email address:  Attention:  **Consultant**:  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 16 - GENERAL** | | | | | | |
| **Defence's Security Alert System level:**  (Clause 16.3(d)(i)) | ("Aware" if not otherwise stated) | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 16.13) | Clause 16.13 ***[DOES/DOES NOT]*** apply.  (Clause  16.13 applies unless otherwise stated)  ***[CLAUSE 16.13 WILL APPLY WHERE THE FEE IS VALUED (OR ESTIMATED) TO BE OVER $4 MILLION (INCLUSIVE OF GST)]*** | | | | | |
| **CLAUSE 17 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 17) | | Clause 17 ***[DOES/DOES NOT]*** apply.  [To be inserted following selection of the successful Tenderer]  (Clause 17 does not apply unless otherwise stated) | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 17) | | **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 18 - INFORMATION SECURITY** | | | | | | |
| **DISP membership:**  (Clause 18.1) | | 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 18.2(e)(ii)A) | | **Role** | | **Minimum level of security clearance** | | |
|  | |  | | |
| **Anticipated highest security classification of information and assets:** (Clause 18.2(f)) | |  | | | | |

Annexure 1 - Brief

Annexure 2 - SPECIAL CONDITIONS

*[THE TENDER ADMINISTRATOR/CONTRACTOR’S REPRESENTATIVE ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE SUBCONTRACT. THE TENDER ADMINISTRATOR/CONTRACTOR’S REPRESENTATIVE ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED. NOTE THAT THERE ARE MORE EXTENSIVE SPECIAL CONDITIONS IN THE MANAGING CONTRACTOR CONTRACT WHICH MAY ALSO BE OF RELEVANCE (WITH AMENDMENT) TO THE SUBCONTRACT]*

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 its business or undertaking, unless the Hazardous Substances are managed in accordance with subparagraph (ii); and
         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 Consultant of Hazardous Substances known to it to be within:
         1. Commonwealth Premises relevant to the Services; and
         2. any other Commonwealth property (including plant and equipment) provided to the Consultant for the purposes of the Services.
   2. The Consultant
      1. The Consultant acknowledges Hazardous Substances may be present within:
         1. Commonwealth Premises relevant to the Services; or
         2. any other Commonwealth property (including plant and equipment) provided to the Consultant for the purposes of the Services.
      2. Without limiting paragraph (d) the Consultant must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Services or incorporated into the MCC 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 Services or incorporated into the MCC Works).
      3. Without limiting paragraph (b), the Consultant must:
         1. prepare a register of each Hazardous Substance to be:
            1. used in the Services;
            2. incorporated into the MCC Works;
            3. held or stored by the Consultant on Site; or
            4. transported by the Consultant 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 Consultant:
         1. handling or storing the Hazardous Substance on Site; or
         2. transporting the Hazardous Substance to or from the Site or in or through Commonwealth Premises;
      2. provide the Contractor's Representative an updated Hazardous Substance Register:
         1. on each occasion that it is updated by the Consultant; 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 Services; or
         2. incorporated into the MCC Works;
      4. provide the SDS 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 Services or incorporated into the MCC 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) - (iv) 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 Services;
         2. incorporated into the MCC 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 4.7 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 4.7 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 Consultant must not use, handle or store a Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 1.3(d) in connection with the Services or the MCC 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 Consultant must provide:
       1. details of the Hazardous Substance and the relevant category under clause 1.3(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 1.3(d); and
       3. for each Hazardous Substance which falls within one or more of the following categories:
          1. clause 1.3(d)(i) or 1.3(d)(ii), a copy of all Approvals for use, handling or storage;
          2. clause 1.3(d)(v) or 1.3(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 1.3(d)(vi), a copy of:

all notices given to a relevant regulator; and

all licences required to be held by the Consultant;

in relation to use, storage or handling.

* + 1. Without limiting clause 6.15 of the Conditions of Subcontract or any other provision of the Subcontract, the Consultant 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 (as defined in the Managing Contractor Contract) and after the end of the last Defects Liability Period (as defined in the Managing Contractor Contract));
       3. ensure that all goods incorporated into the MCC Works comply with WHS Legislation and any Statutory Requirements relating to Hazardous Substances;
       4. ensure that all Hazardous Substances used in the Services or used in (or incorporated into) the MCC 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 Services or the MCC Works; and
       6. be able to demonstrate compliance with this paragraph (f) at the request of the Contractor's Representative.
  1. Definitions

For the purposes of clause 1:

* + 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. SITE RESTRICTIONS

The Site based Services must be executed subject to the following restrictions:

***[INSERT DESCRIPTION OF RESTRICTIONS.]***

1. REQUESTS FOR INFORMATION
   * 1. Without limiting the Conditions of Subcontract, the Services include responding to Requests for Information (Request for Information Services). All documentation provided as part of the Request for Information Services will be deemed to form part of the Design Documentation.
     2. Without limiting the Conditions of Subcontract, the Consultant must:
        1. perform the Request for Information Services so as to ensure that the Request for Information Services fully address each Request for Information, reduce the need for further Requests for Information and minimise the Commonwealth’s exposure to delay and extra costs under the Managing Contractor Contract to the maximum extent possible;
        2. submit (or resubmit) the Design Documentation prepared as Request for Information Services to the Contractor's Representative in accordance with clause 6 of the Conditions of Subcontract;
        3. perform the Request for Information Services within the time required by the Contractor's Representative, including so as to ensure that the Contractor's Representative can issue the Design Documentation prepared by the Consultant in response to each Request for Information so as to minimise the Commonwealth’s exposure to delay and extra costs under the Managing Contractor Contract; and
        4. for the purposes of performing the Request for Information Services, ensure that its personnel and other resources have appropriate availability, qualifications, experience, ability and expertise.
     3. For the purposes of clause 3 of the Special Conditions, Request for Information means any request made by a consultant or contractor to the Commonwealth or the Contractor requesting further information, instruction, guidance, advice or opinion (including in respect of the resolution of ambiguities, discrepancies or inconsistencies in the Design Documentation) or otherwise in respect of the Design Documentation.
2. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES
   * 1. Without limiting clause 7.4 of the Conditions of Subcontract, the Consultant must prepare and implement by no later than [***INSERT EG 14 days***] after the Award Date, and as a condition precedent to the Consultant being given access to the Site, a “Method of Work Plan for Airfield Activities” for all aspects of the Services (**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 Consultant will implement to manage the Services on and near the Site, including (as applicable):
        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 Consultant;
        7. liaison with the Contractor, the Commonwealth and Other Contractors;
        8. Approvals prior to carrying out Services;
        9. rubbish, dust and debris control;
        10. Foreign Object Damage (FOD) control;
        11. noise management;
        12. fencing;
        13. security;
        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.
3. OPERATING AIRFIELD
   * 1. The Consultant must ensure that the Services do not compromise aircraft operations or the safety of aircraft.
     2. Without limiting clause 6.15 of the Conditions of Subcontract and as part of the Services, the Consultant must liaise with the Contractor and the Contractor's Representative as required to co-ordinate the Services with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.
4. CIVIL LIABILITY ACT (WESTERN AUSTRALIA)

In clause 13.18 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. ADJUSTMENT OF TABLE OF VARIATION RATES AND PRICES
   * 1. The Fee is not subject to rise and fall.
     2. All rates and prices in the Table of Variation Rates and Prices are to be adjusted (using the formula set out below) annually on the anniversary of the Award Date.
     3. The following formula shall be used to calculate the rise and fall of the Table of Variation Rates and Prices:

|  |  |
| --- | --- |
| Pn = Po x | In |
| Io |

Where:

Pn = the revised rate or price applying from the most recent annual anniversary of the Award Date.

Po = the rate or price applying at the Award Date.

In = the latest of the preceding March, June, September or December Price Revision Index published prior to the annual anniversary of the Award Date.

Io = the latest of the preceding March, June, September or December Price Revision Index published prior to the Award Date.

* + 1. **Price Revision Index** = is the index set out below

|  |  |  |
| --- | --- | --- |
| **Description** | **Table** | **Group** |
| ABS Publication 6345.0 Labour Price Index | Table 5 | Private - Construction Index |

1. CHILD SAFETY

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE CONSULTANT AND ITS OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE SUBCONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONSULTANT 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 SERVICES]***

If any part of the activities carried out by the Consultant under the Subcontract (including any Services) involves the Consultant employing or engaging a person (whether as an officer, employee, agent, consultant, or volunteer) that is required by State or Territory law to have a working with children check to undertake such activities or any part of such activities, the Consultant 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 such activities, including mandatory reporting and working with children checks however described; and
    2. if requested, provide the Commonwealth at the Consultant’s cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.

1. PRELIMINARY DESIGN SOLUTION

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

* + 1. prior to the Award Date, ***[IT HAS/THE CONTRACTOR’S OTHER DESIGN 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 Consultant 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 MCC Works are designed in accordance with the Preliminary Design Solution (as may be developed in accordance with the Subcontract), the MCC Works will comply with the requirements of the Brief and satisfy all other requirements of the Subcontract; and
    5. it must design the MCC Works in accordance with the Preliminary Design Solution (as may be developed in accordance with the Contract), except to the extent where a Variation necessitates a consequential change to the Preliminary Design Solution in which case the Consultant must notify the Contractor's Representative of such change.

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 10.1 of the Special Conditions will not apply when the Payment Times Procurement Connected Policy does not apply to this Subcontract.]***
    2. Notwithstanding clause 11.5of the Conditions of Subcontract (and the corresponding Subcontract Particular), the Contractor will pay the Consultant:
       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 Consultant 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 Consultant enters into a PT PCP Subcontract, it must include provisions equivalent to those in clause 10.1(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 Consultant enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract must include:
       1. provisions equivalent to those in clause 10.1(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 10 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** or **PT PCP** means the Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended 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 updated 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 Services;
        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 Consultant and another party to provide goods or services directly or indirectly to the Consultant 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. JOINT AND SEVERAL LIABILITY

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

The Consultant acknowledges and agrees:

* + 1. that the joint and several liability of each entity comprising the Consultant, and the Consultant'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 Consultant entered into for the purposes of tendering for or performing the Services or otherwise in connection with this Subcontract; and
    2. that the Contractor has entered into this Subcontract in reliance upon the Consultant's acknowledgement and agreement in paragraph (a).

Annexure 3 - MILESTONE FEE PAYMENT SCHEDULE

| **Payment milestone name** | **Payment milestone description** | **Amount (GST exclusive)** |
| --- | --- | --- |
| **Planning Phase:** | | |
| ***[EG. 50% Schematic Design Report]*** | ***[EG. Each of the following has been achieved by the Consultant:***   * + 1. ***Design Documentation comprising the 50% Schematic Design Report (the required content of which is set out in section [INSERT] of the Brief) has been submitted to, and not rejected by, the Contractor's Representative in accordance with clause 6.3 of the Conditions of Subcontract; and***     2. ***each of the other activities to be undertaken as described in section [INSERT] of the Brief has been completed in accordance with the requirements set out in the Brief.]*** | $[To be inserted following selection of successful Tenderer] |
| ***[INSERT]*** | ***[INSERT]*** | $[To be inserted following selection of successful Tenderer] |
| ***[INSERT]*** | ***[INSERT]*** | $[To be inserted following selection of successful Tenderer] |
| **Delivery Phase:** | | |
| ***[INSERT]*** | ***[INSERT]*** | $[To be inserted following selection of successful Tenderer] |
| ***[E.G. Performance of the Services in respect of the Project in each relevant month in accordance with the Subcontract]*** | ***[E.G. Completion of all the Services the Consultant is required to perform in the relevant month in accordance with the Subcontract.]*** | ***[E.G. The Subcontract value of the Services performed by the Consultant in accordance with the Subcontract in each relevant month, provided that the balance of the Fee remaining once the Consultant has achieved all payment milestones up to and including the payment milestone [E.G. "COMPLETION UNDER THE MANAGING CONTRACTOR CONTRACT"] is not less than [INSERT RELEVANT PERCENTAGE I.E. 20% OF THE SUBCCONSULTANT'S DELIVERY PHASE FEE]]*** |
| ***[E.G. Completion under the Managing Contractor Contract]*** | ***[E.G. A notice of completion has been issued in respect of the last Stage of the MCC Works under the Managing Contractor Contract.]*** | ***[E.G. $[To be inserted following selection of successful Tenderer]]*** |
| ***[INSERT]*** | ***[INSERT]*** | ***$[To be inserted following selection of successful Tenderer]*** |

Annexure 4 - table of variation RATES and prices