

**COMMONWEALTH OF AUSTRALIA**

**DEPARTMENT OF DEFENCE**

MINOR WORKS CONTRACT (INTERNATIONAL)

CONDITIONS OF CONTRACT

PROJECT NUMBER: [*INSERT PROJECT NUMBER*]

**PROJECT NAME: *[INSERT PROJECT NAME]***

*[LAST AMENDED 29 SEPTEMBER 2020 - PLEASE REMOVE PRIOR TO TENDER ISSUE OR EXECUTION]*

**Please note:**

* matters in ***[SQUARE BRACKETS AND ITALICS]*** are to be completed by the Principal before documents are issued to Tenderers; and
* matters in **[SQUARE BRACKETS AND BOLD]** are to be completed by Tenderers before lodging their Tender.

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| 1 CONTRACT AND NOTICES |  | | |  | | | |  | |  | |
| The Contract Administrator receives and evaluates the Tenders.  The Contract Administrator is ***[INSERT].***  The Contract Administrator's address and email address are ***[INSERT].***  The Contract Administrator acts as agent of the Principal in administering all provisions of the Contract.  The Contractor must not comply with any purported direction of a person associated with the Works (as defined in clause 1.1 of the Conditions of Tender) or the Contract other than a direction of the Contract Administrator. |  | | | When the Principal (as listed on the Signing Page) signs this document on the Signing Page and one copy is returned to the Tenderer/Contractor (**Award Date**) this is written acceptance of the Tender for the performance of the Works for a Lump Sum of:  $ [TENDERER TO INSERT FOR REVIEW BY PRINCIPAL] *[AUSTRALIAN CURRENCY, UNLESS OTHERWISE STATED]* | | | | No | | No Contract exists. | |
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|  |  | | | An entire Contract exists between the Principal and the Contractor comprising the:  (a) Conditions of Tender;  (b) Conditions of Contract; and  (c) documents described in clause 1.1 of the Conditions of Tender. | | | |  | | If the Contractor finds any discrepancy, error or ambiguity in or between the documents comprising the Contract it is to inform the Contract Administrator and follow the instructions given by the Contract Administrator. | |
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|  |  | | | All notices to be given or served under or arising out of a provision of the Contract must be in writing and sent to the address or email address:  (a) specified on the Signing Page (in respect of the Contractor or the Principal) or in this clause 1 (in respect of the Contract Administrator); or  (b) last notified in writing to the party giving or serving the notice. | | | |  | |  | |
| 2 DESIGN |  | |  | | | |  | | |  |
|  |  | | If the Contractor is to undertake design it is to develop the design and submit the design (comprising drawings, specifications, calculations and any engineering certificates required) to the Contract Administrator for permission to use. | | | | Yes | | | The Contractor's design is to comply with the Contract and be fit for its intended purpose. |
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| Permission to use by the Contract Administrator does not relieve the Contractor of its responsibility to design in accordance with the Contract and the Contractor acknowledges that the Principal is relying on its skill and judgement in undertaking design. | Yes | | The Contract Administrator is to give permission to use the design within ***[INSERT NUMBER OF DAYS]*** days of receipt if it is in accordance with the Contract and the Contractor is to construct the Works in accordance with that permitted design. | | | | No | | | The Contractor is to resubmit the design until given permission by the Contract Administrator to use and cannot commence construction until permission to use is given. |
| 3 RISK AND INSURANCE |  | |  | | | |  | | |  |
| The Principal is responsible for:  (a) loss or damage to the Works caused by faulty design carried out by persons other than the Contractor or persons for whom it is responsible;  (b) injury, death, loss or damage to persons and property caused by the negligent act or omission of the Principal or persons for whom it is responsible; and  (c) risks commonly excluded from construction risks insurance and public liability insurance policies. |  | | Except for the responsibilities allocated to the Principal, the Contractor is responsible for and is to effect and maintain insurances on terms and with an insurer approved by the Principal (such approval not to be unreasonably withheld) to cover the risk of:  (a) loss or damage to the Works until Completion to be insured for the amount of the Lump Sum listed in clause 1;  (b) injury, death, loss or damage to persons or property, including property of the Principal other than the Works, caused by the performance of the Works, to be insured to the value of ***[INSERT VALUE]***; and  (c) injury, death, loss or damage to its employees caused by or resulting from the performance of the Works to be insured under workers compensation legislation and to the full extent of common law liability. | | | |  | | | The Contractor is to indemnify and keep the Principal indemnified against any loss or damage to the property of the Principal (including the Works and existing property in, about or adjacent to the Works) and against any legal liability, loss, claim or proceedings for personal injury, death, or loss of or damage to property arising from the performance of the Works. |
| 4 SITE AND POSSESSION | |  |  | | |  |  | | | | |
| The Principal is to give the Contractor sufficient possession of the Site (as defined in clause 1.1 of the Conditions of Tender) to allow it to perform the Works but is not to give the Contractor sole or uninterrupted possession of or access to the Site of the Works. | |  | The Principal is to give the Contractor possession of the Site of the Works on whichever is the later of:  (a) ***[INSERT NUMBER OF DAYS]*** days after Contract Administrator accepts the Tender; or  (b) ***[INSERT NUMBER OF DAYS]*** days after the Contract Administrator is given satisfactory evidence of insurances. | | |  | The Contractor is to give the Contract Administrator and the Principal reasonable access to the Site of the Works for supervision, testing and examination of the Works. The Contractor is to make good the Site of the Works and its surroundings on completion of its work to the satisfaction of the Contract Administrator. | | | | |
| 5 COMMENCEMENT ON SITE | | |  | | |  |  | | | | |
| The Contract Administrator may instruct the Contractor not to begin or to suspend the Works. | |  | The Contractor is to commence to construct the Works within ***[INSERT NUMBER OF DAYS]***  daysof being given possession of the Site of the Works. | | |  | If the Contractor discovers that the conditions on, about or below the Site of the Works differ from what it ought to have reasonably anticipated at Tender time, it is to inform the Contract Administrator and follow the instructions given by the Contract Administrator. | | | | |
|  | |  |  | | |  | The Contractor and the Contract Administrator are to agree the reasonable extra costs incurred by the Contractor because of the different conditions, excluding delay costs (if any) which are to be compensated under clause 6 below, and if unable to agree, the Contract Administrator is to determine the costs. | | | | |
| 6 COMPLETION AND DELAY | | |  | | |  |  | | | | |
| If the Contractor does not Complete the Works by the Date for Completion then the Contractor is to pay the Principal liquidated damages at the rate of  $ ***[INSERT AMOUNT (INCLUDING CURRENCY)]*** per day from the Date for Completion until the Works are Completed. | |  | The Contractor is to Complete the Works within ***[INSERT TIME]***of the Award Date or such extended time as may be agreed or determined (**Date for Completion**). | | |  | If the Contractor is delayed then it is to meet with the Contract Administrator and determine the cause of the delay. Where the delay is caused by:  (a) an instruction (except a direction under clause 7 below) given by the Contract Administrator;  (b) a breach of the Contract by the Principal; or | | | | |
|  | |  |  | | |  | (c) any event beyond the control of the Contractor,  the Contract Administrator and the Contractor are to agree an extension of time within which the Works can be Completed and if unable to agree within 14 days of the meeting to determine the cause of delay, the Contract Administrator is to determine a reasonable extension of time. The Contract Administrator may for any reason and at any time extend the Date for Completion. | | | | |
|  | |  |  | | |  | Where an extension of time is agreed or determined for delay caused by paragraph (a) or (b) above then the Principal is to pay the Contractor agreed compensation (which is the only and total compensation recoverable by the Contractor for any delay and disruption) at the rate of:  $ ***[INSERT RATE (INCLUDING CURRENCY)]***  for each day of the agreed or determined extension of time. | | | | |
| 7 STATUTORY REQUIREMENTS, QUALITY AND NON-CONFORMING WORK | | |  | | |  |  | | | | |
|  | |  | | The Contractor must perform its obligations under this Contract in accordance with all Statutory Requirements (as defined in clause 23). | | | |  | |  | |
| The Contract Administrator may direct the Contractor to remove, replace or correct any non-conforming part of the Works during the Defects Liability Period and specify the time within which the Contractor is to comply with the direction.    The Contractor fixes non-conforming work within the time specified by the Contract Administrator.  No  The Contract Administrator is to determine the costs of having the non-conforming work corrected by another contractor and the Contractor is to pay the Principal the costs so determined. | |  | | The Contractor is to supply materials (which are new, free from defects and suitable for their purpose) and standards of workmanship which are in conformity with the Contract, the National Construction Code (unless otherwise notified in writing to the Contractor by the Contract Administrator), relevant Australian Standards (unless notified otherwise in writing to the Contractor by the Contract Administrator)and all lawful requirements of national, regional or other local requirements or legislation and subordinate regulations, ordinances, bylaws, orders and proclamations. | | | |  | | The Contractor is to comply with any direction of the Contract Administrator to:  (a) uncover and recover work; or  (b) carry out testing, additional testing or re-testing.    Compliance with the direction is at the Contractor's cost *unless* the work uncovered, recovered, tested or re-tested is in conformity with the Contract in which case the Contract Administrator is to agree with the Contractor the reasonable extra costs or if unable to agree determine the Contractor's costs in uncovering, recovering, testing or re-testing. | |
| 8 VARIATIONS | |  | |  | | | |  | |  | |
| A variation is any change to the form, quality and extent of the Works instructed by the Contract Administrator (including an omission). | |  | | The Contract Administrator may instruct the Contractor to vary the Works by changing the form, quality and extent of the Works and the Contractor is to carry out the instruction. | | | | Yes | | The Contract Administrator and Contractor are to meet to agree the reasonable cost of the variation, excluding the delay costs (if any) to be compensated under clause 6 above, and if unable to agree the Contract Administrator is to determine the cost. | |
| 9 COMPLETION | | | | | | | |  | |  | |
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|  | |  | | The Contractor is to inform the Contract Administrator when, in its opinion:  (a) a Stage for payment (if any) has been reached; and  (b) the Works have reached Completion.  If the Contract Administrator agrees with the Contractor's opinion, the Contract Administrator is to:  (c) determine when the Stage for payment was reached and when the Works reached Completion; and  (d) notify the Contractor of its determination. | | | |  | | The Works have reached Completion when:  (a) the Works are capable of use for their intended purpose; and  (b) the Works are finished except for minor defects which do not affect the use of the Works and which can be rectified without affecting the use of the Works. | |

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| 10 PAYMENT AND SECURITY | | |  |  |
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| The Principal must pay the Contractor the amounts (if any) stated in the Payment Statement within 10 business days of the issue of the Payment Statement to the Contractor. |  | The Principal is to pay the Contractor the Lump Sum (*less*, if no unconditional undertaking has been provided by the Contractor in accordance with clause 19 below, money retained against satisfactory performance of the Contract in the amount of ***[INSERT PERCENTAGE]***% of the Lump Sum) (*less* any costs or amounts the Contractor is to pay the Principal under the Contract) at the stages and in the amounts set out below:  Stage Amount        *plus* when the Works are Completed the Principal is to pay the Contractor:  (a) any other costs the Contract Administrator has agreed or determined are payable to the Contractor under the Contract; and  (b) any other amounts the Principal is to pay the Contractor under the Contract. |  | The Contractor is to give the Contract Administrator an Invoice, (with a copy sent to invoices@defence.gov.au), when:  (a) the Contractor is notified that a Stage for payment has been reached for the Amount then payable; and  (b) the Contractor is notified that Completion has been reached for the amounts then payable including any additional payments.  The Invoice is to show the Purchase Order Number, the Stage, the Amount against the Stage, and any additional payments, moneys previously paid and total claimed on the Invoice.  Within 10 business days of receiving the Contractor's Invoice, the Contract Administrator must issue a Payment Statement stating the amounts (if any) due and payable to the Contractor. |
| 11 DEFECTS LIABILITY PERIOD | |  |  |  |
| The Contract Administrator may direct the Contractor to remove, replace or correct any non-conforming part of the Works during the Defects Liability Period and specify the time within which the Contractor is to comply with the direction.  Yes  The Contractor fixes the non-conforming part of the Works within the time specified in the direction given by the Contract Administrator.  No  The Contract Administrator is to determine the costs of having the non-conforming part of the Works fixed by another contractor and the Contractor is to pay the Principal the costs so determined. |  | The Contractor is to make good any part of the Works which is not in conformity with the Contract either at the Date of Completion or that becomes apparent during a defects liability period of ***[INSERT LIABILITY PERIOD]*** from the time when the Works reached Completion as determined by the Contract Administrator and notified to the Contractor (**Defects Liability Period**). |  | At the end of the Defects Liability Period the Principal is to pay the Contractor retention moneys or return the unconditional undertaking provided by the Contractor in accordance with clause 19 below, *less* any amounts the Contractor is to pay the Principal. |

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| 12 DISPUTES |  |  |  |  |
| A dispute is any disagreement the Contractor may have with any instruction, direction or determination of the Contract Administrator and any other dispute or difference between the Principal and the Contractor arising out of or in connection with the Contract or the Works. |  | If a dispute arises at any time, the party raising the dispute is to notify the other party in writing of the nature of the dispute and give adequate particulars to identify the dispute. Within 21 days of the giving of a written notice the Contractor and Contract Administrator are to meet to attempt to resolve the dispute or to agree on an alternative process to resolve the dispute (whether expert determination, executive negotiation, mediation or otherwise). |  | Despite the existence of a dispute or difference between the parties the Contractor must:  (a) continue to carry out the Works; and  (b) otherwise comply with its obligations under the Contract. |
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| Arbitration under this clause 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.  The seat of the arbitration will be Melbourne, Australia and the proper law of the arbitration shall be Victoria. |  | All disputes not resolved within 21 days (or such other time agreed in writing) of the giving of a written notice are referred to arbitration. |  |  |
| 13 DEFAULT AND INSOLVENCY | |  |  |  |
| If the Contractor:  (a) is wound up or declared insolvent;  (b) fails to carry out an instruction or direction of the Contract Administrator within the time specified or if no time is specified, within a reasonable time;  (c) is not progressing the execution of the Works at a rate of progress satisfactory to the Contract Administrator; or  (d) fails to comply with any of its obligations under the contract, *then* |  |  |  | The Principal through the Contract Administrator may: (a) notify the Contractor in writing that the Contract is terminated;  (b) to the extent permitted by law, suspend payments due or to become due under clause 10 above; and (c) assess the costs of Completing the Works by another contractor.  Yes |
| If the calculation results in **(A)** being greater than **(B)** the Contractor is to pay the difference to the Principal within seven days of written demand for payment. |  | Shortfall |  | The Contract Administrator is to calculate the difference between **(A)** the costs of Completing the Works by another contractor; and **(B)** the amount of suspended payments, plus if no unconditional undertaking has been provided by the Contractor in accordance with clause 19 below, retention moneys.  Excess  If the calculation results in **(B)** being greater than **(A)** the Principal is to pay the difference to the Contractor. |

### 14 GENERAL LIABILITY FOR TAXES

(a) As between the Principal and the Contractor, the Contractor bears the risk of, and must pay, all Taxes incurred or imposed in connection with the Works, the Contract or the Site.

(b) The Contractor must indemnify the Principal against any loss, damage or liability arising out of or in connection with Taxes which Contractor is required to pay under this clause 14.

(c) In this clause 14, **Tax or Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing.

### 15 PRIVACY

(a) The Contractor agrees that if it obtains Personal Information in the course of performing the Works, it will use or disclose that Personal Information only for the purposes of the Contract.

(b) The Contractor shall promptly notify the Principal in writing if it:

(i) becomes aware of a breach or possible breach of any of the obligations mentioned in this clause 15; or

(ii) becomes aware that a disclosure of Personal Information may be required by law.

(c) The Contractor must ensure that its officers, employees, agents and subcontractors comply with this clause 15.

(d) In this clause 15, **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably by ascertained, from the information or opinion.

### 16 GOVERNING LAW

The law of this contract (including the arbitration agreement within) is the law of Victoria, Australia.

### 17 COMMERCIAL-IN-CONFIDENCE INFORMATION

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

(i) publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of A$10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);

(ii) report and post on the internet a list of contracts valued at A$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and

(iii) report and post on the internet information about its contracts in other ways pursuant to its other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.

(b) Subject to paragraph (c), the Principal must keep confidential any information provided to the Principal by the Contractor as set out below:

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| **Commercial-in-Confidence Information** | **Justification** |
| **[TENDERER TO INSERT FOR REVIEW BY THE PRINCIPAL]** | **[TENDERER TO INSERT FOR REVIEW BY THE PRINCIPAL]** |

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

(c) The Principal's obligation in paragraph (b) does not apply if the Commercial-in-Confidence Information is:

(i) disclosed by the Principal 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 this Contract;

(ii) disclosed by the Principal to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Principal's management, reporting or auditing requirements;

(iii) disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;

(iv) disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;

(v) disclosed to any Commonwealth department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;

(vi) authorised or required by law to be disclosed; or

(vii) in the public domain otherwise than due to a breach of paragraph (b).

### 18 FREEDOM OF INFORMATION

(a) 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.

(b) The Contractor acknowledges that Commonwealth requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

### 19 UNCONDITIONAL UNDERTAKING

(a) The Principal may, in its sole and absolute discretion, request the Contractor by notice in writing to provide security to the Principal:

(i) in the form of an unconditional undertaking (duly stamped) in a form and otherwise terms and given by a financial institution approved by the Principal;

(ii) in the following amounts:

|  |
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| $***[INSERT AMOUNT (INCLUDING CURRENCY)]*** or ***[INSERT PERCENTAGE]***% of the Lump Sum. |

(iii) within ***[INSERT NUMBER OF DAYS]*** days of the notice being given under this paragraph (a).

(b) The Principal is not obliged to pay the Contractor interest on:

(i) the unconditional undertaking; or

(ii) subject to paragraph (c), the proceeds of the unconditional undertaking if it is converted into cash,

and does not hold the proceeds or money referred to in this paragraph (b) on trust for the Contractor.

(c) If the [Principal](#Commonwealth) makes a call upon the unconditional undertaking held under this clause 19 and obtains cash as a consequence:

(i) the [Principal](#Commonwealth) will pay simple interest, on the amount of any cash obtained in excess of the sum to which the [Principal](#Commonwealth) is entitled at the time of such call; and

(ii) the sum attracting interest under subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the [Contractor](#Contractor) to the [Principal](#Commonwealth) at the time such amounts become payable.

### 20 CONFIDENTIAL INFORMATION

(a) The Contractor must not disclose any Principal Confidential Information to any third party without the prior written consent of the Principal. The Contractor will not be in breach of this clause in circumstances where it is required by law to disclose any Principal Confidential Information.

(b) In this clause 20, **Principal Confidential Information** means any information provided by the Principal to the Contractor or which comes into the possession of the Contractor in connection with the Works which the Principal has identified as confidential or the Contractor ought reasonably to know is confidential.

### 21 CLASSIFIED INFORMATION

(a) At the request of the Principal, the Contractor must:

(i) comply with the Commonwealth's security clearance process;

(ii) obtain the level of security clearance requested by the Principal; and

(iii) comply with all security policies and procedures notified by the Principal from time to time.

(b) The Contractor must not disclose any Classified Information unless the disclosure:

(i) is strictly in accordance with the provisions of the Defence Security Principles Framework; and

(ii) has first been approved in writing by the Principal.

(c) In giving any approval to the Contractor under paragraph (b), the Principal may impose such conditions as the Principal thinks fit, including conditions requiring any recipient of Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to the Principal.

(d) The Contractor must handle and store any Classified Information in its possession or control strictly in accordance with the provisions of the Defence Security Principles Framework.

(e) In this clause 21:

(i) **Classified Information** includes:

A. any Commonwealth document marked with a national security classification; and

B. any information or document that the Contractor knows or ought to know is subject to, or ought to be treated in accordance with, the provisions of the Defence Security Principles Framework; and

(ii) **Defence Security Principles Framework** is a reference to that document as amended from time to time.

22 access to project documents

(a) The Contractor must:

(i) maintain the Project Documents until the end of the Defects Liability Period; and

(ii) at the request of the Contract Administrator at any time during the execution of the Works or the Defects Liability Period:

A. make the Project Documents available for inspection and copying by the Contractor Administrator or any other person nominated by the Contract Administrator;

B. provide to the Contract Administrator such copies of the Project Documents as the Contract Administrator may require, in such formats as may be required; and

C ensure that any subcontract made in connection with this contract contains enforceable obligations requirement the subcontractor to comply with the Contractor's obligations arising under this clause 22 as if the subcontractor were the Contractor.

(b) For the purposes of the Contract, **Project Document** includes all material produced or provided, or required to be produced or provided, to the Principal or the Contract Administrator by the Contractor, under or in connection with the Contract or the Works.

23 Work HEALTH and SAFETY

(a) The Contractor must:

(i) ensure that in carrying out the Works, it so far as is reasonably practicable:

A. complies with all laws and other requirements of the Contract in respect of work health and safety;

B. consults, cooperates and coordinates activities with the Contract Administrator, any other contractors and its subcontractors;

C. 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

D. 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 it is to:

1) assist an injured person or remove a deceased person;

2) 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, as if the WHS Legislation applied to the Contractor;

as if the WHS Legislation applied to the Contractor;

(ii) undertake all things necessary to ensure that the Works are carried out safely and in a manner that does not put the health and safety of persons at risk and protect property, including all Principal and Contractor personnel and the Principal's property;

(iii) acknowledges that any Principal personnel located at the Contractor's or a subcontractor's premises in connection with the Contract, shall be taken to be workers (as defined in the WHS legislation);

(iv) must prepare a Work Health and Safety Plan and must regularly review and update its Work Health and Safety Plan;

(v) notify the Contract Administrator:

A. in respect of notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident; and

B. in respect of all other work health and safety matters arising out of or in connection with the Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraph A. in a monthly report to the Contract Administrator;

(vi) comply with any local work health and safety Statutory Requirements in delivering the Works, provided in the event there is a conflict between the standard prescribed by local work health and safety Statutory Requirements and any Australian Statutory Requirements concerning work health and safety, the Australian Statutory Requirements shall prevail;

(vii) if requested by the Contract Administrator, provide written assurances and institute systems to obtain regular written assurances from its subcontractors and each other contractor or consultant or other person engaged to do work by the Principal about ongoing compliance with the WHS Legislation in a format specified by the Contract Administrator;

(viii) not:

A. use Asbestos or ACM in carrying out the Works; and

B. install or incorporate Asbestos or ACM into the Works; and

(ix) ensure that all subcontractors comply with the requirements in this clause 23.

(b) The Contract Administrator may direct the Contractor to take specific measures that the Contract Administrator or the Principal considers reasonably necessary to deal with a circumstance / event which has, or is likely to have, an adverse effect on the health or safety of persons connected with the provision of the Works and the Contractor must comply with this direction, to the extent reasonably practicable.

(c) The Contractor must implement and maintain for the duration of the Contract a thorough safety induction process for all persons engaged in performing the Works.

(d) For the purposes of this Contract:

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

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

(iii) **Statutory Requirements** means:

A. any law applicable to the carrying out of the activities performed by the Contractor or the Works;

B. any approvals or requirement of any national, regional or local authority or organisation which must be obtained to carry out the relevant activities or in relation to the Works;

C. national, regional or local government requirements including policies or guidelines that are or will be applicable to the Site, Works or activities performed by the Contractor; or

D. any other requirement as notified by the Contract Administrator to the Contractor.

(iv) **WHS Legislation** means the *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations* *2011* (Cth).

(v) **Work Health and Safety Plan** means the Work Health and Safety Plan prepared by the Contractor which has been reviewed and not rejected by the Contract Administrator and which must address the following matters:

A. the roles and responsibilities of key persons with work health and safety positions;

B. arrangements in place or to be implemented for:

1) consultation, cooperation and coordination of activities for the purposes of compliance with the WHS Legislation;

2) managing and reporting of work health and safety incidents and procedures; and

3) any site specific health and safety rules, including induction and notification requirements;

C. management of work health and safety generally, including document and record keeping and information sharing;

D. provision of written assurances in compliance with paragraph (a)(vii);

E. management of subcontractors; and

F. any other matter necessary for the Contractor's compliance with this clause 23 or any other information in relation to work health and safety as requested by the Contract Administrator.

24 TERMINATION FOR CONVENIENCE

(a) The Principal may at any time, for its sole convenience, terminate the Contract by notifying the Contractor in writing.

(b) If the Principal issues such a notice, the Contractor must stop work in accordance with the notice, comply with any directions given by the Principal and mitigate all costs (including the cost of compliance with any directions by the Principal) and losses arising out of or in connection with the termination, including those arising from any affected subcontracts.

(c) The Principal will only be liable for payments to the Contractor for Works carried out or completed in accordance with the Contract before the date of the termination notice and any reasonable costs incurred by the Contractor that are directly attributable to the termination (subject to the Contractor demonstrating these costs to the Principal's satisfaction on a fully open book, cost-transparent basis).

(c) The Principal will only be liable for payments to the Contractor for Works carried out or completed in accordance with the Contract before the date of the termination notice and any reasonable costs incurred by the Contractor that are directly attributable to the termination (subject to the Contractor demonstrating these costs to the Principal's satisfaction on a fully open book, cost-transparent basis).

25 RESTRICTED SITE ACCESS

(a) This clause 25 applies if the Contractor carries out Works at a Site with restricted access controls.

(b) The Contractor must be, and must ensure that its subcontractors are, fully familiar with all requirements for access to the Site.

(c) The Contractor must, and must ensure that its subcontractors:

(i) attend any security briefing requested by the Principal or the Contract Administrator from time to time;

(ii) submit all applications to secure Site access so as to not cause delay to the Works; and

(iii) immediately inform the Principal of any:

A. delays in securing Site access; or

B. loss of Site access.

(d) In carrying out the Works, the Contractor must, and must ensure that its subcontractors, comply with the requirements for Site access applicable to the Site (including any changes to Site access requirements).

(e) If there is a change to any individual measure to meet a specific threat or threats to the Site from time to time after the Award Date, the Principal will notify the Contractor of the change and instruct the Contractor as to the course it is to adopt insofar as the Works are affected by the change.

26 FRAUD CONTROL, ANTI-BRIBERY AND CORRUPTION

(a) Without limiting the Contractor's other obligations, the Contractor must:

(i) proactively take all necessary measures to prevent, detect and investigate any fraud, bribery and corruption in connection with the Contract or the performance of the Works (including all measures directed by the Contract Administrator); and

(ii) proactively take all necessary corrective action to mitigate any loss or damage to the Principal resulting from fraud, bribery or corruption to the extent that the fraud, bribery or corruption was caused or contributed to by the Contractor or any of its officers, employees, consultants, subcontractors or agents and put the Principal in the position it would have been in if the fraud, bribery or corruption had not occurred (including all corrective action directed by the Contract Administrator).

(b) If the Contractor knows or suspects that any fraud, bribery or corruption is occurring or has occurred it must immediately provide a detailed written notice to the Contract Administrator including details of:

(i) the known or suspected fraud, bribery or corruption;

(ii) how the known or suspected fraud, bribery or corruption occurred;

(iii) the proactive corrective action the Contractor will take under paragraph (a)(ii); and

(iv) the proactive measures which the Contractor will take under paragraph (a)(i) to ensure that the fraud, bribery or corruption does not occur again,

and such further information and assistance as the Principal, or any person authorised by the Principal, requires in relation to the known or suspected fraud, bribery or corruption.

27 BLACK ECONOMY PRocUREMENT CONNECTED POLICY

(a) Clause 27 ***[APPLIES / DOES NOT APPLY - THIS CLAUSE WILL APPLY IF THE PROCUREMENT IS A NEW APPROACH TO THE MARKET, HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE) AND IT IS BEING PROCURED VIA AN OPEN TENDER PROCESS BY THE COMMONWEALTH (INCLUDING BY THE DEPARTMENT OF DEFENCE) IN CIRCUMSTANCES WHERE THE CPRs APPLY AND REGARDLESS OF LOCATION.]***

(b) The Contractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Contractor becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Contractor is:** | **Additional STRs required:** |
| 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Contract or subcontract (as applicable). |
| 1. a trustee acting in its capacity as trustee of a trust | a satisfactory and valid STR in respect of any new trustee appointed to the trust. |
| 1. a joint venture participant | a satisfactory and valid STR in respect of:   * + - 1. any new participant in the joint venture; and       2. any new joint venture operator if the new operator is not already a participant in the joint venture. |
| 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of any new head company of the Consolidated Group. |
| 1. a member of a GST Group | a satisfactory and valid STR in respect of any new representative for the GST Group. |

(c) The Contractor must provide the Principal with copies of the STRs referred to in paragraph (b) within 5 business days after a written request by the Principal.

(d) The Contractor:

* + - 1. warrants that at the Award Date it holds a valid and satisfactory STR;
      2. must hold a valid and satisfactory STR at all times while carrying out activities under the Contract or the Works and, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR;
      3. must ensure that any subcontractor, if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), holds a valid and satisfactory STR at all times during the term of the relevant subcontract; and
      4. must retain a copy of any STR held by any subcontractor in accordance with subparagraph (iii) and must, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR.

(e) If the Contractor intends to enter into a subcontract with a subcontractor where the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), the Contractor must comply with the requirements of the Black Economy Procurement Connected Policy in relation to the procurement of the subcontract.

28 CHILD SAFETY

(a) Clause 28 ***[does apply/does not apply - THIS CLAUSE*** ***IS TO BE USED IN CIRCUMSTANCES WHERE THE CONTRACTOR AND ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE CONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONTRACTOR IS CARRYING OUT ACTIVITIES THAT MAY BE PROVIDED ON A SCHOOL’S PREMISES EVEN WHERE INTERACTING WITH CHILDREN IS NOT A PART OF THE CONTRACTED ACTIVITIES.]***

(b) If any part of the activities carried out by the Contractor under the Contract involves the Contractor employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by Australian State or Territory law to have a working with children check to undertake such activities or any part of such activities, the Contractor agrees:

(i) without limiting its other obligations under the Contract, to comply with all Australian 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

(ii) if requested, provide the Principal at the Contractor’s cost, a statement of compliance with this clause, in such form as may be specified by the Principal.

(c) When child safety obligations may be relevant to a subcontract made in connection with the Contract, the Contractor must ensure that any such subcontract entered into by the Contractor for the purposes of fulfilling the Contractor’s obligations under the Contract imposes on the subcontractor the same obligations regarding child safety that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

**29 WORK HEALTH AND SAFETY - ENGAGEMENT AS PRINCIPAL CONTRACTOR**

(a) In accordance with Regulation 293 of the WHS Legislation, the Principal engages and appoints (as relevant) the Contractor as the principal contractor for the construction project and the Contract and authorises the Contractor to have management or control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project and the Contract, pursuant to the WHS Legislation. The Contractor accepts the engagement and appointment (as relevant) as principal contractor and will fulfil the obligations of principal contractor for the construction project and the Contract, unless relieved of that engagement or appointment (or appointment as relevant) by notice in writing given by the Principal or the Contract Administrator.

**30 DEFENCE INDUSTRY SECURITY PROGRAM**

(a) Clause 30 ***[does apply/does not apply]***.

(b) Without limiting clause 21, the Contractor must:

(i) be "Defence-ready" for the purposes of the DISP;

(ii) at its cost obtain and thereafter maintain for the term of the Contract the ***[INSERT]*** level of DISP membership; and

(iii) comply with any other direction or requirement of the Contract Administrator in relation to the DISP.

(c) For the purposes of this Contract, **DISP** means the Defence Industry Security Program more particularly described at http://www.defence.gov.au/dsvs/industry.

**31 MODERN SLAVERY**

(a) The Contractor:

(i) must not, and must use all reasonable endeavours to ensure that its officers, employees, agents and subcontractors do not:

A. engage in any conduct that would constitute Modern Slavery; and

B. do anything to put the Contractor or the Commonwealth in breach of any Modern Slavery Law;

(ii) must comply, and must use all reasonable endeavours to ensure that its officers, employees, agents and subcontractors at all times comply with all Modern Slavery Laws;

(iii) if the Contractor knows or suspects that any Modern Slavery practices are occurring or have occurred in connection with this Contract, must immediately provide a detailed written notice to the Contract Administrator; and

(iv) must undertake appropriate remediation actions to address any breaches, issues or failures arising in connection with this clause 31 at the Contractor’s own cost and in accordance with any directions of, or standards required by, the Contract Administrator.

(b) For the purposes of this Contract:

(i) **Modern Slavery** means conduct defined as “modern slavery” in the Modern Slavery Act.

(ii) **Modern Slavery Act** means the *Modern Slavery Act* 2018 (Cth).

(iii) **Modern Slavery Laws** means:

A. any Statutory Requirements (as defined in clause 23) related to Modern Slavery including the Modern Slavery Act;

B. Division 270 or 271 of the *Criminal Code Act* 1995 (Cth);

C. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); and

D. Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

## SIGNING PAGE

**SIGNED as an agreement by:**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1 CONTRACTOR | | | | | |  | 2 PRINCIPAL | | | | | |
| Name: | |  | | | |  | Name: | |  | | | |
| A.C.N.: | |  | | | |  | Position: | |  | | | |
| Address: | |  | | | |  | Address: | |  | | | |
|  | |  | | | |  |  | |  | | | |
| Phone No: | |  | | | |  | Phone No: | |  | | | |
| Builders Registration Licence No: | | | | |  |  | Purchase Order No: | | | |  | |
|  | | | | | |  |  | | | | | |
| Signed by, or for and on behalf of the Contractor in the presence of: | | | | | |  | Signed by, or for and on behalf of the Principal in the presence of: | | | | | |
|  | | | | | |  |  | | | | | |
| Signature of Authorised Signatory/Representative | | | | | |  | Signature of Authorised Officer | | | | | |
|  | | | | | |  |  | | | | | |
| Full name of Authorised Signatory/Representative | | | | | |  | Full name of Authorised Officer | | | | | |
|  | | | | | |  |  | | | | | |
| Signature of Witness | | | | | |  | Signature of Witness | | | | | |
|  | | | | | |  |  | | | | | |
| Full name of Witness | | | | | |  | Full name of Witness | | | | | |
|  | | | | | |  |  | | | | | |
| On this |  | | day of |  | |  | On this |  | | day of | |  |