



Australian Government

Defence

**PANEL AGREEMENT
FOR
DEFENCE INFRASTRUCTURE PANEL - ENVIRONMENT,
HERITAGE AND ESTATE ENGINEERING 2020 - 2027
[PANEL MEMBER]**

This Panel Agreement applies to the following Service Categories under the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027:

[SERVICE CATEGORIES]

[NOTE: THIS VERSION OF THE PANEL AGREEMENT REFLECTS PROPOSED AMENDMENT AGREEMENTS CIRCULATED TO PANEL CONSULTANTS FOR SIGNATURE IN MAY AND SEPTEMBER 2023 AND JULY 2025.

PLEASE NOTE THERE MAY BE CERTAIN INSURANCE-RELATED AMENDMENTS TO THIS PANEL AGREEMENT AS AGREED BETWEEN THE COMMONWEALTH AND A PANEL CONSULTANT NOT REFLECTED IN THIS TEMPLATE.

FOR THE CURRENT VERSION OF THE CONTRACT PARTICULARS UNDER THE RELEVANT TERMS OF ENGAGEMENT, USERS SHOULD REFER TO THE APPLICABLE TEMPLATE REQUEST FOR PROPOSAL AVAILABLE ON THE DEFENCE WEBSITE]

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SECTION 1 INTRODUCTION

INTRODUCTION

1. The Defence Estate and Infrastructure Group within the Department of Defence has established the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027 (**Panel**) on behalf of the Commonwealth of Australia. The purpose of the Panel is to provide environment, heritage and estate engineering related services set out in Section 5 to:
 - (a) the Department of Defence; and
 - (b) Other Commonwealth Agencies.
2. This document sets out the basis of the relationship between the Commonwealth and each Consultant appointed to the Panel. The document is divided into the following sections:
 - (a) Section 1 - this Introduction;
 - (b) Section 2 - the Panel Conditions;
 - (c) Section 3 - the Engagement process;
 - (d) Section 4 - the Terms of Engagement; and
 - (e) Section 5 - the Scope of Services.
3. There is a distinction between the terms governing the standing offer made by the Consultant to the Commonwealth and the terms governing each contract for which the Consultant is engaged:
 - (a) the Panel Conditions provide the broad contractual framework for the supervision and administration of the panel arrangement and define the general legal relationship between the contracting parties; whereas
 - (b) the Terms of Engagement provide the more detailed provisions governing the specific legal relationship between the contracting parties for each Engagement.
4. As and when the Commonwealth requires Services to be performed by the Consultant, it will invoke an engagement process generally consistent with that set out in Section 3. This may be by way of competitive or non-competitive arrangements.
5. The Commonwealth does not guarantee any volume of work for the Consultant and the Commonwealth reserves the right to contract for services outside the Panel. However, the Commonwealth recognises the benefits that will accrue to both it and the Consultant through members of the Panel participating in the performance of the Services.
6. Further, as set out in clause 2.8 of the Panel Conditions, the Consultant may from time to time be engaged directly by Nominated Contractors.
7. The primary strategic objective of the Panel is to streamline Commonwealth procurement processes for the Services under the Panel and in so doing maximise procurement efficiency.
8. Whether the Consultant continues to receive requests for proposals and engagements will depend, among other things, upon its performance, capability and capacity at a Panel and Engagement level as assessed and rated by the Commonwealth.

SECTION 2

PANEL CONDITIONS

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FORMAL AGREEMENT

This Panel Agreement is made on

Parties Commonwealth of Australia (Commonwealth)

[Panel Member], ABN: [Panel Member ABN] (Consultant)

This Formal Agreement applies to the following Service Categories under the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027:

[SERVICE CATEGORIES]

1. The parties acknowledge and agree that they must perform the obligations imposed on them by the Panel Agreement.
2. The Panel Agreement comprises the following documents identified as follows:

Document description	Where found
This Formal Agreement	This document
Section 2 - the Panel Conditions Section 3 - the Engagement Process Section 4 - the Terms of Engagement Section 5 - the Scope of Services	The documents provided to the Consultant by the Commonwealth in an email from [NAME] to [NAME] dated [DATE] and titled [INSERT]

3. 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

Signed for and on behalf of the Commonwealth of Australia in the presence of:

Signature of Witness

Name of Witness in full

Signature of Authorised Officer

Name of Authorised Officer in full

[S 127 OF CORPORATIONS ACT]

Executed by the **Consultant** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Executed by the **Consultant** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Full name of sole director and company secretary who states that he or she is the sole director and sole company secretary of the **Consultant**

Signature of company secretary/director

Full name of company secretary/director

Signature of sole director and sole company secretary

[OR - AUTHORISED SIGNATORY OF COMPANY]

Signed for and on behalf of the **Consultant** by its authorised signatory in the presence of:

Signature of witness

Full name of witness

Signature of authorised signatory

Full name of authorised signatory

[OR - PARTNERSHIP]

Signed as authorised representative for and on behalf of all the partners trading as the **Consultant** in the presence of:

Signature of witness

Full name of witness

Signature of authorised representative

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of the Consultant.

Full name of authorised representative

PANEL CONDITIONS

1. GLOSSARY OF TERMS

Unless the context otherwise indicates, wherever used in this document, each word or phrase in the headings in this clause 1 has the meaning given to it under the relevant heading. Terms used in the Panel Agreement that are defined in the Terms of Engagement have the meaning given to them in the Terms of Engagement applicable to the relevant Service Category.

Australian Government Information Security Manual

Is a reference to that document as amended from time to time.

Australian Government Personnel Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Physical Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Protective Security Policy Framework

Is a reference to that document (or any replacement document) as amended from time to time.

Australian Privacy Principle

Has the meaning given in the Privacy Act.

Award Date

The date on which the contract for any Engagement is formed, as stated in the relevant Contract Particulars.

Base Date

The date upon which the Term commences as set out in the Panel Particulars.

Change of Control

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.

Commonwealth

The Commonwealth of Australia, including:

- (a) the Department of Defence; and
- (b) Other Commonwealth Agencies.

Commonwealth's Assistant Panel Manager

The person nominated by the Commonwealth to act as the assistant panel manager under this Panel Agreement, who for the time being is the Executive Officer Quality and Compliance, Directorate of Program Assurance, Capital Facilities and Infrastructure Branch.

Commonwealth's Panel Manager

The person nominated by the Commonwealth to act as the panel manager under this Panel Agreement, who for the time being is the Deputy Director, Quality and Compliance, Directorate of Program Assurance, Capital Facilities and Infrastructure Branch.

Commonwealth Requirements

Policies, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Departmental requirements.

Confidential Information

- (a) Means, subject to paragraph (b):
 - (i) the Project Documents;
 - (ii) any Terms of Engagement;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which is in any way connected with the Panel Agreement or any Terms of Engagement which:
 - A. by its nature is confidential;
 - B. the Consultant knows or ought to know is confidential; or
 - C. is the subject of a Separation Arrangement; and
 - (iv) 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.
- (b) Does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which:
 - (i) 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 or anyone on the Commonwealth's behalf;
 - (ii) is in the public domain otherwise than due to a breach of clause 15; or
 - (iii) has been independently developed or acquired by the Consultant.

Confidential Information Incident

A single breach or a series of breaches of clause 15, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

An identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.

Consultant

The consultant who is a party to this Panel Agreement, as set out in the Panel Particulars.

Consultant's Panel Manager

The person nominated by the Consultant to act as its representative for this Panel Agreement set out in the Panel Particulars, as replaced by written notice from the Consultant to the Commonwealth and with the prior written approval of the Commonwealth under clause 3.2.

Contract Particulars

The contract particulars attached to the relevant Official Order for each Engagement.

Control

Includes:

- (a) 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;
- (b) 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;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) 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
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

day

For the purposes of:

- (a) the Panel Agreement, means calendar day; and
- (b) the Terms of Engagement and any Engagement, has the meaning set out in clause 1.2 of the Terms of Engagement.

Defence

Department of Defence.

Defence Estate and Infrastructure Group or E&IG

Defence Estate and Infrastructure Group within the Department of Defence.

Defence Security Principles Framework

Is a reference to that document as amended from time to time.

Defence Strategic Interest Issue

Means any issue that involves an actual, potential or perceived risk of an adverse effect on the interests of the Commonwealth including:

- (a) protecting Australia's national security requirements, in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework);
- (b) ensuring that the whole (or any part of) the Confidential Information is not exported (or capable of being exported) outside of Australia or is not disclosed or transmitted (or capable of being disclosed or transmitted) to any person who does not hold (or is not eligible to hold) an Australian Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
- (c) ensuring compliance by the Consultant with Australia's national security requirements, in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security

Defence Website

The website available at www.defence.gov.au/.

Employers' Liability Insurance

If the Services are performed or the Consultant's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, 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.

Engagement

An engagement to perform the Services for the Commonwealth under the Panel on the terms set out in the relevant Official Order.

Financial Representative

Means:

- (a) in relation to the Consultant, the Consultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Consultant; and
- (b) in relation to a subconsultant, the subconsultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subconsultant.

Insolvency Event

Any one of the following:

- (a) 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 Commonwealth 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 Panel Agreement or any Engagement for financial reasons;
- (b) execution is levied against the Consultant by a creditor;
- (c) 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;
- (d) where the Consultant is an individual person or a partnership including an individual person, the Consultant:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt; or
 - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. 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;

- (e) where the Consultant is a corporation, any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (iii) the corporation entering a deed of company arrangement with creditors;
 - (iv) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (vi) 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);
 - (vii) a winding up order or deregistration order is made in respect of the corporation;
 - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
 - (ix) 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
 - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) 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
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

Long Service Leave Legislation

Means:

- (a) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (b) *Building and Construction Industry Long Service Payments Act 1986* (NSW);
- (c) *Construction Industry Long Service Leave and Benefits Act 2005* (NT);
- (d) *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld);
- (e) *Construction Industry Long Service Leave Act 1987* (SA);
- (f) *Construction Industry (Long Service) Act 1997* (Tas);
- (g) *Construction Industry Long Service Leave Act 1997* (Vic);
- (h) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA);

- (i) the long service leave obligations in the National Employment Standards in the *Fair Work Act 2009* (Cth); and
- (j) any legislation in any State or Territory of Australia addressing long service leave in the building and construction industry.

Material Change

Means any actual, potential or perceived material change to the circumstances of the Consultant, including any change:

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or
 - (iii) the Consultant's financial viability or capacity to perform the Services and otherwise meet its obligations under the Panel Agreement; or
- (b) which affects the truth, completeness or accuracy of:
 - (i) the Consultant's tender for the Panel;
 - (ii) the Consultant's proposal in response to a request for proposal under the Panel; or
 - (iii) any other information, documents, evidence or clarifications provided by the Consultant to the Commonwealth arising out of or in any way in connection with the Panel Agreement or the Services.

Nominated Contractor

A contractor engaged by the Commonwealth (other than the Consultant) and notified as such in writing by the Commonwealth.

Official Order

An official order issued by the Commonwealth to the Consultant, under clause 2.4 of the Panel Conditions, in respect of the Consultant's proposal to deliver Services for a specific Engagement.

Other Commonwealth Agency

Means a Commonwealth entity as defined by and subject to the *Public Governance, Performance and Accountability Act 2013* (Cth), other than Defence.

Panel

The Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027.

Panel Consultant

The consultants who are members of the Panel.

Panel Particulars

The panel particulars set out in Appendix 1 to these Panel Conditions.

Personal Information

Has the meaning given in the Privacy Act.

Privacy Act

Means the *Privacy Act 1988* (Cth).

Professional Indemnity Insurance

A policy of insurance to cover claims made against the insured for:

- (a) civil liability for breach of professional duty (whether owed in contract or otherwise); and
- (b) unintentional breaches of third party intellectual property,

by the Consultant or its subconsultants in carrying out the Services.

Proforma Services Subcontract

The proforma services subcontract published from time to time on the Defence Website (or any alternative location notified by the Commonwealth), and nominated by the Commonwealth as being the Proforma Services Subcontract for the purposes of the Panel.

Project DCAP

The "Project Detailed Consultant's Activities Proposal" as specified in the Contract Particulars, as amended from time to time in accordance with clause 5.8 of the Terms of Engagement.

Project Documents

Includes:

- (a) Consultant Material;
- (b) Commonwealth Material;
- (c) Approvals;
- (d) the documents which the Consultant is obliged to maintain for any Engagement; and
- (e) without limiting paragraphs (a) - (d), any other material produced or provided, or required to be provided, to the Commonwealth or the Commonwealth's Panel Manager under, for the purposes of or in connection with the Panel, the Panel Agreement or the Services.

Public Liability Insurance

A policy of liability insurance covering:

- (a) the Consultant and all subconsultants for their respective liabilities; and
- (b) the Commonwealth for all liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Consultant (or any subconsultant),

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 any way in connection with the Services.

This policy is not required to cover liabilities insured under Workers Compensation Insurance, Employers' Liability Insurance or Professional Indemnity Insurance.

Recipient

Any person provided with Confidential Information, including potential or actual subcontractors, suppliers and material suppliers.

Reserved Panel Condition

Those Panel Conditions notified in writing to Consultants by the Commonwealth's Panel Manager from time to time and which initially comprise, until otherwise so notified, the following:

- (a) clause 2.3 (Withdrawal from or addition to the Panel);
- (b) clause 2.6 (Unsatisfactory Performance);
- (c) clause 6 (Conflict of Interest);
- (d) clause 9 (Performance Management); and
- (e) clause 16 (Significant Events).

Schedule of Rates

The schedule of rates referred to in clause 5 and set out in Appendix 2.

Separation Arrangement

Any arrangement that the Consultant:

- (a) has in place; or
- (b) will put in place,

for the purpose of complying with clause 15.

Service Category

A category of Services for which Panel Consultants have been appointed to the Panel. The Service Categories for which the Panel Consultant has been appointed to the Panel are set out in the Panel Particulars.

Services

The services which the Consultant may be engaged to perform for any Engagement, which will be of the same or similar type to those set out in Section 5 of this Panel Agreement.

Scope of Services

The scope of services described in Section 5 of this Panel Agreement.

Significant Event

Means:

- (a) a Material Change;
- (b) a Defence Strategic Interest Issue;
- (c) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Consultant or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (d) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Consultant or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

Significant Event Remediation Plan

The plan (if any) prepared by the Consultant and finalised under clause 16.4.

Statutory Requirements

Includes any:

- (a) law of the Commonwealth or of a State or Territory or a local body, including Acts, ordinances, regulations, by-laws and other subordinate legislation; and
 - (b) Commonwealth Requirements,
- applicable to the Services.

Term

The period of time during which the Consultant may be engaged to perform Services, which commences on the Base Date and ends on the fifth anniversary of the Base Date:

- (a) subject to the Commonwealth's right to extend the Term for any number and duration of periods by written notice to the Consultant not less than 14 days before the expiry of the current Term; and
- (b) provided that the extended Term cannot be extended beyond the eighth anniversary of the Base Date.

Terms of Engagement

The terms of engagement are:

- (a) subject to paragraph (b), those terms set out in Section 4A of this Panel Agreement; or
- (b) if the relevant Service Category is Contamination Remediation Works or Unexploded Ordnance Remediation, those terms set out in Section 4B of this Panel Agreement.

Workers Compensation Insurance

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 (and including Employers' Liability Insurance, if applicable).

2. NATURE OF PANEL AGREEMENT

2.1 Formation of Panel

The Commonwealth has established the Panel of Panel Consultants, of which the Consultant is one, to perform Services as requested from time to time by the Commonwealth.

The Commonwealth may:

- (a) add other consultants to the Panel;
- (b) refresh the Panel or any Service Category;
- (c) add other categories of Services to the Panel;
- (d) have other consultants (not on the Panel) perform services that are similar to the Services; or
- (e) as part of any Engagement, require Panel Consultants to perform services outside the Scope of Services for which they are on the Panel.

2.2 Engagement Process

- (a) If at any time during the Term the Commonwealth requires the performance of Services, it may engage the Consultant through a process generally consistent with that set out in Section 3 of this Panel Agreement.

- (b) The Consultant warrants that any information provided or representation made to the Commonwealth in connection with any engagement process (including any proposal submitted by the Consultant in respect of an Engagement) will be true and accurate in all material respects at the time such information is provided or representation is made to the Commonwealth.

2.3 Withdrawal from or addition to the Panel

- (a) The Consultant may by written notice to the Commonwealth's Panel Manager at any time withdraw from the Panel in respect of one or more Service Categories, in which event the Commonwealth will not involve the Consultant in any future engagement processes for the relevant Service Categories. This withdrawal will not relieve the Consultant from, or otherwise affect, the Consultant's obligations under this Panel Agreement or in respect of any Services which it has performed or been engaged to perform under this Panel Agreement.
- (b) The Commonwealth may at any time and for any reason appoint additional persons to the Panel, in which event the Commonwealth will notify the Consultant of that appointment.

2.4 Formation of Contract for Performance of Services

If the Commonwealth elects to engage the Consultant for the performance of Services and issues an Official Order to the Consultant, then the Consultant and the Commonwealth will be deemed to have entered into a contract for the performance of the relevant Services on the Award Date stated in the Contract Particulars. The terms and conditions for any Engagement will:

- (a) subject to paragraph (b), comprise:
 - (i) the Official Order;
 - (ii) the Contract Particulars (as finalised and attached to the Official Order);
 - (iii) the Fee Schedule (as finalised and specified in the Contract Particulars);
 - (iv) the Terms of Engagement;
 - (v) the Brief (as specified in the Contract Particulars);
 - (vi) the Project DCAP (as finalised and specified in the Contract Particulars);
 - (vii) this Panel Agreement; and
 - (viii) any other documents listed in the Contract Particulars; or
- (b) if the relevant Service Category is Contamination Remediation Works or Unexploded Ordnance Remediation, comprise:
 - (i) the Official Order;
 - (ii) the Contract Particulars (as finalised and attached to the Official Order);
 - (iii) the Terms of Engagement;
 - (iv) the Technical Specification (as specified in the Contract Particulars);
 - (v) the Project DCAP (as finalised and specified in the Contract Particulars);
 - (vi) this Panel Agreement; and
 - (vii) any other documents listed in the Contract Particulars.

2.5 No Guarantee of Work

- (a) The Commonwealth does not guarantee a volume of work to the Consultant under this Panel Agreement. The level of work awarded to the Consultant will depend substantially upon (among other matters):
- (i) its general performance at a Panel level and Engagement level as assessed by the Commonwealth;
 - (ii) its demonstrated expertise and experience in the type of services required by the Commonwealth; and
 - (iii) how it responds to the evaluation criteria for each request for proposal.
- (b) Where under this Panel Agreement the Commonwealth (or the Commonwealth's Panel Manager) has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Commonwealth (or other person on its behalf) will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

2.6 Unsatisfactory Performance

- (a) The Consultant acknowledges that, if its performance under the Panel or any Engagement is assessed as unsatisfactory in any respect, the Commonwealth may elect to (in its absolute discretion):
- (i) require the Consultant's Panel Manager to meet with the Commonwealth's Panel Manager at a time and location notified by the Commonwealth's Panel Manager in writing to discuss the Consultant's unsatisfactory performance (and any steps that the Consultant is taking or proposes to take to address its unsatisfactory performance); or
 - (ii) suspend or discontinue seeking proposals from the Consultant for future work.
- (b) If the Commonwealth elects, under paragraph (a), to suspend or discontinue seeking proposals from the Consultant:
- (i) the Commonwealth will give the Consultant written notice of this decision, together with reasons; and
 - (ii) the Commonwealth may, in the notice under subparagraph (i), state the matters which the Consultant must address (to the satisfaction of the Commonwealth) before the Commonwealth will reconsider its decision.

2.7 Matters Affecting the Consultant

- (a) Without limiting the Panel Agreement, the Consultant must immediately, at any time during the Term, notify the Commonwealth of:
- (i) any material changes to its legal name, size, structure, financial viability, financial standing or of any other fact, matter or thing which could:
 - A. adversely affect its ability to perform its obligations under this Panel Agreement;
 - B. give rise to any actual or perceived conflict of interest under clause 6 (whether under the Panel Agreement or in respect of a specific Engagement); or
 - C. require any changes to or otherwise affect the arrangements under this Panel Agreement; and
 - (ii) where it submits a notice under subparagraph (i):
 - A. all steps necessary being taken to address the matters set out in subparagraph (i) (including the details of any proposed novation of any Engagement); and

- B. all other information required by the Commonwealth.
- (b) Whether following a notification by the Consultant under paragraph (a) or not, if the Commonwealth considers that a material change to the Consultant's legal name, size, structure, financial viability, financial standing or of any other fact, matter or thing may:
- (i) adversely affect the Consultant's ability to perform its obligations under this Panel Agreement; or
 - (ii) give rise to an actual or perceived conflict of interest under clause 6 (whether under the Panel Agreement or in respect of a specific Engagement),
- it may elect to suspend or discontinue to seek proposals from the Consultant for future work.
- (c) If the Commonwealth elects to suspend or discontinue to seek proposals from the Consultant:
- (i) the Commonwealth will give the Consultant written notice of this decision, together with reasons; and
 - (ii) the Commonwealth may, in the notice under subparagraph (i), state the matters which the Consultant must address (to the satisfaction of the Commonwealth) before the Commonwealth will reconsider its decision.

2.8 Engagement of Consultant by Nominated Contractors

- (a) The Consultant acknowledges that:
- (i) the Commonwealth may from time to time request the Consultant to agree to be directly engaged by a Nominated Contractor rather than the Commonwealth; or
 - (ii) Nominated Contractors may from time to time request the Consultant to agree to tender for a direct engagement with the Nominated Contractor.
- (b) Where the Consultant agrees to being directly engaged by the Nominated Contractor under paragraph (a)(i) or, having agreed to tender, is successful in its tender under paragraph (a)(ii), it is intended that any resultant contract between the Consultant and the Nominated Contractor will be on the basis of:
- (i) subject to paragraph (b)(ii), the Proforma Services Subcontract, with only such amendments as approved in writing by the Commonwealth's Panel Manager and on the basis of the rates in the Schedule of Rates; or
 - (ii) if the relevant Service Category is Contamination Remediation Works or Unexploded Ordnance Remediation, the terms attached to the request or the tender (as the case may be) (which may include the Schedule of Rates to the extent applicable to the particular service).
- (c) The Consultant must, as soon as practicable, provide written notice to the Commonwealth's Panel Manager:
- (i) if it is approached by a Nominated Contractor as contemplated in paragraph (a)(ii); and
 - (ii) after entering into a contract with a Nominated Contractor.

2.9 Mandatory Training

The Consultant must attend mandatory training either in person in Canberra or by Webinar (or equivalent) as advised by the Commonwealth. This training, which is expected to be held in 2020, will be held on a date or dates notified by the Commonwealth. The Consultant will be required to attend a specific and separate training session for each Service Category for which the Consultant has been appointed as well as an introductory session in relation to the Panel.

The Consultant must bear its own costs and disbursements in connection with the training and shall have no entitlement to claim from, or to be paid by, the Commonwealth for such costs or disbursements.

3. PERSONNEL

3.1 Commonwealth's Panel Manager and the Commonwealth's Assistant Panel Manager

- (a) Subject to the limitation in paragraph (b), each of the Commonwealth's Panel Manager and the Commonwealth's Assistant Panel Manager has authority to separately exercise any right, power, discretion or other function (including to accept, agree, approve, receive notice of, comment on or reject any matter) conferred on the Commonwealth's Panel Manager under the Panel Agreement.
- (b) The Commonwealth's Panel Manager will have exclusive authority to exercise any right, power, discretion or other function (including to accept, agree, approve, receive notice of, comment on or reject any matter) in respect of any matter arising in connection with a Reserved Panel Condition.
- (c) Any reference to the Commonwealth's Panel Manager in these Panel Conditions is, other than in respect of a Reserved Panel Condition, to be read as including a reference to the Commonwealth's Assistant Panel Manager.
- (d) The Commonwealth may at any time replace the Commonwealth's Panel Manager or the Commonwealth's Assistant Panel Manager (as the case may be), in which event the Commonwealth will appoint another person as the Commonwealth's Panel Manager or the Commonwealth's Assistant Panel Manager (as the case may be) and notify the Consultant of that appointment in writing.

3.2 Consultant's Panel Manager

- (a) The Consultant's Panel Manager will act as the point of contact between the Commonwealth and the Consultant for the purposes of this Panel Agreement.
- (b) The Consultant must obtain the Commonwealth's prior written approval if it proposes to replace the Consultant's Panel Manager.
- (c) In seeking the Commonwealth's written approval for the replacement of the Consultant's Panel Manager under paragraph (b), the Consultant must:
 - (i) provide a written request to the Commonwealth's Panel Manager which must include a curriculum vitae for the proposed replacement setting out details of their experience, ability and expertise;
 - (ii) if requested by the Commonwealth's Panel Manager, arrange for the proposed replacement to attend an interview with the Commonwealth's Panel Manager to enable the Commonwealth's Panel Manager to determine their suitability; and
 - (iii) provide a written undertaking to the Commonwealth's Panel Manager that the proposed Consultant's Panel Manager has been fully informed of the Consultant's Panel Manager's responsibilities and the Consultant's obligations under this Panel Agreement.
- (d) The Consultant's Panel Manager is responsible for, at a minimum:
 - (i) keeping the Consultant's personnel fully and regularly informed of the Commonwealth's business and its support and service requirements;
 - (ii) keeping the Commonwealth fully and regularly informed on issues which affect the Commonwealth's activities with respect to the Services and the Panel, including all matters affecting the Consultant described in clause 2.7;
 - (iii) ensuring that the most appropriate, experienced and suitably qualified personnel are allocated to the Services for each Engagement;
 - (iv) ensuring that the Consultant complies with its quality obligations under the Panel Agreement and in respect of any Engagement;

- (v) ensuring that the Consultant performs its obligations under the Panel Agreement and in respect of any Engagement in a timely and responsive manner;
 - (vi) participating in and carrying out all activities required by the Commonwealth in assessing the Consultant's performance at a Panel and Engagement level;
 - (vii) ensuring that the Commonwealth's business and its support and service requirements are:
 - A. regularly (no less than every 6 months) communicated to its personnel; and
 - B. understood and delivered by the Consultant in a timely and effective manner and in accordance with the requirements of the Panel Agreement;
 - (viii) working with the Commonwealth's Panel Manager to resolve issues affecting the relationship between the Commonwealth and the Consultant, including ensuring timely responses;
 - (ix) addressing any performance issues in relation to any Engagement including any performance issues the subject of any notice of non-complying Services issued by the Commonwealth's Representative under the Terms of Engagement; and
 - (x) otherwise generally doing all things reasonably necessary to establish, maintain and enhance a collaborative relationship between the Commonwealth and the Consultant.
- (e) Notwithstanding paragraphs (b) and (c), the Consultant must ensure that at all times its Consultant's Panel Manager has the necessary authority, capability and capacity to perform the roles set out in paragraph (d).
- (f) Without limiting clause 7, the Consultant must ensure that at all times during the Term it performs and otherwise fulfils the promises, undertakings and representations it made in its submission for inclusion on the Panel with respect to the role of its Consultant's Panel Manager including in respect of its approach to quality, reporting and meetings.

3.3 Subconsultants

Without limiting the Consultant's obligations or liabilities under this Panel Agreement, any obligation of the Consultant under this Panel Agreement is deemed to include an obligation on the Consultant to ensure that its subconsultants comply with a corresponding obligation.

3.4 Succession, internal communication and training

The Consultant must, and must ensure that its personnel (including all personnel engaged on each Engagement), comply with the requirements of the Panel Agreement in respect of succession, internal communication and training.

4. INDEMNITY AND INSURANCE

4.1 Indemnity

The Consultant must indemnify the Commonwealth against:

- (a) any claim by any person; and
- (b) all costs, losses and damages incurred or suffered by the Commonwealth,

to the extent arising out of or in connection with any wilful, unlawful or negligent act or omission of the Consultant, its officers, employees, agents or subconsultants in connection with the performance of any Services or any breach of contract by the Consultant.

4.2 Insurance

The Consultant must:

- (a) as a minimum, without limiting any insurance policies it is required to have in place for any Engagement, maintain for the duration of the Term the minimum levels of insurance coverage specified by the Consultant in its submission for inclusion on the Panel and set out in the Panel Particulars;
- (b) immediately notify the Commonwealth's Panel Manager in writing if any of the insurance policies required by paragraph (a) cease to be available for the amounts of cover and in terms specified in the Panel Particulars on commercially reasonable terms;
- (c) if it gives notice under paragraph (b), take all such reasonably available steps (including those required by the Commonwealth's Panel Manager) to effect and maintain alternative arrangements which will mitigate any risk to the Commonwealth arising out of the matters raised in the notice; and
- (d) where requested from time to time:
 - (i) provide the Commonwealth with copies of certificates of currency of; and
 - (ii) allow the Commonwealth's Panel Manager to inspect,
 the insurance policies the Consultant is required to maintain under either paragraph (a) or any Engagement.

5. SCHEDULE OF RATES

5.1 Role of Schedule of Rates

- (a) Subject to paragraphs (b) and (c), the Schedule of Rates has the following roles:
 - (i) where the Consultant is engaged in accordance with the procedures set out in Section 3 of the Panel Agreement on a schedule of rates basis, the Schedule of Rates will apply;
 - (ii) where the Consultant is engaged on a staged or phased basis, the Schedule of Rates will apply to any adjustment of the relevant lump sum fee on a phase-by-phase basis;
 - (iii) the Schedule of Rates may be used for the valuation of any "Variation" under any Engagement;
 - (iv) the Schedule of Rates will be used when the Consultant is to be engaged as a subconsultant to another Panel Consultant in relation to any Services being provided under the Panel; and
 - (v) the Schedule of Rates will be used for valuing amounts payable to the Consultant for Services performed under a Short Form Engagement Process in accordance with clause 2 of Section 3 of the Panel Agreement.
- (b) For the avoidance of doubt, where the Consultant is engaged under a lump sum fee in respect of any Engagement, that lump sum fee will not (unless elsewhere stated in the relevant Contract) be subject to rise and fall in costs.
- (c) If the relevant Service Category is Contamination Remediation Works or Unexploded Ordnance Remediation, the Schedule of Rates will only apply in respect of the positions nominated in the Schedule of Rates and the Terms of Engagement may provide for additional rates schedules.

5.2 Rise and Fall

Item 3 of Appendix 2 sets out the basis and timing of the adjustment of the rates and prices in the Schedule of Rates for rise and fall.

5.3 Rates and Prices in the Schedule of Rates

- (a) The Consultant's Panel Manager may, within 30 days of each anniversary of the Base Date (and, after the expiry of the Term, for so long as the Consultant is performing Services in respect of an Engagement), notify the Commonwealth's Panel Manager in writing of the adjustment to the rates and prices in the Schedule of Rates calculated in accordance with clause 5.2 for rise and fall (if any).

- (b) If the Consultant fails to notify the Commonwealth's Panel Manager of an adjustment to its rates and prices in the Schedule of Rates in accordance with paragraph (a):
 - (i) the Consultant will have no entitlement to an adjustment of the rates and prices in the Schedule of Rates for the relevant year; and
 - (ii) the previously notified and agreed rates and prices will apply.

Clause 5.3 will survive the expiry of the Term.

6. CONFLICT OF INTEREST

- (a) The Consultant warrants that:
 - (i) as at the Base Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Panel Agreement;
 - (ii) it will ensure that no conflict of interest exists or is likely to arise at any time during the Term:
 - A. whether in performance of its obligations:
 - 1) under this Panel Agreement;
 - 2) in respect of any Engagement; or
 - 3) otherwise in the performance of services for any third party; or
 - B. when it seeks to:
 - 1) engage a Panel Consultant as a subconsultant; or
 - 2) enter into a subconsultancy with another Panel Consultant, for the purposes of any Engagement;
 - (iii) if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
 - A. immediately notify the Commonwealth's Panel Manager in writing of the conflict or risk;
 - B. include in the notice provided to the Commonwealth's Panel Manager under subsubparagraph A details of the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and
 - C. take such steps as may be required by the Commonwealth to remove or minimise the conflict or risk of conflict; and
 - (iv) it will not submit a proposal for any Engagement if the Consultant has a conflict of interest or if there is a risk of conflict of interest in respect of the Engagement.
- (b) The Commonwealth's Panel Manager may (in its absolute discretion), at any time during the Term, notify the Consultant in writing that it considers that an actual, potential or perceived conflict of interest has arisen between the interests of the Commonwealth and the Consultant in respect of the:
 - (i) Panel Agreement; or
 - (ii) any Engagement (including any proposal submitted by the Consultant in respect of any Engagement).
- (c) If a notice is given under paragraph (b), the Consultant will:

- (i) immediately respond to the Commonwealth's Panel Manager in writing, providing details of:
 - A. the actual, potential or perceived conflict of interest identified in the Commonwealth's Panel Manager's notice; and
 - B. the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and
- (ii) comply with any direction given by the Commonwealth's Panel Manager in relation to the actual, potential or perceived conflict of interest.

7. CONSULTANT'S SUBMISSION

The Consultant:

- (a) acknowledges that:
 - (i) in its submission for inclusion on the Panel it made promises, undertakings and representations;
 - (ii) the Commonwealth has entered into this Panel Agreement in reliance upon those promises, undertakings and representations; and
 - (iii) the requirements of the Panel Agreement are minimum requirements for the Services only and do not limit the Consultant's obligations under any Engagement;
- (b) where requested by the Commonwealth, must perform or otherwise fulfil those promises, undertakings and representations, whether in the performance of any specific Services under any Engagement or otherwise; and
- (c) without limiting paragraphs (a) and (b), must comply with any undertakings or representations it made in its submission for inclusion on the Panel relating to ensuring the security of Confidential Information and Sensitive and Classified Information.

8. QUALITY ASSURANCE

The Consultant:

- (a) must implement the quality assurance process, system or framework in its submission for inclusion on the Panel;
- (b) must allow the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth access to the quality assurance process, system or framework of the Consultant and its subconsultants so as to enable auditing or other monitoring;
- (c) will not be relieved from compliance with any of its Panel obligations or from any of its liabilities whether under the Panel Agreement, any Terms of Engagement or otherwise according to law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Panel Agreement or Terms of Engagement;
 - (ii) any direction by the Commonwealth's Panel Manager concerning the Consultant's quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;
 - (iii) any audit or other monitoring by the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth of the Consultant's compliance with the quality assurance process, system or framework; or
 - (iv) any failure by the Commonwealth's Panel Manager, or anyone else acting on behalf of the Commonwealth, to detect:

- A. all or any part of the Consultant's performance of its obligations under the Panel Agreement; or
- B. any Services,

which are not in accordance with the requirements of the Panel Agreement or Terms of Engagement (as the case may be), including where any such failure arises from any negligence on the part of the Commonwealth's Panel Manager or other person; and

- (d) must, if it receives a notice of non-complying services under the Terms of Engagement in respect of any Engagement:

- (i) update its quality assurance system to ensure that it is adequate to prevent a reoccurrence of that non-complying service in that or similar Engagements; and
- (ii) take any other steps necessary to avoid a reoccurrence of the non-complying Services in that or similar Engagements,

and must upon request provide evidence of its compliance with subparagraphs (i) and (ii) to the Commonwealth's Panel Manager.

9. PERFORMANCE MANAGEMENT

- (a) The Consultant's Panel Manager must participate in performance management discussions with the Commonwealth as required by the Commonwealth's Panel Manager, which will:

- (i) subject to subparagraph (ii), be held at a time and location required by the Commonwealth's Panel Manager and notified to the Consultant in writing;
- (ii) be conducted at not less than 12 monthly intervals; and
- (iii) consider the Consultant's:
 - A. Panel-wide performance; and
 - B. individual Engagement level performance.

- (b) The Consultant must:

- (i) no later than four weeks before each performance management discussion conducted under paragraph (a), submit to the Commonwealth's Panel Manager such information as the Commonwealth's Panel Manager requires for the purpose of monitoring the Consultant's performance (at Panel-wide level and individual Engagement level) and for the purposes of conducting the performance management discussions under paragraph (a); and
- (ii) in the event of any significant issue with respect to the performance of the Consultant (at Panel-wide level or at an individual Engagement level) immediately notify the Commonwealth's Panel Manager in writing, providing full details of:
 - A. the significant performance issue; and
 - B. the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of the significant performance issue.

- (c) Without limiting the Consultant's obligations under this Panel Agreement, under an Engagement or otherwise, the Consultant must:

- (i) ensure it maintains a consistently high standard of performance;
- (ii) capture, manage and report on data regarding the Consultant's performance (including any processes and systems for managing performance);

- (iii) report to the Commonwealth on its performance and management of performance issues that may arise from time to time (including the performance of its key personnel and subconsultants); and
- (iv) ensure that it will otherwise meet the Commonwealth's requirements and best practice, under this Panel Agreement and in respect of each Engagement.

10. GENERAL

10.1 Governing Law

This Panel Agreement is subject to and to be construed in accordance with the laws of the Australian Capital Territory.

10.2 Authority to Act

The Consultant is not an employee of the Commonwealth and is authorised to act as the Commonwealth's agent only in respect of the matters set out or implied in any Engagement.

11. COMMERCIAL-IN-CONFIDENCE INFORMATION AND JOINT AND SEVERAL LIABILITY

11.1 General

The Consultant acknowledges that the Commonwealth 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:

- (a) 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);
- (b) 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
- (c) 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.

11.2 Commercial-in-Confidence Information

- (a) Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Consultant's information described in the Panel Particulars and received from the Consultant (**Commercial-in-Confidence Information**).
- (b) The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
 - (i) disclosed by the Commonwealth 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 Panel Agreement;
 - (ii) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth'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 (a).
- (c) The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Consultant as confidential in nature for the justifications given by the Consultant in the Panel Particulars and for the period asserted by the Consultant in the Panel Particulars.
- (d) The Consultant:
- (i) must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
 - (ii) acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

11.3 Joint and Several Liability

- (a) Where the Consultant comprises more than one person, the terms, conditions and warranties of this Panel Agreement and any Engagement will bind all such persons jointly and each of them severally.
- (b) Where the Consultant comprises more than one person or the Consultant is or would be otherwise jointly or severally liable to the Commonwealth with any other person (whether in contract, in tort for negligence or otherwise), each person comprising the Consultant:
- (i) warrants that it will be responsible to the Commonwealth for the acts and omissions (including breaches of contract) of each other person comprising the Consultant or each other person with whom the Consultant is or would be otherwise jointly and severally liable (**Other Person**) as if those acts and omissions were its own;
 - (ii) for the purposes of subparagraph (i), warrants that it will:
 - A. review all of the activities of the Other Person under or in connection with this Panel Agreement or the performance of Services (**Other's Activities**); and
 - B. identify and rectify all errors or defects in or omissions from the Other's Activities or any other aspect of the Other's Activities which is not in accordance with the relevant contractual requirements;
 - (iii) unconditionally and irrevocably guarantees to the Commonwealth that the Other Person will discharge all of its liabilities to the Commonwealth arising out of or in connection with the Other's Activities (**Other's Liabilities**);
 - (iv) unconditionally undertakes to pay to the Commonwealth on demand any amount demanded in writing by the Commonwealth on account of the Other's Liabilities to the extent that they have not been discharged by the Other Person; and
 - (v) as a separate, additional and primary liability, unconditionally and irrevocably indemnifies the Commonwealth from and against all costs, expenses, losses and damages incurred or suffered by the Commonwealth as a result of or in connection with:
 - A. the Other's Activities or the Other's Liabilities; or
 - B. a breach of the warranty in paragraph (b) or a failure by the person to perform any of its obligations under this clause 11.3.
- (c) To the maximum extent permitted by law, the liability of a party under paragraph (b)(iii), (iv) or (v) will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the party from that liability.

12. COMPLIANCE WITH GOVERNMENT POLICY

12.1 Generally

The Consultant:

- (a) acknowledges that there are (and will be) numerous Commonwealth Requirements which apply (or will apply) to the performance of the Services; and
- (b) will comply with all such Commonwealth Requirements (including those notified to the Consultant by the Commonwealth throughout the Term as they come into existence or otherwise become applicable) in performing Services and otherwise discharging its obligations under this Panel Agreement.

12.2 Workplace Gender Equality

The Consultant must:

- (a) comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth); and
- (b) not enter into a subcontract made in connection with any Services with a subconsultant named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

12.3 Defence's Security Alert System

- (a) The Consultant must be fully familiar with the requirements of Defence's Security Alert System as amended from time to time.
- (b) The Consultant's Panel Manager must attend all security briefings as required by the Commonwealth's Panel Manager from time to time.
- (c) In carrying out the Services or otherwise in conducting any activities in connection with this Panel Agreement, the Consultant must comply with the requirements of Defence's Security Alert System at any level (or individual measure from a higher level to meet a specific threat or threats) applicable to any establishment from time to time.
- (d) The Consultant must participate in all rehearsals of Defence's Security Alert System as directed by the Commonwealth's Panel Manager from time to time.

12.4 Fraud Control

- (a) Without limiting the Consultant's other obligations, the Consultant must:
 - (i) proactively take all necessary measures to prevent, detect and investigate any fraud in connection with the Panel Agreement or any Engagement (including all measures directed by the Commonwealth's Panel Manager); and
 - (ii) proactively take all necessary corrective action to mitigate any loss or damage to the Commonwealth resulting from fraud to the extent that the fraud was caused or contributed to by the Consultant or any of its officers, employees, consultants, subcontractors, subconsultants or agents and put the Commonwealth in the position it would have been in if the fraud had not occurred (including all corrective action directed by the Commonwealth's Panel Manager).
- (b) If the Consultant knows or suspects that any fraud is occurring or has occurred it must immediately provide a detailed written notice to the Commonwealth's Panel Manager including details of:
 - (i) the known or suspected fraud;
 - (ii) how the known or suspected fraud occurred;
 - (iii) the proactive corrective action the Consultant will take under paragraph (a)(ii); and

- (iv) the proactive measures which the Consultant will take under paragraph (a)(i) to ensure that the fraud does not occur again,

and such further information and assistance as the Commonwealth's Panel Manager, or any person authorised by the Commonwealth, requires in relation to the fraud.

13. ENTRY CONDITIONS

- (a) Any person wishing to enter any Commonwealth establishment (**Establishment**) must comply with all relevant Commonwealth Requirements and other relevant local rules and regulations relating to the entry to and conditions upon remaining within the Establishment.
- (b) Without limiting paragraph (a), the Consultant must comply with all relevant security induction procedures and Commonwealth access pass requirements applicable to the Establishment.

14. DEFENCE INDUSTRY SECURITY PROGRAM

- (a) The Defence Industry Security Program (**DISP**) assists in securing Defence capability through strengthened security practices in partnership with industry, and enhances Defence's ability to manage risk in the evolving security environment.
- (b) Without limiting the Panel Agreement, the Consultant must at its cost comply with any requirement notified by the Commonwealth's Panel Manager in relation to the DISP including:
 - (i) to be "Defence-ready" for the purposes of the DISP; and
 - (ii) to otherwise obtain any specified level of DISP membership in its capacity as a member of the Panel.
- (c) The Consultant must comply at its cost with any requirement in connection with the DISP where required, in respect of any Engagement, including by obtaining any specified level of DISP membership.
- (d) The Consultant is referred to the DISP website located at <http://www.defence.gov.au/dsvs/industry>.

15. INFORMATION SECURITY - CONFIDENTIAL INFORMATION

15.1 Consultant's Warranty

- (a) The Consultant acknowledges and agrees that the Confidential Information is confidential.
- (b) Subject to clause 15.3, the Consultant warrants that, on the Base Date, it is not aware of any breach of clause 15 by the Consultant or any Recipient.

15.2 Confidential Information Requirements

- (a) The Consultant must:
 - (i) strictly comply with:
 - A. clause 15; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. clause 15; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements).

- (b) The Consultant must not:
- (i) copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,
- for any purpose other than performing its obligations under the Panel Agreement or the Services or otherwise complying with its obligations under the Panel Agreement.
- (c) The Consultant must ensure that all Recipients of Confidential Information:
- (i) strictly comply with:
 - A. clause 15; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. clause 15; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
 - A. clause 15; or
 - B. any other Confidential Information or information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements).
- (d) The Consultant must:
- (i) ensure:
 - A. the Confidential Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

 - C. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar); and
 - D. otherwise in accordance with all Separation Arrangements; and
 - (ii) immediately:
 - A. detect all actual or potential Confidential Information Incidents;

- B. notify the Commonwealth's Panel Manager if it becomes aware of any actual or potential Confidential Information Incident;
- C. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
- D. strictly comply with all other Confidential Information and information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements),

(together the **Confidential Information Requirements**).

15.3 Return, Destruction and Erasure of Confidential Information

(a) Within 7 days of:

- (i) a request from the Commonwealth's Panel Manager, at any time;
- (ii) the termination of the Consultant's Panel Agreement under clause 18 or otherwise at law; or
- (iii) the expiry of the Term,

the Consultant must:

- (iv) subject to paragraph (b), as directed by the Commonwealth or the Commonwealth's Panel Manager in the notice or request promptly:
 - A. securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Commonwealth's Panel Manager;
 - B. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
 - D. provide the Commonwealth's Panel Manager with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) confirming that the Confidential Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
- (v) promptly notify the Commonwealth's Panel Manager of all Confidential Information (or any part of it) which the Consultant knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
 - B. is beyond the Consultant's (or a Recipient's) possession, power, custody or control,

giving full particulars (including the nature and extent of the Confidential Information precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).
- (b) To the extent required by a Statutory Requirement or to maintain compliance with the Consultant's quality assurance procedure, system or framework, the Consultant may keep one copy of the Confidential Information for its records subject to the Consultant:
 - (i) promptly notifying the Commonwealth's Panel Manager of all Confidential Information it proposes to keep and the detailed basis for doing so; and

- (ii) maintaining the information security of the Confidential Information in accordance with clause 15.
- (c) The Consultant acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Consultant's obligations under clause 15.

15.4 Compliance

Within 24 hours (or such other period notified by the Commonwealth's Panel Manager in its request) of receipt of a request by the Commonwealth's Panel Manager, at any time, the Consultant must:

- (a) provide the Commonwealth's Panel Manager with:
 - (i) evidence of the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Consultant and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and the Confidential Information Requirements),

by the time and date specified in the request; and
- (b) as directed by the Commonwealth's Panel Manager in the request, provide the Commonwealth and the Commonwealth's Panel Manager with access to the Consultant's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth and the Commonwealth's Panel Manager to monitor and assess the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and Confidential Information Requirements), by the time and date specified in the request.

15.5 Acknowledgement, Release and Indemnity

Without limiting any other provision of the Panel Agreement, the Consultant:

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has entered into the Panel Agreement strictly on the basis of, and in reliance upon, the obligations, warranties and releases set out in clause 15;
 - (ii) without limiting any other right or remedy of the Commonwealth, if the Consultant has failed to strictly comply with:
 - A. clause 15; or
 - B. any other Confidential Information or information security requirements notified by the Commonwealth's Panel Manager (including any Separation Arrangements),

the Commonwealth may (in its absolute discretion) do any one or more of the following:

 - C. terminate the Consultant's Panel Agreement under clause 18 or otherwise at law; or
 - D. take such failure into account in assessing any future registration of interest process, tender process or similar procurement process in connection with the Panel Agreement, the Services or any other Commonwealth project; and
 - (iii) the exercise of any of the Commonwealth's absolute discretions under clause 15 is not capable of being the subject of a dispute or difference for the purposes of clause 11 of the Terms of Engagement or otherwise subject to review;

- (b) releases the Commonwealth in respect of any 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 exercise of any of the Commonwealth's absolute discretions under clause 15; and
- (c) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - (i) the Consultant being in breach of clause 15; or
 - (ii) the exercise of any of the Commonwealth's absolute discretions under clause 15.

16. SIGNIFICANT EVENTS

16.1 Consultant's Warranty

Subject to clause 16.2, the Consultant warrants that, on the Base Date, it is not aware of any:

- (a) Material Change; or
- (b) Defence Strategic Interest Issue,

in relation to the Consultant.

16.2 Notice of Significant Event

If, at any time, the Consultant becomes aware of any Significant Event, the Consultant must immediately notify the Commonwealth's Panel Manager, providing details of:

- (a) the Significant Event, including:
 - (i) whether the Consultant considers that it is a Material Change, Defence Strategic Interest Issue or circumstances otherwise set out in paragraph (c) or (d) of the defined term "Significant Event";
 - (ii) the date or dates on or during which the Significant Event occurred; and
 - (iii) whether any of the Consultant's key people or other personnel engaged in connection with the Panel Agreement or any Engagement were involved; and
- (b) 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 Significant Event on the interests of the Commonwealth.

16.3 Commonwealth Rights Upon Occurrence of Significant Event

- (a) Without limiting any other right or remedy of the Commonwealth (under the Panel Agreement or otherwise at law or in equity), if:
 - (i) the Consultant notifies the Commonwealth's Panel Manager under clause 16.2; or
 - (ii) the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Significant Event in relation to the Consultant,

the Commonwealth may (in its absolute discretion) do any one or more of the following:

 - (iii) notify the Consultant that it is required to provide, or meet with representatives of the Commonwealth to provide, further information, documents or evidence in relation to, and otherwise clarify, the:
 - A. nature and extent of the Significant Event; and

- B. 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 Significant Event on the interests of the Commonwealth,
 - by the time and date specified in the notice; and
- (iv) regardless of whether or not the Commonwealth has notified the Consultant under subparagraph (iii), notify the Consultant that:
 - A. the Consultant may continue to perform its obligations under the Panel Agreement or the Services, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Consultant immediately:
 - 1) preparing and implementing a Significant Event Remediation Plan in accordance with clause 16.4; or
 - 2) completing, duly executing and returning a deed,

by the time and date specified in the notice, in each case in a form and on terms acceptable to the Commonwealth in its absolute discretion; or
 - B. the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 18 and (without limiting its other rights) terminate the Consultant's Panel Agreement under clause 18.
- (b) Without limiting any other provision of the Panel Agreement, if the Consultant is in breach of clause 16 then the Commonwealth may (in its absolute discretion) notify the Consultant that the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 18 and (without limiting its other rights) immediately terminate the Consultant's Panel Agreement under clause 18.

16.4 Significant Event Remediation Plan

- (a) If notified by the Commonwealth under clause 16.3(a)(iv)A.1), the Consultant must prepare and submit a draft Significant Event Remediation Plan to the Commonwealth's Panel Manager for approval within 10 business days of the Commonwealth's notice.
- (b) A draft Significant Event Remediation Plan prepared by the Consultant under paragraph (a) must include the following information:
 - (i) how the Consultant will address the Significant Event in the context of the Panel Agreement and the Services, including confirmation that the implementation of the Significant Event Remediation Plan will not in any way impact on the performance of the Services or compliance by the Consultant with its other obligations under the Panel Agreement;
 - (ii) how the Consultant will ensure events similar to the Significant Event do not occur again;
 - (iii) if the Significant Event involves a Material Change, how the Material Change will impact the Consultant's original agreement with the Commonwealth; and
 - (iv) any other matter reasonably requested by the Commonwealth's Panel Manager.
- (c) The Commonwealth's Panel Manager will review the draft Significant Event Remediation Plan and either approve the draft Significant Event Remediation Plan or provide the Consultant with the details of any changes that are required. The Consultant must make any changes to the draft Significant Event Remediation Plan reasonably requested by the Commonwealth's Panel Manager and resubmit the draft Significant Event Remediation Plan to the Commonwealth's Panel Manager for approval within 3 business days of the request unless a different timeframe is agreed in writing by the Commonwealth's Panel Manager. This paragraph (c) will apply to any resubmitted draft Significant Event Remediation Plan.

- (d) Without limiting its other obligations under the Panel Agreement, the Consultant must comply with the Significant Event Remediation Plan as approved by the Commonwealth's Panel Manager. The Consultant agrees to provide reports and other information about the Consultant's progress in implementing the Significant Event Remediation Plan as reasonably requested by the Commonwealth's Panel Manager.

16.5 Release

Without limiting any other provision of the Panel Agreement, the Consultant must bear, and releases the Commonwealth 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 Significant Event or the exercise of any of the Commonwealth's absolute discretions under clause 16.

17. ACCESS TO PROJECT DOCUMENTS

The Consultant must:

- (a) at the request of the Commonwealth's Panel Manager, at any time during the Term and the period of 10 years following the end of the Term:
- (i) make the Project Documents immediately available for inspection and copying by the Commonwealth's Panel Manager or any other person nominated by the Commonwealth's Panel Manager;
 - (ii) provide to the Commonwealth's Panel Manager such copies of the Project Documents as the Commonwealth's Panel Manager may require;
 - (iii) provide all such facilities and assistance and answer all such questions which may be required to enable the Commonwealth's Panel Manager or any nominated persons to identify the amounts being (or proposed to be) incurred or expended by the Consultant in performing the Services; and
 - (iv) make available any officers, employees, agents or subconsultants for interviews with the Commonwealth's Panel Manager or any nominated persons;
- (b) within the time required by the Commonwealth's Panel Manager prior to the end of the Term, deliver to the Commonwealth's Panel Manager a copy of the installed version of each item of software comprising the IT equipment incorporated in the Services, in a storage medium reasonably satisfactory to the Commonwealth, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that it maintains copies of all Project Documents in such a manner as to enable convenient and efficient review by the Commonwealth when required.

18. TERMINATION FOR INSOLVENCY OR BREACH OF CLAUSE 15

Without limiting its other rights under this Panel Agreement or otherwise at law, if the Consultant:

- (a) suffers an Insolvency Event; or
- (b) fails to comply with clause 15,

the Commonwealth may immediately terminate the Consultant's Panel Agreement by written notice.

19. GENERAL

19.1 Privacy

- (a) The Consultant must:
- (i) comply with its obligations under the Privacy Act;

- (ii) comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of this Panel Agreement, as if it were an agency as defined in the Privacy Act;
- (iii) use Personal Information received, created or held by the Consultant for the purposes of this Panel Agreement only for the purposes of fulfilling its obligations under this Panel Agreement;
- (iv) not disclose Personal Information received, created or held by the Consultant for the purposes of this Panel Agreement without the prior written approval of the Commonwealth's Panel Manager;
- (v) not collect, transfer, store or otherwise use Personal Information received, created or held by the Consultant for the purposes of this Panel Agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Commonwealth's Panel Manager;
- (vi) co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Commonwealth's Panel Manager in relation to the management of Personal Information in connection with this Panel Agreement;
- (vii) 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 this Panel Agreement 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;
- (viii) comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
- (ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of this Panel Agreement are, at the expiration or earlier termination of the Consultant's Panel Agreement, at the Commonwealth's Panel Manager's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Commonwealth's Panel Manager to oversee such deletion or destruction;
- (x) agree to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
- (xi) ensure that any subcontract made in connection with this Panel Agreement or any Terms of Engagement contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of clause 19.1, as if the subconsultant were the Consultant;
- (xii) enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Commonwealth's Panel Manager may give;
- (xiii) not use Personal Information collected by the Consultant in connection with the Panel Agreement for, or in any way relating to, any direct marketing purpose; and
- (xiv) indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - A. a breach of the obligations of the Consultant under clause 19.1;
 - B. a breach of a subconsultant's obligations under a subcontract as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held in connection with this Panel Agreement by the Consultant or a subconsultant; or

- D. the disclosure of Personal Information held in connection with this Panel Agreement by the Consultant or a subconsultant in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of, or in any way in connection with, a breach of clause 19.1 by the Consultant.
- (c) The Consultant must immediately notify the Commonwealth in writing if the Consultant:
 - (i) becomes aware of a breach of the obligations under clause 19.1 by itself or by a subconsultant;
 - (ii) becomes aware of a breach of a subconsultant's obligations under a subcontract as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Consultant acknowledges that, in addition to the requirements of clause 19.1, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
- (e) Nothing in clause 19.1 limits any of the Consultant's other obligations or liabilities under the Panel Agreement.
- (f) In clause 19.1, **received** includes collected.

19.2 Freedom of Information

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.

The Consultant acknowledges that Commonwealth Requirements will require certain identifying details of the Panel Agreement to be made available to the public via the internet.

19.3 Long Service Leave

Clause 19.3 only applies if the Long Service Leave Legislation applies to the Services.

- (a) Without limiting its other obligations or liabilities under this Panel Agreement or otherwise, the Consultant must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by the Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
- (c) The Consultant will have no Claim against the Commonwealth arising out of or in connection with its obligations under clause 19.3 or any other obligation under the Long Service Leave Legislation.

19.4 Assignment

- (a) The Consultant must not, without the prior written approval of the Commonwealth and except on the terms and conditions determined in writing by the Commonwealth, assign, mortgage, charge or encumber the Panel Agreement, any Engagement or any part or any benefit or moneys or interest under the Panel Agreement or any Engagement.

- (b) For the purpose of, but without limiting paragraph (a), an assignment of this Panel Agreement and each relevant Engagement will be deemed to have occurred where there has been a Change of Control or Material Change.

19.5 Publicity

- (a) Without limiting clause 15, the Consultant must:
- (i) not furnish any information or issue any document or other written or printed material arising out of or in connection with the Panel, this Panel Agreement, the Services or any Engagement for publication in the media or on social media without the prior written approval of the Commonwealth's Panel Manager; and
 - (ii) refer any enquiries from the media arising out of or in connection with the Panel, this Panel Agreement, the Services or any Engagement to the Commonwealth's Panel Manager.
- (b) If the Commonwealth considers in its reasonable discretion that the Consultant has failed to comply with the requirements of this clause 19.5, the Commonwealth may in its absolute discretion exercise its rights under clause 2.6.

20. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- (a) For the purposes of this clause 20, **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.
- (b) The Consultant must comply with, and ensure that its officers, employees, agents and subconsultants comply with, the Code in connection with the performance of the Panel Agreement and a contract for any Engagement.
- (c) The Consultant must:
- (i) periodically monitor and assess its, and its officers', employees', and agents', compliance with the Code; and
 - (ii) on request from the Commonwealth's Panel Manager, promptly provide information regarding:
 - A. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
 - B. the Consultant's compliance with paragraph (b).
- (d) The Consultant must immediately notify the Commonwealth's Panel Manager in writing upon becoming aware of any breach of paragraph (b). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
- (e) Where the Commonwealth's Panel Manager identifies a possible breach of paragraph (b), it may notify the Consultant in writing, and the Consultant must, within three days of receiving the notice, either:
- (i) where the Consultant considers a breach has not occurred - advise the Commonwealth's Panel Manager that there has not been a breach and provide information supporting that determination; or
 - (ii) where the Consultant considers that a breach has occurred - notify the Commonwealth's Panel Manager under paragraph (d) and otherwise comply with its obligations under this clause 20.
- (f) Notwithstanding paragraph (e), the Commonwealth's Panel Manager may notify the Consultant in writing that it considers that the Consultant has breached paragraph (b), in which case the Consultant must notify the Commonwealth's Panel Manager in writing under paragraph (d) and otherwise comply with its obligations under this clause 20.

- (g) A failure by the Consultant to comply with its obligations under any part of this clause will be a breach of this clause 20.
- (h) Nothing in this clause or the Code limits, reduces or derogates from the Consultant's other obligations under the Panel Agreement or a contract for any Engagement. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Panel Agreement or a contract under any Engagement. The performance by the Consultant of its obligations under this clause will be at no additional cost to the Commonwealth.
- (i) The Consultant acknowledges and agrees that the Commonwealth may take the Consultant's compliance with the Code into account in any engagement process under the Panel Agreement or in connection with any other Commonwealth project.

APPENDIX 1 - PANEL PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS

Base Date: 1 July 2020
(Clause 1)

Consultant:
(Clause 1)

Consultant's Panel Manager: Name:
(Clause 1) Phone:
Email:

Service Categories:
(Clause 1)

CLAUSE 4 - INDEMNITY AND INSURANCE

Employers' Liability Insurance: \$
(Clause 4.2)

Public Liability Insurance: \$
(Clause 4.2)

In respect of any one occurrence

Professional Indemnity Insurance: \$
(Clause 4.2)

For any one claim (including aggregation)

\$

In annual aggregate

Workers Compensation Insurance: Amount of Cover prescribed by Statutory Requirement in the State
(Clause 4.2) or Territory in which the Services are performed or the
Consultant's employees perform work, are employed or normally
reside

CLAUSE 11 - COMMERCIAL-IN-CONFIDENCE INFORMATION

Information which is Commercial-in-Confidence Information: (Clause 11.2)	Specific information	Justification (Confidentiality Test)	Period of Confidentiality
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APPENDIX 2 - SCHEDULE OF RATES

1. Hourly and daily rates

The hourly and daily rates set out below.

[Insert Service Category] - Rates as at the Base Date:

Position	\$ Hourly Rate (exclusive of GST)	\$ Daily Rate (exclusive of GST)

The position descriptions set out in this item 1 must be used by the Consultant when nominating its key people in response to a request for proposal from the Commonwealth in respect of an Engagement under the Panel.

2. Reimbursable costs

- (a) Subject to paragraph (b), all disbursements are included within the hourly rates stated in item 1 of this Appendix 2 and are not separately payable by the Commonwealth. Items which will not be reimbursed by the Commonwealth include:
- (i) telephone calls;
 - (ii) document printing;
 - (iii) email and internet charges;
 - (iv) royalties, licence fees and any other amounts arising out or in connection with any intellectual property rights;
 - (v) taxes (except GST) and duties;
 - (vi) superannuation, long service leave and other employment-related levies, charges and amounts; and
 - (vii) administration costs or booking fees including in relation to arranging or providing venue hire or catering.
- (b) The following disbursements are not included within the hourly rates stated in item 1 of this Appendix 2 and are separately payable by the Commonwealth, **subject to the written consent of the Commonwealth being obtained prior to the incurring of such disbursements:**
- (i) travel costs (to be reimbursed in accordance with non-SES rates with no administrative on-cost), with airfares to be reimbursed at 'economy' fare rates for travel within Australia and 'business class' fare rates for international travel);
 - (ii) car hire and taxi fares (reimbursed at cost only); and
 - (iii) in respect of any Engagement, any disbursements specified as reimbursable by the Commonwealth in its Official Order.
- (c) For the avoidance of doubt, where any Engagement is on a lump sum basis, the Consultant will have no entitlement to reimbursement of any disbursements, including those set out in

paragraph (b), unless otherwise explicitly stated by the Commonwealth in its Official Order.

- (d) The Consultant will have no entitlement to reimbursement of any disbursements, including those set out in paragraph (b), arising out of or in connection with its appointment to the Panel or in relation to attending mandatory training for the Panel in accordance with clause 2.9 of the Panel Conditions.
- (e) The Consultant will have no entitlement to reimbursement of any additional costs or disbursements arising out of or associated with a change in the location of the Consultant's place of business or a change in the location of any of its personnel at any time during the Term.

3. **Price Revision Formula**

- (a) Subject to clause 5.3 of the Panel Conditions, all rates and prices set out in the Schedule of Rates are to be adjusted (using the formula set out in paragraph (b) below) annually on the anniversary of the Base Date.
- (b) The rise and fall formula for the purpose of clause 5.2 of the Panel Conditions is as follows:

$$P_n = P_0 \times \left(\frac{I_n}{I_0} \right)$$

Where:

P_n = the revised rate or price applying from the most recent annual anniversary of the Base Date;

P_0 = the rate or price applying at the Base Date;

I_n = the published preceding September quarter Price Revision Index prior to the annual anniversary of the Base Date; and

I_0 = the Price Revision Index for the quarter containing the Base Date.

Price Revision Index is the index set out below:

Description of Index	Table	Group
ABS Catalogue 6345.0 Wage Price Indexes	Table 5 - Total Hourly Rates of Pay excluding Bonuses	Private Sector - Professional, Scientific and Technical Services

- (c) If the Price Revision Index described in paragraph (b) above is no longer published, the Commonwealth will apply the index which provides the most similar calculation as determined by the Commonwealth's Panel Manager (acting reasonably).
- (d) For the avoidance of doubt, where the Consultant is engaged under a lump sum fee in respect of any Engagement, that lump sum fee will not (unless elsewhere stated in the relevant Terms of Engagement), be subject to rise and fall in costs.

SECTION 3

ENGAGEMENT PROCESS

DESCRIPTION OF ENGAGEMENT PROCESS

1. Standard Engagement Process

- (a) Generally, as and when Services are required to be performed by a Panel Consultant, the following engagement process will be adopted (**Standard Engagement Process**). The actual method of procurement will be determined by the Commonwealth.
- (b) The Standard Engagement Process is as follows:
 - (i) the Commonwealth may request one or more Panel Consultant(s) to confirm promptly in writing whether or not the Panel Consultant(s) intends to submit a proposal in response to the Commonwealth's request for proposal (which may be titled an "expression of interest");
 - (ii) the Commonwealth will conduct a single stage procurement process by sending a request for proposal to one or more Panel Consultant(s) which may include:
 - A. specification of the relevant Terms of Engagement;
 - B. a Brief;
 - C. draft Contract Particulars;
 - D. conforming proposal requirements;
 - E. evaluation criteria;
 - F. a process for the appointment of one or more preferred Panel Consultant(s); and
 - G. details of how a proposal may be accepted by the Commonwealth and the terms of any Contract;
 - (iii) each Panel Consultant who receives a request for proposal must:
 - A. provide a proposal, which (provided that it complies with any conforming proposal requirements specified in the request) will be evaluated; or
 - B. if the Commonwealth has not made a request in accordance with subparagraph (i), submit a written response promptly after receiving the Commonwealth's request declining to provide a proposal;
 - (iv) the Panel Consultant may be informed (without the Commonwealth accepting, or being taken to have accepted, the proposal) that the Commonwealth will negotiate certain or all aspects of the Panel Consultant's proposal (such negotiations may be subject to satisfaction of certain conditions as stated, including the execution of a negotiation protocol setting out the basis on which the Commonwealth will negotiate with the Panel Consultant);
 - (v) if the original or revised proposal is accepted, then an Official Order will be issued to the successful Panel Consultant;
 - (vi) if the original or revised proposal is not accepted, then a notice will be issued to the unsuccessful Panel Consultant; and
 - (vii) the successful and unsuccessful Panel Consultant(s) will be offered the opportunity to participate in a debrief.

2. **Short Form Engagement Process**

2.1 Notwithstanding clause 1, as and when Services are required to be performed by a Panel Consultant, the Commonwealth may in its absolute discretion elect to invoke the engagement process set out in this clause 2 (**Short Form Engagement Process**).

2.2 The Short Form Engagement Process is as follows:

- (a) the Commonwealth will issue a request by written notice (which may be in the form of an email) to the Panel Consultant to commence performance of the relevant Services in accordance with the notice and the Panel Agreement;
- (b) the Panel Consultant must promptly provide a written notice (which may be by way of email):
 - (i) confirming that the Panel Consultant will commence the performance of the Services in accordance with the Commonwealth's notice and the Panel Agreement and setting out an estimated number of hours it considers will be required to perform the Services for each relevant position description specified in the Schedule of Rates; or
 - (ii) declining the request to perform the Services;
- (c) if the Panel Consultant issues a notice under paragraph (b)(i), the Panel Consultant must immediately commence the performance of the relevant Services in accordance with the notice and Panel Agreement;
- (d) the Commonwealth will then as soon as practicable send a request for proposal to the relevant Panel Consultant;
- (e) the Panel Consultant must provide a proposal for evaluation within the time period specified in the request for proposal;
- (f) the Panel Consultant may be informed (without the Commonwealth accepting, or being taken to have accepted, the proposal) that the Commonwealth will negotiate certain or all aspects of the Panel Consultant's proposal (such negotiations may be subject to satisfaction of certain conditions as stated);
- (g) if the original or revised proposal is accepted, then an Official Order will be issued to the Panel Consultant and the Consultant's entitlement to payment for the Services will be determined in accordance with the Official Order;
- (h) if the original or revised proposal is not accepted:
 - (i) a notice will be issued to the Panel Consultant (which may be in the form of an email);
 - (ii) the Panel Consultant must immediately cease the performance of the Services;
 - (iii) the Panel Consultant will only be entitled to payment for the performance of the Services up to receipt of the Commonwealth's notice:
 - A. determined, to the extent applicable, on the basis specified in the Panel Consultant's notice under paragraph (b)(i); or
 - B. otherwise as determined by the Commonwealth's Representative in its absolute discretion having regard to the Schedule of Rates (to the extent the Commonwealth's Representative considers in its absolute discretion that the Schedule of Rates are applicable); and
 - (iv) the Panel Consultant will not have any entitlement to any other Claim against the Commonwealth arising out of or in connection with the relevant Services; and

- (i) if requested by the Commonwealth's Representative, the Panel Consultant must provide sufficient details, calculations, supporting documentation and other required information to assist the Commonwealth's Representative determine (in its absolute discretion) the amount payable to the Panel Consultant under paragraph (h)(iii)B.

3. **Remediation Short Form Engagement Process**

3.1 Notwithstanding clause 1, as and when Services are required to be performed by a Panel Consultant in respect of the Contamination Remediation Works and Unexploded Ordnance Remediation Service Categories, the Commonwealth may in its absolute discretion elect to invoke the engagement process set out in this clause 3 (**Remediation Short Form Engagement Process**).

3.2 The Remediation Short Form Engagement Process is as follows:

- (a) the Commonwealth will issue a request by written notice (which may be in the form of an email) to the Panel Consultant to commence performance of the relevant Services in accordance with the Commonwealth's notice and the Panel Agreement;
- (b) not used
- (c) the Panel Consultant must promptly provide a written notice (which may be by way of email):
 - (i) confirming that the Panel Consultant will commence the performance of the Services in accordance with the Commonwealth's notice and the Panel Agreement and setting out, but not limiting or affecting the Commonwealth's rights in respect of, an estimated number of hours it considers will be required to perform the Services for each relevant position description specified in the Schedule of Rates; or
 - (ii) declining the request to perform the Services;
- (d) if the Panel Consultant issues a notice under paragraph (c)(i), the Panel Consultant must immediately commence the performance of the relevant Services in accordance with the notice and Panel Agreement;
- (e) the Commonwealth will then as soon as practicable send a request for proposal to the relevant Panel Consultant (which may include the Services referred to in the notice under paragraph (b)(i) and other Services);
- (f) the Panel Consultant must provide a proposal for evaluation within the time period specified in the request for proposal;
- (g) the Panel Consultant may be informed (without the Commonwealth accepting, or being taken to have accepted, the proposal) that the Commonwealth will negotiate some or all aspects of the Panel Consultant's proposal (such negotiations may be subject to satisfaction of certain conditions as stated);
- (h) if the original or revised proposal is accepted, then an Official Order will be issued to the Panel Consultant and the Consultant's entitlement to payment for the Services will be determined in accordance with the Official Order;
- (i) if the original or revised proposal is not accepted:
 - (i) a notice will be issued to the Panel Consultant;
 - (ii) the Panel Consultant must immediately cease the performance of the Services;
 - (iii) the Panel Consultant will only be entitled to payment for the performance of the Services up to receipt of the Commonwealth's notice:
 - A. determined, to the extent applicable, on the basis specified in the Panel Consultant's notice under paragraph 2.2(b)(i); or

- B. otherwise as determined by the Commonwealth's Representative in its absolute discretion having regard to the Schedule of Rates (to the extent the Commonwealth's Representative considers in its absolute discretion that the Schedule of Rates are applicable); and
- (iv) save as expressly set out in this sub-clause (i), the Panel Consultant will not have any entitlement to commence or maintain any other Claim against the Commonwealth nor to recover any cost or expense arising out of or in connection with the relevant Services; and
- (j) if requested by the Commonwealth's Representative, the Panel Consultant must provide sufficient details, calculations, supporting documentation and other required information to assist the Commonwealth's Representative determine (in its absolute discretion) the amount payable to the Panel Consultant under paragraph 2.2(h)(iii)B.

4. **Official Order**

The Official Order is the document from the Commonwealth to the Panel Consultant giving notice of acceptance of the Panel Consultant's proposal. A contract will be formed between the Commonwealth and the Panel Consultant in accordance with the Panel Agreement.

5. **Role of the Scope of Services**

- (a) Each Scope of Services attached to this Panel Agreement:
 - (i) represents minimum and general requirements only for the relevant Services and does not limit the Panel Consultant's obligations under any Engagement;
 - (ii) is intended to provide a basis for tailoring to the requirements of individual Engagements, by the Commonwealth making such additions, deletions or other changes to the Scope of Services in preparing the relevant Brief for a specific Engagement as are necessary to reflect the requirements of the relevant Engagement; and
 - (iii) may be amended by the Commonwealth from time to time in order to reflect changes in Statutory Requirements.
- (b) Where any Engagement is for any Other Commonwealth Agency and the relevant Scope of Services refers to Defence policies, standards, practices, Statutory Requirements or other Defence specific requirements, the Scope of Services may be amended to apply to the Other Commonwealth Agency and its relevant policies, standards, practices, or other requirements.
- (c) Nothing in the Scope of Services or a Brief will be taken to limit or otherwise affect the Panel Consultant's obligations or liabilities under the Panel Agreement or the Terms of Engagement.

6. **Role of Project DCAP**

- (a) The Project DCAP is the detailed consultant's activities proposal prepared by way of a specific response to a specific Engagement.
- (b) The Project DCAP does not limit the Services required to be performed by the Panel Consultant under any Engagement.

7. **Joint Bids**

- (a) The Commonwealth may (in its absolute discretion):
 - (i) invite Panel Consultants to submit a response to a request for proposal on a joint bid basis on terms set out in the request for proposal; and
 - (ii) accept or reject any proposal submitted by Panel Consultants on a joint bid basis in response to a request for proposal.

- (b) If the Commonwealth (in its absolute discretion) accepts a proposal submitted by Panel Consultants on a joint bid basis and issues an Official Order to the Panel Consultants accepting the relevant proposal, the joint bid parties will be jointly and severally liable to the Commonwealth under the Contract in accordance with the terms of the Contract (including the Official Order).



Australian Government

Defence

SECTION 4A TERMS OF ENGAGEMENT

ALL SERVICE CATEGORIES OTHER THAN CONTAMINATION REMEDATION WORKS AND UNEXPLODED ORDNANCE REMEDATION

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TERMS OF ENGAGEMENT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

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

Accredited Building Surveyor

A person who is:

- (a) a building surveyor accredited by the Australian Institute of Building Surveyors; or
- (b) from time to time nominated within MFPE as having the capacity to certify compliance with the requirements of the MFPE and the National Construction Code for Commonwealth projects similar to the Project.

Approval

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 Project or the Services or under any other applicable Statutory Requirement, which must be obtained or satisfied in connection with the Project or Services.

ASD Certified Cloud Services List

The list as amended from time to time located at http://www.asd.gov.au/infosec/irap/certified_clouds.htm.

ASEE

Assistant Secretary Environment and Engineering.

Australian Government Information Security Manual

Is a reference to that document as amended from time to time.

Australian Government Personnel Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Physical Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Protective Security Policy Framework

Is a reference to that document (or any replacement document) as amended from time to time.

Award Date

The date stated in the Contract Particulars.

Black Economy Procurement Connected Policy

The Black Economy Procurement Connected Policy - Increasing the integrity of government procurement - March 2019.

Brief

The brief as specified in the Contract Particulars.

Change of Control

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

Includes any claim for an increase in the Fee, for payment of money (including damages) or for any other compensation or relief:

- (a) under, arising out of, or in any way in connection with, the Contract, including any direction of the Commonwealth's Representative;
- (b) arising out of, or in any way in connection with, the Project, the Services or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Commonwealth

Commonwealth of Australia.

Commonwealth Material

All material provided to the Consultant by the Commonwealth, including documents provided in accordance with clause 5 and any other documents, equipment, machinery and data (stored by any means).

Commonwealth Procurement Rules

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

Commonwealth's Program

Any program, as amended from time to time, prepared by or on behalf of the Commonwealth setting out the times for the Completion of the whole or any part of the Services and the Project, including the Milestones.

Commonwealth's Representative

The person nominated in the Contract Particulars or any other person nominated by the Commonwealth from time to time under clause 4.2 to replace that person.

Commonwealth Requirements

Policies, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Departmental requirements (including the Defence Manual of Fire Protection Engineering as amended or substituted from time to time).

Completion

The point in time when, in respect of a Milestone, everything required by this Contract or a Project Contract to have been completed as a condition precedent to Completion of the Milestone has been completed in accordance with this Contract or the Project Contract.

Confidential Information

- (a) Means, subject to paragraph (b):
 - (i) the Contract;

- (ii) the Project Documents;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which is in any way connected with the project which:
 - A. by its nature is confidential;
 - B. the Consultant knows or ought to know is confidential; or
 - C. is the subject of a Separation Arrangement; and
 - (iv) 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.
- (b) Does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which:
- (i) 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 Commonwealth's Representative or anyone on the Commonwealth's behalf;
 - (ii) is in the public domain otherwise than due to a breach of clause 14; or
 - (iii) has been independently developed or acquired by the Consultant.

Confidential Information Incident

A single breach or a series of breaches of clause 14, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

An identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.

Consolidated Group

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

The person named in the Contract Particulars.

Consultant Material

All material brought, or required to be brought, into existence by the Consultant as part of, or for the purpose of, carrying out the Services including documents, equipment, reports, technical information, plans, charts, drawings, specifications, calculations, tables, schedules, data (stored by any means), photographs and finishes boards.

Consultant's Representative

The person named in the Contract Particulars or any other person from time to time appointed as Consultant's Representative in accordance with clause 4.5.

Contamination

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.

Contract

The contractual relationship between the parties in respect of an Engagement constituted by the documents referred to in clause 2.4 of the Panel Conditions and any other document listed in the Contract Particulars.

Contract Particulars

The particulars for an Engagement attached to the Official Order and entitled "Contract Particulars".

Control

Includes:

- (a) 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;
- (b) 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;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) 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
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Cyber Security Event

An identified occurrence of a system, service or network state indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered occurrence of a system, service or network state which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Cyber Security Incident

A single or series of unwanted or unexpected Cyber Security Events that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Defence

Department of Defence.

Defence Environmental Management System

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

Defence Environmental Plan

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

Defence Environmental Requirements

The Defence Environmental Management System and Defence Environmental Plan which relates to the Site, the Project or the Services and includes any procedures, instructions, requirements and standing orders which have been

developed or issued under the Defence Environmental Management System or Defence Environmental Plan (as the case may be).

Defence Security Principles Framework

Is a reference to that document as amended from time to time.

Defence Strategic Interest Issue

Means any issue that involves an actual, potential or perceived risk of an adverse effect on the interests of the Commonwealth including:

- (a) protecting Australia's national security requirements, in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework);
- (b) ensuring that the whole (or any part of) the Confidential Information is not exported (or capable of being exported) outside of Australia or is not disclosed or transmitted (or capable of being disclosed or transmitted) to any person who does not hold (or is not eligible to hold) an Australian Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
- (c) ensuring compliance by the Consultant with Australia's national security requirements, in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework).

Defence Website

The website available at www.defence.gov.au/.

direction

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

DISP

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

Employers' Liability Insurance

If the Services are performed or the Consultant's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, 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.

Engagement

An engagement to perform the Services for the Commonwealth under the Panel Agreement on the terms set out in the relevant Official Order and the Panel Agreement.

Environment

Includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraph (a), (b), or (c).

Environmental Clearance Certificate

The Environmental Clearance Certificate issued by the Commonwealth relating to the Services or the Project and any conditions incorporated in that certificate.

Environmental Harm

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

Environmental Incident

Any Environmental Harm or Contamination caused by or in relation to the Services.

Environmental Management Plan

The environmental management plan (if any) prepared by the Consultant and finalised under clause 5.14 which sets out in adequate detail the procedures the Consultant will implement to manage the Services from an environmental perspective and which must describe how the Consultant proposes to ensure the Services will be performed consistently with and so as to:

- (a) ensure compliance with the Environmental Requirements and Statutory Requirements; and
- (b) maximise the achievement of the ESD Principles and the Environmental Objectives.

Environmental Objectives

Means to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise adverse impacts on the Environment;
- (c) identify the potential for and respond to Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Project and the Services;
- (e) establish procedures to ensure that no hazardous substance is stored on Commonwealth land without approval;
- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and subconsultants;
- (i) define how the management of the Environment during the Services is reported and performance evaluated;
- (j) describe all monitoring procedures required to identify impacts on the Environment as a result of the Project and the Services;
- (k) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
- (l) establish and maintain programs and procedures for periodic Environmental Management Plan (if any) audits to be carried out.

Environmental Requirements

Includes:

- (a) the Environmental Clearance Certificate;

- (b) the Defence Environmental Requirements; and
- (c) any other matter or requirement specified in the Contract Particulars.

ESD

Ecologically sustainable development.

ESD Principles

Means:

- (a) efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
- (b) increased energy and water conservation and efficiency;
- (c) sustainable development and use of renewable and alternative energy and water resources;
- (d) reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
- (e) improvements to interior and exterior environments leading to increased productivity and better health;
- (f) efficiency in resource and materials utilisation, especially water resources;
- (g) selection of materials and products based on their life-cycle environmental impacts;
- (h) increased use of materials and products with recycled content;
- (i) recycling of construction waste and building materials after demolition;
- (j) reduction in harmful waste products produced during construction;
- (k) facility maintenance and operational practices that reduce or minimise harmful effects on people and the natural environment;
- (l) maintaining the cultural, economic, physical and social wellbeing of people and communities;
- (m) the principles described in the Smart Infrastructure Handbook; and
- (n) the additional specific matters (if any) relating to ESD specified in the Contract Particulars.

Executive Negotiators

The representatives of the parties nominated in the Contract 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.

Fee

The amount set out in or determined in accordance with the Fee Schedule, as adjusted, subject to clause 12.5 (if applicable), under the Contract, which is not, unless elsewhere stated, subject to rise and fall in costs.

Fee Schedule

The Fee Schedule as specified in the Contract Particulars.

Financial Representative

Means:

- (a) in relation to the Consultant, the Consultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Consultant; and
- (b) in relation to a subconsultant, the subconsultant's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subconsultant.

GST

Means the tax payable on taxable supplies under the GST Legislation.

GST Group

A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

Means *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.

High Value Contract

Has the meaning in the Indigenous Procurement Policy.

Indigenous Enterprise

Means an organisation that is 50% or more Indigenous owned that is operating a business.

Indigenous Participation Plan

The plan (if any) either:

- (a) if option 1 of clause 13.1 applies - prepared by the Consultant in accordance with clause 13.1(b); or
- (b) if option 2 of clause 13.2 applies - set out in the Official Order.

Indigenous Procurement Policy

The Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy.

Insolvency Event

Any one of the following:

- (a) 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 Commonwealth 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 Contract for financial reasons;
- (b) execution is levied against the Consultant by a creditor;
- (c) 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;
- (d) where the Consultant is an individual person or a partnership including an individual person, the Consultant:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt; or
 - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. 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;

- (e) where the Consultant is a corporation, any one of the following:
- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (iii) the corporation entering a deed of company arrangement with creditors;
 - (iv) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (vi) 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);
 - (vii) a winding up order or deregistration order is made in respect of the corporation;
 - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
 - (ix) 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
 - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) 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
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

Intellectual Property Rights

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

Any software, hardware or telecommunications equipment:

- (a) produced; or
- (b) provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative,

under, for the purposes of, or in connection with, the Contract, the Services or the Project by, for or on behalf of the Consultant.

Material Change

Means any actual, potential or perceived material change to the circumstances of the Consultant, including any change:

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or
 - (iii) the Consultant's financial viability or capacity to perform the Services, achieve Completion and otherwise meet its obligations under the Contract; or
- (b) which affects the truth, completeness or accuracy of:
 - (i) the Consultant's tender for the Panel;
 - (ii) the Consultant's proposal in response to a request for proposal under the Panel; or
 - (iii) any other information, documents, evidence or clarifications provided by the Consultant to the Commonwealth arising out of or in any way in connection with the Contract or the Services.

Method of Work Plan for Airfield Activities

The method of work plan for airfield activities (if any) prepared in accordance with the applicable provision in clause 5.14, which 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 airfield, including as those matters are directed by the Commonwealth's Representative.

MFPE

The Manual of Fire Protection Engineering as the document is amended from time to time.

Milestone

A milestone described in the Fee Schedule.

Milestone Fee Payment Schedule

Means the Milestone Fee Payment Schedule (if any) in the Fee Schedule, otherwise as adjusted in accordance with the Contract, setting out:

- (a) the instalments in which the Fee is to be payable; and
- (b) the Milestones which must be achieved by the Consultant for each instalment to become payable (failing which the Consultant'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

Has the meaning given by the *Copyright Act 1968* (Cth).

National Construction Code

The National Construction Code that applies in the State or Territory where the Works are located, as amended 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.

Official Order

The document issued by the Commonwealth to the Consultant under the Panel Agreement in respect of an Engagement, entitled "Official Order", engaging the Consultant to perform the Services.

Other Contractor

Any contractor, supplier, subconsultant, subcontractor, consultant, artist, tradesperson or other person engaged or to be engaged to do work other than the Consultant and its subconsultants and a Project Contractor.

Pandemic

The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Relief Event

A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic provided that the adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).

Panel Agreement

The Panel Agreement for the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027 between the Commonwealth and the Consultant.

Project

The project (if any) described in the Official Order.

Project Contractor

Any person who is engaged by the Commonwealth to deliver any aspect of the Project under a Project Contract.

Project Contracts

The project contracts described in the Contract Particulars.

Project Contractor Documentation

Means:

- (a) all material brought or required to be brought into existence by a Project Contractor as part of, or for the purpose of, carrying out any part of the Project Contract including documents, notices, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards; and
- (b) without limiting paragraph (a), includes:
 - (i) Design Documentation (or similar term used in the relevant Project Contract);
 - (ii) programs and cost plans issued under a Project Contract;
 - (iii) if required by the Project Contract, subcontract documentation;
 - (iv) all notices purporting to be issued under a Project Contract, including those seeking additional time or money;
 - (v) all "variations" under a Project Contract;
 - (vi) payment claims purporting to be issued under a Project Contract; and
 - (vii) all other Claims (as defined in each Project Contract).

Project Documents

Includes:

- (a) Consultant Material;

- (b) Commonwealth Material;
- (c) Approvals;
- (d) the documents which the Consultant is obliged to maintain under clause 9.15 or clause 9A.10 (as the case may be); and
- (e) without limiting paragraphs (a) - (d), any other material produced or provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative under, for the purposes of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant (including by subconsultants), including any material relating to the Consultant's compliance with the WHS Legislation.

Project DCAP

The "Project Detailed Consultant's Activities Proposal" as specified in the Contract Particulars, as amended from time to time in accordance with clause 5.8.

Project Plans

The plans (if any) referred to in the Contract Particulars (which may include the Environmental Management Plan, the Method of Work Plan for Airfield Activities, the Site Management Plan and/or the Work Health and Safety Plan) and prepared and finalised by the Consultant under clause 5.14, as amended (if at all) with the written consent of the Commonwealth's Representative.

Recipient

Any person provided with Confidential Information and if clause 15 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subconsultants, subcontractors, suppliers and material suppliers.

Remote Area

Means an area identified on the map located at www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data, as updated from time to time.

Request for Information

Any request made by a Project Contractor to the Consultant (whether under a Project Contract or otherwise) requesting further information, instruction, guidance, advice or opinion (including in respect of the resolution of ambiguities, discrepancies or inconsistencies in the Consultant Material) or otherwise.

Schedule of Rates

The document attached in Appendix 2 to the Panel Agreement.

Security of Payment Legislation

Means:

- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) *Construction Contracts Act 2004* (WA);
- (e) *Construction Contracts (Security of Payments) Act 2004* (NT);
- (f) *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (g) *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (h) *Building and Construction Industry Security of Payment Act 2009* (SA); and

- (i) any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

Sensitive and Classified Information

Any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Consultant by the Commonwealth, the Commonwealth's Representative or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:

- (a) marked as "sensitive information" or "for official use only";
- (b) identified at the time of issue or communication as "Sensitive Information";
- (c) marked with a national security classification or as "Classified Information";
- (d) identified at the time of issue or communication as "Classified Information";
- (e) the Consultant knows or ought to know is subject to, or ought to be treated as Sensitive and Classified Information in accordance with, the provisions of all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework); and
- (f) includes everything recording, containing, setting out or making reference to such document, drawing, information or communication (whether in written, oral or electronic form), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

A single breach or a series of breaches of clause 15, any Separation Arrangements, any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

An identified fact, circumstance, occurrence or event indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Separation Arrangement

Any arrangement that the Consultant:

- (a) has in place; or
- (b) will put in place,

for the purpose of complying with clause 14 and, if clause 15 applies, clause 15.

Services

Means:

- (a) the services outlined in, or reasonably to be inferred from, the Brief; and
- (b) all other services, of a type generally consistent with the services referred to in paragraph (a), which may be required by the Commonwealth in connection with the relevant Engagement.

Significant Event

Means:

- (a) a Material Change;
- (b) a Defence Strategic Interest Issue;
- (c) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Consultant or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (d) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Consultant or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

Significant Event Remediation Plan

The plan (if any) prepared by the Consultant and finalised under clause 17.4.

Site

The site (if any) described in the Contract Particulars.

Site Management Plan

The site management plan (if any) prepared by the Consultant and finalised under clause 5.14, which must set out in adequate detail all procedures the Consultant will implement to manage the carrying out of the Services on and near the Site, including:

- (a) the matters set out in the Contract Particulars;
- (b) if the Services are to be carried out on a Site that may contain Contamination or Unexploded Ordnance, the approach to the management of work health and safety hazards and risks;
- (c) if the Services are to be carried out on or in the vicinity of an airfield, a Method of Work Plan for Airfield Activities; and
- (d) any other matters required by the Commonwealth's Representative.

Smart Infrastructure Handbook

The Defence Smart Infrastructure Handbook: Planning, Design and Construction (or any replacement document) available on the Defence Website (or any alternative location notified by the Commonwealth's Representative) as amended from time to time.

Statement of Tax Record or STR

Has the meaning given in the Black Economy Procurement Connected Policy.

Statutory Requirements

Includes any:

- (a) law of the Commonwealth or of a State or Territory or a local body, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any conditions or requirement under them);
- (c) Commonwealth Requirements; and
- (d) Environmental Requirements,

applicable to the Site or the Services.

Subconsultant Deed of Covenant

The subconsultant deed of covenant in a form determined by the Commonwealth.

Unexploded Ordnance

Any sort of military ammunition or explosive on or under the Site which has failed to explode including sea mines or shells used by the Navy, mortar bombs, mines, artillery shells or hand grenades used by the Army, bombs, rockets or missiles used by the Air Force, and other types of ammunition and explosives including training munitions.

Variation

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

WHS Legislation

Means:

- (a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (b) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

Work Health and Safety Plan

The work health and safety plan (if any) prepared by the Consultant and finalised under clause 5.14, which must as a minimum include:

- (a) the names, positions and responsibilities of all persons (including those at any workplace where the Services are carried out) whose positions or roles involve specific health and safety responsibilities in connection with the delivery of the Services and the Works;
- (b) the arrangements in place, or to be implemented between any persons conducting a business or undertaking at any workplace where the Services and the Works are carried out (including Other Contractors) regarding consulting, cooperating and coordinating activities where the persons conducting a business of undertaking at the relevant workplace where the Services and the Works are carried out and the Consultant owes a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Services and the Works are carried out, including:
 - (i) incident (including notifiable incident) reporting procedures;
 - (ii) preventative and corrective action procedures; and
 - (iii) record-keeping and reporting requirements, including reporting to the Commonwealth's Representative with respect to incidents and accidents in accordance with clause 5.9(c);
- (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at any workplace where the Services and the Works are performed are informed of these rules;
- (e) to the extent that design forms part of the Services and the Works (whether as a designer or where the Consultant must review a design produced by an Other Contractor or Project Contractor), procedures for:
 - (i) conducting design risk assessments regarding design and addressing design changes relevant to work health and safety considerations;
 - (ii) carrying out (or ensuring the carrying out of) calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
 - (iii) ensuring the results of such calculations, analysis, testing or examinations are provided to the Commonwealth promptly upon completion of the relevant Services and the Works;
- (f) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Consultant's work health and safety policies;

- (ii) details of any work health and safety management system (whether certified or uncertified), including procedures for managing work health and safety disputes;
 - (iii) 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
 - (iv) emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
- (g) procedures for ensuring the provision of written assurances to the Commonwealth's Representative in accordance with clause 5.9(e) regarding compliance with the WHS Legislation by the Consultant, subconsultants and Other Contractors;
- (h) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan in accordance with clause 5.14 (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);
- (i) procedures for the management of subconsultants, including, as relevant:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in subparagraph (f)(iii));
 - (ii) the subconsultant's development and provision of job safety assessments or equivalent documentation;
 - (iii) ensuring subconsultants comply with their obligation to consult, cooperate and coordinate activities (including the information-sharing and communication of information); and
 - (iv) ensuring subconsultant compliance with the Work Health and Safety Plan;
- (j) the approach to the management of project and Services and Works hazards and risks including how the Consultant will identify hazards and eliminate or minimise risks arising from those hazards so far as is reasonably practicable:
 - (i) prior to commencing the Services and the Works; and
 - (ii) during the delivery of the Services and Works;
- (k) 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 and the Works;
- (l) the procedures the Consultant will adopt to audit or otherwise monitor and verify its (and its subconsultants) 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);
- (m) the procedures the Consultant will adopt to ensure it provides to the Commonwealth, all information regarding hazards and risks present in or arising from the use of the Works for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 5.9(n));
- (n) the approach the Consultant will adopt in identifying, controlling and managing work health and safety hazards and risks concerning (as applicable):
 - (i) hazardous chemicals (as defined in the WHS Legislation), including, where hazardous chemicals are used or handled in the delivery of the Services and the Works, incorporated into the Works, stored by the Consultant at the workplace or transported by the Consultant to or from the workplace (including whilst transported on, into or from Commonwealth premises);
 - (ii) the presence of Unexploded Ordnance or Contamination on any Site where the Services and Works are to be carried out; and

- (iii) fall hazards, telecommunications towers, demolition, disturbance or removal of asbestos, structural alterations requiring temporary supports, confined spaces, excavation deeper than 1.5 metres, tunnels, use of explosives, pressurised gas distribution mains and consumer piping; chemical, fuel or refrigerant lines, electrical work, including involving energised electrical installations and services, hazardous atmospheres, tilt-up and precast concrete, roadways or railways used by road or rail traffic, movement of powered mobile plant, artificial extremes of temperature; water or other liquids where there is a risk of drowning, diving, remote or isolated work, above-standard exposure to noise exposure to falling objects and abrasive blasting; and
- (o) any other specific matters required by:
 - (i) the Contract; or
 - (ii) the Commonwealth's Representative.

Works

The works (if any) described in the Brief.

1.2 Interpretation

In this Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of this Contract;
- (d) references to any party to this Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to this Contract;
- (f) references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
 - (i) a direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 9.5 or 9A.4),

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place where the Project is to be situated will not be counted in computing the number of days;
- (l) for the purposes of clauses 2.19, 9.4 and 9.5, to the extent that the Services are to be carried out:

- (i) in any jurisdiction other than the State of Victoria, the State of South Australia, the State of Tasmania, the Northern Territory, the Australian Capital Territory or the State of Queensland, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - B. a public holiday in the State or Territory in which the Site is situated;
- (ii) in the State of Victoria, references to "business days" are to days other than:
 - A. a Saturday or Sunday; or
 - B. a day that is partly or wholly observed as a public holiday throughout Victoria;
- (iii) in the Northern Territory, references to "business days" are to days other than:
 - A. a Saturday or Sunday; or
 - B. a public holiday in the Northern Territory;
- (iv) in the State of South Australia, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December;
 - B. a public holiday in the State of South Australia; or
 - C. any other day on which there is a Statewide shutdown of the operations of the building and construction industry;
- (v) in the State of Tasmania, references to "business days" are to days other than:
 - A. a Saturday or Sunday;
 - B. a statutory holiday as defined in the *Statutory Holidays Act 2000* (Tas);
- (vi) in the Australian Capital Territory, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - B. a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT); or
- (vii) in the State of Queensland, references to "business days" are to days other than:
 - A. a Saturday or Sunday;
 - B. the 22nd, 23rd, 24th, 27th, 28th, 29th, 30th, 31st day of December or the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th or 10th day of January; or
 - C. a public holiday, special holiday or bank holiday in Queensland under the *Holidays Act 1983* (QLD);
- (m) other than as set out in paragraphs (k) and (l) references to "day" are references to calendar days;
- (n) the words "including" and "includes" and any variants of those words, will be read as if followed by the words "without limitation";
- (o) where a clause contains two options, the option specified in the Contract Particulars will apply;
- (p) the word "subconsultant" will include subconsultants, subcontractors and suppliers and the word "subcontract" will include a contract with a subconsultant;
- (q) 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;
- (r) unless agreed or notified in writing by the Commonwealth's Representative, 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 preparation of the Consultant Material. If requested by the Commonwealth'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 Consultant Material available to the Commonwealth's Representative; and

- (s) unless the context otherwise requires, capitalised terms in the Brief have the meaning given to them by the Panel Agreement, Official Order, or the meaning given to them by the Commonwealth as published on the Defence Website as amended from time to time.

1.3 Miscellaneous

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in the Contract Particulars.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) 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
 - (ii) otherwise, both parties agree in writing.
- (c) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in this Contract 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 Contract.
- (f) The Consultant must indemnify the Commonwealth against:
 - (i) any liability to or claim by a third party, Project Contractor or an Other Contractor; and
 - (ii) all costs, losses and damages suffered or incurred by the Commonwealth,to the extent arising out of or in connection with any breach by the Consultant of a term of this Contract.
- (g) All obligations to indemnify under this Contract survive termination of the Contract.
- (h) Unless expressly stated to the contrary in this Contract, the Consultant must perform the Services at its cost.
- (i) Without limiting the Consultant's obligations or liabilities under this Contract, any obligation of the Consultant under this Contract is deemed to include an obligation on the Consultant to ensure that its subconsultants comply with a corresponding obligation.
- (j) Where under this Contract the Commonwealth (or the Commonwealth's Representative) has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Commonwealth (or other person on its behalf) will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

2. ROLE OF THE CONSULTANT

2.1 Engagement

- (a) The Consultant must carry out the Services in accordance with:
 - (i) this Contract; and
 - (ii) the Project Contracts.
- (b) For the avoidance of doubt, the expiry of the Term under the Panel Agreement will not limit or affect the Consultant's obligations under this Contract, and they will continue in full force and effect until they have been discharged or the earlier termination of this Contract.

2.2 Standard of Care

The Consultant must:

- (a) 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;
- (b) warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of the service being provided by the subconsultant;
- (c) ensure that the Consultant Material complies with the requirements of the Contract;
- (d) use its best endeavours to ensure that the Consultant Material will be fit for its intended purpose;
- (e) ensure that the Services are provided economically and in accordance with any budgetary requirements of the Commonwealth notified to the Consultant;
- (f) exercise the utmost good faith in the best interests of the Commonwealth and keep the Commonwealth fully and regularly informed as to all matters affecting or relating to the scope or cost of the Services and the Project or otherwise; and
- (g) ensure that any person involved in the performance of the Services, who is required to be licensed or registered with an industry or governmental body, is so licensed or registered.

2.3 Authority to Act

Other than as expressly authorised, the Consultant has no authority to and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Commonwealth; or
- (b) take any act or step to bind or commit the Commonwealth in any manner, whether as a disclosed agent of the Commonwealth or otherwise.

The Consultant is an independent consultant and is not and must not purport to be a partner or joint venturer of the Commonwealth.

2.4 Knowledge of the Commonwealth's Requirements

The Consultant must:

- (a) inform itself of the Commonwealth's requirements for the Services and the Project;
- (b) (without limitation) refer to the Commonwealth Material and the Commonwealth's Program; and
- (c) consult the Commonwealth throughout the carrying out of the Services.

2.5 Notice of Matters Impacting on the Services or the Project

Without limiting clauses 12.1 to 12.5 (if applicable), if the Consultant becomes aware of any matter which:

- (a) is likely to change or which has changed the scope, timing or cost of the Services or the Project;

- (b) affects or may affect the Commonwealth's Program or the Consultant's approved program under clause 7.2; or
- (c) involves any error, omission or defect in any continuing or completed aspect of the Project or the Services,

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

- (d) particulars of the change, error, omission or defect;
- (e) its likely impact; and
- (f) the Consultant's recommendation as to how to minimise its impact upon the scope, timing and cost of the Services and the Project.

2.6 Co-ordination

The Consultant must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with the Project Contractors and Other Contractors;
- (c) carefully co-ordinate and integrate the Services with the activities of the Project Contractors and Other Contractors;
- (d) carry out the Services so as to avoid interfering with, disrupting or delaying, the activities of the Project Contractors and Other Contractors; and
- (e) without limitation, provide whatever advice, support and co-operation is reasonable to facilitate the due carrying out of the activities of each Other Contractor and for the purposes of clause 5.9.

2.7 Access to Consultant's Premises

The Consultant must at all reasonable times:

- (a) give to the Commonwealth's Representative, or to any persons authorised in writing by the Commonwealth's Representative, access to premises occupied by the Consultant where Services are being carried out; and
- (b) permit those persons referred to in paragraph (a) to inspect the carrying out of the Services and any Project Documents.

2.8 Conflict of Interest

The Consultant warrants that:

- (a) at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract;
- (b) it will ensure that no conflict of interest arises or is likely to arise in the performance of its obligations under this Contract;
- (c) it will ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subconsultants; and
- (d) if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
 - (i) notify the Commonwealth's Representative immediately in writing of that conflict or risk;
 - (ii) include in the notice provided to the Commonwealth's Representative under subparagraph (i) details of the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and

- (iii) take all steps required by the Commonwealth's Representative to avoid or minimise the conflict of interest or risk of conflict of interest.

2.9 Subcontracting

(a) The Consultant:

- (i) must not, without the prior written approval of the Commonwealth's Representative, which will not be unreasonably withheld, subcontract any Services, except to a subconsultant named in the Contract Particulars;
- (ii) will:
 - A. not be relieved of any of its liabilities or obligations under the Contract, including those under clauses 2.1 and 2.2; and
 - B. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
- (iii) will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with, the Services;
- (iv) must ensure that each subcontract contains provisions:
 - A. which bind the subconsultants to participate in any novation required by the Commonwealth under clause 10.5(a);
 - B. as required under the Contract; and
 - C. equivalent to the obligations under clause 5.9; and
- (v) must, if requested by the Commonwealth's Representative:
 - A. execute;
 - B. procure the relevant subconsultant to execute; and
 - C. deliver to the Commonwealth's Representative,
a Subconsultant Deed of Covenant duly completed with all relevant particulars:
 - D. as a condition precedent to seeking the prior written approval of the Commonwealth's Representative under paragraph (a); or
 - E. where such approval is not required, within the time required by the Commonwealth's Representative and in any event before commencement of any work by the relevant subconsultant.

- (b) No Subconsultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Commonwealth against the Consultant whether under the Contract or otherwise.

2.10 Statutory Requirements

The Consultant must:

- (a) unless otherwise specified in the Contract Particulars, comply with all Statutory Requirements;
- (b) without limiting paragraph (a):
 - (i) assist the Commonwealth in applying for and obtaining all Approvals referred to in the Contract Particulars; and

- (ii) promptly give the Commonwealth's Representative copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Project issues to the Consultant; and
- (c) regularly and diligently monitor and report to the Commonwealth on whether the Project Contractors comply with all Statutory Requirements applicable to the Project.

2.11 Change in Statutory Requirements or Variance with Contract

If:

- (a) there is any change in a Statutory Requirement after the Award Date; or
- (b) a Statutory Requirement is at variance with the Contract,

then:

- (c) the party discovering this must promptly notify the other;
- (d) the Commonwealth's Representative will instruct the Consultant as to the course it is to adopt insofar as the Services are affected by the change or variance (as the case may be);
- (e) the Fee will be:
 - (i) increased by any extra costs reasonably incurred by the Consultant; or
 - (ii) decreased by any saving made by the Consultant,

in carrying out the Services after the giving of the notice under paragraph (c) and arising directly from the change or variance (as the case may be) or the Commonwealth's Representative's instruction, in either case as determined by the Commonwealth's Representative; and
- (f) if the Fee is adjusted under paragraph (e) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Commonwealth's Representative.

2.12 No authority to give directions or waive requirements

The Consultant has no authority to:

- (a) give directions to the Project Contractors, other than as expressly set out in this Contract or the Project Contracts;
- (b) waive or vary any requirements of a Project Contract; or
- (c) discharge or release a party from any of its obligations under a Project Contract.

2.13 Interpretation of the Brief

- (a) 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.
- (b) The Brief sets out the Commonwealth's minimum requirements, which must be met or exceeded by the Consultant in performing the Services. Nothing contained in the Brief will operate to limit or exclude the Consultant's obligations under the Contract.
- (c) To the extent of any ambiguity, discrepancy or inconsistency between the Brief and any other requirement of the Contract (including any other requirement of the Brief), subject to clause 5.10, whichever requirement provides the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail.

2.14 Co-ordination with other Projects/Programs

Clause 2.14 does not apply unless the Contract Particulars states it applies.

The Consultant:

- (a) acknowledges that the Project is part of the project or program set out in the Contract Particulars;
- (b) must perform the Services in a manner which ensures that the way in which the Project is delivered maximizes the Commonwealth's objectives for the delivery of the Project and the project or program set out in the Contract Particulars, including the delivery of the maximum scope of work within budget and on time; and
- (c) without limiting paragraph (b), must attend such meetings, provide such documents and information, consider and respond to such proposals and do all such other things as the Commonwealth's Representative may require for the purposes of paragraph (b).

2.15 Environment

Clause 2.15 does not apply unless the Contract Particulars states it applies.

Without limiting the Consultant's other obligations under the Contract, the Consultant must:

- (a) ensure that, in preparing the Consultant Material and in carrying out the Services:
 - (i) it complies with the Environmental Management Plan (if any);
 - (ii) other than to the extent identified in writing by the Commonwealth's Representative, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (iii) it does not cause any Environmental Incident;
 - (iv) without limiting subparagraph (iii), it does not cause or contribute to any Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site; and
 - (v) it immediately notifies the Commonwealth's Representative of any non-compliance with the requirements of this clause 2.15, a breach of any 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 (as the case may be); and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in any way in connection with the Services, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment. To the extent that the requirement to clean up and restore the Environment arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with the requirements of the Contract, the Consultant will be entitled to the direct, reasonable and substantiated costs it incurs in cleaning up and restoring the Environment under this clause as determined by the Commonwealth's Representative.

2.16 Services Not Included

The services set out in the Contract Particulars to be carried out in relation to the Project are not included in the Services and will be carried out by the Commonwealth or by other persons (including Other Contractors).

2.17 Site Restrictions

The Site based Services must be performed subject to the restrictions in the Contract Particulars.

2.18 Employers' Liability Insurance

Without limiting clause 4.2 of the Panel Conditions or the Consultant's obligations under the Contract, if the Services are performed or the Consultant's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside of Australia, the Consultant must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of Employers' Liability Insurance, which must be:
 - (i) for the amounts specified in the Contract Particulars;
 - (ii) 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
 - (iii) on terms which are satisfactory to the Commonwealth's Representative (confirmation of which must not be unreasonably withheld or delayed);
- (b) ensure that:
 - (i) to the extent permitted by law, the insurance extends to provide indemnity to the Commonwealth in respect of any statutory and common law liability to the Consultant's employees; and
 - (ii) each of its subconsultants which is legally required to do so, has Employers' Liability Insurance covering the subconsultants in respect of its statutory and common law liability to its employees, in the same manner as the Consultant is required to do so under subparagraph (i);
- (c) immediately notify the Commonwealth's Representative in writing if the insurance required under clause 2.18 ceases to be available for the amounts of cover and in terms specified in the Contract Particulars on commercially reasonable terms;
- (d) if it gives notice under paragraph (c), take all such reasonably available steps (including those required by the Commonwealth's Representative) to effect and maintain alternative arrangements which will mitigate any risk to the Commonwealth arising out of the matters raised in the notice; and
- (e) where requested from time to time:
 - (i) provide the Commonwealth with copies of certificates of currency of; and
 - (ii) allow the Commonwealth's Representative to inspect,
 the insurance policies the Consultant is required to maintain under clause 2.18.

2.19 Black Economy Procurement Connected Policy

- (a) Without limiting clause 2.9, the Consultant must not enter into a subcontract with a subconsultant (or agree to a novation of a subcontract to a subconsultant) if the total value of the services under the subcontract is expected to exceed \$4 million (inclusive of GST) unless the Consultant has obtained and holds any of the STRs set out in the table below, as applicable to the relevant subconsultant.

If the subconsultant to enter into the subcontract is:	STRs required:
a. a body corporate or natural person;	a satisfactory and valid STR in respect of that body corporate or person.
b. a partner acting for or on behalf of a partnership;	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the subcontract.
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: (i) trustee; and

	(ii) the trust.
d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) a relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group.
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) GST Group member; and (ii) GST Group representative.

- (b) 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 or subconsultant is:	Additional STRs required:
a. 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).
b. 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.
c. a joint venture participant;	a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture.
d. a member of a Consolidated Group;	a satisfactory and valid STR in respect of any new head company of the Consolidated Group.
e. a member of a GST Group;	a satisfactory and valid STR in respect of any representative for the GST Group.

- (c) The Consultant must provide the Commonwealth with copies of the STRs referred to in paragraph (a) or (b) within 5 business days after a written request by the Commonwealth.
- (d) For the purposes of the Contract, an STR is taken to be:

- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Black Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
- (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

2.20 Pandemic Relief Event

- (a) If the Consultant considers that there has been a Pandemic Relief Event, it must promptly give the Commonwealth's Representative notice in writing, together with detailed particulars of the following:
 - (i) the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic and full details of the adverse effect;
 - (ii) the likely duration of the Pandemic Relief Event;
 - (iii) the Consultant's plan to deal with the consequences of the Pandemic Relief Event which must as a minimum include details of the steps that the Consultant will take to:
 - A. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Relief Event; and
 - B. minimise any additional cost to the Commonwealth in respect of the Pandemic Relief Event,

(Consultant's Pandemic Relief Plan); and
 - (iv) such other details or information as the Commonwealth's Representative may require.
- (b) The Commonwealth's Representative must, within 14 days of receipt of the Consultant's notice under paragraph (a) notify the Consultant and the Commonwealth of its determination whether a Pandemic Relief Event has occurred.
- (c) Where the Commonwealth's Representative has determined a Pandemic Relief Event has occurred, the Commonwealth'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 Relief Event.
- (d) If a Pandemic Relief Event occurs:
 - (i) subject to paragraph (f), the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant:
 - A. after the giving of the notice under paragraph (a) which arise directly from the Pandemic Relief Event and any instruction of the Commonwealth's Representative under paragraph (c); and
 - B. to the extent such costs were exclusively incurred for the purposes of performing the Services,

as determined by the Commonwealth's Representative; and
 - (ii) the Consultant must:
 - A. comply with any direction of the Commonwealth's Representative in relation to the Pandemic Relief Event; and
 - B. subject to any amendments required by the Commonwealth's Representative, implement the Consultant's Pandemic Relief Plan.
- (e) To the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Pandemic Relief Event, any instruction

of the Commonwealth's Representative under paragraph (c) or any amendment required by the Commonwealth's Representative under subparagraph (d)(ii)B, other than under subparagraph (d)(i).

(f) The Commonwealth's Representative:

- (i) will reduce any entitlement the Consultant would have otherwise had under subparagraph (d)(i) to the extent that the Consultant has failed to take all reasonable steps to minimise any additional cost to the Commonwealth in respect of the Pandemic Relief Event; and
- (ii) may, for the purposes of assessing the Consultant's entitlement under subparagraph (d)(i), take into account any breakdown of the Fee submitted by the Consultant in its proposal for the Services.

(g) If the Fee is adjusted under subparagraph (d)(i) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:

- (i) to be agreed between the parties; or
- (ii) failing agreement, determined by the Commonwealth's Representative.

3. ROLE OF THE COMMONWEALTH

3.1 Information and Services

The Commonwealth must as soon as practicable make available to the Consultant all relevant information, documents and particulars relating to the Project and to the Commonwealth's requirements for the Project, including the Commonwealth's Program.

3.2 Requests for Additional Information by the Consultant

If:

- (a) 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
- (b) the additional information, documents or particulars are not provided by the Commonwealth under this Contract or by an Other Contractor,

then:

- (c) the Consultant must give notice in writing to the Commonwealth's Representative of the details of the additional information, documents or particulars and the reasons why they are required; and
- (d) the Commonwealth must, if the Commonwealth'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.

3.3 Access

- (a) Subject to:
 - (i) the Project Contracts;
 - (ii) any other agreement or arrangement with any party other than the Consultant; and
 - (iii) if required by the Contract Particulars, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 5.14,the Commonwealth must:
 - (iv) as soon as practicable provide the Consultant with access to the Site; and
 - (v) arrange access to any other property which may be necessary for the Consultant to carry out the Services.
- (b) The Consultant must, in exercising its rights of access, comply with all requirements notified by the Commonwealth.

3.4 Request for Commonwealth decision by the Consultant

If:

- (a) the Consultant requests the Commonwealth to consider the selection of alternative courses of action; and
- (b) all information required to enable a decision to be made is provided by the Consultant or is otherwise available,

the Commonwealth must, in such reasonable time as not to delay or disrupt the carrying out of the Services, give a decision on the required course of action.

3.5 Commercial-in-Confidence Information

- (a) Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Consultant's information expressly specified in the Contract Particulars or

otherwise described in the Official Order and received from the Consultant (**Commercial-in-Confidence Information**).

- (b) The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
- (i) disclosed by the Commonwealth 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 Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth'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 (a).
- (c) The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Consultant as confidential in nature for the justification given and period asserted by the Consultant and agreed by the Commonwealth as set out in the Contract Particulars or otherwise described in the Official Order.
- (d) The Consultant:
- (i) must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
 - (ii) acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

4. PERSONNEL

4.1 Commonwealth's Representative

- (a) The Commonwealth's Representative will give directions and carry out all of the other functions of the Commonwealth's Representative under the Contract as the agent of the Commonwealth (and not as an independent certifier, assessor or valuer).
- (b) The Consultant must comply with any direction by the Commonwealth's Representative given or purported to be given under a provision of this Contract.
- (c) Except where the Contract otherwise provides, the Commonwealth's Representative may give a direction orally but will as soon as practicable confirm it in writing.

4.2 Replacement of Commonwealth's Representative

- (a) The Commonwealth may at any time replace the Commonwealth's Representative, in which event the Commonwealth will appoint another person as the Commonwealth's Representative and notify the Consultant of that appointment.
- (b) Any substitute Commonwealth's Representative appointed under this clause 4.2 will be bound by anything done by the former Commonwealth's Representative to the same extent as the former Commonwealth's Representative would have been bound.

4.3 Parties' Conduct

Without limiting any of the rights or obligations of the Commonwealth and Consultant under the Contract, the Commonwealth and Consultant must co-operate with each other in carrying out their obligations under the Contract.

4.4 Assistant Commonwealth's Representative

- (a) The Commonwealth's Representative may:
 - (i) by written notice to the Consultant appoint persons to exercise any of the Commonwealth's Representative's functions under the Contract;
 - (ii) not appoint more than one person to exercise a specific function under the Contract; and
 - (iii) revoke any appointment under paragraph (a) by notice in writing to the Consultant.
- (b) As at the Award Date, the Commonwealth's Representative is deemed to have appointed the persons set out in the Contract Particulars.
- (c) All references in the Contract to Commonwealth's Representative include a reference to a representative appointed under this clause 4.4.

4.5 Contract Key People

The Consultant must:

- (a) employ those people specified in the Project DCAP, including the Consultant's Representative, in the jobs specified in the Project DCAP;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Commonwealth's Representative's prior written approval;
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Commonwealth's Representative of at least equivalent experience, ability and expertise;
- (d) put in place sufficient succession planning and training, to the satisfaction of the Commonwealth, to ensure that the Consultant is able to replace key people under paragraph (c) without any disruption to the Services or the Project; and

- (e) pending any approval of the Commonwealth's Representative under paragraph (c), take all possible steps to ensure the timely and compliant performance of the Services in accordance with the Contract.

4.6 Removal of Persons

- (a) The Commonwealth's Representative may by notice in writing instruct the Consultant to remove any person from the performance of the Services who in the reasonable opinion of the Commonwealth's Representative is guilty of misconduct or is incompetent or negligent.
- (b) The Consultant must ensure that the person referred to in paragraph (a) is not again employed in the Services.

5. DOCUMENTATION

5.1 Commonwealth's Documents

The Commonwealth must provide to the Consultant the Commonwealth Material.

5.2 Consultant's Documents

- (a) The Consultant must, within the time set out in the approved program under clause 7.2, submit to the Commonwealth's Representative for approval the Consultant Material.
- (b) The Commonwealth's Representative may review any Consultant Material, or any resubmitted Consultant Material, prepared and submitted by the Consultant and reject any Consultant Material.
- (c) If any Consultant Material is rejected, the Consultant must re-submit amended Consultant Material to the Commonwealth's Representative within the time frame specified by the Commonwealth's Representative.
- (d) The Consultant must keep the Consultant Material free from any corporate brand, trademark, logo, trade name, stamp, symbol or similar identifying material other than that of the Commonwealth or the Department of Defence.

5.3 No obligation to review

- (a) The Commonwealth's Representative does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Consultant Material submitted by the Consultant for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Consultant Material prepared by the Consultant or any other direction by the Commonwealth's Representative about, or any other act or omission by the Commonwealth's Representative or otherwise by or on behalf of the Commonwealth in relation to, the Consultant Material will:
 - (i) relieve the Consultant from, or alter or affect, the Consultant's liabilities or responsibilities whether under the Contract or otherwise according to law; or
 - (ii) prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise according to law.

5.4 Licence over Consultant Material

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

This licence:

- (a) arises, for any Consultant Material, immediately the Consultant Material is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative,under, for the purposes of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant;
- (b) includes an unlimited right to sublicense;
- (c) without limitation, extends to:
 - (i) any subsequent operation, maintenance or servicing of, or additions, alterations or repairs to the Project; and

- (ii) use in any way for any other Commonwealth project; and
- (d) survives the termination of this Contract on any basis.

5.5 Intellectual Property Warranties

The Consultant warrants that:

- (a) the Consultant owns all Intellectual Property Rights in the Consultant Material or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by this Contract;
- (b) use by the Commonwealth or any sublicensee or subsublicensee of the Consultant Material in accordance with this Contract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
- (c) neither the Commonwealth nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Consultant Material, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
- (d) the use by the Commonwealth or by any sublicense or subsublicensee of the Consultant Material in accordance with this Contract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).

5.6 Intellectual Property Rights

The Consultant must:

- (a) ensure that the Services do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
- (b) indemnify the Commonwealth against any claims against, or costs, losses or damages suffered or incurred by, the Commonwealth arising out of, or in any way in connection with, any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right.

5.7 Commonwealth Material

- (a) The Commonwealth Material will remain the property of the Commonwealth.
- (b) The Commonwealth must inform the Consultant of any Commonwealth 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.
- (c) Without limiting clause 14, and if clause 15 applies, clause 15 the Consultant will be responsible for the protection, maintenance and return of the Commonwealth Material in its possession.

5.8 Project DCAP

The Consultant:

- (a) warrants that the Project DCAP complies with the requirements of this Contract;
- (b) acknowledges that the Project DCAP:
 - (i) does not limit the Consultant's obligations under this Contract; and
 - (ii) may require updating and refining throughout the execution of the Services:
 - A. to the extent that it does not reflect the tasks or other things to be done or provided to perform the Services in accordance with the Contract; and
 - B. without limiting subsubparagraph A, on account of Variations;
- (c) must update and refine the Project DCAP as required by paragraph (b)(ii) with the written approval of the Commonwealth's Representative;

- (d) will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any work which the Consultant is required to carry out arising out of or in connection with paragraph (b); and
- (e) acknowledges that the Commonwealth has not made and does not make any representation or give any warranty with respect to the matter referred to in paragraph (a).

5.9 Work Health and Safety

The Consultant must:

- (a) ensure that in carrying out the Services and the Works:
 - (i) it complies with all Statutory Requirements and other requirements of the Contract in respect of work health and safety;
 - (ii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iii) it complies with its 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
 - (iv) it complies with its 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:
 - A. assist an injured person or remove a deceased person;
 - B. make the area safe or to minimise the risk of a further notifiable incident; or
 - C. the relevant regulator/inspector has given permission to disturb the site;
- (b) carry out the Services and the Works to ensure the health and safety of persons is not put at risk;
- (c) without limiting the Consultant's obligations under this Contract or otherwise at law or in equity, notify the Commonwealth's Representative:
 - (i) in respect of notifiable incidents within the meaning of the WHS Legislation, immediately;
 - (ii) in respect of 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
 - (iii) in respect of all other work health and safety matters arising out of or in any way in connection with the Services, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), within 30 days of such incident occurring;
- (d) for the purposes of paragraphs (a)(iii) and (c), in respect of any notifiable incident:
 - (i) immediately provide the Commonwealth's Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
 - (ii) promptly provide the Commonwealth's Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;
 - (iii) promptly provide the Commonwealth's Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
 - (iv) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Commonwealth's Representative with a summary of the related

investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident;

- (e) institute systems to:
 - (i) obtain regular written assurances from each subconsultant about their ongoing compliance with the WHS Legislation; and
 - (ii) provide, in a format specified by the Commonwealth's Representative, the written assurances regarding the Consultant's ongoing compliance with the WHS Legislation:
 - A. on a quarterly basis; and
 - B. as otherwise directed by the Commonwealth's Representative;
- (f) provide the written assurances obtained under paragraph (e), to the Commonwealth's Representative in accordance with paragraph (e);
- (g) without limiting the Consultant's obligations under this Contract or otherwise at law or in equity within 10 days of receipt provide to the Commonwealth's Representative copies of:
 - (i) all 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 or subconsultant (as the case may be) relating to work health and safety matters;
 - (ii) all formal notices issued by a health and safety representative of the Consultant or subconsultant (as the case may be), under or in compliance with the applicable WHS Legislation; and
 - (iii) all formal notices, written communications and written undertakings given by the Consultant or subconsultant (as the case may be) to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,arising out of or in any way in connection with the carrying out of the Services and the Works by the Consultant;
- (h) exercise a duty of the utmost good faith to the Commonwealth in carrying out the Services to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;
- (i) ensure all subcontracts include provisions equivalent to the obligations of the Consultant in this clause 5.9;
- (j) ensure that, if any Statutory Requirement requires that:
 - (i) a person:
 - A. 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
 - B. 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
 - (ii) 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;
- (k) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (j) are met;
- (l) without limiting the Consultant's obligations under this Contract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Commonwealth's Representative or anyone else acting on behalf of the Commonwealth, provide all

information or copies of documentation held by the Consultant or a subconsultant to the Commonwealth's Representative or anyone else acting on behalf of the Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation;

- (m) if requested by the Commonwealth's Representative or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Commonwealth's Representative before the Consultant or any subconsultant commences such work; and
- (n) where the Consultant is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, promptly provide to the Commonwealth's Representative information concerning:
 - (i) the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
 - (ii) the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in paragraph (i) (and the risks to the health and safety of persons); and
 - (iii) 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.

5.10 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Project Documents:

- (a) the following order of precedence will apply:
 - (i) Official Order;
 - (ii) Contract Particulars;
 - (iii) Fee Schedule;
 - (iv) Terms of Engagement;
 - (v) Brief;
 - (vi) Panel Agreement;
 - (vii) Project DCAP; and
 - (viii) other document forming part of the Contract (if any) specified in the Contract Particulars;
- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any Project Documents, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, paragraph (a) will prevail;
- (c) if it is discovered by the Consultant or the Commonwealth's Representative, then the party discovering it must promptly give notice to the other party; and
- (d) the Commonwealth's Representative must instruct the Consultant as to the course it must adopt within 14 days of the notice under paragraph (c).

5.11 Preparation of Consultant Material

In addition to the requirements of clause 5.8(a), the Consultant warrants that preparation of the Consultant Material in accordance with the Project DCAP will ensure that the Consultant Material complies with the requirements of the Contract and that the Consultant otherwise discharges its obligations under the Contract.

5.12 Proactive Review Of All Project Contractor Documentation

The Consultant must:

- (a) promptly and fully review all Project Contractor Documentation for compliance with the relevant Project Contract before submitting that Project Contractor Documentation to the Commonwealth;
- (b) not submit Project Contractor Documentation to the Commonwealth unless it has been fully reviewed and complies with the relevant Project Contract;
- (c) if any Project Contractor Documentation does not fully comply with the relevant Project Contract, provide the Project Contractor with all comments and other assistance necessary and appropriate to enable the Project Contractor to amend and finalise the Project Contractor Documentation so that it complies with the relevant Project Contract;
- (d) in any event, provide the review of the Project Contractor Documentation to the Commonwealth advising of the actions required to finalise the documentation;
- (e) for the purposes of this clause, be responsible for coordinating the finalisation of all Project Contractor Documentation, including by providing and directing all necessary personnel to administer, supervise, review, coordinate and control finalisation of all Project Contractor Documentation at a rate of progress so that the relevant Project Contractor complies with his obligations under the relevant Project Contract;
- (f) if the Consultant requires any information, guidance, or other direction from the Commonwealth for the purpose of finalising its review of, or enabling the Project Contractor to finalise, any Project Contractor Documentation - promptly request the information, guidance or direction from the Commonwealth;
- (g) proactively program and manage the development, review and finalisation of all Project Contractor Documentation with the relevant Project Contractor so as to ensure that there are no delays to the completion of the project and that value for money for the Commonwealth is otherwise maximised;
- (h) when Project Contractor Documentation is submitted to the Commonwealth, provide recommendations and advice in respect of such Project Contractor Documentation to the Commonwealth; and
- (i) otherwise do all things necessary to ensure that the Commonwealth is able to efficiently and effectively review all Project Contractor Documentation.

5.13 Drawings

Without limiting its other obligations under the Contract, all drawings which the Consultant is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- (a) the standard prescribed in the Contract (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 Services);
- (b) all Statutory Requirements;
- (c) the directions of the Commonwealth's Representative; and
- (d) to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

5.14 Project Plans

(a) The Consultant must:

- (i) carry out the Services in accordance with, and otherwise implement, the Project Plans; and
- (ii) for the purposes of subparagraph (i):
 - A. prepare draft Project Plans, based on the outline approach to preparing the Project Plans and performing the Services to be covered by the Project Plans submitted by the Consultant in its proposal for the Services and otherwise in accordance with the requirements of the Contract, and submit them to the Commonwealth'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 set out in the Contract Particulars after the Award Date for each Project Plan;

- B. not commence any of the Services to which any Project Plan applies, unless the Commonwealth's Representative has had the number of days set out in the Contract Particulars to review the draft Project Plans and has not rejected them;
 - C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Commonwealth's Representative;
 - D. 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 Contract;
 - E. after the Project Plans have been finalised, continue to regularly review its Project Plans, including in accordance with any obligations imposed by the definition of each Project Plan and to correct any defects in or omissions from a Project Plan (whether identified by the Commonwealth's Representative or the Consultant) and submit an amended draft of the Project Plan to the Commonwealth's Representative, after which subsubparagraphs A - D will apply (to the extent applicable); and
 - F. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
- (b) The Consultant will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
- (i) the implementation of and compliance with the requirements of any Project Plan;
 - (ii) any direction by the Commonwealth's Representative concerning a Project Plan or the Consultant's compliance or non-compliance with a Project Plan;
 - (iii) any audit or other monitoring by the Commonwealth's Representative of the Consultant's compliance with a Project Plan; or
 - (iv) any failure by the Commonwealth's Representative, or anyone else acting on behalf of the Commonwealth, 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 Commonwealth's Representative or other person.

5.15 Manual Of Fire Protection Engineering And National Construction Code Certification

Clause 5.15 does not apply unless the Contract Particulars state it applies.

The Consultant must provide to the Commonwealth's Representative written certification from an Accredited Building Surveyor:

- (a) at the time it submits any Consultant Material under clause 5.2 - that the Consultant Material submitted at that time complies with the MFPE and the National Construction Code;
- (b) before issue of any Consultant Material for the purpose of engaging a Project Contractor - that the Consultant Material to be issued at that time complies with the MFPE and the National Construction Code; and
- (c) prior to Completion (as defined in the Project Contract) of the Project or a Stage or a Section (as the case may be and as defined in the Project Contract) - that the Project complies or the Stage or the Section (as the case may be and as defined in the Project Contract) comply (as the case may be) with the MFPE and the National Construction Code,

except to the extent of any dispensation granted by the ASEE and identified in the certification. To the extent that there is any inconsistency between the MFPE and the National Construction Code, the MFPE prevails.

5.16 Requests For Information

Without limiting the Contract, the Services may 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 Consultant Material.

Without limiting the Contract or any Project Contract, the Consultant must:

- (a) 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 Project Contracts to the maximum extent possible;
- (b) submit (or resubmit) the Consultant Material prepared as Request for Information Services to the Commonwealth's Representative in accordance with clause 5.2;
- (c) perform the Request for Information Services within the time required by the Project Contract, or if no time is specified in the Project Contract, by the time required by the Commonwealth's Representative including so as to minimise the Commonwealth's exposure to delay and extra costs under Project Contracts to the maximum extent possible; and
- (d) for the purposes of performing the Request for Information Services, ensure that its personnel, subconsultants and other resources have appropriate availability, qualifications, experience, ability and expertise.

5.17 Access to Project Documents

The Consultant must at the request of the Commonwealth's Representative at any time during the performance of the Services and the period of 10 years following the completion of the Services:

- (a) make the Project Documents available for inspection and copying by the Commonwealth's Representative or any other person nominated by the Commonwealth's Representative;
- (b) provide to the Commonwealth's Representative such copies of the Project Documents as the Commonwealth's Representative may require;
- (c) provide all such facilities and assistance and answer all such questions which may be required to enable the Commonwealth's Representative or any nominated persons to identify the amounts being (or proposed to be) incurred or expended by the Consultant in performing the Services; and
- (d) make available any officers, employees, agents or subconsultants for interviews with the Commonwealth's Representative or any nominated persons.

5.18 Defence Industry Participation Schedule

- (a) This clause 5.18 does not apply unless the Contract Particulars state that it applies.
- (b) The Consultant acknowledges the importance to the Commonwealth of Australian industry participation, as set out in government and Defence policies, and the contribution made by the Consultant towards achieving the objectives for Australian industry participation, to:
 - (i) deliver Services to Defence, from Australian industry and veterans, through solutions that provide value for money for the Commonwealth; and
 - (ii) maximise opportunities for competitive Australian industry and veterans to participate in Defence procurements.
- (c) The Consultant acknowledges that the Defence Industry Participation Schedule sets out the activities that it intends will be carried out by Australian industry (whether by the Consultant or identified subconsultants) in performing the Contract.
- (d) The Consultant must:

- (i) ensure that the activities specified in the Defence Industry Participation Schedule are performed in Australia by the Consultant or, subject to subparagraph (iv), the relevant subconsultants identified in the Defence Industry Participation Schedule;
 - (ii) use its best endeavours to achieve the overall Contract expenditure in Australia in respect to each "Activity Value" specified in the Defence Industry Participation Schedule;
 - (iii) maintain the accuracy, completeness and currency of the Defence Industry Participation Schedule; and
 - (iv) if the Consultant or a subconsultant can no longer perform an activity specified in the Defence Industry Participation Schedule, propose an alternative entity to perform the activity for approval by the Commonwealth's Representative, ensuring that opportunities are maximised for Australian industry and veteran participation.
- (e) The Consultant acknowledges and agrees that the Commonwealth may disclose the Defence Industry Participation Schedule in whole or in part in order to comply with its reporting and other obligations in respect of industry participation.
- (f) Notwithstanding any other clause of this Contract, the Consultant acknowledges and agrees that the Defence Industry Participation Schedule:
 - (i) may be recorded in a central database accessible by the Commonwealth and may be made publicly available;
 - (ii) will not be Commercial-in-Confidence Information for the purposes of clause 3.5; and
 - (iii) may be used by the Commonwealth for any purpose, including being taken into account for evaluation of any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
- (g) In this clause 5.18, **Defence Industry Participation Schedule** means the document (if any) specified in the Official Order as may be updated in accordance with this clause 5.18.

6. QUALITY

6.1 Quality Assurance

The Consultant:

- (a) must implement the quality assurance system specified in the Project DCAP;
- (b) must allow the Commonwealth's Representative access to the quality system of the Consultant so as to enable monitoring and quality auditing;
- (c) if it receives an instruction under clause 6.2 in relation to a non-complying Service, use its quality assurance system to address the relevant non-complying Service and to prevent any reoccurrence of that non-complying Service; and
- (d) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
 - (i) the implementation of and compliance with the quality assurance requirements of the Contract;
 - (ii) any direction by the Commonwealth's Representative concerning the Consultant's quality assurance system or its compliance or non-compliance with that system;
 - (iii) any audit or other monitoring by the Commonwealth's Representative of the Consultant's compliance with the quality assurance system; or
 - (iv) any failure by the Commonwealth's Representative, or anyone else acting on behalf of the Commonwealth, to detect any defect in the Services including where any such failure arises from any negligence on the part of the Commonwealth's Representative or other person.

6.2 Non-Complying Services

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

- (a) requiring the Consultant to:
 - (i) re-perform the non-complying Services and specifying the time within which this must occur; and
 - (ii) to take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Commonwealth of the failure to carry out the Services in accordance with the Contract; and
 - B. put the Commonwealth (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 Contract; or
- (b) advising the Consultant that the Commonwealth will accept the non-complying Services despite the non-compliance.

6.3 Re-performance of the Non-complying Services

If a direction is given under clause 6.2(a), the Consultant must reperform the non-complying Services:

- (a) within the time specified in the Commonwealth's Representative's instruction;
- (b) so as to minimise any delay and disruption to the Services; and
- (c) so as to minimise the delay and disruption to the Project.

6.4 Acceptance of the Non-complying Services

If the Commonwealth accepts the non-complying Services despite the non-compliance under clause 6.2(b), such acceptance will not:

- (a) relieve the Consultant from or alter its liabilities or obligations under the Contract; and
- (b) prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise according to law.

6.5 Update of Quality Assurance System

If the Consultant receives a notice under clause 6.2, then the Consultant must:

- (a) update the quality assurance system specified in the Project DCAP to ensure that it is adequate to prevent a reoccurrence of the relevant non-complying Service or a similar non-compliance;
- (b) take any other steps necessary to avoid a reoccurrence of the relevant non-complying Service or a similar non-compliance; and
- (c) upon request provide evidence of its compliance with paragraphs (a) and (b) to the Commonwealth's Panel Manager.

7. TIME

7.1 Progress

The Consultant must:

- (a) perform the Services in a timely manner;
- (b) use its best endeavours to achieve Completion of each Milestone within the time set out in the approved program under clause 7.2; and
- (c) without being limited by paragraph (b), perform the Services within any time limits specified in the Project Contracts.

7.2 Programming

The Consultant must:

- (a) within 14 days of the Award Date, prepare a program of the Services which must:
 - (i) be based upon the Commonwealth's Program; and
 - (ii) contain the details required by the Contract (including the Milestones) and which the Commonwealth's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than that specified in the Contract Particulars to take account of:
 - (i) changes to the program;
 - (ii) changes to the Commonwealth's Program; or
 - (iii) delays which may have occurred;
- (c) give the Commonwealth's Representative copies of all programs for approval; and
- (d) provide all programs in a format compatible with the software described in the Contract Particulars.

7.3 Consultant Not Relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Commonwealth's Representative will not relieve the Consultant from or alter its liabilities or obligations under the Contract.

7.4 Suspension

- (a) The Commonwealth's Representative:
 - (i) 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
 - (ii) is not required to exercise the Commonwealth's Representative's power under subparagraph (i) for the benefit of the Consultant.
- (b) If a suspension under this clause 7.4 arises as a result of:
 - (i) the Consultant's failure to carry out its obligations in accordance with the Contract, the Consultant will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Consultant's failure to carry out its obligations in accordance with the Contract:
 - A. an instruction to suspend under this clause 7.4 will entitle the Consultant to be paid by the Commonwealth the extra costs reasonably incurred by it as a result of the suspension as determined by the Commonwealth's Representative;

- B. the Consultant must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - C. the Consultant will not be entitled to make any other Claim against the Commonwealth arising out of, or in any way in connection with, the suspension other than under this subparagraph (ii).
- (c) Except to the extent permitted by any relevant Security of Payment Legislation, the Consultant may only suspend the Services when instructed to do so under this clause 7.4.

7.5 Acceleration

- (a) The Commonwealth's Representative may at any time and from time to time, by written notice to the Consultant, require the Consultant to use its best endeavours to achieve Completion of a Milestone by a date earlier than the date in the then approved program under clause 7.2 (**Accelerated Milestone Date**).
- (b) If a direction is given by the Commonwealth's Representative under paragraph (a), the Consultant must:
 - (i) use its best endeavours to:
 - A. accelerate the performance of the Services; and
 - B. otherwise do all things necessary,
 - to achieve Completion of the Milestone by the Accelerated Milestone Date; and
 - (ii) keep the Commonwealth's Representative fully and regularly informed of the progress of the Services against the Accelerated Milestone Date.
- (c) The Consultant will:
 - (i) be entitled to its extra costs properly and reasonably incurred in complying with paragraph (a); and
 - (ii) not be entitled to make any Claim, other than for payment of an amount in accordance with subparagraph (i), arising out of or in connection with a direction by the Commonwealth's Representative under paragraph (a).

8. VARIATION

8.1 Variation Price Request

- (a) The Commonwealth's Representative may, at any time, issue a document titled "Variation Price Request" to the Consultant which will set out details of a proposed Variation which the Commonwealth is considering with respect to the Services.
- (b) Where applicable, the Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant that would be involved in carrying out the proposed Variation.
- (c) Within 14 days of the receipt of a "Variation Price Request", the Consultant must provide the Commonwealth's Representative with a written notice in which the Consultant sets out:
 - (i) the adjustment (if any) to the Fee to carry out the proposed Variation;
 - (ii) if specified in the "Variation Price Request", the Consultant's proposed methodology for the performance of the proposed Variation; and
 - (iii) the effect (if any) which the proposed Variation will have on the then approved program.

8.2 Variation Order

Whether or not the Commonwealth's Representative has issued a "Variation Price Request" under clause 8.1, the Commonwealth's Representative may at any time instruct the Consultant to carry out a Variation by a written document titled "Variation Order", in which the Commonwealth's Representative will state one of the following:

- (a) the proposed adjustment to the Fee as set out in the Consultant's notice under clause 8.1 (if any) is agreed and the Fee will be adjusted accordingly; or
- (b) any adjustment to the Fee will be determined under clauses 8.3(b) and 8.3(c).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

8.3 Cost of Variation

The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Commonwealth's Representative:

- (a) as agreed under clause 8.2(a);
- (b) if paragraph (a) does not apply, in accordance with the rates and prices in the Schedule of Rates, if and insofar as the Commonwealth's Representative determines that those rates or prices are applicable to, or it is reasonable to use them for valuing, the Variation; or
- (c) to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Commonwealth's Representative; and
- (d) if the Fee is adjusted under this clause 8.3 and a Milestone Fee Payment Schedule applies, the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Commonwealth's Representative.

8.4 Rates and Prices

Where any rates and prices in the Schedule of Rates are used under clause 8.3(b), the rates and prices will be deemed to cover:

- (a) all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Consultant's obligations under the Contract; and
- (b) all costs and expenses which will be incurred by the Consultant arising out of or in any way in connection with the Variation.

8.5 Omissions

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

8.6 All Work Included

The Consultant has allowed for the provision of all work necessary for the Services, whether or not expressly mentioned in the Brief.

Any such work:

- (a) must be undertaken and provided by the Consultant; and
- (b) forms part of the Services and will not entitle the Consultant to make a Claim except as otherwise provided for in the Panel Agreement.

9. PAYMENT (OPTION 1)

9.1 Payment Obligation

Subject to clause 9.11 and to any other right to set-off which the Commonwealth may have, the Commonwealth will pay the Consultant:

- (a) the Fee; and
- (b) any other amounts which are payable by the Commonwealth to the Consultant under the Contract.

9.2 Payment Claims

Subject to clause 9.3, the Consultant must give the Commonwealth's Representative claims for payment on account of the Fee and all other amounts then payable by the Commonwealth to the Consultant under the Contract:

- (a) at the times stated in the Contract Particulars until completion of the Services or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after completion of the Services, within the time required by clause 9.7;
- (c) in the format which the Commonwealth's Representative reasonably requires;
- (d) which are based on the Schedule of Rates to the extent it is relevant;
- (e) which show separately the amounts (if any) claimed on account of:
 - (i) the Fee; and
 - (ii) all other amounts then payable by the Commonwealth to the Consultant under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
 - (i) to enable the Commonwealth's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Consultant under the Contract; and
 - (ii) including any such documentation or information which the Commonwealth'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.

9.3 Conditions Precedent

- (a) The Consultant's entitlement to submit a payment claim under clause 9.2 is conditional upon the Consultant having:
 - (i) obtained the insurance required under clause 4.2 of the Panel Conditions and (if requested) provided evidence of this to the Commonwealth's Representative;
 - (ii) complied with clause 5.9;
 - (iii) complied with its programming obligations under clause 7.2; and
 - (iv) complied with clause 9.16 (if applicable).
- (b) If the Consultant has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
 - (i) the payment claim is deemed to have been invalidly submitted under clause 9.2;
 - (ii) the Commonwealth's Representative will not be obliged to include in any payment statement under clause 9.4 any amount included in the payment claim; and
 - (iii) the Commonwealth will not be liable to pay any amount included in the payment claim.

- (c) If the Consultant:
 - (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of clause 9.2(f) in relation to any amount (or portion of any amount) claimed in the payment claim,
 then:
 - (iii) the Consultant will not be entitled to payment of;
 - (iv) the Commonwealth's Representative will not be obliged to include in any payment statement under clause 9.4; and
 - (v) the Commonwealth will not be liable to pay,
 the amount (or the portion of the amount) claimed in the payment claim in relation to which the Consultant has failed to comply with the requirements of clause 9.2(f), unless:
 - (vi) the Commonwealth's Representative issues a written notice to the Consultant identifying the documentation or information which the Consultant has failed to provide under clause 9.2(f); and
 - (vii) the Consultant provides that documentation or information to the Commonwealth's Representative within the time required in the Commonwealth's Representative's notice.

9.4 Payment Statements

The Commonwealth's Representative:

- (a) must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 9.2; or
 - (b) may, if the Consultant fails to submit any such claim in accordance with clause 9.2, at any time,
- give the Consultant (with a copy to the Commonwealth), on behalf of the Commonwealth, a payment statement which states:
- (c) the payment claim to which it relates (if any);
 - (d) the Consultant's total value of entitlement under the Contract;
 - (e) the amount already paid to the Consultant;
 - (f) the amount (if any) which the Commonwealth's Representative believes to be then payable by the Commonwealth to the Consultant on account of the Fee and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Consultant; and
 - (g) if the amount in paragraph (f) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Commonwealth 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 Commonwealth's Representative will not:

- (h) constitute 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 Contract; or
- (i) constitute a waiver of the requirements of clauses 9.2 and 9.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment statement.

9.5 Payment

- (a) Within 3 business days of the Consultant receiving a payment statement under clause 9.4, the Consultant must give the Commonwealth's Representative a tax invoice for the amounts set out as then payable in the payment statement.
- (b) Subject to clause 9.13(c), within:
 - (i) subject to paragraph (b)(ii), if none of the Services are being carried out in New South Wales or Queensland, 10 business days; or
 - (ii) if any of the Services are being carried out in New South Wales or Queensland, 5 business days,of the Commonwealth receiving a payment statement under clause 9.4, the Commonwealth will pay the Consultant the amounts set out as then payable in the payment statement.

9.6 Payment on Account

Any payment of moneys under clause 9.5 is not:

- (a) evidence of the value of Services or that Services have been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Commonwealth or the Commonwealth's Representative of the Consultant's performance or compliance with the Contract,

but is only to be taken as payment on account.

9.7 Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Commonwealth's Representative) after completion of the Services, the Consultant must give the Commonwealth's Representative:

- (a) a payment claim which complies with clause 9.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of all amounts payable under the Contract; and
- (b) notice of any other amounts which the Consultant claims from the Commonwealth,

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

The payment claim and notice required under this clause 9.7 are in addition to the other notices which the Consultant must give to the Commonwealth's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by clause 12.5.

9.8 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 9.7 has passed, the Consultant releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion, except any Claim included in a payment claim or notice under clause 9.7 which is given to the Commonwealth's Representative within the time required by and in accordance with the terms of clause 9.7.

9.9 Interest

- (a) The Commonwealth will pay simple interest at the rate stated in paragraph (c) on any:

- (i) amount which has been set out as payable by the Commonwealth's Representative in a payment statement under clause 9.4, but which is not paid by the Commonwealth within the time required by the Contract; and
- (ii) damages.
- (b) This will be the Consultant's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
- (c) The interest rate is 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 Commonwealth's Representative.

9.10 Correction of Payment Statements

The Commonwealth's Representative may, in any payment statement:

- (a) correct any error in any previous payment statement; and
- (b) modify any previous payment statement,

issued by the Commonwealth's Representative.

9.11 Right of Set-Off

The Commonwealth may:

- (a) deduct from moneys otherwise due to the Consultant:
 - (i) any debt or other moneys due from the Consultant to the Commonwealth; and
 - (ii) any claim to money which the Commonwealth may have against the Consultant whether for damages or otherwise, whether under the Contract or otherwise at law, relating to the Project or the Services; and
- (b) without limiting paragraph (a), deduct any debt or claim referred to in paragraph (a)(i) or (a)(ii) from any moneys which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a "Variation Order" under clause 8.2.

9.12 Payment of Workers and Subconsultants - Option 1 (NSW only)

The Consultant is not entitled to give the Commonwealth's Representative a payment claim under clause 9.2 and the Commonwealth is not obliged to make any payment under clause 9.5 unless the Consultant has provided the Commonwealth's Representative with:

- (a) a supporting statement (as defined in section 13(9) of the *Building and Construction Industry Security of Payment Act 1999* (NSW)) and prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW);
- (b) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and Schedule 2 Part 6 of the *Payroll Tax Act 2007* (NSW) which is in a form approved by the Commonwealth's Representative, and covers the period of the relevant payment claim; and
- (c) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Consultant has in place in connection with the Services.

The Commonwealth is entitled to withhold from any payment which would otherwise be due to the Consultant under the Contract the amount disclosed as unpaid under this clause 9.12.

9.12 Payment of Workers and Subconsultants - Option 2 (all other States and Territories)

The Consultant must with each payment claim under clause 9.2 provide the Commonwealth's Representative with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by the Commonwealth's Representative, duly signed by the Consultant or, where the Consultant is a corporation, by a representative of the Consultant who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subconsultants):
 - (i) all workers who have at any time been employed by the Consultant in connection with the Services have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Services; and
 - (ii) all subconsultants have been paid all moneys due and payable to them in respect of the Services; and
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subconsultants have been paid all moneys due and payable to them in respect of their employment in connection with the Services.

The Commonwealth is entitled to withhold from any payment which would otherwise be due to the Consultant under the Contract the amount disclosed as unpaid under this clause 9.12.

9.13 GST

- (a) Subject to paragraph (b), where any supply occurs under or in connection with the Contract 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.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with the Contract 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).
- (c) 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.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In this clause 9.13 terms defined in GST Legislation have the meaning given to them in GST Legislation.

9.14 Security of Payment Legislation

- (a) The Consultant agrees with the Commonwealth that:
 - (i) a payment claim submitted to the Commonwealth's Representative under clause 9.2 which also purports to be a payment claim under the relevant Security of Payment Legislation is received by the Commonwealth's Representative as agent for the Commonwealth;
 - (ii) unless otherwise notified to the Consultant by the Commonwealth in writing, the Commonwealth's Representative will give payment statements and carry out all other

functions of the Commonwealth under the relevant Security of Payment Legislation as the agent of the Commonwealth;

- (iii) 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 9.2(a) and 9.2(b) on which the Consultant has satisfied the requirements of clause 9.3(a); and
 - (iv) a reference to a "payment statement" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.
- (b) Failure by the Commonwealth's Representative to set out in a payment statement issued under the relevant Security of Payment Legislation or otherwise an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Commonwealth will not prejudice:
- (i) the Commonwealth's Representative's ability or power to set out in a subsequent payment statement an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Commonwealth; or
 - (ii) the Commonwealth's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract or otherwise at law or in equity.
- (c) The Consultant agrees that the amount set out in the payment statement in accordance with clause 9.4(f) is, 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 this Contract, which the Consultant is entitled to in respect of the Contract.
- (d) The Consultant irrevocably chooses the person set out in the Contract 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:
- (i) the Northern Territory or Western Australia, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer; or
 - (ii) any other State or Territory (other than Queensland) in which Security of Payment Legislation applies, the authorised nominating authority.
- (e) The Consultant must not at any time, without the written consent of the Commonwealth, divulge or suffer or permit its servants, subconsultants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Commonwealth 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:

- (i) the Consultant's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Consultant is unable by requirement of law to comply with its obligation in respect of the Information;
- (ii) notwithstanding the Consultant's obligation in respect of the Information, the Commonwealth may divulge to any person the Information;
- (iii) the Commonwealth may 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 Consultant or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and
- (iv) any Information which the Commonwealth provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to the Commonwealth's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

9.15 Accounting Records

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

- (a) all Variations; and
- (b) all other amounts payable to the Consultant other than on account of the original Fee specified in the Contract Particulars.

9.16 Estate Information

If specified in the Contract Particulars, the Consultant must provide the Consultant Material, as specified by the Commonwealth's Representative, in a format compatible with Defence's estate information reporting system set out on the Defence Website.

9A PAYMENT (OPTION 2)

9A.1 Payment Obligation

Subject to clause 9A.8 and to any other right to set off which the Commonwealth may have, the Commonwealth will pay the Consultant:

- (a) the Fee; and
- (b) any other amounts which are payable by the Commonwealth to the Consultant under the Contract.

9A.2 Payment Claims

Subject to clause 9A.3, the Consultant must submit claims for payment on account of the Fee and all other amounts then payable by the Commonwealth to the Consultant under the Contract:

- (a) at the times stated in the Contract Particulars until completion of the Services or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after completion of the Services, within the time required by clause 9A.6;
- (c) which are in the form of an invoice submitted by the Consultant through the Commonwealth's accounting system;
- (d) which are based on the Schedule of Rates to the extent it is relevant;
- (e) which include sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
 - (i) to enable the Commonwealth's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Consultant under the Contract; and
 - (ii) including any such documentation or information which the Commonwealth's Representative may by written notice from time to time require the Consultant to provide, whether in relation to a specific payment claim or all payment claims generally.

9A.3 Conditions Precedent

- (a) The Consultant's entitlement to submit a payment claim under clause 9A.2 is conditional upon the Consultant having:
 - (i) obtained the insurance required under clause 4.2 of the Panel Conditions and (if requested) provided evidence of this to the Commonwealth's Representative;
 - (ii) complied with clause 5.9;
 - (iii) complied with its programming obligations under clause 7.2; and
 - (iv) complied with clause 9A.11 (if applicable).
- (b) If the Consultant has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
 - (i) the payment claim is deemed to have been invalidly submitted under clause 9A.2; and
 - (ii) the Commonwealth will not be liable to pay any amount included in the payment claim.
- (c) If the Consultant:
 - (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of clause 9A.2(e) in relation to any amount (or portion of any amount) claimed in the payment claim,then:

(iii) the Consultant will not be entitled to payment of; and

(iv) the Commonwealth will not be liable to pay,

the amount (or the portion of the amount) claimed in the payment claim in relation to which the Consultant has failed to comply with the requirements of clause 9A.2(e), unless:

(v) the Commonwealth's Representative issues a written notice to the Consultant identifying the documentation or information which the Consultant has failed to provide under clause 9A.2(e); and

(vi) the Consultant provides that documentation or information to the Commonwealth's Representative within the time required in the Commonwealth's Representative's notice.

9A.4 Payment

Subject to clause 9A.3 and 9A.9, within the number of days set out in the Contract Particulars of the Consultant submitting a valid payment claim under clause 9A.2, the Commonwealth will pay the Consultant the amounts then payable to the Consultant in accordance with the Contract.

9A.5 Payment on Account

Any payment of moneys under clause 9A.4 is not:

- (a) evidence of the value of Services or that Services have been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Commonwealth or the Commonwealth's Representative of the Consultant's performance or compliance with the Contract,

but is only to be taken as payment on account.

9A.6 Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Commonwealth's Representative) after completion of the Services, the Consultant must submit to the Commonwealth:

- (a) a payment claim which complies with clause 9A.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of all amounts payable under the Contract; and
- (b) notice of any other amounts which the Consultant claims from the Commonwealth,

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

The payment claim and notice required under this clause 9A.6 are in addition to the other notices which the Consultant must submit under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by clause 12.5.

9A.7 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 9A.6 has passed, the Consultant releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion, except any Claim included in a payment claim or notice under clause 9A.6 which is given to the Commonwealth's Representative within the time required by and in accordance with the terms of clause 9A.6.

9A.8 Right of Set Off

The Commonwealth may:

- (a) deduct from moneys otherwise due to the Consultant:
 - (i) any debt or other moneys due from the Consultant to the Commonwealth; and
 - (ii) any claim to money which the Commonwealth may have against the Consultant whether for damages or otherwise, whether under the Contract or otherwise at law, relating to the Project or the Services; and
- (b) without limiting paragraph (a), deduct any debt or claim referred to in paragraph (a)(i) or (a)(ii) from any moneys which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a "Variation Order" under clause 8.2.

9A.9 GST

- (a) Subject to paragraph (b), where any supply occurs under or in connection with the Contract 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.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with the Contract 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).
- (c) 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.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In this clause 9A.9 terms defined in GST Legislation have the meaning given to them in GST Legislation.

9A.10 Accounting Records

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

- (a) all Variations; and
- (b) all other amounts payable to the Consultant other than on account of the original Fee specified in the Contract Particulars.

9A.11 Estate Information

If specified in the Contract Particulars, the Consultant must provide the Consultant Material, as specified by the Commonwealth's Representative, in a format compatible with Defence's estate information reporting system set out on the Defence Website.

10. TERMINATION

10.1 Preservation of Rights

Subject to clause 10.6, nothing in this clause 10 or that the Commonwealth does or fails to do pursuant to this clause 10 will prejudice the right of the Commonwealth to exercise any right or remedy (including recovering damages) which it may have where the Consultant breaches (including repudiates) the Contract.

10.2 Consultant Default

The Commonwealth may give a written notice under clause 10.3 to the Consultant if the Consultant:

- (a) does not commence the Services in accordance with the requirements of the Contract;
- (b) suspends the Services other than in accordance with clause 7.4 or otherwise does not proceed with the Services regularly and diligently;
- (c) fails to comply with any of its obligations regarding any insurance required under the Contract or under the Panel Agreement;
- (d) fails to exercise the standard of skill, care and diligence required by the Contract;
- (e) fails to comply with any of its obligations under clause 2.9 or 5.9;
- (f) fails to comply with any instruction contained in a notice issued under clause 6.2;
- (g) materially fails to:
 - (i) implement the Indigenous Participation Plan (if applicable); or
 - (ii) comply with a direction issued by the Commonwealth's Representative under clause 13.1(e) or 13.2(e);
- (h) does not comply with any direction of the Commonwealth's Representative made in accordance with the Contract; or
- (i) is otherwise in substantial breach of the Contract.

10.3 Contents of Notice of Default

A notice under this clause 10.3 must state:

- (a) that it is a notice under clause 10.3;
- (b) the breach relied upon; and
- (c) that the Commonwealth requires the Consultant to remedy the breach within the number of days set out in the Contract Particulars of receiving the notice.

10.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Consultant or, where the Consultant comprises 2 or more persons, to any one of those persons;
- (b) the Consultant does not remedy a breach of Contract the subject of a notice under clause 10.3 within the number of days set out in the Contract Particulars of receiving the notice under clause 10.3; or
- (c) the Consultant fails to comply with:
 - (i) clause 14; or
 - (ii) if clause 15 applies, clause 15,

then the Commonwealth may by written notice to the Consultant immediately (and without having to first give a notice under clause 10.3 (except in the case of paragraph (b))) terminate the Contract.

10.5 Commonwealth's Entitlements after Termination

Subject to clause 10.1, if the Commonwealth terminates the Contract under clause 10.4 or if the Consultant repudiates the Contract and the Commonwealth otherwise terminates the Contract:

- (a) the Commonwealth will:
 - (i) be entitled to require the Consultant to novate to the Commonwealth, or the Commonwealth's nominee, any or all subcontracts between the Consultant and its subconsultants as required by the Commonwealth;
 - (ii) to the extent permitted by the relevant Security of Payment Legislation (if any), not be obliged to make any further payments to the Consultant, including any money the subject of a payment claim under clause 9.2 or 9A.2 (as the case may be) or payment statement under clause 9.4 (if applicable); and
 - (iii) be entitled to recover from the Consultant any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Consultant must immediately hand over to the Commonwealth all copies of:
 - (i) documents provided by the Commonwealth in connection with the Services (including the Commonwealth Material); and
 - (ii) subject to clauses 14.3 and 15.4, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

10.6 Consultant's Entitlements after Termination

If the Commonwealth repudiates the Contract and the Consultant terminates the Contract, the Consultant will:

- (a) be entitled to claim an amount determined in accordance with clause 10.8 as if the Commonwealth had terminated the Contract under clause 10.7; and
- (b) not be entitled to a quantum meruit.

This clause 10.6 will survive the termination of the Contract.

10.7 Termination for Convenience

Without prejudice to any of the Commonwealth's other rights under this Contract, the Commonwealth may:

- (a) at any time for its sole convenience and for any reason by written notice to the Consultant terminate the Contract effective from the time stated in the Commonwealth's notice or if no such time is stated, at the time the notice is given to the Consultant; and
- (b) thereafter, complete the uncompleted part of the Services either itself or by engaging Other Contractors.

10.8 Costs

If the Commonwealth terminates the Contract under clause 10.7, the Consultant:

- (a) will be entitled to payment of the following amounts as determined by the Commonwealth's Representative:
 - (i) for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
 - (ii) the cost of goods or materials (if any) reasonably ordered by the Consultant for the Services for which the Consultant is legally bound to pay provided that:

- A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - B. title in the goods and materials will vest in the Commonwealth upon payment; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraph (a)(ii); and
 - (ii) immediately hand over to the Commonwealth all copies of all:
 - A. documents provided by the Commonwealth in connection with the Services (including the Commonwealth Material); and
 - B. subject to clauses 14.3 and 15.4, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

The amount to which the Consultant is entitled under this clause 10.8 will be a limitation upon the Commonwealth's liability to the Consultant arising out of, or in any way in connection with, the termination of the Contract (whether under clause 10.7 or deemed to be under clause 10.7 through the operation of clause 10.6(a)) and the Consultant will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 10.8.

This clause 10.8 will survive the termination of the Contract by the Commonwealth under clause 10.7 or by the Consultant following repudiation by the Commonwealth.

11. DISPUTE RESOLUTION

11.1 Notice of Dispute

If a dispute or difference arises between the Consultant and the Commonwealth or between the Consultant and the Commonwealth's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services, the Project or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 11.

Where such a dispute or difference arises, either party may give a notice in writing to the Commonwealth's Representative and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

11.2 Expert Determination

If the dispute or difference in relation to a direction of the Commonwealth's Representative is not resolved within 14 days after a notice is given under clause 11.1, the dispute or difference must be submitted to expert determination.

11.3 The Expert

- (a) The expert determination under clause 11.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under this clause 11.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) 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;
 - (iv) does not enter into the agreement in accordance with clause 11.9(b) within 14 days of his or her appointment under this clause 11; or
 - (v) does not make a determination within the time required by clause 11.8,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) 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.

11.4 Not Arbitration

An expert determination conducted under this clause 11 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.

11.5 Procedure for Determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;

- (d) examine such documents and interview such persons as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

11.6 Disclosure of Interest

The expert must:

- (a) disclose to the parties any:
 - (i) interest he or she has in the outcome of the determination;
 - (ii) conflict of interest;
 - (iii) conflict of duty;
 - (iv) personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
 - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (b) not communicate with one party to the determination without the knowledge of the other.

11.7 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

11.8 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 this clause 11 within 28 days from the acceptance by the expert of his or her appointment.

11.9 Agreement with Expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on such terms as the parties and the expert may agree.

11.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant direction of the Commonwealth'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 11.11 and 11.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

11.11 Executive Negotiation

- (a) If:
 - (i) clause 11.2 applies and a notice of appeal is given under clause 11.10; or
 - (ii) clause 11.2 does not apply,

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

(b) The Executive Negotiators must within:

(i) 21 days of:

A. if the dispute or difference is not one which is to be referred to expert determination under clause 11.2, the notice of dispute given under clause 11.1; or

B. otherwise, the notice of appeal given under clause 11.10; or

(ii) 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).

11.12 Arbitration Agreement

If, within:

(a) 21 days of the notice of dispute given under clause 11.1; or

(b) such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

(c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;

(d) cannot resolve the dispute or difference; or

(e) 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.

11.13 Arbitration

(a) Arbitration pursuant to 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 and as otherwise set out in this clause.

(b) The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.

(c) Nothing in this clause is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 2011* (Vic). For the avoidance of doubt, the second sentence of Article 34(6) of the ICC Rules (in force from 1 January 2012) or its equivalent in any subsequent version of the ICC Rules shall not apply.

(d) The parties agree that:

(i) they have entered into the arbitration agreement under this clause 11 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;

(ii) any arbitration conducted pursuant to this clause 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

(iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).

(e) One arbitrator will be appointed.

(f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.

- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
 - (ii) 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;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) 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;
 - (v) 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
 - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

11.14 Proportional Liability

- (a) Notwithstanding anything else, to the extent permissible 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 any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to this clause.
- (b) If any of the Services are being carried out in Western Australia, all of the provisions comprising Part 1F of the *Civil Liability Act 2002* (WA) are hereby expressly excluded from application to this Contract.

11.15 Continuation of Services

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

- (a) continue to carry out the Services; and
- (b) otherwise comply with its obligations under the Contract.

12. NOTICES

12.1 Notice of Variation

If a direction by the Commonwealth's Representative, other than a "Variation Order" under clause 8.2, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Commonwealth arising out of, or in any way in connection with, the direction:

- (a) within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Commonwealth's Representative that it considers the direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Commonwealth's Representative which includes the details required by clause 12.3(b); and
- (c) continue to carry out the Services in accordance with the Contract and all directions of the Commonwealth's Representative, including any direction in respect of which notice has been given under this clause 12.1.

12.2 Notices of Other Claims

Except for claims for:

- (a) payment under clause 9 or 9A (as the case may be) on account of the unadjusted Fee;
- (b) a Variation instructed in accordance with clause 8.2 or to which clause 12.1 applies; or
- (c) contribution or indemnity for loss or damage caused or contributed to by the negligence of the Commonwealth, where the Commonwealth or a third party (other than a subconsultant of the Consultant or other 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 Commonwealth's Representative the notices required by clause 12.3 if it wishes to make a Claim against the Commonwealth in respect of any direction by the Commonwealth's Representative or any other fact, matter or thing (including a breach of the Contract by the Commonwealth) under, arising out of, or in any way in connection with, the Services or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) specified costs are to be added to the Fee; or
 - (ii) the Fee will be otherwise increased or adjusted,as determined by the Commonwealth's Representative.

12.3 Prescribed Notices

The notices referred to in clause 12.2 are:

- (a) a written notice within 7 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Consultant proposes to make a Claim; and
 - (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise and if based on a term of the Contract clearly identifying the specific term;

- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

12.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 12.1(b) or clause 12.2 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 12.3(b) every 28 days after the written claim under clause 12.1(b) or 12.3(b) (as the case may be) was submitted or given to the Commonwealth's Representative, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

12.5 Time Bar

If the Consultant fails to comply with clause 12.1, 12.2, 12.3 or 12.4:

- (a) the Commonwealth will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Consultant; and

- (b) the Consultant will be absolutely barred from making any Claim against the Commonwealth,

arising out of, or in any way in connection with, the relevant direction or fact, matter or thing (as the case may be) to which clause 12.1 or 12.2 applies.

12.6 Other Provisions Unaffected

Nothing in clauses 12.1 - 12.5 will limit the operation or effect of any other provision of the Contract which requires the Consultant to give notice to the Commonwealth's Representative in order to preserve an entitlement to make a Claim against the Commonwealth.

12.7 Address for Service

Any notice to be given or served under or arising out of a provision of this Contract must:

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 10 and 11, which, if sent by email must additionally be delivered by hand or sent by prepaid express post), as the case may be, to the relevant address or email address:
 - (i) stated in the Contract Particulars; or
 - (ii) 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;
- (c) 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
- (d) in the case of notices sent by email:
 - (i) be in Portable Document Format (pdf) and appended as an attachment to the email; and
 - (ii) include the words "This is a notice under clause 12.7 of the Contract" in the subject field of the email.

12.8 Receipt of Notices

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 12.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
 - (i) delivery by hand, on delivery;
 - (ii) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;

- (iii) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
 - (iv) email, the earlier of:
 - A. delivery to the email address to which it was sent; or
 - B. 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.
- (b) In the case of notices under clauses 10 and 11, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 12.7(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:
- (i) the date the notice sent by email is taken to be received; or
 - (ii) 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).

13. INDIGENOUS PROCUREMENT POLICY

13.1 Indigenous Procurement Policy - Option 1 (Non High Value Contract)

- (a) The Consultant must use its reasonable endeavours to increase its:
- (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,
- in carrying out the Services, in accordance with the Indigenous Procurement Policy.
- (b) If at any time the Fee exceeds \$7.5 million (such that the Contract becomes a High Value Contract for the purposes of the Indigenous Procurement Policy), the Consultant must:
- (i) within 14 days of a request from the Commonwealth's Representative, prepare and submit an Indigenous Participation Plan in accordance with the Indigenous Procurement Policy (including any requirement that applies in respect of a Remote Area) to the Commonwealth's Representative for approval; and
 - (ii) once approved by the Commonwealth's Representative:
 - A. comply with the Indigenous Participation Plan; and
 - B. submit a written report to the Commonwealth on its compliance with the Indigenous Participation Plan, as follows:
 - 1) at least quarterly; and
 - 2) within 7 days of the Completion of the Services (**End of Project Report**).
- (c) The Consultant must set out in the End of Project Report:
- (i) whether the Consultant:
 - A. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
 - B. complied with the Indigenous Participation Plan; and
 - (ii) if the Consultant did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
- (d) If the Commonwealth's Representative considers, in its absolute discretion at any time during the carrying out of the Services, that it has concerns in relation to the Consultant's:
- (i) compliance with the Indigenous Participation Plan; or
 - (ii) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
- the Commonwealth's Representative may direct the Consultant to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.
- (e) The Consultant:
- (i) must comply with all directions issued by the Commonwealth's Representative in relation to the Consultant's implementation of the Indigenous Participation Plan; and
 - (ii) will not be entitled to make (nor will the Commonwealth be liable upon) any claim (whether under the Contract or otherwise at law or in equity) arising out of or in connection with that direction.
- (f) Notwithstanding any other clause of this Contract, the Consultant acknowledges and agrees that the reports it submits under subparagraph (b)(ii)B:

- (i) will be recorded in a central database accessible by the Commonwealth and may be made publically available;
- (ii) will not be Commercial-In-Confidence Information for the purposes of this Contract; and
- (iii) may be used by the Commonwealth for any purpose, including being taken into account for evaluation of in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

13.2 Indigenous Procurement Policy - Option 2 (High Value Contract)

- (a) The Consultant must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,
 in carrying out the Services, in accordance with the Indigenous Procurement Policy.
- (b) The Consultant must:
 - (i) comply with the Indigenous Participation Plan; and
 - (ii) submit a written report to the Commonwealth on its compliance with the Indigenous Participation Plan, as follows:
 - A. at least quarterly; and
 - B. within 7 days of the Completion of the Services (**End of Project Report**).
- (c) The Consultant must set out in the End of Project Report:
 - (i) whether the Consultant:
 - A. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
 - B. complied with the Indigenous Participation Plan; and
 - (ii) if the Consultant did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
- (d) If the Commonwealth's Representative considers, in its absolute discretion at any time during the carrying out of the Services, that it has concerns in relation to the Consultant's:
 - (i) compliance with the Indigenous Participation Plan; or
 - (ii) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
 the Commonwealth's Representative may direct the Consultant to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.
- (e) The Consultant:
 - (i) must comply with all directions issued by the Commonwealth's Representative in relation to the Consultant 's implementation of the Indigenous Participation Plan; and
 - (ii) will not be entitled to make (nor will the Commonwealth be liable upon) any claim (whether under the Contract or otherwise at law or in equity) arising out of or in connection with that direction.
- (f) Notwithstanding any other clause of this Contract, the Consultant acknowledges and agrees that the reports under subparagraph (b)(ii):

- (i) will be recorded in a central database accessible by the Commonwealth and may be made publically available;
- (ii) will not be Commercial-In-Confidence Information for the purposes of this Contract; and
- (iii) may be used by the Commonwealth for any purpose, including being taken into account for evaluation of in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

14. INFORMATION SECURITY - CONFIDENTIAL INFORMATION

14.1 Consultant's warranty

- (a) The Consultant acknowledges and agrees that the Confidential Information is confidential.
- (b) The Consultant warrants that on the Award Date and on the date of submitting each payment claim under clause 9.2 or 9A.2 (as the case may be), it is not aware of any of any breach of this clause 14 by the Consultant or any Recipient.

14.2 Confidential Information Requirements

- (a) The Consultant must:
 - (i) strictly comply with:
 - A. this clause 14; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. this clause 14; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
- (b) Subject to, if clause 15 applies, clause 15, the Consultant must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,for any purpose other than carrying out the Services.
- (c) The Consultant must ensure that all Recipients of Confidential Information:
 - (i) strictly comply with:
 - A. this clause 14; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. this clause 14; and
 - B. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
 - A. this clause 14; or

- B. all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
- (d) The Consultant must:
- (i) ensure:
 - A. the Confidential Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),
 are strictly kept:
 - C. secure and protected at all times from all unauthorised use, access, configuration administration (or similar); and
 - D. otherwise in accordance with all Separation Arrangements; and
 - (ii) immediately:
 - A. detect all actual or potential Confidential Information Incidents;
 - B. notify the Commonwealth's Representative if it becomes aware of any actual or potential Confidential Information Incident;
 - C. take all steps necessary to prevent, end, avoid, mitigate, resolve or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
 - D. strictly comply with all other Confidential Information and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements),
 (together the **Confidential Information Requirements**).

14.3 Return, destruction and erasure of Confidential Information

- (a) Within 7 days of:
- (i) a request from the Commonwealth's Representative, at any time;
 - (ii) the termination of the Contract under clause 10 or otherwise at law; or
 - (iii) the expiry of the last Defects Liability Period under the Project Contract,
- the Consultant must:
- (iv) subject to paragraph (b), as directed by the Commonwealth's Representative or the Commonwealth in the request or notice (as the case may be) (if any) promptly:
 - A. securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Commonwealth's Representative;
 - B. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
 - D. provide the Commonwealth's Representative with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity

and position is approved by Commonwealth (acting reasonably) confirming that the Confidential Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and

E. promptly notify the Commonwealth's Representative of all Confidential Information (or any part of it) which the Consultant knows or ought to know:

- 1) has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
- 2) is beyond the Consultant's or a Recipient's possession, power, custody or control,

giving full particulars (including the nature and extent of the Confidential Information, precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).

- (b) Where required by law, the Consultant may keep one copy of the Confidential Information for its records.
- (c) The Consultant acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Consultant's obligations under this clause 14.

14.4 Compliance with clause 14

Within 24 hours (or such period notified by the Commonwealth's Representative) of receipt of a request by the Commonwealth's Representative, at any time, the Consultant must:

- (a) provide the Commonwealth's Representative with:
- (i) evidence of the Consultant's and all Recipients' compliance with clause 14 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Consultant or the Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 14 (including any Separation Arrangements and the Confidential Information Requirements); and
- (b) as directed by the Commonwealth's Representative in the request, provide the Commonwealth's Representative and the Commonwealth with access to the Consultant's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth's Representative and the Commonwealth to monitor and assess the Consultant's and all Recipients' compliance with clause 14 (including any Separation Arrangements and Confidential Information Requirements).

14.5 Acknowledgement, release and indemnity

Without limiting any other provision of this Contract, the Consultant:

- (a) acknowledges and agrees that:
- (i) the Commonwealth has engaged the Consultant to carry out the Services strictly on the basis of, and in reliance upon, the obligations, warranties and releases set out in this clause 14;
 - (ii) without limiting any other right or remedy of the Commonwealth, if the Consultant has failed to strictly comply with:
 - A. this clause 14; or
 - B. any other Confidential Information or information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements),

the Commonwealth may (in its absolute discretion) do any one or more of the following:

- C. terminate the Contract under clause 10 or otherwise at law; or
 - D. take such failure into account in assessing any future registration of interest or tender submitted by the Consultant; and
- (iii) the exercise of any of the Commonwealth's absolute discretions under this clause 14 is not capable of being the subject of a dispute or difference for the purposes of clause 11 or otherwise subject to review;
- (b) releases the Commonwealth from all Claims arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 14; and
- (c) indemnifies the Commonwealth in respect of all Claims arising out of or in connection with:
- (i) the Consultant being in breach of this clause 14; or
 - (ii) the exercise of any of the Commonwealth's absolute discretions under this clause 14.

15. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 15 does not apply unless the Contract Particulars state that it applies.

15.1 Sensitive and Classified Information, generally

- (a) Nothing in this clause 15 limits or otherwise affects clause 14.
- (b) The Consultant acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.

15.2 Consultant's warranties

- (a) The Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 9.2 or 9A.2 (as the case may be), it is not aware of any of any breach of this clause 15 by the Consultant or any Recipient.
- (b) The Consultant warrants that each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Services, properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars:
 - (i) before the Recipient was issued with the Sensitive and Classified Information; and
 - (ii) at all times during the Recipient's access to the Sensitive and Classified Information.

15.3 Sensitive and Classified Information Requirements

- (a) The Consultant must:
 - (i) strictly comply with:
 - A. this clause 15; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. this clause 15; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
- (b) Subject to paragraph (c)(i) the Consultant must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including carrying out the Services. If the Consultant wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Services, it must notify the Commonwealth's Representative providing details of the proposed copying, reproduction, disclosure, use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of proposed Recipients).

- (c) Where a request for copying, reproduction, disclosure use or dealing is made under paragraph (b), the Commonwealth's Representative will notify the Consultant that the Commonwealth (in its absolute discretion) either:

- (i) grants permission, whether with or without such conditions as the Commonwealth thinks fit (including conditions requiring the Recipient of Sensitive and Classified Information (or any part of it) to properly apply for, obtain and hold a current security clearance level at or above the level/s specified in the Contract Particulars before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient's access to the Sensitive and Classified Information or to enter into a deed in a form approved by the Commonwealth); or
 - (ii) refuses permission.
- (d) If the Commonwealth grants permission under paragraph (c)(i), the Consultant must strictly comply with any conditions under paragraph (c)(i).
- (e) The Consultant must ensure that all Recipients of Sensitive and Classified Information:
- (i) strictly comply with:
 - A. this clause 15; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. this clause 15; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Consultant, would be a breach of:
 - A. this clause 15; or
 - B. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements).
- (f) The Consultant must:
- (i) ensure:
 - A. the Sensitive and Classified Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Sensitive and Classified Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means);
 are strictly kept:
 - C. at locations in Australia only (unless the Consultant or a Recipient (as the case may be) is listed on the ASD Certified Cloud Services List or is otherwise approved in writing by the Commonwealth (in its absolute discretion));
 - D. in information technology environments which are accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified in the Contract Particulars:
 - 1) before the Consultant (or Recipient) was issued with the Sensitive and Classified Information; and
 - 2) at all times during the Consultant's (or Recipient's) access to the Sensitive and Classified Information,

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

- E. for caveated or compartmented information (or any part of it) forming part of the Sensitive and Classified Information, in information technology environments which are specifically accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified in the Contract Particulars:

- 1) before the Consultant (or Recipient) was issued with such caveated or compartmented information (or any part of it); and
- 2) at all times during the Consultant's (or Recipient's) access to such caveated or compartmented information (or any part of it),

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

- F. secure and protected at all times from all unauthorised use, access, configuration administration (or similar);

- G. without limiting subsubparagraph F, secure and protected at all times from all use, access, configuration, administration (or similar) from any location outside of Australia;

- H. in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework); and

- I. in accordance with all Separation Arrangements; and

(ii) immediately:

- A. to the maximum extent possible, detect all actual or potential Sensitive and Classified Information Incidents;
- B. notify the Commonwealth's Representative if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
- C. take all steps necessary to prevent, end, avoid, mitigate, resolve or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
- D. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements),

(together the **Sensitive and Classified Information Requirements**).

15.4 Return, destruction and erasure of Sensitive and Classified Information

(a) Within 7 days of receipt of:

- (i) a request from the Commonwealth's Representative, at any time;
- (ii) the termination of the Contract under clause 10 or otherwise at law; or
- (iii) the expiry of the last Defects Liability Period under the Project Contract,

the Consultant must:

- (iv) subject to paragraph (b), as directed by the Commonwealth's Representative or the Commonwealth in the request or notice (as the case may be) and in accordance with all Commonwealth Requirements and Statutory Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework), promptly:
 - A. securely and appropriately return all copies of the Sensitive and Classified Information (in a tangible form) to the Commonwealth's Representative;
 - B. securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
 - D. provide the Commonwealth's Representative with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
- (v) promptly notify the Commonwealth's Representative of all Sensitive and Classified Information (or any part of it) which the Consultant knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
 - B. is beyond the Consultant's or a Recipient's possession, power, custody or control,

giving full particulars (including the nature and extent of the Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).
- (b) Where required by law, the Consultant may keep one copy of the Sensitive and Classified Information for its records.
- (c) The Consultant acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Consultant's obligations under this clause 15.

15.5 Compliance with clause 15

Within 12 hours (or such period notified by the Commonwealth's Representative in its request) of receipt of a request by the Commonwealth's Representative, at any time, the Consultant must:

- (a) provide the Commonwealth's Representative with:
 - (i) evidence of the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Consultant and the Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
- (b) as directed by the Commonwealth's Representative in the request, provide the Commonwealth's Representative and the Commonwealth with access to the Consultant's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth's

Representative and the Commonwealth to monitor and assess the Consultant's and all Recipients' compliance with clause 15 (including any Separation Arrangements and Sensitive and Classified Information Requirements).

15.6 Acknowledgement, release and indemnity

Without limiting any other provision of the Contract, the Consultant:

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has engaged the Consultant to carry out the Services strictly on the basis of, and in reliance upon, the warranties, obligations and releases set out in this clause 15;
 - (ii) without limiting any other right or remedy of the Commonwealth, if the Consultant has failed to strictly comply with:
 - A. this clause 15; or
 - B. any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements),the Commonwealth may (in its absolute discretion) do any one or more of the following:
 - C. terminate the Contract under clause 10 or otherwise at law; or
 - D. take such failure into account in assessing any future registration of interest or tender submitted by the Consultant; and
 - (iii) the exercise of any of the Commonwealth's absolute discretions under this clause 15 is not capable of being the subject of a dispute or difference for the purposes of clause 11 or otherwise subject to review;
- (b) releases the Commonwealth from all Claims arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 15; and
- (c) indemnifies the Commonwealth in respect of all Claims arising out of or in connection with:
 - (i) the Consultant being in breach of this clause 15; or
 - (ii) the exercise of any of the Commonwealth's absolute discretions under this clause 15.

16. DEFENCE INDUSTRY SECURITY PROGRAM

Without limiting clause 15, the Consultant must:

- (a) at its cost obtain and thereafter maintain for the term of the Engagement the level of DISP membership specified in the Contract Particulars; and
- (b) comply with any other direction or requirement of the Commonwealth's Representative in relation to the DISP.

17. SIGNIFICANT EVENTS

17.1 Consultant's Warranty

Subject to clause 17.2, the Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 9.2 or 9A.2 (as the case may be), it is not aware of any Significant Event in relation to the Consultant.

17.2 Notice of Significant Event

If, at any time, the Consultant becomes aware of any Significant Event, the Consultant must immediately notify the Commonwealth's Representative, providing details of:

- (a) the Significant Event, including:
 - (i) whether the Consultant considers that it is a Material Change, Defence Strategic Interest Issue or circumstances otherwise set out in paragraph (c) or (d) of the defined term "Significant Event";
 - (ii) the date or dates on or during which the Significant Event occurred; and
 - (iii) whether any of the Consultant's key people or other personnel engaged in connection with the Services were involved)
- (b) 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 Significant Event on the interests of the Commonwealth.

17.3 Commonwealth Rights Upon Occurrence of Significant Event

- (a) Without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if:
 - (i) the Consultant:
 - A. notifies the Commonwealth's Representative under clause 17.2; or
 - B. has failed to strictly comply with clause 17; or
 - (ii) the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Significant Event in relation to the Consultant,

the Commonwealth may (in its absolute discretion) do any one or more of the following:

 - (iii) notify the Consultant that it is required to provide, or meet with the Commonwealth to provide further information, documents or evidence in relation to, and otherwise clarify, the:
 - A. nature and extent of the Significant Event; and
 - B. 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 Significant Event on the interests of the Commonwealth,

by the time and date specified in the notice; and
 - (iv) regardless of whether or not the Commonwealth has notified the Consultant under subparagraph (iii), notify the Consultant that:
 - A. the Consultant may continue to perform the Services, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Consultant:
 - 1) preparing and implementing a Significant Event Remediation Plan in accordance with clause 17.4; or

- 2) completing, duly executing and returning to the Commonwealth's Representative a deed,

by the time and date specified in the notice, in each case in a form and on terms acceptable to the Commonwealth in its absolute discretion; or

- B. the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 10.4.

- (b) Without limiting any other provision of the Contract, if the Consultant is in breach of clause 17, then the Commonwealth may (in its absolute discretion) notify the Consultant that the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 10.4.

17.4 Significant Event Remediation Plan

- (a) If notified by the Commonwealth under clause 17.3(a)(iv)A.1), the Consultant must prepare and submit a draft Significant Event Remediation Plan to the Commonwealth's Representative for approval within 10 business days of the Commonwealth's notice.
- (b) A draft Significant Event Remediation Plan prepared by the Consultant under paragraph (a) must include the following information:
 - (i) how the Consultant will address the Significant Event in the context of the Services, including confirmation that the implementation of the Significant Event Remediation Plan will not in any way impact on the performance of the Services or compliance by the Consultant with its other obligations under the Contract;
 - (ii) how the Consultant will ensure events similar to the Significant Event do not occur again;
 - (iii) if the Significant Event involves a Material Change, how the Material Change will impact the Consultant's original agreement with the Commonwealth; and
 - (iv) any other matter reasonably requested by the Commonwealth's Representative.
- (c) The Commonwealth's Representative will review the draft Significant Event Remediation Plan and either approve the draft Significant Event Remediation Plan or provide the Consultant with the details of any changes that are required. The Consultant must make any changes to the draft Significant Event Remediation Plan reasonably requested by the Commonwealth's Representative and resubmit the draft Significant Event Remediation Plan to the Commonwealth's Representative for approval within 3 business days of the request unless a different timeframe is agreed in writing by the Commonwealth's Representative. This paragraph (c) will apply to any resubmitted draft Significant Event Remediation Plan.
- (d) Without limiting its other obligations under the Contract, the Consultant must comply with the Significant Event Remediation Plan as approved by the Commonwealth's Representative. The Consultant agrees to provide reports and other information about the Consultant's progress in implementing the Significant Event Remediation Plan as reasonably requested by the Commonwealth's Representative.

17.5 Acknowledgement and Release

The Consultant:

- (a) acknowledges and agrees that the exercise of any of the Commonwealth's absolute discretions under this clause 17 is not capable of being the subject of a dispute or difference for the purposes of clause 11 or otherwise subject to review; and
- (b) must bear, and releases the Commonwealth from, all Claims arising out of in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 17.

18. FINANCIAL VIABILITY

(a) The Consultant:

- (i) warrants that, on the Award Date and on the date of submitting each payment claim under clause 9.2 or 9A.2 (as the case may be):
 - A. it has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants (in accordance with paragraph (b))); and
 - B. each subconsultant engaged in the Services has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
- (ii) acknowledges and agrees that the Commonwealth has entered into this Contract and if applicable, has made payments to the Consultant under clause 9.5 or clause 9A.4 (as the case may be), strictly on the basis of and in reliance upon the warranties set out in clause 18.

(b) The Consultant must pay all subconsultants in accordance with the payment terms in all subcontracts.

(c) The Consultant must keep the Commonwealth's Representative fully and regularly informed as to all financial viability matters which could adversely affect:

- (i) the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; and
- (ii) a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any potential or actual change in:
 - (iii) the Consultant's financial viability; or
 - (iv) a subconsultant's financial viability.

(d) The Commonwealth's Representative may (in its absolute discretion) at any time request the Consultant to:

- (i) provide the Commonwealth's Representative with a solvency statement in the form required by the Commonwealth with respect to:
 - A. the Consultant, properly completed and duly executed by the Consultant; or
 - B. a subconsultant, properly completed and duly executed by the subconsultant;
- (ii) make:
 - A. its Financial Representative available; and
 - B. ensure a subconsultant makes its Financial Representative available, to provide the Commonwealth's Representative and any independent financial adviser engaged by the Commonwealth with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Commonwealth, the Commonwealth's Representative and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:
 - C. the Consultant has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants in accordance with paragraph (b)); or
 - D. a subconsultant has the financial viability necessary to perform its activities in accordance with the relevant subcontract.

(e) If the Commonwealth considers (in its absolute discretion) that there could be or has been a change in:

- (i) the Consultant's financial viability; or
 - (ii) a subconsultant's financial viability,
- which could adversely affect:
- (iii) the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; or
 - (iv) a subconsultant's ability to perform its activities in accordance with the relevant subcontract,
- the Commonwealth's Representative may (in its absolute discretion) direct the Consultant to take such steps as the Commonwealth considers necessary to secure the performance of the Services, Completion and the meeting of its obligations under the Contract.
- (f) If the Commonwealth's Representative gives a direction under paragraph (e), then the Consultant must take such steps as the Commonwealth considers necessary to better secure a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
 - (g) The Consultant acknowledges and agrees that:
 - (i) nothing in clause 18 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity;
 - (ii) neither the Commonwealth nor the Commonwealth's Representative is required to exercise any discretion under clause 18 for the benefit of the Consultant (or any subconsultant);
 - (iii) clause 18 does not give the Consultant (or any subconsultant) any rights; and
 - (iv) (the exercise or failure to exercise a discretion under clause 18 is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 of the Contract or otherwise subject to review.
 - (h) The Consultant must ensure that each subcontract includes provisions equivalent to the obligations of the Consultant in clause 18.

19. CHILD SAFETY

- (a) If any part of the Services involves the Consultant employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Consultant agrees:
 - (i) without limiting its other obligations under the Contract, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
 - (ii) 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.
- (b) When child safety obligations may be relevant to a subcontract made in connection with the Contract, the Consultant must ensure that any such subcontract entered into by the Consultant for the purposes of fulfilling the Consultant's obligations under the Contract imposes on the subcontractor the same obligations regarding child safety that the Consultant has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

20. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- (a) For the purposes of this clause 20, **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.
- (b) The Consultant must comply with, and ensure that its officers, employees, agents and subconsultants comply with, the Code in connection with the performance of the Contract.
- (c) The Consultant must:
 - (i) periodically monitor and assess its, and its officers', employees', and agents', compliance with the Code; and
 - (ii) on request from the Commonwealth's Representative, promptly provide information regarding:
 - A. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
 - B. the Consultant's compliance with paragraph (b).
- (d) The Consultant must immediately notify the Commonwealth's Representative in writing upon becoming aware of any breach of paragraph (b). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
- (e) Where the Commonwealth's Representative identifies a possible breach of paragraph (b), it may notify the Consultant in writing, and the Consultant must, within three days of receiving the notice, either:
 - (i) where the Consultant considers a breach has not occurred - advise the Commonwealth's Representative that there has not been a breach and provide information supporting that determination; or
 - (ii) where the Consultant considers that a breach has occurred - notify the Commonwealth's Representative under paragraph (d) and otherwise comply with its obligations under this clause 20.
- (f) Notwithstanding paragraph (e), the Commonwealth's Representative may notify the Consultant in writing that it considers that the Consultant has breached paragraph (b), in which case the Consultant must notify the Commonwealth's Representative in writing under paragraph (d) and otherwise comply with its obligations under this clause 20.
- (g) A failure by the Consultant to comply with its obligations under any part of this clause will be a breach of the Contract.
- (h) Nothing in this clause or the Code limits, reduces or derogates from the Consultant's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Consultant of its obligations under this clause will be at no additional cost to the Commonwealth.
- (i) The Consultant acknowledges and agrees that the Commonwealth may take the Consultant's compliance with the Code into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

INDICATIVE CONTRACT PARTICULARS

[THESE CONTRACT PARTICULARS ARE INDICATIVE ONLY. THE COMMONWEALTH RESERVES THE RIGHT TO AMEND THEM FOR THE PURPOSES OF A PARTICULAR ENGAGEMENT.]

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Award Date: (Clause 1.1)	[INSERT AWARD DATE]
Brief: (Clause 1.1)	[INSERT]
Commonwealth's Representative: (Clause 1.1)	The person holding the position of [INSERT POSITION TITLE] for the time being [INSERT NAME]
Consultant: (Clause 1.1)	[INSERT LEGAL NAME AND ABN]
Consultant's Representative: (Clause 1.1)	The person holding the position of [INSERT POSITION TITLE] for the time being [INSERT NAME]
Contract: (Clause 1.1 and 5.10)	The other documents forming part of the Contract are: [INSERT OTHER DOCUMENTS FORMING PART OF THE CONTRACT: OR No other documents form part of the Contract]
Environmental Requirements: (Clause 1.1)	[INSERT ADDITIONAL ENVIRONMENTAL REQUIREMENTS; OR None specified]
ESD Principles: (Clause 1.1)	[INSERT ADDITIONAL ESD PRINCIPLES; OR None specified]
Executive Negotiators: (Clause 1.1)	Commonwealth: The person holding the position of Director General, Capital Facilities and Infrastructure Branch Infrastructure Division for the time being [INSERT NAME] Consultant: The person holding the position of [INSERT POSITION TITLE] for the time being [INSERT NAME]
Fee Schedule: (Clause 1.1)	[INSERT]
Project Contracts: (Clause 1.1)	[INSERT THE NAMES OF THE CONTRACTS THAT THE CONSULTANT WILL ADMINISTER OR MANAGE ON BEHALF OF COMMONWEALTH: OR Not applicable]
Project DCAP: (Clause 1.1)	[INSERT]

Project Plans:
(Clause 1.1 and 5.14)

[INSERT PROJECT PLANS REQUIRED E.G. ENVIRONMENTAL MANAGEMENT PLAN; METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES; WORK HEALTH AND SAFETY PLAN; AND/OR SITE MANAGEMENT PLAN.

A METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES WILL BE REQUIRED IF THE WORKS ARE TO BE CARRIED OUT ON OR IN THE VICINITY OF AN AIRFIELD.

A WORK HEALTH AND SAFETY PLAN WILL BE REQUIRED IF THERE IS A RISK TO WORKERS AND OTHER PERSONS ARISING FROM THE CARRYING OUT OF THE SERVICES; OR

None specified.]

Site:
(Clause 1.1)

[INSERT A DESCRIPTION OF THE LOCATION OF THE SITE OR REFER TO AN ATTACHMENT IF SITE MAP IS TO BE USED AS REFERENCE]

Site Management Plan:
(Clause 1.1)

[INSERT ANY MATTERS REQUIRED TO BE ADDRESSED IN THE SITE MANAGEMENT PLAN; OR

None specified]

Governing Law:
(Clause 1.3(a))

[INSERT STATE OR TERRITORY WITHIN AUSTRALIA - MOST LIKELY WHERE THE SERVICES WILL BE PERFORMED OR:

Australian Capital Territory]

CLAUSE 2 - ROLE OF THE CONSULTANT

Subconsultants:
(Clause 2.9(a))

Subconsultant

Services

[INSERT LEGAL NAME AND ABN/ACN]

[INSERT DESCRIPTION OF RELEVANT SERVICES]

[INSERT LEGAL NAME AND ABN/ACN]

[INSERT DESCRIPTION OF RELEVANT SERVICES]

Statutory Requirements with which the Consultant does not need to comply:
(Clause 2.10(a))

[INSERT DESCRIPTION; OR

The Consultant must comply with all Statutory Requirements]

Approvals which the Consultant is to assist the Commonwealth to apply for and obtain:
(Clause 2.10(b)(i))

[INSERT DESCRIPTION OF SPECIFIC APPROVALS: OR

The Consultant is to assist with applying for and obtaining all necessary Approvals]

Co-ordination with other projects/programs:
(Clause 2.14)

Clause 2.14 [DOES/DOES NOT] apply

Other Project/Program:

[INSERT DESCRIPTION OF OTHER PROJECT/ PROGRAM; OR

Not Applicable]

Environment:
(Clause 2.15)

Clause 2.15 [DOES/DOES NOT] apply

Services Not Included:
(Clause 2.16)

**[INSERT DESCRIPTION OF SERVICES NOT INCLUDED;
OR**

None specified]

Site Restrictions:
(Clause 2.17)

[INSERT DESCRIPTION OF SITE RESTRICTIONS; OR

None specified]

Employers' Liability Insurance:
(Clause 2.18)

Employers' Liability Insurance

Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase which must not be less than \$[INSERT].

[NOTE: THIS IS REQUIRED IF THE CONTRACTOR'S ACTIVITIES ARE PERFORMED OR THE CONTRACTOR'S EMPLOYEES PERFORM WORK, ARE EMPLOYED OR NORMALLY RESIDE IN WESTERN AUSTRALIA OR ANY JURISDICTION OUTSIDE AUSTRALIA.]

CLAUSE 4 - PERSONNEL

**Assistant Commonwealth's Representatives
and their functions:**
(Clause 4.4(b))

Person

Function

[INSERT NAME]

**[INSERT FUNCTIONS TO
BE PERFORMED]**

[INSERT NAME]

**[INSERT FUNCTIONS TO
BE PERFORMED]**

CLAUSE 5 - DOCUMENTATION

**Number of days for submission of Project
Plans:**
(Clause 5.14(a)(ii)A)

Environmental Management
Plan

**[INSERT (IF
APPLICABLE)]**

Site Management Plan

**[INSERT (IF
APPLICABLE)]**

Work Health and Safety Plan

**[INSERT (IF
APPLICABLE)]**

Other: [SPECIFY]

**[INSERT (IF
APPLICABLE)]**

Number of days for review of Project Plans:
(Clause 5.14(a)(ii)B)

Environmental Management
Plan

**[INSERT (IF
APPLICABLE)]**

Site Management Plan

**[INSERT (IF
APPLICABLE)]**

Work Health and Safety Plan

**[INSERT (IF
APPLICABLE)]**

Other: [SPECIFY]

**[INSERT (IF
APPLICABLE)]**

**Manual of Fire Protection Engineering and
Building Code of Australia Certification:**
(Clause 5.15)

Clause 5.15 **[DOES/DOES NOT]** apply

Defence Industry Participation Schedule
(Clause 5.18)

Clause 5.18 **[DOES/DOES NOT]** apply
(Clause 5.18 does not apply unless otherwise stated)

CLAUSE 7 - TIME

**Maximum intervals between
program updates by Consultant:**
(Clause 7.2(b))

[INSERT A TIME PERIOD FOR PROGRAM UPDATES,
eg Monthly]

Program software:
(Clause 7.2(d))

[INSERT THE TYPE OF PROGRAM TO BE USED,
ENSURING SPECIFICATION OF APPROVED
EQUIVALENTS,

eg Microsoft Project or approved equivalent]

CLAUSE 9 - PAYMENT (OPTION 1)

Payment (Option 1):
(Clause 9)

Clause 9 [DOES/DOES NOT] apply

**Times for submission of payment claims by
the Consultant to Commonwealth's
Representative:**
(Clause 9.2(a))

[IF CLAUSE 9 APPLIES SELECT APPLICABLE TIME
FOR SUBMISSION OF PAYMENT CLAIMS AND DELETE
REFERENCE TO TIME THAT IS NOT APPLICABLE]

[MONTHLY]

Monthly on the [INSERT DAY eg 28th] day of each month

OR, IF THE SITE IS NOT IN NSW

[ON COMPLETION OF MILESTONES]

Upon Completion of Milestones in accordance with the Milestone
Fee Payment Schedule set out in the Fee Schedule.

[IF CLAUSE 9 DOES NOT APPLY INSERT,

Not applicable]

Payment of Workers and Subconsultants:
(Clause 9.12)

[IF CLAUSE 9 APPLIES, SELECT APPLICABLE OPTION.
OPTION 1 APPLIES IF THE SERVICES ARE BEING
PERFORMED IN NEW SOUTH WALES]

[OPTION 1/ OPTION 2] applies.
(Option 2 applies unless otherwise stated)

[IF CLAUSE 9 DOES NOT APPLY INSERT,

Not applicable]

Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:
(Clause 9.14(d))

[IF CLAUSE 9 APPLIES INSERT

To the extent that the relevant part of the Services is carried out in:

1. the Northern Territory or Western Australia:
 - (a) the appointed adjudicator is ; or
 - (b) if no appointed adjudicator is appointed, the prescribed appointer is the Resolution Institute, Northern Territory Chapter or Western Australian Chapter (as the case may be); or
2. Victoria, any one of the following:
 - (a) Resolution Institute, Victorian Chapter;
 - (b) Building Adjudication Victoria Inc; or
 - (c) Rialto Adjudications Pty Ltd; or
3. any other State or Territory (save for Queensland), the Resolution Institute of the Chapter in that State or Territory.

OR IF CLAUSE 9 DOES NOT APPLY INSERT,

Not applicable]

Accounting records (additional):
(Clause 9.15)

[IF CLAUSE 9 APPLIES, INSERT DETAILS FOR ADDITIONAL ACCOUNTING RECORDS (IF ANY); OR IF CLAUSE 9 DOES NOT APPLY INSERT,

Not applicable]

Estate Information:
(Clause 9.16)

[IF CLAUSE 9 APPLIES SELECT APPLICABLE OPTION]

Clause 9.16 **[DOES/DOES NOT]** apply
(Clause 9.16 applies unless otherwise stated)

[IF CLAUSE 9 DOES NOT APPLY INSERT,

Not applicable]

CLAUSE 9A - PAYMENT (OPTION 2)

Payment (Option 2):
(Clause 9A)

Clause 9A **[DOES/DOES NOT]** apply

Times for submission of payment claims by the Consultant: (Clause 9A.2(a))	[IF CLAUSE 9A APPLIES SELECT APPLICABLE TIME FOR SUBMISSION OF PAYMENT CLAIMS AND DELETE REFERENCE TO TIME THAT IS NOT APPLICABLE] [MONTHLY] Monthly on the [INSERT DAY eg 28th] day of each month OR, IF THE SITE IS NOT IN NSW [ON COMPLETION OF MILESTONES] Upon Completion of Milestones in accordance with the Milestone Fee Payment Schedule set out in the Fee Schedule. [IF CLAUSE 9A DOES NOT APPLY INSERT, Not applicable]
Number of days for payment: (Clause 9A.4)	[IF CLAUSE 9A APPLIES INSERT NUMBER OF DAYS FOR PAYMENT] [INSERT] days (30 days unless otherwise specified) [IF CLAUSE 9A DOES NOT APPLY INSERT, Not applicable]
Accounting records (additional): (Clause 9A.10)	[IF CLAUSE 9A APPLIES, INSERT DETAILS FOR ADDITIONAL ACCOUNTING RECORDS (IF ANY); OR IF CLAUSE 9A DOES NOT APPLY INSERT, Not applicable]
Estate Information: (Clause 9A.11)	[IF CLAUSE 9A APPLIES SELECT APPLICABLE OPTION] Clause 9A.11 [DOES/DOES NOT] apply (Clause 9A.11 applies unless otherwise stated) [IF CLAUSE 9A DOES NOT APPLY INSERT, Not applicable]
<u>CLAUSE 10 - TERMINATION</u>	
Number of days to remedy breach: (Clause 10.3(c) and 10.4(b))	[INSERT] days
<u>CLAUSE 11 - DISPUTE RESOLUTION</u>	
Industry expert who will conduct expert determinations: (Clause 11.3(a)(i))	[INSERT NAME, COMPANY (IF APPLICABLE) AND ABN OF SPECIFIC EXPERT; OR None specified]
Nominating authority for expert: (Clause 11.3(a)(ii))	[INSERT NAME, COMPANY (IF APPLICABLE) AND ABN OF SPECIFIC NOMINATING AUTHORITY; OR The President for the time being of the Resolution Institute unless otherwise specified]

CLAUSE 12 - NOTICES

Address and email address, for the giving or serving of notices, upon:
(Clause 12.7)

Commonwealth:

Attn: [INSERT NAME/POSITION]

[INSERT STREET ADDRESS (DO NOT USE PO BOX)]

[INSERT SUBURB, STATE, POSTCODE]

Email: [INSERT NUMBER]

Consultant:

Attn: [INSERT NAME/POSITION]

[INSERT STREET ADDRESS (DO NOT USE PO BOX)]

[INSERT SUBURB, STATE, POSTCODE]

Email: [INSERT NUMBER]

CLAUSE 13 - INDIGENOUS PROCUREMENT POLICY

Option for Indigenous Procurement Policy: [OPTION 1/ OPTION 2] applies.
(Clause 10.2(g), 13.1 and 13.2)

(Option 1 applies unless otherwise stated)

CLAUSE 15 INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Sensitive and Classified Information:
(Clause 15)

Clause 15 [DOES/DOES NOT] apply.
(Clause 15 does not apply unless otherwise stated)

Current security clearance level/s:
(Clause 15.2(b) and 15.3(c)(i))

[INSERT (IF APPLICABLE)]

Information technology environment accreditation or certification level/s:
(Clause 15.3(f)(i)D)

[INSERT (IF APPLICABLE)]

Information technology environment accreditation or certification level/s (caveated or compartmented information):
(Clause 15.3(f)(i)E)

[INSERT (IF APPLICABLE)]

CLAUSE 16 DEFENCE INDUSTRY SECURITY PROGRAM

Level of DISP Membership:
(Clause 16(a))

[INSERT (IF APPLICABLE)]



Australian Government

Defence

SECTION 4B TERMS OF ENGAGEMENT

CONTAMINATION REMEDIATION WORKS AND UNEXPLODED ORDNANCE REMEDIATION



Australian Government

Defence

GENERAL REMEDIATION CONTRACT (GRC-1 2013)

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CONDITIONS OF CONTRACT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

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

Accredited Environmental Site Auditor

The person (if any) named in the Contract Particulars, being a person who is an accredited environmental site auditor (contaminated land) (or equivalent) under:

- (a) section 75 of the *Environment Protection Act 1997* (ACT);
- (b) Part 4 of the *Contaminated Land Management Act 1997* (NSW);
- (c) section 67-69 of the *Waste Management and Pollution Control Act 1998* (NT);
- (d) section 381 of the *Environmental Protection Act 1994* (Qld), being an organisation listed under Schedule 8 of the *Environmental Protection Regulation 2008* (Qld);
- (e) section 103V of the *Environment Protection Act 1993* (SA);
- (f) section 53S of the *Environment Protection Act 1970* (Vic); or
- (g) Division 1, Part 7 of the *Contaminated Sites Act 2003* (WA).

Accredited Environmental Site Auditor's Functions

The roles and functions of the Accredited Environmental Site Auditor, as outlined in Annexure 1, Part C.

ACM

Asbestos containing material.

Act of Prevention

Any one of:

- (a) a breach of the Contract by the Commonwealth;
- (b) any other act or omission of the Commonwealth, the Contract Administrator or an Other Contractor engaged by the Commonwealth; or
- (c) a Remediation Works Variation the subject of a direction by the Contract Administrator, except where the Remediation Works Variation is instructed in the circumstances described in clause 9.8(b),

but excluding any act or omission of the Commonwealth, the Contract Administrator or an Other Contractor engaged by the Commonwealth in accordance with or otherwise permitted by the Contract.

Approval

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 Contractor's Activities or the Remediation Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities or the Remediation Works; or
- (b) certify or verify that the Remediation Works, or a completed Stage, have achieved Remediation Completion.

Approved Security

An unconditional undertaking (duly stamped) in the form set out in the Schedule of Collateral Documents and otherwise on terms, and given by a financial institution, approved by the Commonwealth.

ASD Certified Cloud Services List

The list as amended from time to time located at http://www.asd.gov.au/infosec/irap/certified_clouds.htm.

Australian Government Information Security Manual

Is a reference to that document as amended from time to time.

Australian Government Personnel Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Physical Security Management Protocol

Is a reference to that document as amended from time to time.

Australian Government Protective Security Policy Framework

Is a reference to that document as amended from time to time.

Australian Privacy Principle

Has the meaning given in the Privacy Act.

Award Date

The date stated in the Contract Particulars.

Black Economy Procurement Connected Policy

The Black Economy Procurement Connected Policy - Increasing the integrity of government procurement - March 2019.

Bond

Security in the form of a conservation bond required under the Heritage Act or by any consent or permit issued under the Heritage Act.

Change of Control

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

Claim

Includes any claim for an increase in the Contract Price, for payment of money (including damages) or for an extension of time:

- (a) under, arising out of or in connection with the Contract, including any direction of the Contract Administrator;
- (b) arising out of, or in connection with the Contractor's Activities, the Remediation Works or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Collateral Warranty

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

Commonwealth

Commonwealth of Australia.

Commonwealth Heritage Management Principles

Means Commonwealth Heritage management principles within the meaning of the EPBC Act.

Commonwealth Heritage Values

Means Commonwealth Heritage values within the meaning of the EPBC Act.

Commonwealth Heritage Place

Means a Commonwealth Heritage place within the meaning of the EPBC Act.

Commonwealth Premises

Means any of the following that is owned or occupied by the Commonwealth:

- (a) an area of land or any other place (whether or not it is enclosed or built on);
- (b) a building or other structure; or
- (c) a vehicle, vessel or aircraft.

Commonwealth Procurement Rules

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

Commonwealth Risk

Any one of:

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

Commonwealth WHS Act

The *Work Health and Safety Act 2011* (Cth) and includes any amendment, re-enactment or replacement of it.

Commonwealth WHS Regulations

The *Work Health and Safety Regulations 2011* (Cth) and includes any amendment, re-enactment or replacement of it.

Confidential Information

- (a) Means, subject to paragraph (b):

- (i) the Contract;
 - (ii) the Project Documents;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way connected with the Contractor's Activities or the Remediation Works which:
 - A. by its nature is confidential;
 - B. the Contractor knows or ought to know is confidential; or
 - C. is the subject of a Separation Arrangement; and
 - (iv) 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.
- (b) **Confidential Information** does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which:
- (i) is in the possession of the Contractor without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf;
 - (ii) is in the public domain otherwise than due to a breach of clause 19; or
 - (iii) has been independently developed or acquired by the Contractor.

Confidential Information Incident

A single breach or a series of breaches of clause 19, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

An identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.

Consolidated Group

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

Construction Risks Insurance

A policy of insurance covering the respective rights, interests and liabilities of the Commonwealth, the Contractor and all subcontractors arising out of or in connection with the works in progress and insuring at a minimum all the things referred to in clause 5.1 for which the Contractor bears the risk of loss or damage resulting from any insurable event.

Contamination

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.

Contract

The contractual relationship between the parties in respect of an Engagement constituted by the documents referred to in clause 2.4(b) of the Panel Conditions and any other document listed in the Contract Particulars.

Contract Administrator

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

Any references to the "Commonwealth's Representative" in the Contract should be read as references to the Contract Administrator.

Contract Administrator's Office

The office provided by the Contractor pursuant to clause 8.25.

Contract Particulars

The particulars attached to the Official Order and entitled "Contract Particulars".

Contract Price

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

Contractor

The person specified in the Contract Particulars.

Contractor's Activities

All things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations.

Contractor HOTO Obligation

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

Contractor's Representative

The person specified in the Contract Particulars or any other person from time to time appointed as Contractor's Representative in accordance with clause 3.6.

Control

Includes:

- (a) 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;
- (b) 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;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) 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
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Cyber Security Event

An identified occurrence of a system, service or network state indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered occurrence of a system, service or network state which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Cyber Security Incident

A single or series of unwanted or unexpected Cyber Security Events that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Dangerous Goods

Has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail, 7th edition.

Date for Remediation Completion

In respect of the Remediation Works or a Stage, the date, or period of time, specified in the Contract Particulars, as adjusted under the Contract.

Date of Remediation Completion

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

Deed of Guarantee, Undertaking and Substitution

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

Defence

Department of Defence.

Defence Environmental Management System

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

Defence Environmental Plan

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

Defence Environmental Requirements

The Defence Environmental Management System and Defence Environmental Plan applicable to the Site, the Contractor's Activities or the Remediation 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 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 Contractor's Activities or the Remediation Works. To the extent that any of the requirements would require or suggest the insertion of provisions into the Contract, then:

- (a) those provisions will be incorporated by reference into the Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the Contract Administrator in accordance with clause 7.12.

Defence Security Principles Framework

Is a reference to that document as amended from time to time.

Defence Strategic Interest Issue

Any issue that involves an actual, potential or perceived risk of an adverse effect on the interests of the Commonwealth including:

- (a) protecting Australia's national security requirements, in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework);
- (b) ensuring that the whole (or any part of) the Confidential Information is not exported (or capable of being exported) outside of Australia or is not disclosed or transmitted (or capable of being disclosed or transmitted) to any person who does not hold (or is not eligible to hold) an Australian Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
- (c) ensuring compliance by the Contractor with Australia's national security requirements, in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework).

Defence Website

The website available at www.defence.gov.au/.

direction

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

Employers' Liability Insurance

If the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, a policy of insurance covering the liability of the Contractor 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.

Engagement

An engagement to perform the Contractor's Activities and Remediation Works under the Panel Agreement on the terms set out in the relevant Official Order.

Environment

Includes:

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

Environmental Clearance Certificate

The Environmental Clearance Certificate issued by the Commonwealth relating to the Contractor's Activities or the Remediation Works and any conditions incorporated in that certificate.

Environmental Consultant

The person specified in the Contract Particulars.

Environmental Consultant's Functions

The roles and functions of the Environmental Consultant, as outlined in Annexure 1, Part A.

Environmental Consultant's Representative

The person appointed by the Environmental Consultant under clause 3.8(c).

Environmental Harm

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

Environmental Incident

Any Environmental Harm or Contamination arising out of or in connection with the Contractor's Activities or the Remediation Works.

Environmental Management Plan

The plan prepared by the Contractor and finalised under clause 7.7, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and Remediation Works from an environmental perspective to:

- (a) ensure compliance with the Environmental Requirements and Statutory Requirements; and
- (b) maximise the achievement of the Environmental Objectives.

The Environmental Management Plan must address, at a minimum:

- (c) without limiting paragraph (a), all Statutory Requirements;
- (d) all Environmental Objectives;
- (e) all Environmental Requirements;
- (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's key people under clause 3.6) regarding the Environment;
- (g) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the Environment during the Contractor's Activities and the Remediation Works;
- (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding the Environment;
- (i) the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 7.7;
- (j) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Remediation Works;
- (k) the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 7.7 (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 Contractor's Activities and the Remediation Works);
- (l) the procedure for ensuring subcontractor compliance with the Environmental Management Plan;

- (m) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the Environmental Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Remediation Works;
- (n) the procedure and approach to ensure the alignment of the Environmental Management Plan with other Project Plans, including the Work Health and Safety Plan and the Site Management Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
- (o) the additional matters specified in the Contract Particulars; and
- (p) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Environmental Objectives

The Environmental Objectives are:

- (a) to encourage best practice environmental management through the planning, development, implementation and continuous improvement of environmental management procedures during the Contractor's Activities and the Remediation Works;
- (b) to prevent and minimise adverse impacts on the Environment;
- (c) to ensure that no hazardous substance is stored on Commonwealth land without Approval;
- (d) to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
- (e) the additional objectives specified in the Contract Particulars.

Environmental Requirements

Includes:

- (a) the Environmental Clearance Certificate;
- (b) the Defence Environmental Requirements; and
- (c) the additional requirements specified in the Contract Particulars.

EPBC Act

The Environment Protection and Biodiversity Conservation Act 1999 (Cth).

Errors and Omissions Insurance

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

Executive Negotiators

The representatives of the parties specified in the Contract 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

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

Financial Representative

Means:

- (a) in relation to the Contractor, the Contractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Contractor; and
- (b) in relation to a subcontractor, the subcontractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subcontractor.

GST

The tax payable on taxable supplies under the GST Legislation.

GST Group

A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

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 Chemical

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

- (a) prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
- (b) restricted carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
- (c) hazardous chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls;
- (d) Schedule 11 Hazardous Chemicals;
- (e) hazardous chemicals listed in Table 14.1 of Schedule 14 of the *Work Health and Safety Regulations 2011* (Cth);
- (f) Schedule 15 Chemical; and
- (g) lead as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Hazardous Substances

Means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.

Heritage Act

The *Heritage Act 1995* (Vic).

Heritage Department

The "Heritage Council" established under the Heritage Act (or such other Department of the State of Victoria which administers the Heritage Act).

Heritage Inventory

The "Heritage Inventory" established under the Heritage Act.

Heritage Register

The Heritage Register established under the Heritage Act.

HOTO Plan and Checklist

The worksheets contained within the excel workbook titled "HOTO Plan & Checklist" available at <http://defence.gov.au/estatemangement/lifecycle/PlanHandoverTakeover/Default.asp>, as updated, superseded or replaced from time to time.

HOTO Process

The process for handover and takeover of the Remediation Works or a Stage to enable the occupation, use, operation and maintenance of the Remediation Works or the Stage by the Commonwealth and Other Contractors including the:

- (a) commissioning of the Remediation Works or the Stage (including the inspection and testing process);
- (b) handover of the Remediation Works or the Stage to the Commonwealth; and
- (c) occupation, use, operation and maintenance of the Remediation Works or the Stage by the Commonwealth and Other Contractors,

in accordance with the HOTO Requirements.

HOTO Requirements

The requirements published on the Defence Website in respect of commissioning, handover and takeover of projects on the Defence Estate, including:

- (a) 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
- (b) any other requirement published on the Defence Website expressed as applying to the commissioning, handover and takeover of projects on the Defence Estate,

each as updated, superseded or replaced from time to time.

Indigenous Enterprise

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

Indigenous Participation Plan

The plan prepared by the Contractor and specified in the Contract Particulars.

Indigenous Procurement Policy

The Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy.

Insolvency Event

Any one of the following:

- (a) the Contractor becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Commonwealth in writing or its creditors generally that the Contractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) 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 Contractor;

- (d) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
- (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt; or
 - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. 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;
- (e) where the Contractor is a corporation, any one of the following:
- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (iii) the corporation entering a deed of company arrangement with creditors;
 - (iv) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (vi) 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);
 - (vii) a winding up order or deregistration order is made in respect of the corporation;
 - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
 - (ix) 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
 - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) 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
- (g) 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

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

Any software, hardware or telecommunications equipment:

- (a) produced; or
 - (b) provided, or required to be provided, to the Commonwealth or the Contract Administrator,
- under, for the purposes of, or arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works by, for or on behalf of the Contractor.

Long Service Leave Legislation

Means:

- (a) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (b) *Building and Construction Industry Long Service Payments Act 1986* (NSW);
- (c) *Construction Industry Long Service Leave and Benefits Act 2005* (NT);
- (d) *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld);
- (e) *Construction Industry Long Service Leave Act 1987* (SA);
- (f) *Construction Industry (Long Service) Act 1997* (Tas);
- (g) *Construction Industry Long Service Leave Act 1997* (Vic);
- (h) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA);
- (i) the long service leave obligations in the National Employment Standards in the *Fair Work Act 2009* (Cth); and
- (j) any legislation in any State or Territory of Australia addressing long service leave in the building and construction industry.

Lump Sum Component

The lump sum component of the Contract Price specified in the Contract Particulars as adjusted, subject to clause 16.5 (if applicable) under the Contract.

Lump Sum Work

That component of the Remediation Works described as such in the Technical Specification for which the lump sum component of the Contract Price (specified in the Contract Particulars) is payable, as varied (if at all) by a Remediation Works Variation.

Material Change

Any actual, potential or perceived material change to the circumstances of the Contractor, including any change:

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or
 - (iii) the Contractor's financial viability, availability, capacity or ability to perform the Contractor's Activities, achieve Remediation Completion and otherwise meet its obligations under the Contract; or
- (b) which affects the truth, completeness or accuracy of:

- (i) if the Contractor lodged a registration of interest, the registration of interest;
- (ii) if the Contractor lodged a tender, the tender; or
- (iii) any other information, documents, evidence or clarifications provided by the Contractor to the Commonwealth arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Contract, the Contractor's Activities or the Remediation Works.

Method of Work Plan for Airfield Activities

The method of work plan for airfield activities (if any) prepared in accordance with clause 7.16.

Moral Rights

Has the meaning given by the *Copyright Act 1968* (Cth).

Moral Rights Consent

A moral rights consent in the form set out in the Schedule of Collateral Documents.

NATA

National Association of Testing Authorities Australia.

National Heritage Management Principles

Means National Heritage management principles within the meaning of the EPBC Act.

National Heritage Place

Means a National Heritage Place within the meaning of the EPBC Act.

National Heritage Values

Means the National Heritage Values within the meaning of the EPBC Act.

Official Order

The document issued by the Commonwealth to the Contractor under the Panel Agreement in respect of an Engagement, entitled "Official Order", engaging the Contractor to carry out the Contractor's Activities and the Remediation Works.

Ozone Depleting Substance

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.

Other Contractor

Any contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors (including the Environmental Consultant and (except for the purposes of paragraph (b) of the definition of 'Act of Prevention' in this clause 1.1) the Accredited Environmental Site Auditor or the Technical Advisor (as the case may be)).

Pandemic

The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Relief Event

A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Contractor's Activities caused as a direct result of the Pandemic provided that the adverse effect

is one which the Contractor could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).

Panel Agreement

The Panel Agreement for the Defence Infrastructure Panel - Environment, Heritage and Estate Engineering 2020 - 2027 between the Commonwealth and the Contractor.

Panel Conditions

The Panel Conditions in Section 2 of the Panel Agreement.

Plant, Equipment and Work

Those things used, or work undertaken, by the Contractor to undertake the Remediation Works or a Stage but which will not form part of the Remediation Works or the Stage.

Personal Information

Has the meaning given in the Privacy Act.

Powering Indigenous Procurement reporting portal

The online portal where contractors report on their progress against their mandatory minimum requirements under the Indigenous Procurement Policy.

Privacy Act

The *Privacy Act 1988* (Cth).

Professional Indemnity Insurance

A policy of insurance to cover claims made against the insured for:

- (a) civil liability for breach of professional duty (whether owed in contract or otherwise); and
- (b) unintentional breaches of third party intellectual property,

by the Contractor or its subcontractors in carrying out the Contractor's Activities.

Project

The project (if any) described in the Official Order.

Project DCAP

The Project DCAP as finalised and referenced in the Contract Particulars.

Project Documents

Includes:

- (a) Remediation Design Documentation prepared by the Contractor under clause 7.2;
- (b) programs;
- (c) Project Plans;
- (d) Project DCAP;
- (e) Approvals;
- (f) operation and maintenance manuals and warranties from subcontractors;
- (g) IT Equipment;

- (h) the documents which the Contractor is obliged to maintain under clause 12.21;
- (i) without limiting paragraphs (a) - (h), any other:
 - (i) data, documents, drawings, records and information; and
 - (ii) material:
 - A. produced; or
 - B. provided, or required to be provided, to the Commonwealth or the Contract Administrator,

under, for the purposes of, or arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works by, for or on behalf of the Contractor (including by subcontractors), including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, software, databases or other information stored in any electronically-retrievable medium, technical information, plans, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Contractor), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents, any material relating to the Contractor's compliance with the WHS Legislation and any other material of a similar nature to those materials arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works; and
- (j) without limiting paragraphs (a) - (i), all material at any time derived (under, for the purposes of, or arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works) from, or based on, the material described in paragraphs (a) - (i).

Project Lifecycle and HOTO Plan

The plan prepared by the Contractor in accordance with, and for the purposes of, the HOTO Requirements and finalised under clause 7.7, which must:

- (a) be prepared in accordance with the HOTO Plan and Checklist;
- (b) meet all applicable HOTO Requirements and Statutory Requirements; and
- (c) include any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Project Management Meetings

The meetings coordinated and facilitated by the Contract Administrator in relation to the works (including the Remediation Works) to be undertaken on or in relation to the Site, which shall be held at the times and locations specified in the Contract Particulars, and at such other times and locations as may be reasonably directed by the Contract Administrator.

Project Plans

The:

- (a) Project Lifecycle and HOTO Plan;
- (b) Environmental Management Plan;
- (c) Quality Plan;
- (d) Site Management Plan;
- (e) Work Health and Safety Plan; and

- (f) the additional plans specified in the Contract Particulars and finalised by the Contractor under clause 7.7,

as updated or amended under clause 7.7.

Public Liability Insurance

A policy of liability insurance covering:

- (a) the Contractor and all subcontractors for their respective liabilities; and
- (b) the Commonwealth for all liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Contractor (or any subcontractor),

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 Contractor's Activities or the Remediation Works.

This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers' Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Quality Manager

The person specified in the Contract Particulars or any other person from time to time appointed as the Quality Manager for the Contractor's Activities in accordance with clause 3.6.

Quality Objectives

Means to:

- (a) encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Contractor's Activities and the Remediation Works;
- (b) prevent and minimise adverse quality impacts during the Contractor's Activities and the Remediation Works (including Remediation Defects before, at and after Remediation Completion);
- (c) optimise the value for money achieved by the Commonwealth in respect of the Contractor's Activities and the Remediation Works; and
- (d) achieve the additional objectives specified in the Contract Particulars.

Quality Plan

The plan prepared by the Contractor and finalised under clause 7.7, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Remediation Works from a quality perspective to:

- (a) ensure compliance with the Smart Infrastructure Handbook and Statutory Requirements; and
- (b) maximise the achievement of the Quality Objectives.

The Quality Plan must address, at a minimum:

- (c) all Statutory Requirements;
- (d) all Quality Objectives;
- (e) the Contractor's quality assurance procedure, system or framework (which may or may not be a certified quality assurance procedure, system or framework);
- (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the Quality Manager and the Contractor's key people under clause 3.6(a)) regarding quality;

- (g) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding quality generally during the Contractor's Activities and the Remediation Works;
- (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding quality;
- (i) the procedure for preparing (including tailoring) and finalising the Quality Plan under clause 7.7 (including how the Contractor will ensure maximum consistency between the Contractor's quality assurance procedure, system or framework and the Quality Plan);
- (j) the procedure for regularly reviewing, updating and amending the Quality Plan under clause 7.7;
- (k) the procedure for ensuring subcontractor compliance with the Quality Plan;
- (l) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Remediation Works;
- (m) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the Quality Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Remediation Works;
- (n) the additional matters specified in the Contract Particulars; and
- (o) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Recipient

Any person provided with Confidential Information and, if clause 20 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subcontractors, suppliers and material suppliers.

Related Body Corporate

Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).

Remediation Completion

The point in time when, in respect of the Remediation Works or a Stage:

- (a) the Remediation Works are, or the Stage is, complete except for minor Remediation Defects, which:
 - (i) do not prevent the Site or the part of the Site relevant to the Stage from being used for the Specified Site Use Objective; and
 - (ii) can be corrected without prejudicing the convenient use of the Site or the part of the Site relevant to the Stage;
- (b) those tests which are required by the Contract to be carried out and passed before the Remediation Works or the Stage reach Remediation Completion have been carried out and passed;
- (c) the Contractor has satisfied all Contractor HOTO Obligations which must be satisfied to achieve "Handover" under and in accordance with the HOTO Requirements;

- (d) all documents and other information referred to in the Contract, including all Approvals, which are required for the satisfactory completion of the Remediation Works or the Stage have been supplied to the Contract Administrator;
- (e) without limiting paragraph (d), the Contractor has done everything which the Contract requires it to do as a condition precedent to Remediation Completion, including those things described in the Contract Particulars;
- (f) all documents and other information reasonably required by the Environmental Consultant to prepare the Remediation Validation Report have been supplied to the Environmental Consultant and the Contract Administrator;
- (g) the Remediation Validation Report has been obtained by the Contractor from the Environmental Consultant (and provided to the Commonwealth) in relation to:
 - (i) in the case of Remediation Completion of the Remediation Works, the Site; or
 - (ii) in the case of Remediation Completion of the Stage, the part of the Site relevant to that Stage; and
- (h) if required by the Commonwealth under clause 8.8(a), the Contractor has executed a deed of novation in accordance with clause 8.8(b).

Remediation Completion Notice

A notice under clause 13.2(b)(i) by the Contract Administrator stating that Remediation Completion of the Remediation Works or a Stage has been achieved.

Remediation Defect

Means:

- (a) any defect, fault, failure or omission in the Remediation Works, including any aspect of the Remediation Works which is not in accordance with the requirements of the Contract; and
- (b) any damage to any property (whether of the Commonwealth or a third party) resulting from the Contractor's Activities.

Remediation Defects Rectification Period

The period which commences on the Date of Remediation Completion of the Remediation Works or a Stage, and which continues for the period specified in the Contract Particulars, as extended by clause 9.10.

Remediation Design Documentation

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

Remediation Validation Report

The report prepared by the Environmental Consultant in relation to:

- (a) in the case of Remediation Completion of the Remediation Works, the Site; or
- (b) in the case of Remediation Completion of a Stage, the part of the Site relevant to that Stage,

which confirms that the Remediation Works or the Stage (as the case may be) have been completed in accordance with:

- (c) the Technical Specification; and
- (d) the Remediation Design Documentation,

and that the Site or the relevant part of the Site (as applicable) is suitable for use for the Specified Site Use Objective.

Remediation Works

The physical works, a brief description of which is set out in the Contract Particulars and the details of which are set out in the Contract (including the Technical Specification and the Remediation Design Documentation), which the Contractor must undertake, complete and hand over to the Commonwealth in accordance with the Contract, as varied (if at all) by a Remediation Works Variation, including both the Lump Sum Work and the Schedule of Rates Work.

Remediation Works Variation

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

Schedule 11 Hazardous Chemical

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

Schedule 15 Chemical

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

Schedule of Collateral Documents

The schedule of proforma contracts and other documents applicable to the General Remediation Contract:

- (a) posted on the Defence Website (or any alternative location notified by the Commonwealth), as amended from time to time by the Commonwealth; and
- (b) which as at the Award Date include the contracts and other documents specified in the Contract Particulars.

Schedule of Rates

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

Schedule of Rates Component

The schedule of rates component of the Contract Price specified in the Contract Particulars as adjusted, subject to clause 16.5 (if applicable) under the Contract.

Schedule of Rates Work

That component of the Remediation Works described as such in the Technical Specification for which the Schedule of Rates Component of the Contract Price (specified in the Contract Particulars) is payable, as varied (if at all) by a Remediation Works Variation.

Security of Payment Legislation

Means:

- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (a) *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (b) *Construction Contracts Act 2004* (WA);
- (c) *Construction Contracts (Security of Payments) Act 2004* (NT);
- (d) *Building and Construction Industry Security of Payment Act 2009* (Tas);

- (e) *Building and Construction Industry (Security of Payment) Act 2009 (ACT)*;
- (f) *Building and Construction Industry Security of Payment Act 2009 (SA)*; and
- (g) any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

Sensitive and Classified Information

Any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:

- (a) marked as "sensitive information" or "for official use only";
- (b) identified at the time of issue or communication as "Sensitive Information";
- (c) marked with a national security classification or as "Classified Information";
- (d) identified at the time of issue or communication as "Classified Information"; or
- (e) the Contractor knows or ought to know is subject to, or ought to be treated as Sensitive and Classified Information in accordance with, the provisions of all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework); and
- (f) includes everything recording, containing, setting out or making reference to such document, drawing, information or communication (whether in written, oral or electronic form), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

A single breach or a series of breaches of clause 20, any Separation Arrangements, any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

An identified fact, circumstance, occurrence or event indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Separation Arrangement

Any arrangement that the Contractor:

- (a) has in place; or
- (b) will put in place,

for the purpose of complying with clause 19 and, if clause 20 applies, clause 20.

Significant Event

Means:

- (a) a Material Change;
- (b) a Defence Strategic Interest Issue;

- (c) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (d) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

Significant Event Remediation Plan

The plan (if any) prepared by the Contractor and finalised under clause 22.4.

Site

The site or sites for the Remediation Works described in the Contract Particulars.

Site Audit Statement

A certificate or statement of environmental audit (or equivalent) issued in relation to the Site certifying that the Site can be used for the Specified Site Use Objective, which certificate or statement has been issued under the:

- (a) *Environment Protection Act 1997* (ACT), where the Site is located in the ACT;
- (b) *Contaminated Land Management Act 1997* (NSW), where the Site is located in NSW;
- (c) *Waste Management and Pollution Control Act 1998* (NT), where the Site is located in the Northern Territory;
- (d) *Environmental Protection Act 1994* (Qld), where the Site is located in Queensland;
- (e) *Environment Protection Act 1993* (SA), where the Site is located in South Australia;
- (f) *Environment Protection Act 1970* (Vic), where the Site is located in Victoria; or
- (g) *Contaminated Sites Act 2003* (WA), where the Site is located in Western Australia.

Site Information

The documents specified in the Contract Particulars.

Site Management Plan

The plan prepared by the Contractor and finalised under clause 7.7, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Remediation Works on and near the Site. The Site Management Plan must address at a minimum:

- (a) all Statutory Requirements;
- (b) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's Representative and the Contractor's key people under clause 3.6(a)) regarding management of the Contractor's Activities and the Remediation Works on and near the Site;
- (c) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the occupation, use, operation and maintenance of Commonwealth property and the Site (including for the purpose of military activities, expeditions and exercises) during the Contractor's Activities and the Remediation Works;
- (d) procedures for access to:
 - (i) Commonwealth property (including any Defence location); and
 - (ii) the Site,
 by Contractor and subcontractor personnel, visitors, pedestrians and vehicles, including procedures for:

- (iii) ensuring security (including identification and pass procedures and any physical security measures);
 - (iv) minimising disruption and inconvenience to the Commonwealth and Other Contractors;
 - (v) vehicle and traffic management; and
 - (vi) noise management;
- (e) without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Contractor and subcontractor personnel in respect of Commonwealth property and the Site;
- (f) procedures for:
 - (i) establishing the Site (including site amenities, laydown areas and parking zones);
 - (ii) cleaning, maintenance, waste management and debris control on Commonwealth property and the Site; and
 - (iii) any dangerous or prohibited substances, material or goods (including Commonwealth property) on the Site relevant to the Contractor's Activities and the Remediation Works;
- (g) if the Contractor's Activities or the Remediation Works are to be carried out on or in the vicinity of an airfield, the procedure for preparation and approval of a Method of Work Plan for Airfield Activities;
- (h) the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 7.7;
- (i) the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 7.7 (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 Contractor's Activities and the Remediation Works);
- (j) the procedure for ensuring subcontractor compliance with the Site Management Plan;
- (k) the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Remediation Works;
- (l) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Remediation Works;
- (m) the procedure and approach to ensure the alignment of the Site Management Plan with other Project Plans, including the Work Health and Safety Plan and the Environmental Management Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
- (n) the additional matters specified in the Contract Particulars; and
- (o) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Smart Infrastructure Handbook

The Defence Smart Infrastructure Handbook: Planning, Design and Construction available on the Defence Website (or any alternative location notified by the Contract Administrator), as amended from time to time.

Special Conditions

The document attached at Annexure 2.

Specified Site Use Objective

The Site use objective, if any, specified in the Contract Particulars, being the use for which the Site must be capable of being used following Remediation Completion.

Stage

A stage of the Remediation Works specified in the Contract Particulars.

Statement of Tax Record or STR

Has the same meaning as in the Black Economy Procurement Connected Policy.

Statutory Requirements

Means:

- (a) any law applicable to the Contractor's Activities or the Remediation Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any condition or requirement under an Approval);
- (c) Defence Requirements; and
- (d) Environmental Requirements.

Synthetic Greenhouse Gas

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.

Subcontractor Deed of Covenant

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

Table of Remediation Works Variation Rates and Prices

The table (if any) specified in the Contract Particulars, containing rates and prices to:

- (a) be used for the purposes of valuing Remediation Works Variations under clause 11.5; and
- (b) apply where the limits of accuracy specified in the Contract Particulars are exceeded in respect of any items of Schedule of Rates Works for which a corresponding rate exists in the Table of Remediation Works Variation Rates and Prices.

Technical Advisor

The person specified in the Contract Particulars.

Technical Advisor's Certification

A certificate obtained by the Contractor from the Technical Advisor in relation to the Site stating that the Remediation Works have been completed in accordance with:

- (a) the Technical Specification; and
- (b) the Remediation Design Documentation,

and that the Site is suitable for use for the Specified Site Use Objective, but which certificate is not a Site Audit Statement.

Technical Advisor's Functions

The roles and functions of the Technical Advisor, as outlined in Annexure 1, Part B.

Technical Specification

The documents specified in the Contract Particulars.

Terms of Engagement

For the purposes of the Contract, means the Conditions of Contract for the Department of Defence General Remediation Contract (GRC-1 2013) as set out in Section 4B of the Panel Agreement.

Unidentified Site Conditions

Any ground conditions at the Site (including any groundwater conditions), which differ materially from those which should have been anticipated by a prudent, competent and experienced contractor if it had done those things which the Contractor is deemed to have done under clause 6.1.

Unexploded Ordnance

Any sort of military ammunition or explosive on or under the Site which has failed to explode including sea mines or shells used by the Navy, mortar bombs, mines, artillery shells or hand grenades used by the Army, bombs, rockets or missiles used by the Air Force, and other types of ammunition and explosives including training munitions.

WHS Accreditation Scheme

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

WHS Legislation

Means:

- (a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (b) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

Work Health and Safety Plan

The plan prepared by the Contractor and finalised under clause 7.7 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Remediation Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation). The Work Health and Safety Plan must address, at a minimum:

- (a) 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 Contractor's Activities and the Remediation Works;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Contractor's Activities and the Remediation Works are being undertaken (including the Contract Administrator, the Commonwealth and Other Contractors) regarding consulting, cooperating and coordinating activities where the persons conducting a business or undertaking at the workplace and the Contractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Contractor's Activities and the Remediation Works are carried out, including:
 - (i) incident (including notifiable incident) reporting procedures;

- (ii) preventative and corrective action procedures; and
 - (iii) record-keeping and reporting requirements, including reporting to the Contract Administrator with respect to incidents and accidents under clause 8.13(c);
- (d) any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (f) if the Contract requires the Contractor to design any part of the Remediation Works, procedures for:
 - (i) conducting design risk assessments, purchasing policies for Plant, Equipment and Work, materials and substances, meeting Statutory Requirements (including WHS Legislation) regarding design and addressing design changes relevant to work health and safety considerations;
 - (ii) carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
 - (iii) ensuring the results of such calculations, analysis, testing or examinations are provided to the Commonwealth, including as a condition precedent to Remediation Completion and prior to the expiry of the Remediation Defects Rectification Period;
- (g) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Contractor's work health and safety policy;
 - (ii) details of any work health and safety management system (whether certified or uncertified), including procedures for managing work health and safety disputes;
 - (iii) 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
 - (iv) emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
- (h) procedures for ensuring the provision of written assurances to the Contract Administrator under clause 8.13(f) regarding compliance with the WHS Legislation by the Contractor, subcontractors and Other Contractors;
- (i) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 7.7 (including as a consequence of any review of hazards, risks and control measures regarding the Contractor's Activities, the Remediation Works and any notifiable incident or systemic risk management failure);
- (j) procedures for the management of subcontractors, including:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in subparagraph (g)(iii));
 - (ii) the subcontractor's development and provision of safe work method statements, job safety assessments or equivalent documentation;
 - (iii) ensuring subcontractors comply with their obligation to consult, cooperate and coordinate activities (including the information-sharing and communication of information); and
 - (iv) ensuring subcontractor compliance with the Work Health and Safety Plan;
- (k) the approach to the management of project (and Contract) hazards and risks including how the Contractor will identify hazards and eliminate or minimise risks arising from those hazards so far as is reasonably practicable:
 - (i) prior to commencing the Contractor's Activities and the Remediation Works; and

- (ii) during the Contractor's Activities and the Remediation Works;
- (l) the actions the Contractor will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the Contractor's Activities and the Remediation Works;
- (m) the procedures the Contractor will adopt to audit or otherwise monitor and verify its (and its subcontractors') 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);
- (n) the procedures the Contractor will adopt to ensure it provides to the Commonwealth, when conducting any handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the Remediation Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 8.13(o));
- (o) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning (as applicable):
 - (i) Hazardous Substances, including, where Hazardous Substances are used or handled in the Contractor's Activities, incorporated into the Remediation Works, stored by the Contractor at the workplace or transported by the Contractor to or from the workplace (including whilst transported on, into or from Commonwealth Premises;
 - (ii) identification of insitu Unexploded Ordnance, including the carrying out of Unexploded Ordnance survey activities;
 - (iii) removal and remediation of Unexploded Ordnance;
 - (iv) identification of insitu Contamination;
 - (v) Contamination management activities and the carrying out of Remediation Works regarding Contamination;
 - (vi) the carrying out of transportation activities regarding the removal and remediation of Contamination and Unexploded Ordnance; and
 - (vii) fall hazards, telecommunications towers, demolition, disturbance or removal of asbestos, structural alterations requiring temporary supports, confined spaces, excavation deeper than 1.5 metres, tunnels, use of explosives, pressurised gas distribution mains and consumer piping; chemical, fuel or refrigerant lines, electrical work, including involving energised electrical installations and services, hazardous atmospheres, tilt-up and precast concrete, roadways or railways used by road or rail traffic, movement of powered mobile plant, artificial extremes of temperature; water or other liquids where there is a risk of drowning, diving, remote or isolated work, above-standard exposure to noise exposure to falling objects and abrasive blasting;
- (p) the procedure and approach to ensure the alignment of the Work Health and Safety Plan with other Project Plans, including the Site Management Plan and the Environmental Management Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
- (q) the additional matters specified in the Contract Particulars; and
- (r) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Workers Compensation Insurance

A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment (and including Employers' Liability Insurance, if applicable).

1.2 Interpretation

In the Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Contract;
- (d) references to any party to the Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to the Contract;
- (f) references to the Contract and any deed, agreement or instrument are deemed to include references to the Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
 - (i) a direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 12.5),
within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (l) for the purposes of clauses 10.8, 10.9, 10.10 and 10.11:
 - (i) any extension of time stated in days; or
 - (ii) any reference to "day",
will exclude public holidays and include only those days which are stated in the Contractor's approved program under clause 10.2 as working days;
- (m) for the purposes of clauses 12.4, 12.5 and 17.10, to the extent that the Contractor's Activities are to be carried out:
 - (i) in any jurisdiction other than the State of Victoria, the State of South Australia, the State of Tasmania, the Northern Territory, the Australian Capital Territory or the State of Queensland, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - B. a public holiday in the State or Territory in which the Site is situated;
 - (ii) in the State of Victoria, references to "business days" are to days other than:

- A. a Saturday or Sunday; or
 - B. a day that is partly or wholly observed as a public holiday throughout Victoria;
- (iii) in the Northern Territory, references to "business days" are to days other than:
 - A. a Saturday or Sunday; or
 - B. a public holiday in the Northern Territory;
- (iv) in the State of South Australia, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December;
 - B. a public holiday in the State of South Australia; or
 - C. any other day on which there is a Statewide shutdown of the operations of the building and construction industry;
- (v) in the State of Tasmania, references to "business days" are to days other than:
 - A. a Saturday or Sunday;
 - B. a statutory holiday as defined in the *Statutory Holidays Act 2000* (Tas);
- (vi) in the Australian Capital Territory, references to "business days" are to days other than:
 - A. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - B. a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT); or
- (vii) in the State of Queensland, references to "business days" are to days other than:
 - A. a Saturday or Sunday;
 - B. the 22nd, 23rd, 24th, 27th, 28th, 29th, 30th, 31st day of December or the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th or 10th day of January; or
 - C. a public holiday, special holiday or bank holiday in Queensland under the *Holidays Act 1983* (QLD);
- (n) other than as set out in paragraphs (k), (l) and (m) references to "day" are references to calendar days;
- (o) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (p) the word "subcontractor" will include subcontractors, suppliers and consultants and the word "subcontract" will include a contract with a subcontractor;
- (q) where a clause contains two options, the option specified in the Contract Particulars will apply;
- (r) 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
- (s) unless agreed or notified in writing by the Contract Administrator, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Technical Specification is a reference to the edition last published prior to the Award Date. If requested by the Contract Administrator, the Contractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Technical Specification and Remediation Design Documentation available to the Contract Administrator.

1.3 Miscellaneous

- (a) The Contract is subject to and is to be construed in accordance with the laws of the State or Territory specified in the Contract Particulars.

- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) 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
 - (ii) otherwise, both parties agree in writing.
- (c) The Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in the Contract 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 Contract.
- (f) The Contractor must indemnify the Commonwealth against:
 - (i) any liability to or claim by a third party including a subcontractor or Other Contractor; and
 - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,arising out of or in connection with any breach by the Contractor of a term of the Contract.
- (g) All obligations to indemnify under the Contract survive termination of the Contract on any basis.

2. COMMENCEMENT

2.1 Contractor's Obligations

The Contractor must:

- (a) immediately commence to carry out the Contractor's Activities;
- (b) subject to clause 2.2(a), commence the Remediation Works on Site by no later than the date specified in the Contract Particulars; and
- (c) unless otherwise stated, carry out the Contractor's Activities at its cost.

2.2 Commonwealth's Obligations

The Commonwealth must:

- (a) give the Contractor sufficient access to the Site to allow it to commence work on the Site on the later of:
 - (i) satisfaction of the following conditions precedent to access:
 - A. the Contractor having provided to the Contract Administrator:
 - 1) the Approved Security required under clause 4.1; and
 - 2) evidence satisfactory to the Contract Administrator under clause 5.4(e) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.4;
 - B. the Environmental Management Plan, the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 7.7; and
 - C. any other conditions specified in the Contract Particulars; and
 - (ii) the date specified in the Contract Particulars; and
- (b) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities.

2.3 Delayed Access

Any failure by the Commonwealth to give access as required by clause 2.2(a) will not be a breach of the Contract but will entitle the Contractor to:

- (a) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; and
- (b) have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly out of the Commonwealth's failure to give the Contractor access to the Site, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Commonwealth's failure to give the Contractor access to the Site, other than under paragraphs (a) and (b).

3. PERSONNEL

3.1 Contract Administrator

The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of the Commonwealth (and not as an independent certifier, assessor or valuer).

The Contractor must:

- (a) comply with any direction by the Contract Administrator given or purported to be given under a provision of the Contract; and
- (b) not comply with any direction of the Commonwealth other than as expressly stated in the Contract.

Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of Contract Administrator

The Commonwealth may at any time replace the Contract Administrator, in which event the Commonwealth will appoint another person as the Contract Administrator and notify the Contractor of that appointment.

Any substitute Contract Administrator appointed under clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

3.3 Parties' Conduct

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

3.4 Contract Administrator's Representative

The Contract Administrator may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

As at the Award Date, the Contract Administrator is deemed to have appointed the persons specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.

All references in the Contract to Contract Administrator include a reference to a representative appointed under clause 3.4.

3.5 Contractor's Representative

The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

3.6 Key People for the Contractor's Activities

The Contractor must:

- (a) employ those people specified in the Project DCAP, including the Contractor's Representative and the Quality Manager, in the jobs specified in the Project DCAP;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and

- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

3.7 Removal of Persons

The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again involved in the Contractor's Activities.

3.8 Environmental Consultant

- (a) The Commonwealth may appoint an Environmental Consultant to carry out the Environmental Consultant's Functions.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Environmental Consultant may confer with the Contractor but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of subparagraph (i), the Contractor must not comply with any direction of the Environmental Consultant given directly by the Environmental Consultant to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(a).
- (c) The Environmental Consultant may, from time to time, by written notice to the Contractor appoint a person to:
 - (i) represent the Environmental Consultant during the carrying out of the Contractor's Activities; and
 - (ii) perform the Environmental Consultant's Functions under this Contract as the Environmental Consultant's Representative.

All references to the Environmental Consultant include a reference to a representative appointed under this paragraph (c).

- (d) The Contract Administrator may revoke any appointment under paragraph (c) by notice in writing to the Contractor.
- (e) The Commonwealth may, in its absolute discretion and at any time, terminate the services of the Environmental Consultant and:
 - (i) the Commonwealth's decision to terminate the services of the Environmental Consultant is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Environmental Consultant;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Environmental Consultant; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in connection with, the termination of the Environmental Consultant's services.
- (f) If the Commonwealth terminates the services of the Environmental Consultant, or if the Environmental Consultant ceases to act for any reason, the Contract Administrator will:
 - (i) promptly notify the Contractor in writing; and

- (ii) as soon as reasonably practicable, appoint another Environmental Consultant and notify the Contractor of that appointment.
- (g) Any substitute Environmental Consultant appointed under clause 3.8(f) will be bound by anything done by the former Environmental Consultant to the same extent as the former Environmental Consultant would have been bound.
- (h) No report given by the Environmental Consultant, including the Remediation Validation Report, will have any force or effect unless it is given in writing.
- (i) The Contractor must:
 - (i) co-operate with the Environmental Consultant;
 - (ii) assist the Environmental Consultant in the performance of the Environmental Consultant's Functions (including the provision, in a timely fashion, of all information the Environmental Consultant may reasonably require);
 - (iii) co-ordinate the Contractor's Activities with the work of the Environmental Consultant; and
 - (iv) facilitate the execution of the Environmental Consultant's Functions, including the timely provision of all information and documents the Environmental Consultant may reasonably require in preparing the Remediation Validation Report.
- (j) If the Contractor has any concern which a prudent, competent and experienced contractor would have in relation to the performance of the Environmental Consultant, it must:
 - (i) promptly notify the Contract Administrator; and
 - (ii) consult with the Contract Administrator and provide such information and take all such other steps as the Contract Administrator may require to resolve the Contractor's concern.
- (k) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment on any of the Environmental Consultant's activities or functions.
- (l) No review of or comment upon, or failure to review or comment upon, the Environmental Consultant's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under, the Contract or otherwise at law or in equity.
- (m) The Contractor acknowledges and agrees that the Remediation Validation Report:
 - (i) does not constitute acceptance by the Commonwealth of the Contractor's performance of its Contract obligations; and
 - (ii) is not an audit under the relevant Statutory Requirements of the State or Territory in which the Remediation Works are carried out.
- (n) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or omission of the Environmental Consultant (including any requirement that the Contractor provide information or documents or otherwise cooperate or coordinate with or assist the Environmental Consultant for the purposes of paragraph (i)) except to the extent that the act or omission (other than a requirement that the Contractor provide information or documents or otherwise cooperate or coordinate with or assist the Environmental Consultant for the purposes of paragraph (i)) has caused a delay to the Contractor's Activities, in which case, the Contractor may be entitled to an extension of time in accordance with clause 10.

3.9 Accredited Environmental Site Auditor

- (a) If the Contract Particulars provide that a Site Audit Statement is required in relation to the Site:
 - (i) the Commonwealth will appoint the Accredited Environmental Site Auditor to carry out the Accredited Environmental Site Auditor's Functions; and

- (ii) the Commonwealth will ensure that the Accredited Environmental Site Auditor is accredited (or, if no process exists for accreditation, recognised) under the relevant Statutory Requirements in the State or Territory in which the Remediation Works are being carried out.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Accredited Environmental Site Auditor may confer with the Contractor but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of paragraph (i), the Contractor must not comply with any direction of the Accredited Environmental Site Auditor given directly by the Accredited Environmental Site Auditor to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(a).
- (c) No certification or report given by the Accredited Environmental Site Auditor will have any force or effect unless it is given in writing.
- (d) The Commonwealth may, in its absolute discretion, terminate the services of the Accredited Environmental Site Auditor and:
 - (i) the Commonwealth's decision to terminate the services of the Accredited Environmental Site Auditor is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Accredited Environmental Site Auditor;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Accredited Environmental Site Auditor; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the termination of the Accredited Environmental Site Auditor's services.
- (e) If the Commonwealth terminates the services of the Accredited Environmental Site Auditor, or if the Accredited Environmental Site Auditor ceases to act for any reason, the Contract Administrator will:
 - (i) promptly notify the Contractor in writing; and
 - (ii) as soon as reasonably practicable, appoint another Accredited Environmental Site Auditor and notify the Contractor of that appointment.
- (f) The Contractor must assist the Accredited Environmental Site Auditor in the performance of the Accredited Environmental Site Auditor's Functions, including the timely provision of all information and documents the Accredited Environmental Site Auditor may reasonably require.
- (g) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment upon any of the Accredited Environmental Site Auditor's activities, including:
 - (i) any Site Audit Statement issued by the Accredited Environmental Site Auditor;
 - (ii) a decision of the Accredited Environmental Site Auditor not to issue any Site Audit Statement; or
 - (iii) the issue of a Site Audit Statement subject to conditions.
- (h) No comment upon or review of, or failure to comment upon or review, the Accredited Environmental Site Auditor's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise at law or in equity.
- (i) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or

omission of the Accredited Environmental Site Auditor (including any requirement that the Contractor provide information or documents or otherwise cooperate or coordinate with or assist the Accredited Environmental Site Auditor for the purposes of paragraph (i)).

3.10 Technical Advisor

- (a) If the Contract Particulars provide that a Technical Advisor's Certification is required in relation to the Site then the Commonwealth will appoint the Technical Advisor to carry out the functions of the Technical Advisor.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Technical Advisor may confer with the Contractor, but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of paragraph (i), the Contractor must not comply with any direction of the Technical Advisor given directly by the Technical Advisor to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(a).
- (c) No certification given by the Technical Advisor will have any force or effect unless it is given in writing.
- (d) The Commonwealth may, in its absolute discretion, terminate the services of the Technical Advisor and:
 - (i) the Commonwealth's decision to terminate the services of the Technical Advisor is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Technical Advisor;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Technical Advisor; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in connection with, the termination of the Technical Advisor's services.
- (e) If the Commonwealth terminates the services of the Technical Advisor, or if the Technical Advisor ceases to act for any reason, the Contract Administrator will:
 - (i) promptly notify the Contractor in writing; and
 - (ii) as soon as reasonably practicable, appoint another Technical Advisor and notify the Contractor of that appointment.
- (f) Any Technical Advisor appointed under subparagraph 3.10(e)(ii) is bound by any direction given by any former Technical Advisor to the same extent as the relevant former Technical Advisor would have been bound by that direction.
- (g) The Contractor must assist the Technical Advisor in the performance of the Technical Advisor's Functions, including the timely provision of all documents and information the Technical Advisor may reasonably require.
- (h) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment upon any of the Technical Advisor's activities, including:
 - (i) any Technical Advisor's Certification issued by the Technical Advisor; or
 - (ii) the decision of the Technical Advisor not to issue any Technical Advisor's Certification.

- (i) No comment upon or review of, or failure to comment upon or review, the Technical Advisor's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise at law or in equity.
- (j) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or omission of the Technical Advisor (including any requirement that the Contractor provide information or documents or otherwise cooperate or coordinate with or assist the Technical Advisor for the purposes of paragraph (i)).

3.11 Industrial Relations

Without limiting the Contractor's obligations under clause 18, the Contractor must, in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
- (d) comply with all other requirements of the Contract relating to industrial relations.

3.12 Monthly Meeting

The Contractor must:

- (a) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates, including the:
 - (i) Environmental Consultant;
 - (ii) Technical Advisor; or
 - (iii) Accredited Environmental Site Auditor;
- (b) discuss the report it has prepared under clause 3.13 and such other matters as the Contract Administrator may from time to time require;
- (c) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
- (d) if it requires instructions from the Commonwealth, make all necessary recommendations with respect to the instructions required.

The Contract Administrator must:

- (e) before each meeting:
 - (i) prepare an agenda for the meeting; and
 - (ii) issue an agenda for the meeting; and
- (f) after each meeting:
 - (i) prepare minutes of the meeting; and
 - (ii) issue minutes of the meeting.

3.13 Contractor's Monthly Report

At least 7 days prior to each meeting under clause 3.12, the Contractor must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include at a minimum:

- (a) detailed particulars on the progress of the Contractor's Activities and the Remediation Works including:
 - (i) key activities, meetings and other events in the previous month;
 - (ii) if the Contract requires the Contractor to design any part of the Remediation Works, the status of all Remediation Design Documentation;
 - (iii) the status of all Approvals;
 - (iv) photographs of the Contractor's Activities and the Remediation Works; and
 - (v) any deviations from the Contractor's approved program under clause 10.2;
- (b) detailed particulars of all:
 - (i) payment claims, payment statements and payments;
 - (ii) Remediation Works Variation Price Requests, responses, Remediation Works Variation Orders, Contractor requests for Remediation Works Variation under clause 11.7 and proposed adjustments to the Contract Price;
 - (iii) written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Remediation Completion;
 - (iv) other Claims made by the Contractor (including in respect of Unidentified Site Conditions, Statutory Requirements and the resolution of ambiguities under clause 7.12);
 - (v) calls, attendances, recommendations and actions taken in respect of all Remediation Defects (in accordance with clause 9.5);
 - (vi) disputes under clause 15; and
 - (vii) notices under clause 16.1 or 16.2;
- (c) detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
 - (i) are significantly impacting; or
 - (ii) have the potential to significantly impact,

the Contractor's Activities or the Remediation 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;
- (d) confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.13, including:
 - (i) the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 7.7);
 - (ii) details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Contractor's Activities and the Remediation Works;
 - (iii) details of lead indicator data, including:
 - A. inductions, training and other work health and safety awareness programmes conducted;

- B. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
 - C. inspections of Plant, Equipment and Work;
 - (iv) without limiting the Contractor's obligations to notify the Contract Administrator under:
 - A. clause 8.13(c)(i) and 8.13(d), summary data regarding notifiable incidents; and
 - B. clause 8.13(c)(ii) and 8.13(c)(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;
 - (v) relevant statistics and other information regarding lost time injury days; and
 - (vi) all other work health and safety matters required by the Contract or the Contract Administrator;
- (e) confirmation of compliance with:
 - (i) WHS Accreditation Scheme;
 - (ii) quality assurance requirements, including the Quality Plan;
 - (iii) Site-related requirements, including the Site Management Plan;
 - (iv) commissioning and handover requirements, including the Project Lifecycle and HOTO Plan;
 - (v) Environmental Requirements, including the Environmental Management Plan;
 - (vi) information security requirements, including clause 19 and, if clause 20 applies, clause 20; and
 - (vii) any other security requirements,

together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (vii); and
- (f) any other matters required by the Contract Administrator.

4. SECURITY

4.1 Form

The Contractor must provide security to the Commonwealth:

- (a) in the form of Approved Security;
- (b) in the amounts specified in the Contract Particulars for the Remediation Works or a Stage; and
- (c) within 14 days of the Award Date.

4.2 Release of Security

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

- (a) within 14 days of the issue of a Remediation Completion Notice for the Remediation Works or a Stage, release from the security held under clause 4.1, 50% of the security held for the Remediation Works or the Stage under clause 4.1;
- (b) within 14 days of the expiration of the last Remediation Defects Rectification Period for the Remediation Works or a Stage (excluding any extensions under clause 9.10), release such amount of the security under clause 4.1 then held for the Remediation Works or the Stage, as the Contract Administrator determines to be reasonable, having regard to the work to which any remaining Remediation Defects Rectification Periods applies, to ensure the Commonwealth's interests are not prejudiced; and
- (c) release the balance of the security then held under clause 4.1 following the latest of:
 - (i) the expiry of the last Remediation Defects Rectification Period; or
 - (ii) the Contractor has complied with all its obligations under the Contract.

4.3 Interest

- (a) The Commonwealth:
 - (i) is not obliged to pay the Contractor interest on:
 - A. the Approved Security; or
 - B. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
- (b) If the Commonwealth makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
 - (i) the Commonwealth will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which the Commonwealth is entitled at the time of such call; and
 - (ii) the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Commonwealth at the time such amounts become payable.

4.4 Deed of Guarantee, Undertaking and Substitution

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

5. RISKS AND INSURANCE

5.1 Risk of Remediation Works

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

- (a) any loss of or damage to:
 - (i) the Remediation Works or a Stage;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Commonwealth to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss of or damage to the Remediation Works or a Stage, a Remediation Completion Notice is issued for the Remediation Works or the Stage; and
 - (v) otherwise, a Remediation Completion Notice is issued for the Remediation Works or the last Stage to reach Remediation Completion; and
- (b) after the issue of a Remediation Completion Notice for the Remediation Works or the Stage, any loss of or damage to the Remediation Works or the Stage arising from any act or omission of the Contractor during the Remediation Defects Rectification Period or from an event which occurred prior to the issue of the Remediation Completion Notice for the Remediation Works or the Stage.

5.2 Other Risks

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

- (a) any loss of or damage to property of the Commonwealth (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

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

5.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good any loss of, or repair the damage to, the Remediation Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
- (b) where the loss or damage arises from a Commonwealth Risk, only comply with paragraph (a) to the extent directed by the Contract Administrator.

If paragraph (a) applies, the Contractor will bear the cost of such replacement, making good or repair. If paragraph (b) applies, the replacement, making good or repair directed by the Contract Administrator will be treated as if it were a Remediation Works Variation the subject of a direction by the Contract Administrator and clause 11.5 applied.

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurance:
 - (i) Construction Risks Insurance, if the Contract Particulars provide that Construction Risks Insurance is required;
 - (ii) Public Liability Insurance;
 - (iii) Workers Compensation Insurance;
 - (iv) if the Contract requires the Contractor to design any part of the Remediation Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - (v) such other insurances on such terms as are specified in the Contract Particulars, each of which must be:
 - (vi) for the amounts specified in the Contract Particulars;
 - (vii) 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
 - (viii) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Workers Compensation Insurance and Employers' Liability Insurance ensure that:
 - (i) to the extent permitted by law, the insurance extends to provide indemnity to the Commonwealth in respect of any statutory and common law liability to the Contractor's employees; and
 - (ii) each of its subcontractors which is legally required to do so, has Workers Compensation Insurance and Employers' Liability Insurance covering the subcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Contractor is required to do under subparagraph (i);
- (c) in relation to the Public Liability Insurance, ensure the insurance is not subject to any limits which are narrower or more restrictive than the worldwide limits and jurisdictional limits specified in the Contract Particulars;
- (d) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
 - (i) has a retroactive date of no later than the commencement of the Contractor's Activities; and
 - (ii) is not subject to any limits which are narrower or more restrictive than the worldwide limits and jurisdictional limits specified in the Contract Particulars;
- (e) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
 - (i) it has complied with clause 5.4; and
 - (ii) each insurance required under clause 5.4 is current and complies with clause 5.4,as required by the Contract Administrator from time to time;
- (f) ensure that:
 - (i) if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs the Commonwealth in writing

that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld or delayed; and

- (ii) if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
- (g) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (v) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies; and
- (h) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4 for the amounts specified in the Contract Particulars.

For the purpose of paragraph (e), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

5.5 Failure to Insure

- (a) If the Contractor fails to comply with clause 5.4 (including any failure to cause to be effected and maintained or otherwise have the benefit of the insurance required by clause 5.4 or provide evidence satisfactory to the Contract Administrator in accordance with clause 5.4(e)), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost will be a debt due from the Contractor to the Commonwealth.
- (b) The Contractor must take all necessary steps to assist the Commonwealth in exercising its discretion under paragraph (a). For the purpose of paragraph (a), "**all necessary steps**" includes providing all insurance information and documents (including proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.

5.6 Period of Insurance

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

- (a) in the case of the Construction Risks Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;

- (b) in the case of Public Liability Insurance:
 - (i) written on an occurrence basis, until the latest of:
 - A. the end of the last Remediation Defects Rectification Period;
 - B. the date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - C. the completion of the Contractor's Activities; or
 - (ii) written on a claims made basis, until the expiration of the period specified in the Contract Particulars following the latest of:
 - A. the end of the last Remediation Defects Rectification Period;
 - B. the date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - C. the completion of the Contractor's Activities;
- (c) in the case of Workers Compensation Insurance, until the latest of:
 - (i) the end of the last Remediation Defects Rectification Period;
 - (ii) the date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) the completion of the Contractor's Activities; and
- (d) in the case of Professional Indemnity Insurance or Errors and Omissions Insurance, until the expiration of the period specified in the Contract Particulars following the latest of:
 - (i) the end of the last Remediation Defects Rectification Period;
 - (ii) the date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) the completion of the Contractor's Activities.

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy required by the Contract;
- (b) keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy required by the Contract,

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

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify the Commonwealth if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor 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 Contract.

5.8 Procedure upon Loss or Damage

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

- (a) the Contractor must:
 - (i) make the Remediation Works or the Stage and the Site safe and secure;
 - (ii) notify the relevant insurers and comply with their instructions; and
 - (iii) promptly consult with the Contract Administrator to discuss the steps to be taken to:
 - A. comply with its obligations under clause 5.3; and
 - B. ensure that, to the greatest extent possible, the Contractor continues to comply with its other obligations under the Contract; and
- (b) upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of the Commonwealth's consultants) will:
 - (i) be paid to the Contractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Contractor replaces, makes good or repairs the loss of or damage to the Remediation Works or the Stage; and
 - (ii) be the limit of the Contractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Remediation Works or the Stage.

5.9 Cross Liability

Clause 5.9 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.

Where the Contract requires insurance to provide cover to more than one insured, the Contractor must ensure that the insurance policy provides that:

- (a) the insurance (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom coverage 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; and
- (c) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds.

5.10 Insurance Amendments if the Contractor is Self-Insured or a Non-Commonwealth Licensee

- (a) Clause 5.10 applies only if the Contract Particulars state it applies.
- (b) Clause 5 is amended in accordance with the amendments set out in Annexure 2 - Insurance Amendments if the Contractor is self-insured or a non-Commonwealth licensee.

6. SITE ACCESS AND CONDITIONS

6.1 Contractor to Inform Itself

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

- (a) assessing the risks which it is assuming under the Contract, including:
 - (i) in relation to the Site; and
 - (ii) conducting a detailed review of the Site Information; and
- (b) ensuring that the Contract Price contains sufficient allowances to protect it against any of these risks eventuating.

6.2 Site Information

Without limiting clause 6.5:

- (a) the Commonwealth has made available to the Contractor certain information, data and documents (including the Site Information) for the purposes of the Contractor assessing the conditions on, in, under or in the vicinity of the Site;
- (b) the Commonwealth does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Contractor (including the Site Information);
- (c) the Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 6.5 applies to the information, data and documents; and
- (d) the Contractor acknowledges and agrees that, to the extent permitted by law, it will not be liable to make (nor will the Commonwealth be liable upon) any Claim by the Contractor arising out of or in connection with such information, data or documents.

6.3 Site Access

The Commonwealth:

- (a) must, subject to clause 2.2 and paragraph 6.3(b), provide the Contractor with such access to the Site as the Contractor reasonably requires to undertake the Contractor's Activities;
- (b) is not obliged to:
 - (i) provide the Contractor with sole access to the Site; or
 - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
- (c) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
- (d) must use reasonable endeavours to ensure that any Other Contractors engaged by the Commonwealth comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, insurance and work health and safety.

6.4 Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to the Commonwealth, Other Contractors and any person authorised by the Commonwealth or the Contract Administrator to occupy, use, operate, maintain or access the Site in their occupation, use of, operation or maintenance of or access to any part of the Site,

including any occupation, use, operation or maintenance of or access to part of the Remediation Works or a Stage under clause 13.5;

- (b) at all reasonable times give the Commonwealth, the Contract Administrator, Other Contractors and any person authorised by either the Commonwealth or the Contract Administrator access to the Remediation Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
- (c) provide the Commonwealth and the Contract Administrator with every reasonable facility necessary for the supervision, examination, inspection and testing of the Contractor's Activities.

6.5 Non-Reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Commonwealth or anyone on behalf of the Commonwealth (including any information, data and documents provided under clause 6.2(a)); or
 - (ii) the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract and will carry out the Contractor's Activities based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges and agrees that the Commonwealth has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

6.6 Unexploded Ordnance

- (a) This clause does not apply unless the Contract Particulars states that it applies.
- (b) If the Contractor considers it has or is likely to have encountered an Unexploded Ordnance, it must:
 - (i) suspend the Remediation Works and any other Contractor's Activities in the vicinity of the Unexploded Ordnance;
 - (ii) clearly mark the location of the Unexploded Ordnance;
 - (iii) protect the Unexploded Ordnance and not touch or disturb it further;
 - (iv) ensure all persons and materials, plant and equipment are kept clear of the Unexploded Ordnance;
 - (v) immediately give the Contract Administrator notice in writing of the Unexploded Ordnance, its features and precise location;
 - (vi) comply with any instructions of the Contract Administrator in relation to the Unexploded Ordnance; and
 - (vii) comply with clause 8.13.
- (c) The Contract Administrator must, within 14 days of receipt of the Contractor's notice under clause 6.6(b)(v):
 - (i) determine (in its absolute discretion) whether an Unexploded Ordnance has been encountered; and
 - (ii) notify the Contractor and the Commonwealth of the Contract Administrator's determination.
- (d) If the Contract Administrator determines that an Unexploded Ordnance has been encountered, the Contractor will be entitled to:

- (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) be paid by the Commonwealth any extra costs reasonably incurred by the Contractor after the giving of a notice under subparagraph 6.6(b)(v) arising from the Unexploded Ordnance, as determined by the Contract Administrator and added to the Contract Price, subject to the Contractor taking all steps possible to mitigate those extra costs.
- (e) If the Contract Administrator determines that an Unexploded Ordnance has not been encountered, then the Contractor:
- (i) must immediately recommence the suspended Remediation Works and other Contractor's Activities; and
 - (ii) will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any action the Contractor was required to take to comply with paragraph (a).

6.7 Extra Land Required

- (a) Clause 6.7 only applies if the Contract Particulars state it applies.
- (b) The Contract Particulars set out the details of any area of land, in addition to the Site, which may be made available by the Commonwealth to enable the Contractor to carry out the Contractor's Activities.
- (c) The Contractor must:
 - (i) comply with all conditions attaching to any agreement by a person having an interest in the areas of land referred to in the Contract Particulars;
 - (ii) procure for itself the occupation or use of or relevant rights over any land in addition to the Site or those other areas of land referred to in the Contract Particulars, which the Contractor may require for carrying out the Contractor's Activities or otherwise for the purposes of the Contract;
 - (iii) indemnify the Commonwealth in respect of all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth arising out of or in connection with any owner or occupier of, or any other persons having an interest in, any land referred to in subparagraph (ii); and
 - (iv) as a condition precedent to Remediation Completion of the Remediation Works, or any Stage described in the Contract Particulars, provide the Contract Administrator with an executed release on terms satisfactory to the Commonwealth from all claims from the owner or occupier of, and any other persons having an interest in, all land referred to in subparagraph (ii).

6.8 Operating Airfield

- (a) Clause 6.8 only applies if the Contract Particulars state it applies.
- (b) The Contractor must ensure that the Contractor's Activities and the Remediation Works do not compromise aircraft operations or the safety of aircraft.
- (c) Without limiting clause 8.13(a)(ii) and as part of the Contractor's Activities, the Contractor must liaise with the Commonwealth and the Contract Administrator as required to co-ordinate the Contractor's Activities and the Remediation Works with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.

6.9 National Heritage Place

- (a) Clause 6.9 only applies if the Contract Particulars state it applies.
- (b) The Contractor must ensure that, in carrying out the Contractor's Activities:

- (i) it does not take any action that has, will have or is likely to have a significant impact on the National Heritage Values of a National Heritage Place; and
- (ii) it does not act inconsistently with or contravene:
 - A. a management plan for a National Heritage Place made under the EPBC Act; or
 - B. the National Heritage Management Principles under the EPBC Act.

6.10 Commonwealth Heritage Place

- (a) Clause 6.10 only applies if the Contract Particulars state it applies.
- (b) The Contractor must ensure that, in carrying out the Contractor's Activities:
 - (i) it does not take any action that has, will have or is likely to have a significant impact on the Commonwealth Heritage Values of a Commonwealth Heritage Place; and
 - (ii) it does not act inconsistently with or contravene:
 - A. a management plan for a Commonwealth Heritage Place made under the EPBC Act; or
 - B. the Commonwealth Heritage Management Principles under the EPBC Act.

6.11 Heritage Act Requirements (Victoria)

- (a) Clause 6.11 only applies if the Contract Particulars state it applies.
- (b) Prior to commencing the Contractor's Activities, the Contractor must carry out a search of the Heritage Register and Heritage Inventory to ascertain whether the Site (or any area within the Site) is listed on the Heritage Register or Heritage Inventory.
- (c) Without limiting clause 8.3, the Contractor must:
 - (i) obtain Approvals required under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Contractor's Activities; and
 - (ii) comply with conditions of any such Approval in carrying out the Contractor's Activities, including the engagement and supervision of any archaeological work by a qualified archaeologist.
- (d) Subject to paragraph (e), the Contractor must:
 - (i) if a Bond is required to be provided in relation to the Site, provide the amount (as amended from time to time by the Heritage Department) of the Bond to the Heritage Department; and
 - (ii) give all notices and pay all fees and other amounts required to be paid under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Contractor's Activities.
- (e) The parties agree that the:
 - (i) amount of the Bond used or retained by the Heritage Department and not returned to the Contractor in accordance with the Heritage Act; and
 - (ii) extra costs reasonably incurred by the Contractor in complying with clause 6.11 and the Heritage Act (if any),

will be reimbursed by the Commonwealth to the Contractor.
- (f) Any amount which the Contractor claims under subparagraph (e)(i) must be included in its payment claim in accordance with clause 12.11.
- (g) Any amount to be reimbursed by the Commonwealth in accordance with paragraph (e) will be reduced to the extent that the Contractor has caused or in any way contributed to (including as a result of failing

to fulfil its obligations under the Heritage Act) the Bond being used or retained or the costs being increased.

7. PLANS AND DOCUMENTATION

7.1 Commonwealth's Documents

The Commonwealth must provide to the Contractor the documents and number of copies of those documents specified in the Contract Particulars.

7.2 Contractor's Design

The Contractor must:

- (a) prepare Remediation Design Documentation in accordance with the Technical Specification and the other requirements of the Contract, if:
 - (i) the Contract Particulars state that the Contractor must prepare Remediation Design Documentation; or
 - (ii) directed to do so under clause 11.4 or 11.8(b); and
- (b) where paragraph (a)(i) applies:
 - (i) as part of the program it is to prepare under clause 10.2, submit to the Contract Administrator for approval a documentation program which makes allowance for the Remediation Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Remediation Design Documentation within the period of time within which the Contract Administrator may review the Remediation Design Documentation under clause 7.3; and
 - (ii) submit the Remediation Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under paragraph (b).

7.3 Contract Administrator may Review Remediation Design Documentation

- (a) The Contract Administrator may:
 - (i) review any Remediation Design Documentation, or any resubmitted Remediation Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within 10 business days of the submission by the Contractor of such Remediation Design Documentation or resubmitted Remediation Design Documentation, reject the Remediation Design Documentation if in the Contract Administrator's reasonable opinion the Remediation Design Documentation does not comply with the requirements of the Contract.
- (b) If any Remediation Design Documentation is rejected, the Contractor must submit amended Remediation Design Documentation to the Contract Administrator.
- (c) The Contractor must not commence execution of any part of the Remediation Works to which any Remediation Design Documentation which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days specified in paragraph 7.3(a) to review the Remediation Design Documentation and has not rejected the Remediation Design Documentation.

7.4 No Obligation to Review

- (a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Remediation Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Remediation Design Documentation prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Commonwealth in relation to, the Remediation Design Documentation will:

- (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
- (ii) prejudice the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.

7.5 Copies of Remediation Design Documentation

For the purposes of clauses 7.2(b)(i) and 7.3, the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Remediation Design Documentation in:

- (a) hard copy; and
- (b) electronic copy,

in accordance with the requirements specified in the Contract Particulars.

7.6 Fitness for Purpose

The Contractor warrants that:

- (a) the Remediation Design Documentation it prepares will be fit for its intended purpose; and
- (b) upon Remediation Completion, the Remediation Works or the Stage will, to the extent that the Remediation Works or the Stage has been designed by the Contractor, be fit for the intended purpose.

7.7 Project Plans

- (a) The Contractor must:

- (i) carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Plans;
- (ii) for the purposes of subparagraph (i):
 - A. prepare draft Project Plans, based, where applicable, on the outline approach to preparing the Project Plans and performing the Contractor's Activities to be covered by the Project Plans submitted by the Contractor in its proposal for the Contractor's Activities and otherwise in accordance with the requirements of the Contract, and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event no later than the number of days set out in the Contract Particulars after the Award Date for each Project Plan;
 - B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the draft Project Plans and has not rejected them;
 - C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Contract Administrator;
 - D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract;
 - E. after the Project Plans have been finalised, continue to regularly review its Project Plans, including in accordance with any obligations imposed by the definition of each Project Plan and to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor) and submit an amended draft of the Project Plan to the Contract Administrator, after which subsubparagraphs A - D will apply (to the extent applicable); and

- F. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
- (b) The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise at law or in equity as a result of:
 - (i) the implementation of and compliance with the requirements of any Project Plan;
 - (ii) any direction by the Contract Administrator concerning a Project Plan or the Contractor's compliance or non-compliance with a Project Plan;
 - (iii) any audit or other monitoring by the Contract Administrator of the Contractor's compliance with a Project Plan; or
 - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, 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 Contract Administrator or other person.

7.8 Availability

The Contractor must keep available for the use of the Contract Administrator, the Commonwealth or anyone else acting on behalf of the Commonwealth:

- (a) on the Site, one complete set of the Technical Specification, all Remediation Design Documentation, any documents provided by the Commonwealth under clause 7.1 and all other Project Documents directed in writing by the Contract Administrator; and
- (b) at any area off-Site where the Contractor's Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

7.9 Licence over Project Documents

The Contractor grants to the Commonwealth 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:

- (a) arises, for each Project Document, immediately the Project Document is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Commonwealth or the Contract Administrator, under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works by, for or on behalf of the Contractor;
- (b) includes an unlimited right to sub-licence;
- (c) without limitation, extends to:
 - (i) any subsequent occupation, use, operation and maintenance of, or additions, alterations or repairs to the Remediation Works; and
 - (ii) use in any way for any other Commonwealth project; and
- (d) survives the termination of the Contract on any basis.

7.10 Intellectual Property Warranties

The Contractor warrants that:

- (a) the Contractor 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 Contract;

- (b) use by the Commonwealth or any sublicensee or subsublicensee of the Project Documents in accordance with the Contract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
- (c) neither the Commonwealth 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
- (d) the use by the Commonwealth or by any sublicensee or subsublicensee of the Project Documents in accordance with the Contract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).

7.11 Intellectual Property Rights

The Contractor must:

- (a) ensure that the Contractor's Activities do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
- (b) indemnify the Commonwealth in respect of all claims against, costs, losses, damages or liabilities suffered or incurred by, the Commonwealth 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.

7.12 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Remediation Design Documentation (which the Contractor is entitled to use under clause 7.3 or any other Project Document):

- (a) the order of precedence specified in the Contract Particulars will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Remediation 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 Contract will prevail;
- (c) if it is discovered by the Contractor or the Commonwealth, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing; and
- (d) after receipt of a notice from a party the Contract Administrator must within 14 days of receipt of the notice instruct the Contractor as to the course it must adopt.

7.13 Access to Premises and Project Documents

The Contractor must:

- (a) at the request of the Commonwealth at any time during the Contractor's Activities and the period of 10 years following the latest of:
 - (i) the end of the last Remediation Defects Rectification Period;
 - (ii) the date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) the completion of the Contractor's Activities,
 provide and make available:
 - (iv) access to its premises and make the Project Documents available for inspection by the Contract Administrator or anyone else acting on behalf of the Commonwealth;
 - (v) such copies of the Project Documents as the Contract Administrator or anyone else acting on behalf of the Commonwealth may require;

- (vi) all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
- (vii) any officers, employees, agents or subcontractors for interviews with the Contract Administrator or anyone else acting on behalf of the Commonwealth;
- (b) as a condition precedent to Remediation Completion, deliver to the Contract Administrator a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Remediation Works or the Stage, in a storage medium reasonably satisfactory to the Commonwealth, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under clause 7.13 as if the subcontractor were the Contractor.

7.14 Project DCAP

The Contractor:

- (a) warrants that the Project DCAP complies with the requirements of this Contract;
- (b) acknowledges that the Project DCAP:
 - (i) does not limit the Contractor's obligations under this Contract; and
 - (ii) may require updating and refining throughout the execution of the Contractor's Activities:
 - A. to the extent that it does not reflect all the tasks and other things to be done or provided to perform the Contractor's Activities in accordance with the Contract; and
 - B. without limiting subsubparagraph A, on account of Remediation Works Variations;
- (c) must update and refine the Project DCAP as required by paragraph (b)(ii) with the written approval of the Contract Administrator;
- (d) will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any work which the Contractor is required to carry out arising out of or in connection with paragraph (b); and
- (e) acknowledges that the Commonwealth has not made and does not make any representation or give any warranty as to any of the matters referred to in paragraph (a).

7.15 Drawings

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

- (a) the standard prescribed in the Contract (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 Remediation Works);
- (b) all Statutory Requirements;
- (c) the directions of the Contract Administrator; and
- (d) to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

7.16 Interpretation of Technical Specification

- (a) Requirements contained in the Technical Specification, whether or not they include the expression "the Contractor must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Contractor, unless stated otherwise.
- (b) The Technical Specification sets out the Commonwealth's minimum requirements, which must be met or exceeded by the Contractor in performing the Contractor's Activities. Nothing contained in the Technical Specification will operate to limit or exclude the Contractor's obligations under the Contract.
- (c) To the extent of any ambiguity, discrepancy or inconsistency between the Technical Specification and any other requirement of the Contract (including any other requirement of the Technical Specification), subject to clause 7.12, whichever requirement provides the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail.

7.17 Method of Work Plan for Airfield Activities

- (a) Clause 7.17 only applies if the Contract Particulars state it applies.
- (b) Without limiting clause 7.7, the Contractor must prepare and implement by no later than the number of days set out in the Contract Particulars after the Award Date and as a condition precedent to the Contractor being given access to the Site, a Method of Work Plan for Airfield Activities for all aspects of the Contractor's Activities and the Remediation Works.
- (c) 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 Contractor will implement to manage the Contractor's Activities on and near the Site, including:
 - (i) submission of the Method of Work Plan for Airfield Activities to the Contract Administrator;
 - (ii) the establishment of the Site;
 - (iii) access to the Site;
 - (iv) security passes for the Site;
 - (v) personnel and vehicle identification and control on the Site;
 - (vi) control of personnel including a point of contact from the Contractor;
 - (vii) liaison with the Commonwealth and Other Contractors;
 - (viii) Approvals prior to carrying out Remediation Works;
 - (ix) rubbish, dust and debris control;
 - (x) Foreign Object Damage (**FOD**) control;
 - (xi) noise management;
 - (xii) fencing;
 - (xiii) security of the Remediation Works;
 - (xiv) hours of work;
 - (xv) traffic management;
 - (xvi) safety procedures;
 - (xvii) fuel and hazardous material storage;
 - (xviii) issues associated with military exercises and military expeditions; and
 - (xix) issues associated with aircraft movements.

8. EXECUTION OF REMEDIATION WORKS

8.1 Description of Remediation Works

Subject to clause 7.12, the Contractor must undertake and execute the Remediation Works in accordance with:

- (a) the Technical Specification;
- (b) if the Contract requires the Contractor to design any part of the Works, any Remediation Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for the Remediation Works under clause 7.3;
- (c) any direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Remediation Works Variation directed by the Contract Administrator by a document titled "Remediation Works Variation Order"; and
- (d) the other requirements of the Contract.

8.2 All Remediation Work Included

- (a) The Contractor has allowed for in the Lump Sum Component of its Contract Price the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Technical Specification or any Remediation Design Documentation.
- (b) Any such Plant, Equipment and Work, materials and other work:
 - (i) must be undertaken and provided by the Contractor; and
 - (ii) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.
- (c) To the extent that any such Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities are not covered by the Schedule of Rates Component of the Contract Price, the Contractor will:
 - (i) be deemed to have allowed for the undertaking or provision of those Plant, Equipment and Work, materials and other work in its Lump Sum Component; and
 - (ii) not be entitled to any adjustment to the Lump Sum Component or to make any other Claim against the Commonwealth, arising out of or in connection with the undertaking or provision of those Plant, Equipment and Work, materials and other work, unless:
 - A. the Contractor is otherwise so entitled under:
 - 1) clause 6.6(d); or
 - 2) clause 11.10(a); or
 - B. a Remediation Works Variation Order is issued by the Contract Administrator under clause 11.4.

8.3 Statutory Requirements

The Contract Particulars specify the Approvals which exist at the Award Date or which the Commonwealth will obtain after the Award Date.

In carrying out the Contractor's Activities, the Contractor must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
- (b) without limiting paragraph (a):
 - (i) apply for and obtain all Approvals other than those specified in the Contract Particulars; and

- (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
- (c) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Contractor's Activities or the Remediation Works issues to the Contractor.

8.4 Change in Statutory Requirements or Variance with Contract

- (a) If:
 - (i) there is any change in a Statutory Requirement after the Award Date; or
 - (ii) a Statutory Requirement is at variance with the Contract,
 then the party discovering the change or variance must promptly give the Contract Administrator and the other party notice in writing.
- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the change or variance.
- (c) Subject to paragraph (d), the Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a), which arise directly from the change or variance and the Contract Administrator's instruction under paragraph 8.4(b) as determined by the Contract Administrator.
- (d) The Contract Price will be decreased by any saving made by the Contractor which arise directly from the change or variance and the Contract Administrator's instruction under paragraph 8.4(b), as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under clause 8.4(b), other than under paragraph (c)(i) and (ii).

8.5 Subcontracting

The Contractor:

- (a) must not without the prior written approval of the Contract Administrator, subcontract any work specified in the Contract Particulars except to a subcontractor specified in the Contract Particulars;
- (b) will:
 - (i) not be relieved of any of its liabilities or obligations under the Contract, including those under clause 2.1; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted, as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe any of the requirements of the relevant subcontract;
- (c) will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Contractor's Activities;
- (d) must ensure that each subcontract contains provisions:
 - (i) which bind the subcontractor to participate in any novation required by the Commonwealth under clause 14.5(a)(ii); and
 - (ii) as otherwise required by the Contract; and

- (e) must, if requested by the Contract Administrator:
 - (i) execute;
 - (ii) procure the relevant subcontractor to execute; and
 - (iii) deliver to the Contract Administrator,
 a Subcontractor Deed of Covenant duly completed with all relevant particulars:
 - (iv) as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
 - (v) when such approval is not required, within the time required by the Contract Administrator and in any event before commencement of work by the relevant subcontractor.

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

8.6 Collateral Warranties

The Contractor must, as a condition precedent to Remediation Completion of the Remediation Works or a Stage specified in the Contract Particulars, procure and provide the Commonwealth with the warranties specified in the Contract Particulars:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty; and
- (b) in the form of the Collateral Warranty.

No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by the Contract:

- (c) the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
- (d) the Commonwealth will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
- (e) for the purpose of paragraph (d), the Contractor irrevocably appoints the Commonwealth as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

8.7 Co-operation with Other Contractors

Without limiting clause 8.13(a)(ii), the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.

8.8 Novation

- (a) The Contractor acknowledges and agrees that the Commonwealth may:
 - (i) dispose of the Site to a third party; and

- (ii) at any time (whether on or after Remediation Completion), without the consent of the Contractor, novate the Contract to that third party after Remediation Completion or its nominees (whether in whole or in part).
- (b) If the Commonwealth elects to novate the Contract under subparagraph (a)(i), the Contractor must execute a deed of novation on the terms required by the Commonwealth to give effect to the novation within 7 days of receipt of the deed of novation from the Commonwealth.

8.9 Setting Out

The Contractor must:

- (a) set out the Remediation Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

8.10 Survey

The Contractor must, as a condition precedent to Remediation Completion of the Remediation Works or a Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:

- (a) the whole of the Remediation Works or the Stage are within any particular boundaries stipulated in the Contract except to the extent that the Remediation Works or Stage are specifically required by the Contract to be outside those boundaries; and
- (b) if required by the Technical Specification, specified elements of the Remediation Works or the Stage are within the tolerances specified.

8.11 Measurements and Dimensions

Without limiting clause 8.9:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Technical Specification (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
- (c) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.11.

8.12 Safety

- (a) The Contractor must carry out the Contractor's Activities safely and in a manner that does not put the health and safety of persons at risk.
- (b) The Contractor must carry out the Contractor's Activities in a manner that protects property.
- (c) If the Contract Administrator reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Remediation Works, the Contract Administrator may direct the Contractor to change its manner of working or to cease working.

8.13 Work Health and Safety

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all Statutory Requirements and other requirements of the Contract in respect of work health and safety;

- (ii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iii) it complies with its 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
 - (iv) it complies with its duty under the WHS Legislation to, where a notifiable incident has occurred, ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless it is to:
 - A. assist an injured person or remove a deceased person;
 - B. make the area safe or to minimise the risk of a further notifiable incident; or
 - C. the relevant regulator / inspector has given permission to disturb the site;
- (b) without limiting the obligation in paragraph (a)(ii), where required by the Contract Administrator:
- (i) develop and implement in conjunction with the Commonwealth and all other shared duty holders a Consultation, Cooperation and Coordination Plan (**CCC Plan**) regarding the delivery of the Contractor's Activities and the Remediation Works;
 - (ii) consult, coordinate and cooperate with the Commonwealth, any other shared duty holder to ensure that each of its Project Plans appropriately addresses all hazards and resulting risks associated with or arising from the carrying out of the Contractor's Activities and the Remediation Works;
 - (iii) ensure the CCC Plan addresses all relevant Commonwealth Requirements (including as advised from time to time by the Commonwealth) regarding the carrying out of the Contractor's Activities and the Remediation Works; and
 - (iv) regularly review and update as necessary the CCC Plan in conjunction with all shared duty holders, including the Commonwealth;
- (c) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator:
- (i) in respect of notifiable incidents within the meaning of the WHS Legislation, immediately;
 - (ii) in respect of 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
 - (iii) in respect of all other work health and safety matters arising out of or in connection with the Contractor's Activities and the Remediation Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 3.13;
- (d) for the purposes of paragraphs (a)(iii) and (c) above, in respect of any notifiable incident:
- (i) immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
 - (ii) promptly provide the Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
 - (iii) promptly provide the Contract Administrator with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
 - (iv) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Contract Administrator with a summary of the related investigations,

actions to be taken and any impact on the Contract that may result from the notifiable incident;

- (e) if applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- (f) institute systems to:
 - (i) obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation; and
 - (ii) provide, in a format specified by the Contract Administrator, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:
 - A. on a monthly basis in the reports under clause 3.13;
 - B. on a quarterly basis (when requested by the Contract Administrator); and
 - C. as otherwise directed by the Contract Administrator;
- (g) provide the written assurances obtained under paragraph (f) to the Contract Administrator in accordance with paragraph (f);
- (h) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, within 10 days of receipt provide to the Contract Administrator copies of:
 - (i) all 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 Contractor or subcontractor relating to work health and safety matters;
 - (ii) all formal notices issued by a health and safety representative of the Contractor or subcontractor under or in compliance with the applicable WHS Legislation; and
 - (iii) all formal notices, written communications and written undertakings given by the Contractor or subcontractor 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 Contractor's Activities or the Remediation Works;
- (i) exercise a duty of the utmost good faith to the Commonwealth in carrying out the Contractor's Activities to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;
- (j) ensure all subcontracts include provisions equivalent to the obligations of the Contractor in clause 8.13;
- (k) ensure that, if any Statutory Requirement requires that:
 - (i) a person:
 - A. 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
 - B. 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
 - (ii) 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;
- (l) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (k) are met;
- (m) without limiting the Contractor's obligations under the Contract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract

Administrator or anyone else acting on behalf of the Commonwealth, provide all information or copies of documentation held by the Contractor or a subcontractor to the Contract Administrator or anyone else acting on behalf of the Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation;

- (n) if requested by the Contract Administrator 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 Contract Administrator before the Contractor or any subcontractor commences such work;
- (o) where the Contractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contract Administrator as a condition precedent to Remediation Completion and before the expiry of the Remediation Defects Rectification Period information concerning:
 - (i) the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
 - (ii) 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
 - (iii) 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;
- (p) if the Contractor is responsible for design, ensure the Remediation Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
- (q) not use asbestos or ACM in carrying out the Contractor's Activities;
- (r) not use, install or incorporate asbestos or ACM into the Remediation Works;
- (s) provide a certificate to the Contract Administrator in a form satisfactory to the Contract Administrator as a condition precedent to Remediation Works which states that:
 - (i) all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) used, installed or incorporated into the Remediation Works are entirely (meaning 100%) free of asbestos and ACM; and
 - (ii) the Contractor has otherwise complied with all Statutory Requirements in relation to asbestos and ACM in carrying out the Contractor's Activities and the Remediation Works;
- (t) without limiting paragraph (s), if any imported materials, goods, products, equipment and plant have or has been used, installed or incorporated into the Remediation Works, the Contractor must provide to the Contract Administrator as a condition precedent to Remediation Completion:
 - (i) sample test reports; and
 - (ii) test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method,

in relation to the imported materials, goods, products, equipment or plant which have or has been used, installed or incorporated into the Remediation Works; and
- (u) if the Contractor is a designer of a structure or part of a structure for the purposes of the WHS Legislation, the Contractor must provide to the Contract Administrator, with each submission of Remediation Design Documentation under clause 7.2, a written report that specifies the hazard relating to the design of the structure (or part) which, as far as the Contractor is reasonably aware:
 - (i) create a risk to health or safety to those carrying out construction work on the structure (or part); and
 - (ii) are associated only with the particular design.

8.14 Work Health and Safety (Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia or Tasmania) - Engagement as Principal Contractor

- (a) This clause 8.14 applies if the Contractor's Activities are being carried out in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia or Tasmania.
- (b) In accordance with Regulation 293 of the WHS Legislation, the Commonwealth engages the Contractor as the principal contractor and authorises the Contractor to have management or control of the workplace and in carrying out the Contractor's Activities for the purpose of discharging the duties imposed on a principal contractor for the project and the Contract, pursuant to the WHS Legislation. The Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the project and the Contract, unless relieved of that engagement and authorisation by notice in writing given by the Commonwealth or the Contract Administrator.
- (c) For the purposes of the Contract, the Project and the WHS Legislation, **principal contractor** means the role as authorised and engaged under clause 8.14.
- (d) The Contractor must ensure that all relevant elements of its Work Health and Safety Management Plan are aligned with its Work Health and Safety Plan.

8.15 Occupational Health and Safety (Victoria)

- (a) To the extent that the Contractor's Activities are carried out in Victoria, clause 8.15 applies to the Contractor as the person who has, to any extent, responsibility for the management or control of the Site or a workplace, or a means of access to or egress from the Site or a workplace, or plant or substances on the Site or workplace.
- (b) Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, on and from the Award Date the Commonwealth authorises and engages (and appoints for the purposes of the OHS Regulations (Vic)) the Contractor as the principal contractor for the project, the Construction Work and the Contract and the Contractor accepts such engagement or appointment as the Principal Contractor for the project and Construction Work and the Contractor must:
 - (i) strictly comply with the OHS Act (Vic) and the OHS Regulations (Vic) and do all things necessary and in a manner which ensures that both the Contractor and the Commonwealth satisfy their obligations under the OHS Act (Vic), the OHS Regulations (Vic), the Commonwealth WHS Act and the Commonwealth WHS Regulations;
 - (ii) accept that, as Principal Contractor, the Contractor is the person responsible for the control or management (or both) of the Construction Work and the Site at all times until the Construction Work is completed pursuant to the terms of the Contract;
 - (iii) ensure that it satisfies its obligations under the OHS Act (Vic), the OHS Regulations (Vic), the Commonwealth WHS Act and the Commonwealth WHS Regulations as they apply to other persons (e.g. employees of subcontractors);
 - (iv) immediately comply with directions on safety issued by any relevant authority or by the Commonwealth under the Contract;
 - (v) without limiting clause 8.26, display signs on the Site that are clearly visible from outside the Site identifying the Contractor as the Principal Contractor and stating the contact telephone numbers of the Contractor;
 - (vi) without limiting clause 1.3(g), on and from the Award Date, indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with any breach by the Contractor of the OHS Act (Vic), the OHS Regulations (Vic), the Commonwealth WHS Act, the Commonwealth WHS Regulations or clause 8.15;
 - (vii) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to:

- A. comply with the Contractor's obligations in paragraph (b)(i), (iii) and (iv) as if the subcontractor were the Contractor (except that the subcontractor will not be taken to be authorised or engaged (or appointed) as the Principal Contractor for the Construction Work, the project and the Contract);
 - B. acknowledge the authorisation and engagement (and appointment) of the Contractor as the Principal Contractor as the person responsible for the control or management (or both) of the Construction Work and the Site at all times until the Construction Work is completed for the purposes of the Contract;
 - C. not interfere with, disturb, impede or obstruct the carrying out by the Contractor of its obligations as Principal Contractor; and
 - D. cooperate and comply with any direction of the Contractor; and
- (viii) ensure that any subsubcontract made in connection with the Contract contains enforceable obligations requiring the subsubcontractor to comply with the subcontractor's obligations arising under subparagraph (vii) as if the subsubcontractor were the subcontractor.
- (c) It is the Commonwealth's intention to authorise the Contractor to exercise such authority of the Commonwealth as is necessary to enable the Contractor to discharge the responsibilities imposed on the Contractor under clause 8.15 and under the OHS Act (Vic) and the OHS Regulations (Vic), the Commonwealth WHS Act and the Commonwealth WHS Regulations. If the Contractor becomes aware that the authority is not sufficient for this purpose, the Contractor must immediately provide detailed written notice to the Contract Administrator.
- (d) For the purposes of clause 8.15:
 - (i) **Construction Work** means the construction and completion of the Contractor's Activities together with any other construction work to which the OHS Act (Vic) or the OHS Regulations (Vic) and the Commonwealth WHS Act or the Commonwealth WHS Regulations apply (whether by force of clause 8.15 or otherwise at law or in equity) which is carried out by the Contractor, subcontractors or sub-subcontractors at or in relation to the Site during the term of the Contract.
 - (ii) **OHS Act (Vic)** means the *Occupational Health and Safety Act 2004* (Vic) and includes any amendment, re-enactment or replacement of it.
 - (iii) **OHS Regulations (Vic)** means the *Occupational Health and Safety Regulations 2007* (Vic) and includes any amendment, re-enactment or replacement of it.
 - (iv) **Principal Contractor** means a person who is by clause 8.15 authorised and engaged as the Principal Contractor for the Construction Work, the project and the Contract under Regulation 293 of the Commonwealth WHS Regulations and without derogation from those obligations under the Commonwealth WHS Regulations and the Commonwealth WHS Act must also comply with the obligations as if (and to the extent that) the person is appointed and authorised to be the principal contractor within the terms of the OHS Act (Vic) and the OHS Regulations (Vic).
 - (v) Without limiting the definition of "Site" in clause 1.1, **Site** means a workplace within the terms of the OHS Act (Vic) or the OHS Regulations (Vic) and the Commonwealth WHS Act and Commonwealth WHS Regulations.

8.16 Occupational Health and Safety (Western Australia)

- (a) To the extent that the Contractor's Activities are carried out in Western Australia, clause 8.16 applies to the Contractor as the person who has, to any extent, control of the Site or a workplace, or a means of access to or egress from the Site or workplace, or plant or substances on the Site or workplace.
- (b) Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, on and from the Award Date the Commonwealth authorises and engages the Contractor as the Principal Contractor for the Construction Work, the project and the Contract and the Contractor accepts such engagement as the Principal Contractor for the Construction Work, the project and the Contract and the Contractor must:

- (i) strictly comply with the OHS Act (WA) and the OHS Regulations (WA) and do all things necessary and in a manner which ensures that both the Contractor and the Commonwealth satisfy their obligations under the OHS Act (WA), the OHS Regulations (WA), the Commonwealth WHS Act and the Commonwealth WHS Regulations;
 - (ii) accept that, as Principal Contractor, the Contractor is the person responsible for the control or management (or both) of the Construction Work and the Site at all times until the Construction Work is completed pursuant to the terms of the Contract;
 - (iii) ensure that it satisfies its obligations under the OHS Act (WA), the OHS Regulations (WA), the Commonwealth WHS Act and the Commonwealth WHS Regulations as they apply to other persons (e.g. employees of subcontractors);
 - (iv) immediately comply with directions on safety issued by any relevant authority or by the Commonwealth under the Contract;
 - (v) without limiting clause 1.3(g), on and from the Award Date, indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with any breach by the Contractor of the OHS Act (WA), the OHS Regulations (WA), the Commonwealth WHS Act, the Commonwealth WHS Regulations or clause 8.16;
 - (vi) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to:
 - A. comply with the Contractor's obligations in paragraphs (b)(i), (iii) and (iv) as if the subcontractor were the Contractor (except that the subcontractor will not be taken to be authorised or engaged as the Principal Contractor for the Construction Work, the project and the Contract);
 - B. acknowledge the authorisation and engagement of the Contractor as the Principal Contractor and the person responsible for the control or management (or both) of the Construction Work and the Site at all times until the Construction Work is completed for the purposes of the Contract;
 - C. not interfere with, disturb, impede or obstruct the carrying out by the Contractor of its obligations as Principal Contractor; and
 - D. cooperate and comply with any direction of the Contractor; and
 - (vii) ensure that any subsubcontract made in connection with the Contract contains enforceable obligations requiring the subsubcontractor to comply with the subcontractor's obligations arising under subparagraph (vi) as if the subsubcontractor were the subcontractor.
- (c) It is the Commonwealth's intention to authorise the Contractor to exercise such authority of the Commonwealth as is necessary to enable the Contractor to discharge the responsibilities imposed on the Contractor under clause 8.16 and under the OHS Act (WA), the OHS Regulations (WA), the Commonwealth WHS Act and the Commonwealth WHS Regulations. If the Contractor becomes aware that the authority is not sufficient for this purpose, the Contractor must immediately provide detailed written notice to the Contract Administrator.
- (d) For the purposes of clause 8.16:
- (i) **Construction Work** means the construction and completion of the Contractor's Activities together with any other construction work to which the OHS Act (WA) or the OHS Regulations (WA) and the Commonwealth WHS Act or the Commonwealth WHS Regulations apply (whether by force of clause 8.16 or otherwise at law or in equity) which is carried out by the Contractor, subcontractors or sub-subcontractors in relation to the Site during the term of the Contract.
 - (ii) **OHS Act (WA)** means the *Occupational Safety and Health Act 1984* (WA) and includes any amendment, re-enactment or replacement of it.
 - (iii) **OHS Regulations (WA)** means the *Occupational Safety and Health Regulations 1996* (WA) and includes any amendment, re-enactment or replacement of it.

- (iv) **Principal Contractor** means a person who is by clause 8.16 authorised and engaged as the Principal Contractor for the Construction Work, the project and the Contract under Regulation 293 of the Commonwealth WHS Regulations and without derogation from those obligations under the Commonwealth WHS Regulations and the Commonwealth WHS Act is the main contractor for the purposes of the OHS Act (WA) and the OHS Regulations (WA).
- (v) Without limiting the definition of "Site" in clause 1.1, **Site** means a workplace and construction site within the terms of the OHS Act (WA) or the OHS Regulations (WA) and a workplace within the terms of the Commonwealth WHS Act and Commonwealth WHS Regulations.

8.17 Plant, Equipment and Work

- (a) The Contractor warrants that there will be, on Site at all times, adequate Plant, Equipment and Work required by the Contractor to carry out the Contractor's Activities in accordance with the Contract.
- (b) The Contractor must not remove from the Site any Plant, Equipment and Work specified in the Contract Particulars without the Contract Administrator's prior written approval, except for the purpose of achieving Remediation Completion as contemplated under clause 8.18(b).

8.18 Cleaning Up

The Contractor must:

- (a) in carrying out the Contractor's Activities, and as far as practicable, keep the Site and the Remediation Works clean and tidy and free of refuse; and
- (b) as a condition precedent to Remediation Completion of the Remediation Works and each Stage, remove all rubbish, materials and Plant, Equipment and Work from the part of Site relevant to the Remediation Works or the Stage.

8.19 The Environment

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (ii) it does not cause or contribute to any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies the Contract Administrator of:
 - A. any non-compliance with the requirements of clause 8.19;
 - B. any breach of a Statutory Requirement for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its subcontractors comply with the requirements in clause 8.19; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of or in connection with the Contractor's Activities or the Remediation Works, whether or not it has complied with all Statutory Requirements and other requirements of the Contract for the protection of the Environment.

8.20 Urgent Protection

The Commonwealth may take any action necessary to protect the Remediation Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor must take but does not take.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in taking such action will be a debt due from the Contractor to the Commonwealth.

8.21 Valuable, Archaeological or Special Interest Items

- (a) Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Commonwealth.
- (b) Where such an item is found on or in the Site, the Contractor must:
 - (i) immediately give the Contract Administrator and the Commonwealth notice in writing;
 - (ii) not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
 - (iii) ensure that the item is protected until the nature of the item has been competently determined.
- (c) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the finding of the item.
- (d) The Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contract Administrator's instruction under paragraph (c), as determined by the Contract Administrator.
- (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the finding of the item or the Contract Administrator's instruction under paragraph (c), other than under paragraph (d).

8.22 The Commonwealth May Act

The Commonwealth may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in so carrying out such a Contract obligation will be a debt due from the Contractor to the Commonwealth.

8.23 Access Hours

Unless otherwise agreed in writing by the Contractor and the Contract Administrator, the access hours applicable to the Contractor's Activities to be carried out on Site are those specified in the Contract Particulars.

8.24 Salvaged Materials

Subject to clause 8.21, unless expressly stated to the contrary in the Contract or directed by the Contract Administrator, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Remediation Works, and which do not form part of the Site, are the property of the Contractor.

8.25 Contract Administrator's Office

- (a) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site, provide and erect on the Site, where directed by the Contract Administrator, the temporary office and associated facilities and services specified in the Contract Particulars for the sole use of the Contract Administrator and the Contract Administrator's Representatives.
- (b) The Contract Administrator's Office will remain the property of the Contractor.
- (c) Without limiting paragraph (a), the Contractor must:
 - (i) carry out all installations and connections necessary to provide lighting, heating, air conditioning and a separate telephone line to the Contract Administrator's Office;
 - (ii) install all lighting, heating, air conditioning and telephones in the Contract Administrator's Office as directed by the Contract Administrator;
 - (iii) maintain the Contract Administrator's Office until the last Date of Completion, including all necessary cleaning and maintenance;
 - (iv) pay all costs of installation, consumption, rental and removal of all lighting, heating, air conditioning and telephone services in the Contract Administrator's Office (excluding the cost of telephone calls which are to be paid by the Contract Administrator); and
 - (v) remove the Contract Administrator's Office from the Site within 7 days of the last Date of Remediation Completion.

8.26 Project Signboards

- (a) The Contractor must provide the number of project signboards specified in the Contract Particulars, each of which must:
 - (i) be in the dimensions specified in the Contract Particulars;
 - (ii) set out:
 - A. the name of the project;
 - B. the names of the parties to the Contract;
 - C. the name of the Contract Administrator;
 - D. a general description of the Remediation Works;
 - E. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
 - F. the Date for Remediation Completion;
 - G. the location of the Site office (if any); and
 - H. any additional information:
 - 1) specified in the Contract Particulars; or
 - 2) required by the Contract Administrator.
- (b) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site, submit the proposed location, layout and content of the project signboards to the Contract Administrator for approval.
- (c) Once approved by the Contract Administrator, the Contractor must:
 - (i) fix the project signboards in the locations approved by the Contract Administrator;
 - (ii) maintain the project signboards until the last Date of Remediation Completion; and

- (iii) dismantle and remove the project signboards within 7 days of the last Date of Remediation Completion.

8.27 Work Not Included

The remediation work specified in the Contract Particulars to be carried out on the Site is not included in the Contract and will be carried out during the term of the Contract by the Commonwealth or by other persons (including Other Contractors).

8.28 Dilapidation Survey

- (a) Clause 8.28 only applies if the Contract Particulars state it applies.
- (b) Prior to commencing the Contractor's Activities on the Site, the Contractor must carry out a comprehensive survey of the location and condition of existing structures, roads, car parks, access paths, footpaths, trees, services, other civil works on and around the Site and any other items areas or features specified in the Contract Particulars. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Contractor, the Contract Administrator may attend for the carrying out of the survey.
- (c) The survey must include a comprehensive photographic record of existing conditions prior to the Contractor having access to the Site.
- (d) A copy of the survey and the photographic record is to be provided to the Contract Administrator by no later than the number of days specified in the Contract Particulars after the Contractor is granted access to the Site.

8.29 Prior Work

- (a) Clause 8.29 only applies if the Contract Particulars state it applies.
- (b) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after the Commonwealth gives the Contractor access to the Site under clause 2.2(a) of the Contract;
 - (ii) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Contract Administrator in writing providing:
 - A. full particulars of the defects or matters identified; and
 - B. the reasons for the opinion formed by it in respect to the defects or matters identified, and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
- (c) On receipt of the Contractor's notice, the Contract Administrator will investigate the Prior Work the subject of the notice and:
 - (i) if the Contract Administrator agrees with the Contractor - issue a direction to the Contractor and value any work carried out by the Contractor by reason of that direction as a Remediation Works Variation under clause 11.5 of the Contract; or
 - (ii) if the Contract Administrator disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.
- (d) If the Contractor fails to:
 - (i) inspect the Prior Work as required by subparagraph (b)(i); or

- (ii) notify the Contract Administrator of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

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

8.30 Joining Up

- (a) Clause 8.30 only applies if the Contract Particulars state it applies.
- (b) Where the method of joining up of old and new work is not specified in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c), the cutting away and joining up must be carried out by the Contractor in a manner approved by the Contract Administrator and made good in all trades to match existing adjacent work.

8.31 Existing Services and Structures

- (a) Clause 8.31 only applies if the Contract Particulars state it applies.
- (b) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c).
- (c) The Contractor must obtain the prior written approval from the Contract Administrator in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (d) Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown on the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c) or should have been shown in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c), is evident on the Site or has been notified in writing by the Contract Administrator to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
- (e) The Contractor must notify the Contract Administrator immediately upon the discovery of services or obstructions not shown in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c) or identified by inspection.
- (f) The Contractor must immediately notify the Contract Administrator in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
- (g) The Contractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Remediation Works and must comply with the requirements of the Commonwealth, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during construction or maintenance of the Remediation Works.

8.32 Items to be Supplied by Commonwealth

- (a) Clause 8.32 only applies if the Contract Particulars state it applies.
- (b) The items specified in the Contract Particulars will be supplied by the Commonwealth without charge to the Contractor for use in the execution of the Contractor's Activities subject to the following conditions:
 - (i) the Contractor must submit a written request for any such items and, on receiving the Contract Administrator's written authority, must take delivery of the items at the time and date notified by the Contract Administrator in writing;

- (ii) before taking delivery of any such items, the Contractor must ensure that they are in a satisfactory condition and in the quantities specified and the Contractor has all relevant information in respect of the installation, construction or commissioning of such items;
- (iii) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth will not be liable upon) any Claim arising out of or in connection with the replacement of any items that the Contractor claims to be defective or deficient in quantity;
- (iv) the Contractor is responsible for the safety of all such items until they are incorporated in the Remediation Works; and
- (v) the Commonwealth does not represent or warrant that the quantities specified in the Contract Particulars are adequate for the Contractor's Activities and the supply of any additional quantities must be arranged by the Contractor at its cost.

8.33 Pandemic Relief Event

- (a) If the Contractor considers that there has been a Pandemic Relief Event, it must promptly give the Contract Administrator and the Commonwealth notice in writing, together with detailed particulars of the following:
 - (i) the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Contractor's Activities caused as a direct result of the Pandemic and full details of the adverse effect;
 - (ii) the likely duration of the Pandemic Relief Event;
 - (iii) the Contractor's plan to deal with the consequences of the Pandemic Relief Event which must as a minimum include details of the steps that the Contractor will take to:
 - A. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Relief Event; and
 - B. minimise any additional cost to the Commonwealth in respect of the Pandemic Relief Event,

(Contractor's Pandemic Relief Plan); and
 - (iv) such other details or information as the Contract Administrator may require.
- (b) The Contract Administrator must, within 14 days of receipt of the Contractor's notice under paragraph (a) notify the Contractor and the Commonwealth of its determination whether a Pandemic Relief Event has occurred.
- (c) Where the Contract Administrator has determined a Pandemic Relief Event has occurred, the Contract Administrator may, without being under any obligation to do so, instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Pandemic Relief Event.
- (d) If a Pandemic Relief Event occurs:
 - (i) subject to paragraph (f), the Contractor will be entitled to:
 - A. an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; and
 - B. have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the Pandemic Relief Event and any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator; and
 - (ii) the Contractor must:
 - A. comply with any direction of the Contract Administrator in relation to the Pandemic Relief Event; and

- B. subject to any amendments required by the Contract Administrator, implement the Contractor's Pandemic Relief Plan.
- (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Pandemic Relief Event, any instruction of the Contract Administrator under paragraph (c) or any amendment required by the Contract Administrator under subparagraph (d)(ii)B, other than under subparagraph (d)(i).
- (f) The Contract Administrator:
 - (i) will reduce any entitlement the Contractor would have otherwise had under paragraph (d)(i)B to the extent that the Contractor has failed to take all reasonable steps to minimise any additional cost to the Commonwealth in respect of the Pandemic Relief Event; and
 - (ii) may, for the purposes of assessing the Contractor's entitlement under subparagraph (d)(i)B, take into account any breakdown of the Contract Price submitted by the Contractor in its proposal for the Contractor's Activities.

9. QUALITY OF REMEDIATION WORKS

9.1 Remediation Works

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard prescribed in the Contract; or
 - B. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Remediation Works; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which:
 - A. comply with the requirements of the Contract; or
 - B. if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Remediation Works; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Remediation Works; and
- (c) comply with the requirements of the Contract and, to the extent they are not inconsistent, best industry practice and the requirements of all relevant standards of Standards Australia.

9.2 Contract Administrator's Right to Inspect

- (a) The Contract Administrator may at any time inspect the Contractor's Activities or the Remediation Works.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Contract Administrator owes no duty to the Contractor to:
 - A. inspect the Contractor's Activities or the Remediation Works; or
 - B. review the Remediation Works for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
 - (ii) no inspection of the Contractor's Activities or review of the Remediation Works by the Contract Administrator will in any way lessen or otherwise affect:
 - A. the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - B. the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.

9.3 Sampling and Analysis

The Contractor must carry out all sampling and analysis required by the Contract or directed by the Contract Administrator. All sampling and analysis is to be carried out in accordance with any procedure:

- (a) specified in the Contract which may apply to the tests; or
- (b) if no procedure exists, as reasonably directed by the Contract Administrator.

9.4 Costs of Sampling and Analysis

If:

- (a) the Contract Administrator directs the Contractor to carry out sampling and analysis which:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Remediation Defect in respect of which the Contract Administrator gave an instruction under clause 9.5; and
- (b) the results of the sampling and analysis show the Contractor's Activities are in accordance with the Contract,

the Contractor will be entitled to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the sampling and analysis, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the sampling and analysis, other than under this clause 9.4.

9.5 Remediation Defects

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

If, prior to the expiration of the Remediation Defects Rectification Period for the Remediation Works or a Stage, the Contract Administrator discovers or believes there is a Remediation Defect, the Contract Administrator may give the Contractor an instruction specifying the Remediation Defect and doing one or more of the following:

- (a) requiring the Contractor to correct the Remediation Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to carry out a Remediation Works Variation to overcome the Remediation Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising the Contractor that the Commonwealth will accept the work, or any part of it, despite the Remediation Defect.

9.6 Correction of Remediation Defect or Remediation Works Variation

If an instruction is given under clause 9.5(a) or (b), the Contractor must correct the Remediation Defect or carry out the Remediation Works Variation:

- (a) within the time specified in the Contract Administrator's instruction; and
- (b) if after Remediation Completion, at times and in a manner which cause as little inconvenience to the occupants of the Site as is reasonably possible.

9.7 Claim for Correction of Remediation Defect

Where an instruction is given under clause 9.5(a):

- (a) the Contractor will only be entitled to make a Claim for correcting the Remediation Defect (or the relevant part) if the Remediation Defect (or the relevant part) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Remediation Defect will be treated as if it were a Remediation Works Variation the subject of a direction by the Contract Administrator and clause 11.5 applied.

9.8 Claim for Remediation Works Variation

Where a Remediation Works Variation has been instructed under clause 9.5(b) and:

- (a) the Contractor is not responsible for the Remediation Defect (or the relevant part):
 - (i) the Contract Price will be adjusted in accordance with clause 11.5; and

- (ii) the Contractor will be entitled to an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; or
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part):
 - (i) the Contract Administrator will determine:
 - A. the value of the Remediation Works Variation in accordance with clause 11.5; and
 - B. the cost of correcting the Remediation Defect (or the relevant part) as if clause 9.7(b) applied;
 - (ii) the Contract Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
 - A. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Contract Price will be increased by the excess; or
 - B. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the Contract Price will be decreased by the difference and will be a debt due from the Contractor to the Commonwealth; and
 - (iii) the Contractor will not be entitled to claim an extension of time to any Date for Remediation Completion.

9.9 Acceptance of Remediation Work

If:

- (a) an instruction is given under clause 9.5(c) prior to the expiration of the Remediation Defects Rectification Period; and
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Remediation Defect (or the relevant part) will be a debt due from the Contractor to the Commonwealth.

9.10 Extension of Remediation Defects Rectification Period

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.5(a) or (b) during the Remediation Defects Rectification Period; and
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part),

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

9.11 Common Law Rights not Affected

Neither the Commonwealth's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Remediation Defects, whether before or after the expiration of the Remediation Defects Rectification Period, will be affected or limited by:

- (a) the rights conferred upon the Commonwealth or Contract Administrator by this clause 9 or any other provision of the Contract;
- (b) the failure by the Commonwealth or the Contract Administrator to exercise any such rights; or
- (c) any instruction of the Contract Administrator under clause 9.5.

9.12 HOTO Process

Without limiting clause 8.13(a)(ii) or clause 13, the Contractor must:

- (a) fully co-operate with the Contract Administrator, the Commonwealth and Other Contractors and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
- (b) without limiting paragraph (a):
 - (i) carry out all Contractor HOTO Obligations;
 - (ii) ensure that all Contractor HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Requirements;
 - (iii) comply with:
 - A. all applicable HOTO Requirements; and
 - B. all commissioning, handover and takeover requirements described in the Contract;
 - (iv) as and when required by the Contract Administrator, provide the Commonwealth with such other specific assistance as may be required by the Commonwealth to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
 - (v) as and when required by the Contract Administrator, meet with the Contract Administrator, the Commonwealth and Other Contractors for the purpose of ensuring that the Contract Administrator, the Commonwealth and Other Contractors have sufficient Project Documents to enable the Contract Administrator, the Commonwealth and Other Contractors to:
 - A. occupy, use, operate and maintain the Remediation Works or the Stage; and
 - B. perform such other activities as may be required by the Commonwealth in respect of the Remediation Works or the Stage.

9.13 Quality Assurance

The Contractor:

- (a) must implement the quality assurance process, system or framework in its Quality Plan;
- (b) without limiting clause 7.13, must allow the Contract Administrator or anyone else acting on behalf of the Commonwealth access to the quality assurance process, system or framework of the Contractor and its subcontractors so as to enable auditing or other monitoring; and
- (c) will not be relieved from compliance with its obligations under the Contract or otherwise at law or in equity as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any direction by the Contract Administrator concerning the Contractor's quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;
 - (iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Commonwealth of the Contractor's compliance with the quality assurance process, system or framework; or
 - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any Contractor's Activities or aspects of the Remediation Works which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

10. TIME FOR CONTRACTOR'S ACTIVITIES AND REMEDIATION WORKS

10.1 Progress and Time for Remediation Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) achieve Remediation Completion of the Remediation Works or each Stage by the relevant Date for Remediation Completion.

10.2 Programming

The Contractor must:

- (a) within 14 days of the Award Date, prepare a program of the Contractor's Activities which must contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than that specified in the Contract Particulars to take account of:
 - (i) changes to the program; or
 - (ii) delays which may have occurred, including any for which the Contractor is granted an extension of time under clause 10.8;
- (c) give the Contract Administrator copies of all programs for approval;
- (d) ensure that all subcontractors adhere to the program; and
- (e) provide all programs in a format compatible with the software specified in the Contract Particulars.

10.3 Contractor Not Relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Contract Administrator will not:

- (a) relieve the Contractor from or alter its obligations under the Contract, especially (without limitation) the obligation to achieve Remediation Completion by each Date for Remediation Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any or all of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Commonwealth's or Contract Administrator's Contract obligations.

10.4 Acceleration by Contractor

If the Contractor chooses to accelerate progress, then despite clause 3.3:

- (a) neither the Commonwealth nor the Contract Administrator will be obliged to take any action to assist or enable the Contractor to achieve Remediation Completion before any Date for Remediation Completion; and
- (b) the time for the carrying out of the Commonwealth's or the Contract Administrator's obligations will not be affected.

10.5 Delays Entitling Claim for Extension of Time

If the Contractor is, or is likely to be, delayed:

- (a) prior to the Date for Remediation Completion of the Remediation Works or a Stage, by an Act of Prevention or a cause specified in the Contract Particulars in a manner which will prevent it from achieving Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion; or

- (b) after the Date for Remediation Completion of the Remediation Works or a Stage, by an Act of Prevention in a manner which will delay it in achieving Remediation Completion of the Remediation Works or the Stage,

the Contractor may claim an extension of time.

10.6 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay submit a written claim to the Contract Administrator for an extension to the relevant Date for Remediation Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that it will be delayed in achieving Remediation Completion in the manner set out in clause 10.7(c); and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Contract Administrator:
 - (i) every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
 - (ii) containing the information required by paragraph (a).

10.7 Conditions Precedent to Extension

Subject to clause 10.14, it is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claim required by clause 10.6 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor;
- (c) the Contractor must have actually been, or be likely to be, delayed by:
 - (i) prior to the Date for Remediation Completion of the Remediation Works or the Stage, an Act of Prevention or a cause specified in the Contract Particulars in a manner which will prevent it from achieving Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion unless that date is extended; or
 - (ii) after the Date for Remediation Completion of the Remediation Works or the Stage, an Act of Prevention in a manner which will delay it in achieving Remediation Completion of the Remediation Works or the Stage; and
- (d) the Contractor must not have been given an instruction under clause 10.13.

10.8 Extension of Time

Subject to clause 10.9, if the conditions precedent in clause 10.7 have been satisfied, the relevant Date for Remediation Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Commonwealth and the Contractor within 21 days of the Contractor's written claim under clause 10.6.

10.9 Reduction in Extension of Time

The Contract Administrator will reduce any extension to the relevant Date for Remediation Completion it would otherwise have notified to the Commonwealth and the Contractor under clause 10.8 to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.10 Unilateral Extension of Time

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under clause 10, the Commonwealth may (in its Commonwealth's absolute discretion) at any time and from time to time by written notice to the Contractor and the Contract Administrator, unilaterally extend any Date for Remediation Completion.

The Contractor acknowledges that:

- (a) the Commonwealth is not required to exercise the Commonwealth's discretion under clause 10.10 for the benefit of the Contractor;
- (b) clause 10.10 does not give the Contractor any rights; and
- (c) the exercise or failure to exercise the Commonwealth's discretion under clause 10.10 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

10.11 Agreed Damages

Clause 10.11 applies unless the Contract Particulars state that it does not apply.

The Contractor will be entitled to be paid the amount specified in the Contract Particulars for each day by which the Date for Remediation Completion of the Remediation Works or a Stage is extended due to a breach of the Contract by the Commonwealth.

This amount:

- (a) is the agreed damages which will be payable by the Commonwealth in these circumstances; and
- (b) will be a limitation upon the Commonwealth's liability to the Contractor for any delay or disruption which:
 - (i) the Contractor encounters in carrying out the Contractor's Activities; and
 - (ii) arises out of or in connection with the breach of the Contract by the Commonwealth,

and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any delay or disruption, other than under clause 10.11.

10.12 Suspension

- (a) The Contract Administrator:
 - (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
 - (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
- (b) If a suspension under clause 10.12 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 10.12 will entitle the Contractor to:
 - A. an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.7; and
 - B. have the Contract Price increased by the extra costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension, other than under paragraph (b)(ii).

- (c) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the Contractor's Activities when instructed to do so under clause 10.12.

10.13 Instruction to Accelerate

If the Contractor gives the Contract Administrator a written claim under clause 10.6, the Contract Administrator may:

- (a) instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion; and
- (b) give such an instruction whether or not the cause of delay for which the Contractor has given its written claim under clause 10.6 otherwise entitles the Contractor to an extension of time to any relevant Date for Remediation Completion.

10.14 Partial Acceleration

If the Contract Administrator gives the Contractor an instruction to accelerate under clause 10.13 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

10.15 Acceleration

If the Contract Administrator gives an instruction to the Contractor under clause 10.13:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Remediation Completion for the cause of delay, the Contractor will be entitled to be paid:
 - (i) the extra costs reasonably incurred by the Contractor as a direct result of accelerating the Contractor's Activities; and
 - (ii) that percentage of the amount under subparagraph (i) specified in the Contract Particulars; and
- (c) subject to clause 10.14, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.13, other than under paragraph (b).

10.16 Commonwealth's Rights to Liquidated Damages Not Affected

The Commonwealth's rights to liquidated damages under clause 13.7 for a failure by the Contractor to achieve Remediation Completion of the Remediation Works or a Stage by any relevant Date for Remediation Completion are not affected by the Contract Administrator giving the Contractor an instruction to accelerate under clause 10.13.

11. VARIATION TO REMEDIATION WORKS

11.1 Notice of Unidentified Site Conditions

- (a) If the Contractor considers it has encountered an Unidentified Site Condition, it must immediately give the Contract Administrator notice in writing.
- (b) The Contract Administrator must, within 21 days of receipt of the Contractor's notice under paragraph (a):
 - (i) notify the Contractor and the Commonwealth of its determination whether an Unidentified Site Condition has been encountered; and
 - (ii) instruct the Contractor as to the course it must adopt in so far as the Contractor's Activities are affected by an Unidentified Site Condition.

11.2 Contractor's Entitlement for Unidentified Site Conditions

If the Contract Administrator determines that an Unidentified Site Condition has been encountered, the Contractor will be entitled to:

- (a) an extension of time to any relevant Date for Remediation Completion under clause 10.6 where it is otherwise so entitled under clause 10.8; and
- (b) to the extent to which it is reasonably required by the Contractor, request a Remediation Works Variation under clause 11.7.

To the extent permitted by law, the Contractor's entitlement under this clause 11.2 will be its only right to make a Claim arising out of, or in any way in connection with, the Unidentified Site Condition.

11.3 Remediation Works Variation Price Request Initiated by the Commonwealth

At any time prior to the Date of Remediation Completion of the Remediation Works or a Stage (but without limiting clauses 5.3 and 9.5), the Contract Administrator may issue a document titled "Remediation Works Variation Price Request" to the Contractor which will set out details of a proposed Remediation Works Variation which the Commonwealth is considering.

The Contractor must immediately take all action required under any relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Remediation Works Variation.

Within 14 days of the receipt of a "Remediation Works Variation Price Request", the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:

- (a) the adjustment (if any) to the Contract Price to carry out the proposed Remediation Works Variation; and
- (b) the effect (if any) which the proposed Remediation Works Variation will have on the then approved program, including each Date for Remediation Completion.

11.4 Remediation Works Variation Order

Whether or not the Contract Administrator has issued a "Remediation Works Variation Price Request" under clause 11.3, at any time prior to the Date of Remediation Completion of the Remediation Works or a Stage (but without limiting clauses 5.3 and 9.5), the Contract Administrator may instruct the Contractor to carry out a Remediation Works Variation by a written document titled "Remediation Works Variation Order" in which the Contract Administrator will state one of the following:

- (a) the proposed adjustment to the Contract Price set out in the Contractor's notice under clause 11.3 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.5(b) and 11.5(c).

No Remediation Works Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Remediation Works Variation.

11.5 Valuation of Remediation Works Variation

Subject to clauses 9.8(b) and 11.9, the Contract Price will be increased or decreased for all Remediation Works Variations which have been the subject of a direction by the Contract Administrator:

- (a) as agreed under clause 11.4(a);
- (b) if paragraph (a) does not apply, in accordance with the rates and prices included in the Schedule of Rates, if and insofar as the Contract Administrator determines that those rates and prices are applicable to or it is reasonable to use them for valuing, the Remediation Works Variation, to which will be added any reasonable costs incurred by the Contractor as a direct result of the Remediation Works Variation delaying the Contractor; or
- (c) to the extent paragraph 11.5(b) does not apply, by a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Contract Administrator,to which will be added any reasonable costs incurred by the Contractor as a direct result of the Remediation Works Variation delaying the Contractor.

11.6 Omissions

If a Remediation Works Variation the subject of a direction by the Contract Administrator omits any part of the Remediation Works or a Stage, the Commonwealth may thereafter carry out this omitted work either itself or by engaging Other Contractors.

11.7 Remediation Works Variations Requested by Contractor

- (a) The Contractor may request the Contract Administrator to direct a Remediation Works Variation:
 - (i) where it reasonably considers that a Remediation Works Variation is necessary or desirable (including to minimise costs); or
 - (ii) without limiting subparagraph (i), as a consequence of an Unidentified Site Condition which has been determined by the Contract Administrator under clause 11.1(b)(i) to have been encountered.
- (b) Any request under clause 11.7(a) must be in writing and must contain the following details:
 - (i) a description of the Remediation Works Variation;
 - (ii) the reason or reasons why the Remediation Works Variation is required;
 - (iii) the additional or reduced costs or time involved in the Remediation Works Variation and any proposal for sharing any savings in costs with the Commonwealth, including the amount;
 - (iv) any benefits which will flow to the Commonwealth from the Remediation Works Variation; and
 - (v) the effect which the Remediation Works Variation will have upon the future cost of operating and maintaining the Remediation Works.

11.8 Contract Administrator's Determination

After a request is made by the Contractor in accordance with clause 11.7, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or
- (b) approving the request either conditionally or unconditionally and, if clause 11.7(a)(ii) applies, outlining any change to the requirements for Remediation Completion as a consequence of the Unidentified Site Condition.

The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.

11.9 Remediation Works Variation Approved by Contract Administrator

Subject to clause 11.10, if the Contract Administrator issues a written notice under clause 11.8(b) approving the Contractor's request under clause 11.7:

- (a) unless otherwise agreed, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Remediation Works Variation;
- (b) if the Contractor's request offered to share savings in cost with the Commonwealth, the Contract Price will be reduced by or adjusted in accordance with the Contractor's offer; and
- (c) the Contractor will be responsible for all parts of the Remediation Works which are in any way affected by the Remediation Works Variation.

11.10 Unidentified Site Conditions and Contract Price

If the Contract Administrator issues a written notice under clause 11.8 approving the Contractor's request under clause 11.7 in relation to a Remediation Works Variation which has been requested as a consequence of an Unidentified Site Condition determined by the Contract Administrator under clause 11.1(b)(i) to have been encountered:

- (a) the Contract Price will be increased or decreased in accordance with clause 11.5(a), clause 11.5(b) or clause 11.5(c) (as appropriate); and
- (b) the requirements for Remediation Completion will be varied as reasonably determined by the Contract Administrator and set out in the Contract Administrator's notice under clause 11.8.

12. PAYMENT

12.1 Payment Obligation

- (a) Subject to clause 12.15 and to any other right to set-off which the Commonwealth may have, the Commonwealth will pay the Contractor:
 - (i) the Contract Price; and
 - (ii) any other amounts which are payable by the Commonwealth to the Contractor under the Contract.
- (b) The Contract Price comprises the:
 - (i) Lump Sum Component; and
 - (ii) Schedule of Rates Component.

12.2 Payment Claims

Subject to clause 12.3, the Contractor must give the Contract Administrator claims for payment on account of the Contract Price and all other amounts then payable by the Commonwealth to the Contractor under the Contract:

- (a) at the times specified in the Contract Particulars until Remediation Completion or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after Remediation Completion or the Remediation Defects Rectification Period, within the time required by clause 12.9 or 12.11;
- (c) in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
- (d) which are based on the Table of Remediation Works Variation Rates and Prices or the Schedule of Rates to the extent these are relevant;
- (e) which show separately the amounts (if any) claimed on account of:
 - (i) the Lump Sum Component;
 - (ii) the Schedule of Rates Component; and
 - (iii) all other amounts then payable by the Commonwealth to the Contractor under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.

12.3 Conditions Precedent to Submission of Payment Claim

- (a) The Contractor's entitlement to submit a payment claim under clause 12.2 is conditional upon the Contractor having:
 - (i) complied with clause 3.13;
 - (ii) complied with clause 4.1;
 - (iii) if a request has been made under clause 4.4, complied with clause 4.4;

- (iv) complied with clause 5.4;
 - (v) if a request has been made under clause 7.13, complied with clause 7.13;
 - (vi) if a request has been made under clause 8.5(e), complied with clause 8.5(e);
 - (vii) complied with clause 8.13;
 - (viii) complied with clause 7.7;
 - (ix) if an instruction has been given under clause 9.5(a) or (b), complied with clause 9.6;
 - (x) complied with clause 10.2;
 - (xi) complied with clause 12.16;
 - (xii) complied with clause 12.22;
 - (xiii) complied with clause 12.23;
 - (xiv) complied with clause 12.24;
 - (xv) if clause 14.5(b) or 14.8(b)(ii) applies, complied with clause 14.5(b) or 14.8(b)(ii);
 - (xvi) complied with clause 19.3;
 - (xvii) if a request has been made under clause 19.4, complied with clause 19.4;
 - (xviii) if clause 20 applies:
 - A. complied with clause 20.4; and
 - B. if a request has been made under clause 20.5, complied with clause 20.5;
 - (xix) if a notice has been issued under clause 22.3(a)(iv)A, complied with clause 22.3(a)(iv)A; and
 - (xx) if a request has been made under clause 23(d) or (e), complied with clause 23(d) or (e) and (f).
- (b) If the Contractor has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
- (i) the payment claim is deemed to have been invalidly submitted under clause 12.2;
 - (ii) the Contract Administrator will not be obliged to include in any payment statement under clause 12.4 any amount in the payment claim; and
 - (iii) the Commonwealth will not be liable to pay any amount in the payment claim.
- (c) If the Contractor:
- (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of clause 12.2(f) in relation to any amount (or portion of any amount) in the payment claim,
- then:
- (iii) the Contractor will not be entitled to payment of;
 - (iv) the Contract Administrator will not be obliged to include in any payment statement under clause 12.4; and
 - (v) the Commonwealth will not be liable to pay,

the amount (or the portion of the amount) in the payment claim in relation to which the Contractor has failed to comply with the requirements of clause 12.2(f), unless:

- (vi) the Contract Administrator (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Contractor) issues a written notice to the Contractor identifying the documentation or information which the Contractor has failed to provide under clause 12.2(f); and
 - (vii) the Contractor provides that documentation or information to the Contract Administrator by the date and time specified in the Contract Administrator's notice.
- (d) If the Remediation Works are being carried out in Western Australia, for the purposes of the Contract and the *Construction Contracts Act 2004* (WA), a claim for payment will be deemed not to have been made until all the requirements of this clause 12.3 have been satisfied and any information requested by the Contract Administrator has been provided.

12.4 Payment Statement

The Contract Administrator:

- (a) must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or

- (b) may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time,

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

- (c) the payment claim to which it relates (if any);
- (d) the amount previously paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract;
- (e) the amount (if any) which the Contract Administrator believes to be then payable by the Commonwealth to the Contractor on account of the Contract Price and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Contractor; and
- (f) if the amount in paragraph (e) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Commonwealth 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 Contract Administrator will not constitute:

- (g) approval of the Contractor's Activities or the Remediation Works nor will it be taken as an admission or evidence that the part of the Contractor's Activities or Remediation Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract;
- (h) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment statement;
- (i) an admission or evidence of the value of the Contractor's Activities or the Remediation Works or that the Contractor's Activities or the Remediation Works comply with the Contract;
- (j) an admission or evidence of liability; or
- (k) otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract.

12.5 Payment

- (a) Within 3 business days of the Contractor receiving a payment statement under clause 12.4, the Contractor must give the Contract Administrator a tax invoice for the amount stated as then payable by the Commonwealth to the Contractor in the payment statement.
- (b) Subject to clause 12.17(c), within the number of business days specified in the Contract Particulars of the Commonwealth receiving a payment statement under clause 12.4, the Commonwealth will pay the Contractor the amount stated as then payable by the Commonwealth to the Contractor in the payment statement.

12.6 Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

- (a) approval of the Contractor's Activities or the Remediation Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Works covered by the payment has been satisfactorily carried out in accordance with the Contract;
- (b) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment;
- (c) an admission or evidence of the value of the Contractor's Activities or the Remediation Works or that the Contractor's Activities or the Remediation Works comply with the Contract;
- (d) an admission or evidence of liability; or
- (e) otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

12.7 Unfixed Goods and Materials

Unfixed goods or materials will not be included in the value of work in a payment statement under clause 12.4 unless:

- (a) the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
- (b) the Contractor gives the Contract Administrator with a payment claim under clause 12.2:
 - (i) additional Approved Security equal to the amount claimed for the unfixed goods and materials; and
 - (ii) such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in the Commonwealth upon payment;
- (c) the unfixed goods and materials are clearly marked as the property of the Commonwealth and are on the Site or available for immediate delivery to the Site; and
- (d) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.

Upon payment by the Commonwealth of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.

12.8 Release of Additional Approved Security

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

12.9 Remediation Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Remediation Completion Notice for the Remediation Works or a Stage, the Contractor must give the Contract Administrator:

(a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and

(b) notice of any other amounts which the Contractor claims from the Commonwealth,

in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, Remediation Works or the Contract which:

(c) in the case of the Remediation Works, occurred prior to the Date of Remediation Completion of the Remediation Works; or

(d) in the case of a Stage, occurred prior to the Date of Remediation Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under clause 12.9 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.10 Release after Completion Payment Claim and Notice

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

(a) in the case of the Remediation Works, occurred prior to the Date of Remediation Completion of the Remediation Works; or

(b) in the case of a Stage, occurred prior to the Date of Remediation Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

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

12.11 Final Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the end of the Remediation Defects Rectification Period for the Remediation Works or a Stage, the Contractor must give the Contract Administrator:

(a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and

(b) notice of any other amounts which the Contractor claims from the Commonwealth,

in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract which:

(c) in the case of the Remediation Works, occurred during the Remediation Defects Rectification Period for the Remediation Works; or

(d) in the case of a Stage, occurred during the Remediation Defects Rectification Period for the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under clause 12.11 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.12 Release after Final Payment Claim and Notice

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

- (a) in the case of the Remediation Works, occurred during the Remediation Defects Rectification Period for the Remediation Works; or
- (b) in the case of a Stage, occurred during the Remediation Defects Rectification Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

12.13 Interest

The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:

- (a) amount stated as then payable by the Commonwealth in a payment statement under clause 12.4, but which is not paid by the Commonwealth within the time required by the Contract; and
- (b) damages (excluding any agreed damages payable under clause 10.11).

This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

12.14 Correction of Payment Statements

The Contract Administrator may, in any payment statement:

- (a) correct any error in any previous payment statement; and
- (b) modify any previous payment statement,

given by the Contract Administrator.

12.15 Right of Set-Off

The Commonwealth may:

- (a) deduct from moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to the Commonwealth (including liquidated damages payable under clause 13.7); and
 - (ii) any claim to money which the Commonwealth may have against the Contractor whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with the Contractor's Activities or the Remediation Works; and
- (b) 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:
 - (i) amount which may be or thereafter become payable to the Contractor by the Commonwealth in respect of any Remediation Works Variation the subject of a Remediation Works Variation Order under clause 11.4; or
 - (ii) without limiting the unconditional nature of the security held under clause 4.1, the security held under clause 4.1.

12.16 Payment of Workers and Subcontractors - Option 1 (All Other States and Territories)

The Contractor must with each payment claim under clause 12.2 provide the Contract Administrator with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by the Contract Administrator, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subcontractors):
 - (i) all workers who have at any time been employed by the Contractor in connection with the Contractor's Activities or the Remediation Works have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Contractor's Activities or the Remediation Works; and
 - (ii) all subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities or the Remediation Works; and
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subcontractor have been paid all moneys due and payable to them in respect of their employment in connection with the Contractor's Activities or the Remediation Works.

The Commonwealth is entitled to withhold from any amount stated as then payable by the Commonwealth in a payment statement under clause 12.4 the amount disclosed as unpaid under clause 12.16.

12.16 Payment of Workers and Subcontractors - Option 2 (New South Wales Only)

The Contractor is not entitled to give the Contract Administrator a payment claim under clause 12.2 and the Commonwealth is not obliged to make any payment under clause 12.5 unless the Contractor has provided the Contract Administrator with:

- (a) a supporting statement (as defined in section 13(9) of the *Building and Construction Industry Security of Payment Act 1999* (NSW)) and prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW);
- (b) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and Schedule 2 Part 6 of the *Payroll Tax Act 2007* (NSW) which is in a form approved by the Contract Administrator, and covers the period of the relevant payment claim; and
- (c) evidence of compliance with its Workers Compensation Insurance obligations under clause 5.4.

The Commonwealth is entitled to withhold from any amount stated as then payable by the Commonwealth in a payment statement under clause 12.4 the amount disclosed as unpaid under clause 12.16.

12.17 GST

- (a) Subject to paragraph (b), where any supply arises out of or in connection with the Contract, the Contractor's Activities or the Remediation Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
- (c) 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.

- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In clause 12.17 subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.

12.18 Quantities in Schedule of Rates

- (a) The items of work and quantities in any Schedule of Rates are estimated and not guaranteed. The Contractor will not be entitled to make any Claim against the Commonwealth if the items of work or quantities are incorrect in that they:
 - (i) contain an incorrect quantity (subject to paragraph (b));
 - (ii) contain an item which should not have been included; or
 - (iii) omit an item which should have been included.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Schedule of Rates Work must not include work which forms part of the Lump Sum Work; and
 - (ii) the relevant quantity of work performed by the Contractor in respect of each line item in the Schedule of Rates must not exceed the quantity in the Schedule of Rates unless:
 - A. the Contractor has provided reasonable prior written notice to the Contract Administrator together with a detailed explanation of the need to exceed that quantity (including the estimated excess quantity) and such further information as the Contract Administrator may require; and
 - B. the Contract Administrator has provided written agreement to the excess quantity, in which case the relevant quantity in the Schedule of Rates will be adjusted accordingly and this subparagraph (ii) will reapply to that adjusted quantity.
- (c) The Contractor must carry out all Schedule of Rates Work so as to:
 - (i) ensure, to the maximum extent possible, that the quantities are not exceeded; and
 - (ii) minimise the cost to the Commonwealth.

12.19 Limits of Accuracy in the Schedule of Rates

If a Schedule of Rates exists and:

- (a) the actual quantity of an item required to carry out the Contractor's Activities is greater or less than the quantity shown in the Schedules of Rates;
- (b) the Commonwealth has accepted a rate for the item referred to in paragraph 12.18(a); and
- (c) the actual quantity of the item referred to in paragraph 12.18(a) is outside the limits of accuracy specified in the Contract Particulars,

the rate will only apply to the quantities within those limits of accuracy and (subject to paragraph 12.18(b)) quantities outside those limits of accuracy will have their value determined:

- (d) where the Table of Remediation Works Variation Rates and Prices contains a corresponding item to the relevant item in the Schedules of Rates for which the quantity required is greater or less than the

quantity shown in the Schedules of Rates - in accordance with the Table of Remediation Works Variation Rates and Prices; and

- (e) where the Table of Remediation Works Variation Rates and Prices does not contain a corresponding item to the relevant item in the Schedules of Rates for which the quantity required is greater or less than the quantity shown in the Schedules of Rates:
 - (i) by agreement between the Contractor and the Contract Administrator; or
 - (ii) failing agreement, by the Contract Administrator using reasonable rates.

12.20 Security of Payment Legislation

- (a) The Contractor agrees with the Commonwealth that:
 - (i) a payment claim submitted to the Contract Administrator under clause 12.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Contract Administrator as agent for the Commonwealth;
 - (ii) if:
 - A. any of the Remediation Works are being carried out in Western Australia - unless otherwise notified to the Contractor by the Commonwealth in writing, the Contract Administrator will give payment statements and carry out all other functions of the Commonwealth under the relevant Security of Payment Legislation (including receiving adjudication applications) as the agent of the Commonwealth; or
 - B. no Remediation Works are being carried out in Western Australia - unless otherwise notified to the Contractor by the Commonwealth in writing, the Contract Administrator will give payment statements and carry out all other functions of the Commonwealth under the relevant Security of Payment Legislation as the agent of the Commonwealth;
 - (iii) to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clauses 12.2(a) and 12.2(b) on which the Contractor has satisfied the requirements of clause 12.3(a); and
 - (iv) a reference to a "payment statement" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.
- (b) Failure by the Contract Administrator to state in a payment statement issued under the relevant Security of Payment Legislation or otherwise an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Commonwealth to the Contractor will not prejudice:
 - (i) the Contract Administrator's ability or power to state in a subsequent payment statement an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Commonwealth to the Contractor; or
 - (ii) the Commonwealth's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract or otherwise at law or in equity.
- (c) The Contractor agrees that the amount stated in the payment statement as then payable by the Commonwealth to the Contractor under clause 12.4(e) is, subject to clause 12.16, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of the Contract and which the Contractor is entitled to be paid in respect of the Contract.
- (d) The Contractor irrevocably chooses the person specified in the Contract 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 Contractor's Activities are to be carried out in:
 - (i) the Northern Territory or Western Australia, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer; or

- (ii) any other State or Territory in which Security of Payment Legislation applies, the authorised nominating authority or adjudication registry.
- (e) The Contractor must not at any time, without the written consent of the Commonwealth, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Commonwealth 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:

- (i) to the extent permitted by law, the Contractor's obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
- (ii) notwithstanding the Contractor's obligations in respect of the Information, the Commonwealth has absolute discretion to divulge or permit its servants, subcontractors or agents to divulge to any person the Information;
- (iii) the Commonwealth may divulge or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and
- (iv) any Information which the Commonwealth provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to the Commonwealth's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

12.21 Accounting Records

The Contractor 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:

- (a) all Remediation Works Variations; and
- (b) without limiting paragraph (a), all amounts paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract.

12.22 Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Contractor must, with each payment claim under clause 12.2, provide the Contract Administrator with accurate information which apports monthly costs against expenses for all work completed since the Commonwealth's previous payment to the Contractor.

12.23 Remediation Works Accounting

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to bring all completed Remediation Works to account, as a condition precedent to Completion of the Remediation Works or a Stage, the Contractor must provide a cost report to the Contract Administrator which sets out:

- (a) details of the Contract Price and all other amounts payable under the Contract paid by the Commonwealth to the Contractor in respect of the Remediation Works or the Stage;
- (b) the matters specified in the Contract Particulars; and
- (c) any other matters required by the Contract Administrator.

12.24 Estate Information

If specified in the Contract Particulars, the Contractor must provide the Project Documents, as specified by the Contract Administrator, in a format compatible with Defence's estate information reporting system set out on the Defence Website.

13. COMPLETION OF REMEDIATION WORKS

13.1 Contractor to Notify of Remediation Completion

The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Remediation Completion of the Remediation Works or a Stage.

13.2 Contract Administrator to Inspect

The Contract Administrator must:

- (a) promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under clause 13.1 or a notice under paragraph (d) (as the case may be), inspect the Remediation Works or the Stage; and
- (b) if:
 - (i) satisfied that Remediation Completion has been achieved, issue a notice to the Commonwealth and the Contractor:
 - A. stating the date upon which the Contract Administrator determines Remediation Completion was achieved; and
 - B. containing a list of any minor Remediation Defects of the type described in paragraph (a) of the definition of "Remediation Completion" in clause 1.1; or
 - (ii) not satisfied that Remediation Completion has been achieved, issue a notice so advising the Contractor and the Commonwealth.

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

- (c) proceed to bring the Remediation Works or the Stage to Remediation Completion; and
- (d) when it considers it has achieved Remediation Completion, give the Contract Administrator written notice to that effect (after which clause 13.2 will reapply).

13.3 Unilateral Issue of Remediation Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1 or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Remediation Completion of the Remediation Works or a Stage has been achieved, the Contract Administrator may issue a Remediation Completion Notice under clause 13.2(b)(i) for the Remediation Works or the Stage.

13.4 Hand-Over of Site Upon Completion

Upon the issue of a Remediation Completion Notice, the Contractor must:

- (a) hand over the Site to the Commonwealth; and
- (b) correct all Remediation Defects listed in the Remediation Completion Notice as soon as possible.

13.5 Part of the Works or a Stage

The Commonwealth may, after written notice is given to the Contractor by the Contract Administrator, occupy or use (or arrange for Other Contractors to occupy or use) any part of the Site although the whole of the Remediation Works or the Stage has not reached Remediation Completion.

If any such notice is given by the Contract Administrator:

- (a) the Commonwealth must allow the Contractor reasonable access to the part of the Site referred to in the notice and being occupied or used by the Commonwealth, to enable the Contractor to bring the Remediation Works or the relevant Stage of which the area being occupied or used forms part to Remediation Completion; and

- (b) this will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to achieve Remediation Completion of the Remediation Works or the relevant Stage of which the area being occupied or used forms part by the relevant Date for Remediation Completion.

13.6 Effect of Remediation Completion Notice

A Remediation Completion Notice will not:

- (a) constitute approval of the Contractor's Activities, the Remediation Works or the Stage, nor will it be taken as an admission or evidence that the Contractor's Activities, the Remediation Works or the Stage have or has been satisfactorily carried out in accordance with the Contract;
- (b) constitute an admission or evidence that the Contractor's Activities, the Remediation Works or the Stage comply or complies with the Contract;
- (c) otherwise, constitute any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract; or
- (d) prejudice any rights or remedies of the Commonwealth or Contract Administrator under the Contract or otherwise at law or in equity.

13.7 Liquidated Damages

If the Date of Remediation Completion of the Remediation Works or a Stage has not occurred by the Date for Remediation Completion for the Remediation Works or the Stage, the Contractor must pay liquidated damages at the rate specified in the Contract Particulars for every day after the Date for Remediation Completion until the Date of Remediation Completion or the Contract is terminated, whichever is first.

This amount is an agreed genuine pre-estimate of the Commonwealth's damages if the Date of Remediation Completion does not occur by the Date for Remediation Completion.

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

14. TERMINATION

14.1 Preservation of Rights

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

14.2 Contractor Default

The Commonwealth may give a written notice under clause 14.3 to the Contractor if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.12 or otherwise does not proceed with the Contractor's Activities regularly and diligently;
- (c) fails to comply with:
 - (i) clause 4.1;
 - (ii) if a request has been made under clause 4.4, clause 4.4;
 - (iii) clause 5.4;
 - (iv) clause 5.6;
 - (v) clause 7.7;
 - (vi) clause 8.12;
 - (vii) clause 8.13;
 - (viii) if an instruction has been given under clause 9.5(a) or (b), the Contractor fails to comply with clause 9.6;
 - (ix) clause 9.13;
 - (x) clause 12.24;
 - (xi) clause 18;
 - (xii) clause 19;
 - (xiii) if clause 20 applies, clause 20;
 - (xiv) clause 22; or
 - (xv) clause 23;
- (d) materially fails to:
 - (i) implement the Indigenous Participation Plan; or
 - (ii) comply with a direction issued by the Contract Administrator under clause 17.2(f);
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any direction of the Contract Administrator made in accordance with the Contract;
or
- (g) is otherwise in substantial breach of the Contract.

14.3 Contents of Notice of Default

A notice under clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the failure or breach relied upon; and
- (c) that the Commonwealth requires the Contractor to remedy the failure or breach within the number of days specified in the Contract Particulars of receiving the notice.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons;
- (b) the Contractor does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 14.3;
- (c) an instruction has been given under clause 9.5(a) or (b), the Contractor fails to comply with clause 9.6; or
- (d) the Contractor fails to comply with:
 - (i) clause 19; or
 - (ii) if clause 20 applies, clause 20,

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

14.5 Commonwealth's Entitlements after Termination by Commonwealth

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

- (a) the Commonwealth will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Remediation Works;
 - (ii) be entitled to require the Contractor to novate to the Commonwealth or the Commonwealth's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Commonwealth;
 - (iii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
 - (iv) be entitled to recover from the Contractor all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of, or in connection with, such termination; and
- (b) the Contractor must comply with clause 19.3 and, if clause 20 applies, clause 20.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Contract.

14.6 Contractor's Entitlements after Termination by Contractor

If the Commonwealth repudiates the Contract and the Contractor terminates the Contract, the Contractor will:

- (a) be entitled to payment of an amount determined in accordance with clause 14.8 as if the Commonwealth had terminated the Contract under clause 14.7; and
- (b) not be entitled to a quantum meruit.

Clause 14.6 will survive the termination of the Contract.

14.7 Termination for Convenience

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

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Commonwealth's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter (at its absolute discretion) complete the uncompleted part of the Contractor's Activities and the Remediation Works either itself or by engaging Other Contractors.

14.8 Contractor's Entitlements after Termination for Convenience by Commonwealth

If the Commonwealth terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Contract Administrator:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Remediation Works for which the Contractor is legally bound to pay provided that:
 - A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - B. title in the goods and materials will vest in the Commonwealth upon payment; and
 - (iii) the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
 - (ii) comply with clause 19.3 and, if clause 20 applies, clause 20.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

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

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

15. DISPUTES

15.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Commonwealth or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in clause 15.

Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

15.2 Expert Determination

If the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses specified in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

15.3 The Expert

- (a) The expert determination under clause 15.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under clause 15.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) 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;
 - (iv) does not enter into the Expert Determination Agreement or other agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under clause 15.3; or
 - (v) does not make a determination within the time required by clause 15.8,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) 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.

15.4 Not Arbitration

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

15.5 Procedure for Determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;

- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.6 Disclosure of Interest

The expert must:

- (a) disclose to the parties any:
 - (i) interest he or she has in the outcome of the determination;
 - (ii) conflict of interest;
 - (iii) conflict of duty;
 - (iv) personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
 - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.7 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.8 Conclusion of Expert Determination

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

15.9 Expert Determination Agreement

- (a) 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.
- (b) 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.

15.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

15.11 Executive Negotiation

- (a) If:
 - (i) clause 15.2 applies, and a notice of appeal is given under clause 15.10; or

- (ii) clause 15.2 does not apply,
the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
 - (i) 21 days of:
 - A. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - B. otherwise, the notice of appeal given under clause 15.10; or
 - (ii) 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).

15.12 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - (ii) otherwise, the notice of appeal given under clause 15.10; or
 - (b) such longer period of time as the Executive Negotiators may agree in writing,
the Executive Negotiators:
 - (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
 - (d) cannot resolve the dispute or difference; or
 - (e) 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.

15.13 Arbitration

- (a) Arbitration pursuant to clause 15.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 15.13.
- (b) The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
- (c) Nothing in clause 15.13 is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 2011* (Vic). For the avoidance of doubt, the second sentence of Article 34(6) of the ICC Rules (in force from 1 January 2012) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
 - (ii) any arbitration conducted pursuant to clause 15.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
 - (ii) 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;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) 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;
 - (v) 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
 - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

15.14 Proportional Liability

- (a) 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 any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 15.14.
- (b) If any of the Remediation Works are being carried out in Western Australia, all of the provisions comprising Part 1F of the *Civil Liability Act 2002* (WA) are hereby expressly excluded from application to this Contract.

15.15 Continuation of Contractor's Activities

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

- (a) continue to carry out the Contractor's Activities and Remediation Works; and
- (b) otherwise comply with its obligations under the Contract.

16. NOTICES

16.1 Notice of Remediation Works Variation

If a direction by the Contract Administrator, other than a "Remediation Works Variation Order" under clause 11.4, constitutes or involves a Remediation Works Variation, the Contractor must, if it wishes to make a Claim against the Commonwealth arising out of, or in any way in connection with, the direction:

- (a) within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Remediation Works Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities and the Remediation Works in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 16.1.

16.2 Notices of Other Claims

Except for claims for:

- (a) an extension of time under clause 10.6;
- (b) payment under clause 12.2 of the original Contract Price specified in the Contract Particulars; or
- (c) a Remediation Works Variation instructed in accordance with clause 11.4 or to which clause 16.1 applies,

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

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) amounts are to be added to the Contract Price; or
 - (ii) otherwise, the Contract Price will be increased or adjusted,

as determined by the Contract Administrator.

16.3 Prescribed Notices

The notices referred to in clause 16.2 are:

- (a) 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:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification.

16.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the

case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time Bar

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

- (a) the Commonwealth will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Commonwealth,

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

16.6 Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Commonwealth.

16.7 Address for Service

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

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 14 and 15 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
 - (i) specified in the Contract Particulars; or
 - (ii) 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;
- (c) 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
- (d) in the case of notices sent by email:
 - (i) be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
 - (ii) include the words "This is a notice under clause 16.7 of the Contract" in the subject field of the email.

16.8 Receipt of Notices

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
 - (i) delivery by hand, on delivery;
 - (ii) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
 - (iii) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
 - (iv) email, the earlier of:
 - A. delivery to the email address to which it was sent; or

- B. 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.
- (b) In the case of notices under clauses 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
 - (i) the date the notice sent by email is taken to be received; or
 - (ii) 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).

17. GENERAL

17.1 Workplace Gender Equality

The Contractor must:

- (a) comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth); and
- (b) not enter into a subcontract made in connection with the Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

17.2 Indigenous Procurement Policy

- (a) The Contractor must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,in carrying out the Contractor's Activities, in accordance with the Indigenous Procurement Policy.
- (b) The Contractor must:
 - (i) comply with the Indigenous Participation Plan; and
 - (ii) submit a written report to the Commonwealth via the Powering Indigenous Procurement reporting portal on its compliance with the Indigenous Participation Plan, as follows:
 - A. at least quarterly; and
 - B. within 7 days of the expiry of the last Remediation Defects Rectification Period (**End of RDRP Report**).
- (c) The Contractor must set out in the End of RDRP Report:
 - (i) whether the Contractor:
 - A. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
 - B. complied with the Indigenous Participation Plan; and
 - (ii) if the Contractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
- (d) Throughout the carrying out of the Contractor's Activities, the Contractor is responsible for managing the Contractor's access to the Powering Indigenous Procurement reporting portal including by managing the:
 - (i) enabling of its authorised personnel's access; and
 - (ii) disabling of its authorised personnel's access,and must promptly notify the Contract Administrator of such enabling and disabling and any other matters relating to access to the Powering Indigenous Procurement reporting portal.
- (e) If the Contract Administrator considers, in its absolute discretion at any time during the carrying out of the Contractor's Activities, that it has concerns in relation to the Contractor's:
 - (i) compliance with the Indigenous Participation Plan; or
 - (ii) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Contract Administrator may direct the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.

- (f) The Contractor:
 - (i) must comply with all directions issued by the Contract Administrator in relation to the Contractor's implementation of the Indigenous Participation Plan; and
 - (ii) will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any direction of the Contract Administrator under subparagraph (i).
- (g) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under subparagraph (b)(ii):
 - (i) will be recorded in a central database accessible by the Commonwealth and may be made publically available;
 - (ii) will not be Commercial-in-Confidence Information for the purposes of the Contract; and
 - (iii) may be used by the Commonwealth for any purpose, including being taken into account for evaluation of in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

17.3 Defence's Security Alert System

- (a) Nothing that the Contractor is or may be required to do under clause 17.3 will derogate from, or otherwise limit, the Contractor's obligations under the Contract.
- (b) The Contractor must be, and must ensure that its subcontractors are, fully familiar with the requirements of Defence's Security Alert System.
- (c) The Contractor must, and must ensure that its subcontractors:
 - (i) attend any security briefing requested by the Contract Administrator from time to time; and
 - (ii) participate in any rehearsal of Defence's Security Alert System directed by the Contract Administrator from time to time.
- (d) In carrying out the Contractor's Activities, the Contractor must, and must ensure that its subcontractors, comply with the requirements of Defence's Security Alert System:
 - (i) at the level specified in the Contract Particulars; and
 - (ii) 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.
- (e) If there is any change to Defence's Security Alert System level specified in the Contract 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:
 - (i) the Contract Administrator will notify the Contractor of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Contractor as to the course it is to adopt insofar as the Contractor's Activities are affected by the change to the level (or individual measure from a higher level to meet a specific threat or threats); and
 - (ii) subject to subparagraph (iii), the Contractor will be entitled to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator; or
 - (iii) the Contract Price will be decreased by any saving made by the Contractor after the giving of the notice under subparagraph (i) which arise directly from the change and the Contract

Administrator's instruction under subparagraph (i), as determined by the Contract Administrator.

- (f) The amount (if any) under paragraph (e)(ii) will be a limitation on the Commonwealth's liability to the Contractor arising out of or in connection with:

(i) the change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats); and

(ii) the Contract Administrator's instruction,

and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth 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 Contract Administrator's instruction under paragraph (e)(i), other than under paragraph (e)(ii).

17.4 Privacy

- (a) The Contractor must:

(i) comply with its obligations under the Privacy Act;

(ii) comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;

(iii) use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract only for the purposes of fulfilling its obligations under the Contract;

(iv) not disclose Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Contract Administrator;

(v) not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;

(vi) co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;

(vii) ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract 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;

(viii) comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;

(ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Contract Administrator's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;

(x) agree to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;

(xi) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 17.4, as if the subcontractor were the Contractor;

- (xii) enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contract Administrator may give;
- (xiii) not use Personal Information collected by the Contractor for the purposes of, under, arising out of or in connection with the Contract for, or in any way relating to, any direct marketing purpose; and
- (xiv) indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - A. a breach of the obligations of the Contractor under clause 17.4;
 - B. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor; or
 - D. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 17.4.
- (c) The Contractor must immediately notify the Commonwealth in writing if the Contractor:
 - (i) becomes aware of a breach of the obligations under clause 17.4 by itself or by a subcontractor;
 - (ii) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Contractor acknowledges that, in addition to the requirements of clause 17.4, the Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
- (e) Nothing in clause 17.4 limits any of the Contractor's obligations under the Contract or otherwise at law or in equity.
- (f) In clause 17.4, **received** includes collected.

17.5 Moral Rights

- (a) To the extent permitted by law, the Contractor:
 - (i) must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subcontractors do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of the Project Documents or the Remediation Works by:
 - A. the Commonwealth;
 - B. any third party to whom the Commonwealth sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Project Documents or the Remediation Works (**Sub-Licensee**);

- C. any third party to whom the Commonwealth assigns any Intellectual Property Rights in the Project Documents or the Remediation Works (**Assignee**); or
 - D. any Other Contractors;
- (ii) without limiting subparagraph (i), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
 - A. failing to acknowledge or attribute the Contractor's or any other person's authorship of the Project Documents or the Remediation Works;
 - B. falsely attributing authorship of the Project Documents or the Remediation Works; and
 - C. making any modification, variation or amendment of any nature whatsoever to the Project Documents or the Remediation Works, whether or not:
 - 1) it results in a material distortion of or destruction or mutilation of the Project Documents or the Remediation Works; or
 - 2) it is prejudicial to the honour or reputation of the Contractor or any other author of the Project Documents or the Remediation Works; and
- (iii) without limiting subparagraphs (i) and (ii), consents to any of the Commonwealth, Other Contractors, Sub-Licensees and Assignees:
 - A. using the Project Documents or the Remediation Works other than for the purpose for which it was intended at the time the Project Document was or the Remediation Works were created;
 - B. altering the Project Documents or the Remediation Works by adding to or removing elements from, or rearranging elements of, the Project Documents or the Remediation Works, including by combining elements of the Project Documents or the Remediation Works with any other material; or
 - C. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including the Remediation Works), whether or not it incorporates, is based on, or is constructed in accordance with, the Project Documents.
- (b) The Contractor must:
 - (i) in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of a Project Document or any part of the Remediation Works, obtain from that person, before he or she creates a Project Document or the relevant part of the Remediation Works, a duly completed and executed Moral Rights Consent;
 - (ii) ensure that no person creates a Project Document or any part of the Remediation Works before that person has duly completed and executed a Moral Rights Consent;
 - (iii) not coerce any person to complete or execute a Moral Rights Consent;
 - (iv) pay to each person who executes a Moral Rights Consent in accordance with clause 17.5 the sum of \$1 on behalf of the Commonwealth;
 - (v) within 7 days of a Moral Rights Consent having been executed in accordance with clause 17.5, provide the Moral Rights Consent to the Contract Administrator; and
 - (vi) maintain an up-to-date record of the names and addresses of each person who is an author of Project Documents or any part of the Remediation Works, and the Project Documents or any part of the Remediation Works of which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.

17.6 Freedom of Information

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.

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.

17.7 Long Service Leave

Clause 17.7 only applies if the Long Service Leave Legislation applies to the Contractor's Activities.

- (a) Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by the Long Service Leave Legislation, the Contractor must pay any levy, charge, contribution or associated amount in respect of the Contractor's Activities.
- (c) Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Contract Price and the Contractor will have no Claim against the Commonwealth arising out of or in connection with its obligations under clause 17.7 or the Long Service Leave Legislation.

17.8 Assignment

- (a) The Contractor must not, without the prior written approval of the Commonwealth and except on such terms and conditions notified by the Commonwealth, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
- (b) For the purpose of but without limiting paragraph (a), an assignment of the Contract will be deemed to have occurred where there has been a Change of Control.

17.9 Publicity

Without limiting clause 19 and if clause 20 applies, clause 20, the Contractor must:

- (a) not furnish any information or issue any document or other written or printed material concerning the Contractor's Activities or the Remediation Works for publication in the media without the prior written approval of the Contract Administrator; and
- (b) refer any enquiries from the media concerning the Contractor's Activities or the Remediation Works to the Contract Administrator.

17.10 Black Economy Procurement Connected Policy

- (a) Without limiting clause 8.5, the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontract) if the total value of the work under the subcontract is expected to exceed \$4 million (inclusive of GST) unless the Contractor has obtained and holds any of the STRs set out in the table below, as applicable to the relevant subcontractor.

If the subcontractor to enter into the subcontract is:	STRs required:
a. a body corporate or natural person;	a satisfactory and valid STR in respect of that body corporate or person.
b. a partner acting for or on behalf of a partnership;	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the

	subcontract.
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust.
d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) a relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group.
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) GST Group member; and (ii) GST Group representative.

- (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 or subcontractor is:	Additional STRs required:
a. 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).
b. 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.
c. a joint venture participant;	a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture.
d. a member of a Consolidated Group;	a satisfactory and valid STR in respect of any new head company of the Consolidated Group.
e. a member of a GST Group;	a satisfactory and valid STR in respect of any representative for the GST Group.

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

17.11 Commercial-in-Confidence Information

- (a) Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Contractor's information expressly specified in the Contract Particulars or otherwise described in the Official Order and received from the Contractor (**Commercial-in-Confidence Information**).
- (b) The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
 - (i) disclosed by the Commonwealth 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 Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth'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 (a).
- (c) The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Contractor as confidential in nature for the justification given and period asserted by the Contractor and agreed by the Commonwealth as set out in the Contract Particulars or otherwise described in the Official Order.
- (d) The Contractor:
 - (i) must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
 - (ii) acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

18. NOT USED

19. INFORMATION SECURITY - CONFIDENTIAL INFORMATION

19.1 Contractor's Warranty

- (a) The Contractor acknowledges and agrees that the Confidential Information is confidential.
- (b) The Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 19 by the Contractor or any Recipient.

19.2 Confidential Information Requirements

- (a) The Contractor must:
 - (i) strictly comply with:
 - A. clause 19; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. clause 19; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (b) Subject to, if clause 20 applies, clause 20, the Contractor must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than performing the Contractor's Activities and achieving Remediation Completion of the Remediation Works.

- (c) The Contractor must ensure that all Recipients of Confidential Information:
 - (i) strictly comply with:
 - A. clause 19; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. clause 19; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
 - A. clause 19; or

- B. any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (d) The Contractor must:
- (i) ensure:
 - A. the Confidential Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),
 are strictly kept:
 - C. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar); and
 - D. otherwise in accordance with all Separation Arrangements; and
 - (ii) immediately:
 - A. detect all actual or potential Confidential Information Incidents;
 - B. notify the Contract Administrator if it becomes aware of any actual or potential Confidential Information Incident;
 - C. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
 - D. strictly comply with all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements),
- (together the **Confidential Information Requirements**).

19.3 Return, Destruction and Erasure of Confidential Information

- (a) Within 7 days of:
- (i) a request from the Contract Administrator, at any time;
 - (ii) the termination of the Contract under clause 14 or otherwise at law; or
 - (iii) the expiry of the last Remediation Defects Rectification Period,
- the Contractor must:
- (iv) subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) promptly:
 - A. securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Contract Administrator;
 - B. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
 - D. provide the Contract Administrator with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) confirming that

the Confidential Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and

- (v) promptly notify the Contract Administrator of all Confidential Information (or any part of it) which the Contractor knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - B. is beyond the Contractor's (or a Recipient's) possession, power, custody or control,giving full particulars (including the nature and extent of the Confidential Information precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).
- (b) To the extent required by a Statutory Requirement or to maintain compliance with the Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Confidential Information for its records subject to the Contractor:
 - (i) promptly notifying the Contract Administrator of all Confidential Information it proposes to keep and the detailed basis for doing so; and
 - (ii) maintaining the information security of the Confidential Information in accordance with clause 19.
- (c) The Contractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Contractor's obligations under clause 19.

19.4 Compliance

Within 24 hours (or such other period notified by the Contract Administrator in its request) of receipt of a request by the Contract Administrator, at any time, the Contractor must:

- (a) provide the Contract Administrator with:
 - (i) evidence of the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Confidential Information Requirements),by the time and date specified in the request; and
- (b) as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and Confidential Information Requirements), by the time and date specified in the request.

19.5 Acknowledgement, Release and Indemnity

Without limiting any other provision of the Contract, the Contractor:

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 19;

- (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
 - A. notifies the Contract Administrator under clause 19.2(d)(ii)B; or
 - B. has failed to strictly comply with:
 - 1) clause 19; or
 - 2) any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements),

the Commonwealth may (in its absolute discretion) do any one or more of the following:

 - C. terminate the Contract under clause 14.4; or
 - D. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
 - (iii) the exercise of any of the Commonwealth's absolute discretions under clause 19 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
- (b) releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 19; and
 - (c) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - (i) a Confidential Information Incident;
 - (ii) the Contractor's failure to strictly comply with clause 19 or any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
 - (iii) the exercise of any of the Commonwealth's absolute discretions under clause 19.

20. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 20 does not apply unless the Contract Particulars state that it applies.

20.1 Sensitive and Classified Information, generally

- (a) Nothing in clause 20 limits or otherwise affects clause 19.
- (b) The Contractor acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.

20.2 Contractor's Warranties

- (a) The Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 20 by the Contractor or any Recipient.
- (b) The Contractor warrants that each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Contractor's Activities and the Remediation Works properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars:
 - (i) before the Recipient was issued with the Sensitive and Classified Information; and
 - (ii) at all times during the Recipient's access to the Sensitive and Classified Information.

20.3 Sensitive and Classified Information Requirements

- (a) The Contractor must:
 - (i) strictly comply with:
 - A. clause 20; and
 - B. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. clause 20; and
 - B. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (b) Subject to paragraph (c)(i), the Contractor must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including carrying out the Contractor's Activities and the Remediation Works. If the Contractor wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Contractor's Activities and the Remediation Works, it must notify the Contract Administrator providing details of the proposed copying, reproduction, disclosure, use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of all proposed Recipients).

- (c) Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (b), the Contract Administrator will notify the Contractor that the Commonwealth (in its absolute discretion) either:
 - (i) grants permission, whether with or without such conditions as the Commonwealth thinks fit (including conditions requiring the Recipient of Sensitive and Classified Information (or any part of it) to properly apply for, obtain and hold a current security clearance level at or above the level/s specified by the Commonwealth in the Contract Particulars before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient's access to the Sensitive and Classified Information or to enter into a deed in a form approved by the Commonwealth); or
 - (ii) refuses permission.
- (d) If the Commonwealth grants permission under paragraph (c)(i), the Contractor must strictly comply with any conditions under paragraph (c)(i).
- (e) The Contractor must ensure that all Recipients of Sensitive and Classified Information:
 - (i) strictly comply with:
 - A. clause 20; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. clause 20; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
 - A. clause 20; or
 - B. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (f) The Contractor must:
 - (i) ensure:
 - A. the Sensitive and Classified Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Sensitive and Classified Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

 - C. at locations in Australia only (unless the Contractor and any Recipient is listed on the ASD Certified Cloud Services List or is otherwise approved in writing by the Commonwealth (in its absolute discretion));
 - D. in information technology environments which are accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in the Contract Particulars:

- 1) before the Contractor (or Recipient) was issued with the Sensitive and Classified Information; and
- 2) at all times during the Contractor's (or Recipient's) access to the Sensitive and Classified Information,

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

E. for caveated or compartmented information (or any part of it) forming part of the Sensitive and Classified Information, in information technology environments which are specifically accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in the Contract Particulars required for such caveated or compartmented information (or any part of it):

- 1) before the Contractor (or Recipient) was issued with such caveated or compartmented information (or any part of it); and
- 2) at all times during the Contractor's (or Recipient's) access to such caveated or compartmented information (or any part of it),

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

F. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);

G. without limiting subsubparagraph F, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia;

H. in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework); and

I. in accordance with all Separation Arrangements; and

(ii) immediately:

A. to the maximum extent possible, detect all actual or potential Sensitive and Classified Information Incidents;

B. notify the Contract Administrator if it becomes aware of any actual or potential Sensitive and Classified Information Incident;

C. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and

D. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

(together the **Sensitive and Classified Information Requirements**).

20.4 Return, Destruction and Erasure of Sensitive and Classified Information

(a) Within 7 days of:

- (i) a request from the Contract Administrator, at any time;

- (ii) the termination of the Contract under clause 14 or otherwise at law; or
 - (iii) the expiry of the last Remediation Defects Rectification Period,
- the Contractor must:
- (iv) subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) and in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework), promptly:
 - A. securely and appropriately return all copies of the Sensitive and Classified Information (in a tangible form) to the Contract Administrator;
 - B. securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
 - D. provide the Contract Administrator with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - (v) promptly notify the Contract Administrator of all Sensitive and Classified Information (or any part of it) which the Contractor knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - B. is beyond the Contractor's (or a Recipient's) possession, power, custody or control,

giving full particulars (including the nature and extent of the Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).
- (b) To the extent required by a Statutory Requirement or to maintain compliance with the Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Sensitive and Classified Information for its records subject to the Contractor:
 - (i) promptly notifying the Contract Administrator of all Sensitive and Classified Information it proposes to keep and the detailed basis for doing so; and
 - (ii) maintaining the information security of the Sensitive and Classified Information in accordance with clause 20.
 - (c) The Contractor acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Contractor's obligations under clause 20.

20.5 Compliance

Within 12 hours (or such other period notified by the Contract Administrator in its request) of receipt of a request by the Contract Administrator, at any time, the Contractor must:

- (a) provide the Contract Administrator with:

- (i) evidence of the Contractor's and all Recipients' compliance with clause 20 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 20 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
- (b) as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 20 (including any Separation Arrangements and Sensitive and Classified Information Requirements).

20.6 Acknowledgement, Release and Indemnity

Without limiting any other provision of the Contract, the Contractor:

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 20;
 - (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
 - A. notifies the Contract Administrator under clause 20.3(f)(ii)B; or
 - B. has failed to strictly comply with:
 - 1) clause 20; or
 - 2) any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

the Commonwealth may (in its absolute discretion) do any one or more of the following:

 - C. terminate the Contract under clause 14.4; or
 - D. take such Sensitive and Classified Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
 - (iii) the exercise of any of the Commonwealth's absolute discretions under clause 20 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
- (b) releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 20; and
- (c) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - (i) a Sensitive and Classified Information Incident;
 - (ii) the Contractor's failure to strictly comply with clause 20 or other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); or

- (iii) the exercise of any of the Commonwealth's absolute discretions under clause 20.

21. DEFENCE INDUSTRY SECURITY PROGRAM

Without limiting clause 20, the Contractor must:

- (a) at its cost obtain and thereafter maintain for the term of the Contract the level of DISP membership specified in the Contract Particulars; and
- (b) comply with any other direction or requirement of the Contract Administrator in relation to the DISP.

22. SIGNIFICANT EVENTS

22.1 Contractor's Warranty

Subject to clause 22.2, the Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any Significant Event in relation to the Contractor.

22.2 Notice of Significant Event

If, at any time, the Contractor becomes aware of any Significant Event, the Contractor must immediately notify the Contract Administrator, providing details of:

- (a) the Significant Event, including:
 - (i) whether the Contractor considers that it is a Material Change, Defence Strategic Interest Issue or circumstances otherwise set out in paragraph (c) or (d) of the defined term "Significant Event";
 - (ii) the date or dates on or during which the Significant Event occurred; and
 - (iii) whether any of the Contractor's key people or other personnel engaged in connection with the Contractor's Activities were involved); and
- (b) the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Significant Event on the interests of the Commonwealth.

22.3 Commonwealth Rights Upon Occurrence of Significant Event

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

- (i) the Contractor:
 - A. notifies the Contract Administrator under clause 22.2; or
 - B. has failed to strictly comply with clause 22; or
- (ii) the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Significant Event in relation to the Contractor,

the Commonwealth may (in its absolute discretion) do any one or more of the following:

- (iii) notify the Contractor that it is required to provide, or meet with the Commonwealth to provide, further information, documents or evidence in relation to, and otherwise clarify, the:
 - A. nature and extent of the Significant Event; and
 - B. steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Significant Event on the interests of the Commonwealth,by the time and date specified in the notice; and
- (iv) regardless of whether or not the Commonwealth has notified the Contractor under subparagraph (iii), notify the Contractor that:
 - A. the Contractor may continue to perform the Contractor's Activities, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Contractor:
 - 1) preparing and implementing a Significant Event Remediation Plan in accordance with clause 22.4; or

- 2) completing, duly executing and returning to the Contract Administrator a deed,

by the time and date specified in the notice, in each case in a form and on terms acceptable to the Commonwealth in its absolute discretion; or

- B. the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 14.4.

- (b) Without limiting any other provision of the Contract, if the Contractor is in breach of clause 22, then the Commonwealth may (in its absolute discretion) notify the Contractor that the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 14.4.

22.4 Significant Event Remediation Plan

- (a) If notified by the Commonwealth under clause 22.3(a)(iv)A.1), the Contractor must prepare and submit a draft Significant Event Remediation Plan to the Contract Administrator for approval within 10 business days of the Commonwealth's notice.
- (b) A draft Significant Event Remediation Plan prepared by the Contractor under paragraph (a) must include the following information:
 - (i) how the Contractor will address the Significant Event in the context of the Contractor's Activities, including confirmation that the implementation of the Significant Event Remediation Plan will not in any way impact on the performance of the Contractor's Activities or compliance by the Contractor with its other obligations under the Contract;
 - (ii) how the Contractor will ensure events similar to the Significant Event do not occur again;
 - (iii) if the Significant Event involves a Material Change, how the Material Change will impact the Contractor's original agreement with the Commonwealth; and
 - (iv) any other matter reasonably requested by the Contract Administrator.
- (c) The Contract Administrator will review the draft Significant Event Remediation Plan and either approve the draft Significant Event Remediation Plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft Significant Event Remediation Plan reasonably requested by the Contract Administrator and resubmit the draft Significant Event Remediation Plan to the Contract Administrator for approval within 3 business days of the request unless a different timeframe is agreed in writing by the Contract Administrator. This paragraph (c) will apply to any resubmitted draft Significant Event Remediation Plan.
- (d) Without limiting its other obligations under the Contract, the Contractor must comply with the Significant Event Remediation Plan as approved by the Contract Administrator. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the Significant Event Remediation Plan as reasonably requested by the Contract Administrator.

22.5 Acknowledgement and Release

The Contractor:

- (a) acknowledges and agrees that the exercise of any of the Commonwealth's absolute discretions under this clause 22 is not capable of being the subject of a dispute or difference for the purposes of clause 15 or otherwise subject to review; and
- (b) must bear, and releases the Commonwealth from, all Claims arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 22.

23. FINANCIAL VIABILITY

- (a) The Contractor:
- (i) warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2:
 - A. it has the financial viability necessary to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors (in accordance with paragraph (b))); and
 - B. each subcontractor engaged in the Contractor's Activities, the Remediation Completion or each Stage has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
 - (ii) acknowledges and agrees that the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 23.
- (b) The Contractor must pay all subcontractors in accordance with the payment terms in all subcontracts.
- (c) The Contractor must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
- (i) the Contractor's ability to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage or otherwise meet its obligations under the Contract; and
 - (ii) a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any potential or actual change in:
 - (iii) the Contractor's financial viability; or
 - (iv) a subcontractor's financial viability.
- (d) The Contract Administrator may (in its absolute discretion) at any time request the Contractor to:
- (i) provide the Contract Administrator with a solvency statement in the form required by the Commonwealth with respect to:
 - A. the Contractor, properly completed and duly executed by the Contractor; or
 - B. a subcontractor, properly completed and duly executed by the subcontractor;
 - (ii) ensure:
 - A. its Financial Representative is available; and
 - B. each subcontractor makes its Financial Representative available,to provide the Contract Administrator and any independent financial adviser engaged by the Commonwealth with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Commonwealth, the Contract Administrator and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:
 - C. the Contractor has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Remediation Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors in accordance with paragraph (b)); or
 - D. a subcontractor has the financial viability necessary to perform its activities in accordance with the relevant subcontract.

- (e) If the Commonwealth considers (in its absolute discretion) that there could be or has been a change in:
- (i) the Contractor's financial viability; or
 - (ii) a subcontractor's financial viability,
- which could adversely affect:
- (iii) the Contractor's ability to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage or otherwise meet its obligations under the Contract; or
 - (iv) a subcontractor's ability to perform its activities in accordance with the relevant subcontract,
- the Contract Administrator may (in its absolute discretion) direct the Contractor to take such steps as the Commonwealth considers necessary to secure the performance of the Contractor's Activities, the Remediation Completion of the Remediation Works or each Stage and the meeting of its obligations under the Contract, including requiring the Contractor to:
- (v) provide additional Approved Security in the form and for an amount required by the Commonwealth under clause 4.1(a);
 - (vi) provide a Deed of Guarantee, Undertaking and Substitution in the form required by the Commonwealth;
 - (vii) establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by the Commonwealth;
 - (viii) provide Subcontractor Deeds of Covenant; or
 - (ix) provide Collateral Warranties.
- (f) If the Contract Administrator gives a direction under paragraph (e), then the Contractor must take such steps as the Commonwealth considers necessary to better secure a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
- (g) The Contractor acknowledges and agrees that:
- (i) nothing in clause 23 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity;
 - (ii) neither the Commonwealth nor the Contract Administrator is required to exercise any discretion under clause 23 for the benefit of the Contractor (or any subcontractor);
 - (iii) clause 23 does not give the Contractor (or any subcontractor) any rights; and
 - (iv) the exercise or failure to exercise a discretion under clause 23 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

The Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in clause 23.

CONTRACT PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Accredited Environmental Site Auditor:
(Clause 1.1)

Additional Project Plans:
(Clause 1.1)

Award Date:
(Clause 1.1)

Other documents forming part of the Contract:
(Clause 1.1)

Contract Administrator:
(Clause 1.1)

Contractor:
(Clause 1.1)

Contractor's Representative:
(Clause 1.1)

Contract Price:
(Clause 1.1, 12.21 and 16.2(b))

- (a) for the Lump Sum Work, a Lump Sum Component of \$ (ex. GST); and
- (b) for the Schedule of Rates Work, the Schedule of Rates Component calculated by multiplying the quantity of Schedule of Rates Work carried out in accordance with the Contract by the rate or price in the Schedule of Rates for that work,

neither of which is, unless elsewhere stated, subject to rise and fall in costs.

Date for Remediation Completion:
(Clause 1.1)

Where there are no Stages, for the Remediation Works is:

Where there are Stages, for each Stage is:

Stage	Date for Remediation Completion
-------	---------------------------------

Environmental Consultant:
(Clause 1.1)

Environmental Management Plan (additional):
(Clause 1.1)

Environmental Objectives (additional):
(Clause 1.1)

Environmental Requirements (additional):
(Clause 1.1)

Executive Negotiators:
(Clause 1.1)

Commonwealth: Assistant Secretary,
Environment and Engineering

Contractor:

Indigenous Procurement Plan:
(Clauses 1.1 and 17.2)

Project DCAP:
(Clauses 1.1 and 7.14)

Project Management Meetings:
(Clauses 1.1)

Meeting frequency:

Meeting location:

Quality Manager:
(Clause 1.1)

Quality Objectives (additional):
(Clause 1.1)

Quality Plan (additional):
(Clause 1.1)

**Remediation Completion - additional
conditions precedent to Remediation
Completion:**
(Clause 1.1)

Remediation Defects Rectification Period:
(Clause 1.1)

Remediation Works:
(Clause 1.1)

**[INSERT BRIEF DESCRIPTION OF REMEDIATION
WORKS]**

Schedule of Collateral Documents:
(Clause 1.1)

1. Approved Security (Unconditional Undertaking)
2. Collateral Warranty
3. Subcontractor Deed of Covenant
4. Deed of Guarantee, Undertaking and Substitution
5. Payment Claim
6. Payment Statement
7. Expert Determination Agreement
8. Moral Rights Consent

Schedule of Rates:
(Clause 1.1)

Site:
(Clause 1.1)

Site Information:

(Clause 1.1)

Site Management Plan (additional):

(Clause 1.1)

Specified Site Use Objective:

(Clause 1.1)

Stages of the Remediation Works:

(Clause 1.1)

Table of Remediation Works Variation Rates and Prices:

(Clause 1.1)

Technical Advisor:

(Clause 1.1)

Technical Specification:

(Clause 1.1)

Work Health and Safety Plan (additional):

(Clause 1.1)

Governing law:

(Clause 1.3(a))

CLAUSE 2 - COMMENCEMENT**Date for commencement on Site:**

(Clauses 2.1(b) and 2.2(a)(ii))

Other conditions precedent to Site access:

(Clause 2.2(a)(i)C)

CLAUSE 3 - PERSONNEL**Contract Administrator's representatives and their functions:**

(Clause 3.4)

Representative**Function(s)****Site Audit Statement:**

(Clause 3.9)

A Site Audit Statement *[IS/IS NOT]* required.

(A Site Audit Statement is required unless otherwise stated)

Technical Advisor's Certification:

(Clause 3.10)

A Technical Advisor's Certification *[IS/IS NOT]* required.

(A Technical Advisor's Certification is required unless otherwise stated)

CLAUSE 4 - SECURITY**Security to be provided by the Contractor:**

(Clause 4.1)

Where there are no Stages, for the Remediation Works is:

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

Where there are Stages, for each Stage is:

Stage**Amount**

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

To the extent that any part of the Contractor's Activities is to be carried out in Queensland, the following warning applies:

This Contract is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building and Construction Commission Act 1991* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security is not to be more than 5% of the Contract Price of the Contract, unless the Contract expressly provides otherwise. Under this Contract, the parties agree that the amount of the security provided by the Contractor is governed by clause 4.

Initialled for and on behalf of the Contractor:

Initialled for and on behalf of the Commonwealth:

CLAUSE 5 - RISKS AND INSURANCE

Insurance policies required to be obtained by the Contractor:
(Clause 5.4)

Construction Risks Insurance

Amount of Cover:

- (a) \$
(the Contract Price if no amount is specified);
- (b) \$ or % of the Contract Price to cover the costs of demolition and removal of debris;
- (c) \$ or % of the Contract Price to cover the Commonwealth's consultant fees;
- (d) \$ for the value of materials or things to be supplied by the Commonwealth; and
- (e) % of the total of the amounts in (a) to (d) to cover escalation costs.

[COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON LEVELS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS]

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

***[FOR WHICHEVER OF OCCURRENCE BASIS OR
CLAIMS MADE BASIS DOES NOT APPLY, INSERT
"N/A" AFTER THE \$ REFERENCES]***

Worldwide limits:

Jurisdictional limits:

***[COMMONWEALTH AND CONTRACT
ADMINISTRATOR TO CONSIDER AND SEEK
ADVICE ON LEVELS AND LIMITS OF
INSURANCES FROM APPROPRIATELY
QUALIFIED AND LICENSED PERSONS]***

Workers Compensation Insurance

Amount of Cover: Amount of Cover prescribed by
Statutory Requirement in the State or Territory in which
the Contractor's Activities are performed or the
Contractor's employees perform work, are employed or
normally reside.

Employers' Liability Insurance

Amount of Cover: The amount that a prudent, competent
and experienced contractor undertaking the Contractor's
Activities would purchase which must not be less than
\$.

***[COMMONWEALTH AND CONTRACT
ADMINISTRATOR TO CONSIDER AND SEEK
ADVICE ON LEVELS AND LIMITS OF
INSURANCES FROM APPROPRIATELY
QUALIFIED AND LICENSED PERSONS]***

Professional Indemnity Insurance

Amount of Cover: \$ per claim and \$ in the
aggregate

Worldwide limits:

Jurisdictional limits:

***[IF THE CONTRACT REQUIRES THE
CONTRACTOR TO DESIGN ANY PART OF THE
REMEDIATION WORKS, COMMONWEALTH AND
CONTRACT ADMINISTRATOR TO CONSIDER AND
SEEK ADVICE ON LEVELS AND LIMITS OF
INSURANCES FROM APPROPRIATELY
QUALIFIED AND LICENSED PERSONS. FOR
WHICHEVER OF PROFESSIONAL INDEMNITY***

***INSURANCE AND ERRORS AND OMISSIONS
INSURANCE DOES NOT APPLY, INSERT "N/A"
AFTER THE \$ REFERENCES]***

***[IF THE CONTRACT DOES NOT REQUIRE THE
CONTRACTOR TO DESIGN ANY PART OF THE
REMEDATION WORKS, INSERT "N/A" AFTER
THE \$ REFERENCES AND FOR THE RELEVANT
LIMITS]***

Errors and Omissions Insurance

Amount of Cover: \$ per claim and \$ in the
aggregate.

Worldwide limits:

Jurisdictional limits:

***[IF THE CONTRACT REQUIRES THE
CONTRACTOR TO DESIGN ANY PART OF THE
REMEDATION WORKS, COMMONWEALTH AND
CONTRACT ADMINISTRATOR TO CONSIDER AND
SEEK ADVICE ON LEVELS AND LIMITS OF
INSURANCES FROM APPROPRIATELY
QUALIFIED AND LICENSED PERSONS. FOR
WHICHEVER OF PROFESSIONAL INDEMNITY
INSURANCE AND ERRORS AND OMISSIONS
INSURANCE DOES NOT APPLY, INSERT "N/A"
AFTER THE \$ REFERENCES]***

***[IF THE CONTRACT DOES NOT REQUIRE THE
CONTRACTOR TO DESIGN ANY PART OF THE
REMEDATION WORKS, INSERT "N/A" AFTER
THE \$ REFERENCES AND FOR THE RELEVANT
LIMITS]***

Other Insurances: (Clause 5.4(a)(v))

***[COMMONWEALTH AND CONTRACT
ADMINISTRATOR TO CONSIDER AND SEEK
ADVICE ON OTHER SPECIFIC AND ADDITIONAL
INSURANCES THAT MAY BE REQUIRED EG
TRANSIT INSURANCE FOR KEY ITEMS
TRANSPORTED TO THE SITE, PRODUCT
LIABILITY INSURANCE, MOTOR VEHICLE
INSURANCE, INDUSTRIAL SPECIAL RISKS
INSURANCE ETC]***

***[COMMONWEALTH AND CONTRACT
ADMINISTRATOR TO CONSIDER AND SEEK
ADVICE ON LEVELS AND LIMITS OF
INSURANCES FROM APPROPRIATELY
QUALIFIED AND LICENSED PERSONS]***

**Minimum amount of subcontractors'
Professional Indemnity Insurance or Errors
and Omissions Insurance:**
(Clause 5.4(h))

Professional Indemnity Insurance

Amount of Cover: \$ per claim and \$ in the
aggregate

Worldwide limits:

Jurisdictional limits:

[IF THE CONTRACT REQUIRES THE CONTRACTOR TO DESIGN ANY PART OF THE REMEDIATION WORKS, COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS. FOR WHICHEVER OF PROFESSIONAL INDEMNITY INSURANCE AND ERRORS AND OMISSIONS INSURANCE DOES NOT APPLY, INSERT "N/A" AFTER THE \$ REFERENCES]

[IF THE CONTRACT DOES NOT REQUIRE THE CONTRACTOR TO DESIGN ANY PART OF THE REMEDIATION WORKS, INSERT "N/A" AFTER THE \$ REFERENCES AND FOR THE RELEVANT LIMITS]

Errors and Omissions Insurance

Amount of Cover: \$ per claim and \$ in the aggregate

Worldwide limits:

Jurisdictional limits:

[IF THE CONTRACT REQUIRES THE CONTRACTOR TO DESIGN ANY PART OF THE REMEDIATION WORKS, COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON LEVELS AND LIMITS OF INSURANCES FROM APPROPRIATELY QUALIFIED AND LICENSED PERSONS. FOR WHICHEVER OF PROFESSIONAL INDEMNITY INSURANCE AND ERRORS AND OMISSIONS INSURANCE DOES NOT APPLY, INSERT "N/A" AFTER THE \$ REFERENCES]

[IF THE CONTRACT DOES NOT REQUIRE THE CONTRACTOR TO DESIGN ANY PART OF THE REMEDIATION WORKS, INSERT "N/A" AFTER THE \$ REFERENCES AND FOR THE RELEVANT LIMITS]

Period for maintenance of Public Liability Insurance (if written on a claims made basis):
(Clause 5.6(b))

Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.

Otherwise: 7 years.

Insurance Amendments if the Contractor is Self-Insured or a Non-Commonwealth Licensee:
(Clause 5.10 and Annexure 2)

Clause 5.10 ***[DOES/DOES NOT]*** apply.
(Clause 5.10 does not apply unless otherwise stated)

[THIS CLAUSE MUST BE SELECTED IF THE CONTRACTOR IS OR IS LIKELY TO BE SELF-INSURED AND/OR A NON-COMMONWEALTH LICENSEE. IF IN DOUBT, SEEK DIRECTION FROM THE COMMONWEALTH'S PANEL MANAGER.]

CLAUSE 6 - SITE ACCESS AND CONDITIONS

Unexploded Ordnance:
(Clause 6.6)

Clause 6.6 **[DOES/DOES NOT]** apply.
(Clause 6.6 does not apply unless otherwise stated)

[THIS CLAUSE SHOULD NOT BE SELECTED TO APPLY IF THE CONTRACTOR HAS BEEN ENGAGED UNDER THE UNEXPLODED ORDNANCE REMEDIATION SERVICE CATEGORY]

Extra Land Required:
(Clause 6.7)

Clause 6.7 **[DOES/DOES NOT]** apply.
(Clause 6.7 does not apply unless otherwise stated)

Areas of extra land required:
(Clause 6.7)

Stages for which an executed release is required:
(Clause 6.7(c)(iv))

Operating airfield:
(Clause 6.8)

Clause 6.8 **[DOES/DOES NOT]** apply.
(Clause 6.8 does not apply unless otherwise stated)

National Heritage Place:
(Clause 6.9)

Clause 6.9 **[DOES/DOES NOT]** apply.
(Clause 6.9 does not apply unless otherwise stated)

Commonwealth Heritage Place:
(Clause 6.10)

Clause 6.10 **[DOES/DOES NOT]** apply.
(Clause 6.10 does not apply unless otherwise stated)

Heritage Act Requirements (Victoria):
(Clause 6.11)

Clause 6.11 **[DOES/DOES NOT]** apply.
(Clause 6.11 does not apply unless otherwise stated)

CLAUSE 7 - PLANS AND DOCUMENTATION

Documents and number of copies to be provided by the Commonwealth to the Contractor:
(Clause 7.1)

Document	Copies
----------	--------

Contractor to prepare Remediation Design Documentation:
(Clause 7.2(a)(i))

[YES/NO]

Number of copies of Remediation Design Documentation to be submitted by the Contractor to the Contract Administrator:
(Clause 7.5)

Remediation Design Documentation hard copy requirements:
(Clause 7.5(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 Contract Administrator)

Remediation Design Documentation electronic copy requirements:
(Clause 7.5(b))

Compatible with Autocad 14

CD-ROM or as determined by the Contract Administrator

Environmental
Management Plan:

Number of days for submission of Project Plans:

(Clauses 7.7(a)(ii) and 7.16)

Project Lifecycle and
HOTO Plan

Method of Work Plan for
Airfield Activities:

Site Management Plan:

Work Health and Safety
Plan:

Other: *[SPECIFY]*

Number of days for review of Project Plans:

(Clauses 7.7(a)(ii)B)

Environmental
Management Plan:

Project Lifecycle and
HOTO Plan

Method of Work Plan for
Airfield Activities:

Site Management Plan:

Work Health and Safety
Plan:

Other: *[SPECIFY]*

Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:

(Clause 7.12(a))

1. Official Order
2. Contract Particulars
3. Terms of Engagement
4. Technical Specification
5. Panel Agreement
6. Project DCAP
7. Any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)
8. Remediation Design Documentation (which the Contractor is entitled to use under clause 7.3(c))
9. Project Plans

Method of Work Plan for Airfield Activities:

(Clause 7.17)

Clause 7.17 *[DOES/DOES NOT]* apply.
(Clause 7.17 does not apply unless otherwise stated)

CLAUSE 8 - EXECUTION OF REMEDIATION WORKS

Existing Approvals and other Approvals which the Commonwealth is to obtain:

(Clause 8.3)

Statutory Requirements with which the Contractor does not need to comply:

(Clause 8.3(a))

Remediation Work which requires approval to subcontract or which must be let to one of the named subcontractors:

(Clause 8.5(a))

Work or Goods

Subcontractors

Stages for which Collateral Warranties required:
(Clause 8.6)

Collateral Warranties required to be procured by the Contractor from subcontractors and provided to the Commonwealth:
(Clause 8.6)

Stages for which a certificate signed by a surveyor is required as condition precedent to Remediation Completion:
(Clause 8.10)

Plant, Equipment and Work which must not be removed from the Site without the Contract Administrator's consent:
(Clause 8.17)

Access hours for Contractor's Activities on Site:
(Clause 8.23)

Requirements for Contract Administrator's Office:
(Clause 8.25)

Number of project signboards:
(Clause 8.26(a))

Project signboard dimensions:
(Clause 8.26(a)(i))

Project signboard information (additional):
(Clause 8.26(a)(ii)H)

Remediation work not included:
(Clause 8.27)

Dilapidation Survey:
(Clause 8.28)

Clause 8.28 ***[DOES/DOES NOT]*** apply.
(Clause 8.28 does not apply unless otherwise stated)

Areas or features to be included in dilapidation survey:
(Clause 8.28(a))

Number of days for submission of dilapidation survey and photographs:
(Clause 8.28(d))

Prior Work:
(Clause 8.29)

Clause 8.29 ***[DOES/DOES NOT]*** apply.
(Clause 8.29 does not apply unless otherwise stated)

Joining up:
(Clause 8.30)

Clause 8.30 ***[DOES/DOES NOT]*** apply.
(Clause 8.30 does not apply unless otherwise stated)

Existing Services and Structures:
(Clause 8.31)

Clause 8.31 ***[DOES/DOES NOT]*** apply.
(Clause 8.31 does not apply unless otherwise stated)

Items to be supplied by Commonwealth:
(Clause 8.32)

Clause 8.32 ***[DOES/DOES NOT]*** apply.
(Clause 8.32 does not apply unless otherwise stated)

Item	Quantity
------	----------

Schedule of items to be supplied by
Commonwealth:
(Clause 8.32)

CLAUSE 9 – QUALITY OF REMEDIATION WORKS

Reference development for purpose of
determining minimum standards for
workmanship and materials:
(Clause 9.1)

Other: *[SPECIFY]*

Period by which Remediation Defects
Rectification Period will be extended following
rectification of a Remediation Defect:
(Clause 9.10)

CLAUSE 10 - TIME

Maximum intervals between program updates
by Contractor:
(Clause 10.2(b))

Program format to be compatible with:
(Clause 10.2(e))

[PRIMAVERA SURETRAK/MICROSOFT PROJECT]
or approved equivalent

Additional causes of delay entitling Contractor
to claim an extension of time:
(Clauses 10.5(a) and 10.7(c))

1. Statewide industrial disputation or other industrial disputation caused by the Commonwealth, which in neither case is caused or contributed to by the Contractor or any subcontractor of the Contractor
2. A change or variance in respect of a Statutory Requirement after the Award Date
3. A Commonwealth Risk
4. Unidentified Site Conditions which have been determined by the Contract Administrator to have been encountered under clause 11.1.
5. Valuable, archaeological or special interest items found on or in the Site.
6. A Pandemic Relief Event.

Agreed damages:
(Clause 10.11)

Clause 10.11 *[DOES/DOES NOT]* apply.
(Clause 10.11 applies unless otherwise stated)

If clause 10.11 applies:

Where there are no Stages, the agreed damages for the Remediation Works are:

\$ per working day

If there are Stages, the agreed damages for each Stage are:

Stage	Agreed damages
	\$ per working day
	\$ per working day
	\$ per working day

\$ per working day

Percentage of extra costs reasonably incurred due to acceleration:
(Clause 10.15(b)(ii))

%
(5% unless otherwise stated)

CLAUSE 12 – PAYMENT

Times for submission of payment claims by the Contractor to the Contract Administrator:
(Clause 12.2(a))

Monthly on the day of each month

[OR, IF THE SITE IS NOT IN NSW]

on Completion of the following milestones:

Number of business days for payment:
(Clause 12.5)

To the extent that the relevant part of the Contractor's Activities is carried out in:

1. Queensland or New South Wales: 5; or
2. any other State or Territory: 10.

Interest rate:
(Clause 12.13)

1. In the case of 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 Contract Administrator; or
2. In the case of 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.

Option for payment of workers and subcontractors:
(Clause 12.16)

[OPTION 1/ OPTION 2] applies.

(Option 1 applies unless otherwise stated)

Limits of accuracy for quantities in Schedule of Rates:
(Clause 12.19(c))

Upper Limit:

(115% unless otherwise stated)

Lower Limit:

(85% unless otherwise stated)

Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:
(Clause 12.20(d))

To the extent that the relevant part of the Contractor's Activities is carried out in:

1. the Northern Territory or Western Australia:
 - (a) the appointed adjudicator is ; or
 - (b) if no appointed adjudicator is appointed, the prescribed appointer is the Resolution Institute, Northern Territory Chapter or Western Australian Chapter (as the case may be); or
2. Victoria, any one of the following:

- (a) Resolution Institute, Victorian Chapter;
- (b) Building Adjudication Victoria Inc; or
- (c) Rialto Adjudications Pty Ltd; or

3. any other State or Territory, the Resolution Institute of the Chapter in that State or Territory.

Remediation Cost Report (additional matters):
(Clause 12.23(b))

Estate Information:
(Clause 12.24)

Clause 12.24 ***[DOES/DOES NOT]*** apply
(Clause 12.24 applies unless otherwise stated)

CLAUSE 13 – COMPLETION

Liquidated damages payable by Contractor when Date for Remediation Completion occurs after Date for Remediation Completion:
(Clause 13.7)

If there are no Stages, for the Remediation Works is:

\$ per day.

If there are Stages, for each Stage is:

Stage	Liquidated Damages
	\$ per day
	\$ per day

CLAUSE 14 - TERMINATION

Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b))

CLAUSE 15 - DISPUTES

Directions to be subject of an expert determination if disputed:
(Clause 15.2)

Directions under clauses: 2.3(b), 4.2, 8.4(c)(ii), 8.4(d), 9.8(b)(i), 8.21(d)(ii), 9.4, 9.5, 9.9, 10.8, 10.9, 10.12(b)(ii)B, 11.5(b), 11.5(c)(ii), 11.1(b)(i), 12.4, 12.19(e)(ii), 13.2(b)(ii), 14.8(a), 17.3(e)(ii) and 17.3(e)(iii)

Industry expert who will conduct expert determinations:
(Clause 15.3(a)(i))

Nominating authority for industry expert:
(Clause 15.3(a)(ii))

(The President for the time being of the Resolution Institute unless otherwise specified)

CLAUSE 16 - NOTICES

Address and email address, for the giving or serving of notices, upon:
(Clause 16.7(b)(i))

Commonwealth:

Address (not PO Box):

Email address:

Attention:

Contract Administrator:

Address (not PO Box):

Email address:

Attention:

Contractor:

Address (not PO Box):

Email address:

Attention:

CLAUSE 17 - GENERAL

Defence's Security Alert System level:
(Clause 17.3(d)(i))

("Alert" if not otherwise specified)

CLAUSE 20 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Sensitive and Classified Information:
(Clause 20)

Clause 20 *[DOES/DOES NOT]* apply.
(Clause 20 does not apply unless otherwise stated)

Current security clearance level/s:
(Clause 20.2(b), 20.3(c)(i))

**Information technology environment
accreditation or certification level/s:**
(Clause 20.3(f)(i)D)

**Information technology environment
accreditation or certification level/s (caveated or
compartmented information):**
(Clause 20.3(f)(i)E)

CLAUSE 21 - DEFENCE INDUSTRY SECURITY PROGRAM

Level of DISP Membership:
(Clause 21(a))

ANNEXURE 1 - FUNCTIONS

PART A - ENVIRONMENTAL CONSULTANT FUNCTIONS

The functions of the Environmental Consultant are to:

1. inspect the Remediation Works;
2. collect samples from the Site, and analyse those samples;
3. construct, maintain and access groundwater monitoring wells;
4. oversee the Remediation Works, having regard to the Technical Specification, Remediation Design Documentation and such other matters as the Environmental Consultant considers relevant;
5. provide such advice to the Contract Administrator as the Contract Administrator requires, or which the Environmental Consultant considers necessary;
6. produce the Remediation Validation Report which confirms whether the Specified Site Use Objective has been achieved in relation to the Site; and
7. perform such other tasks as specified in the Technical Specification as being the responsibility of the Environmental Consultant.

PART B - TECHNICAL ADVISOR'S FUNCTIONS

The functions of the Technical Advisor are to:

1. undertake a review of:
 - (a) the Technical Specification;
 - (b) Project Plans;
 - (c) Remediation Design Documentation;
 - (d) Site Information; and
 - (e) the Remediation Validation Report;
2. inspect the Site, the Contractor's Activities and the Remediation Works from time to time;
3. provide such advice to the Contract Administrator and/or the Environmental Consultant as they may require, or which the Technical Advisor considers necessary;
4. provide the Technical Advisor's Certification stating whether or not the Technical Advisor considers that the Specified Site Use Objective has been achieved in relation to the Site; and
5. perform such other tasks as specified in the Technical Specification as being the responsibility of the Technical Advisor.

PART C - ACCREDITED ENVIRONMENTAL SITE AUDITOR'S FUNCTIONS

The functions of the Accredited Environmental Site Auditor are to:

1. undertake a review of:
 - (a) the Technical Specification;
 - (b) Project Plans;
 - (c) Remediation Design Documentation;
 - (d) Site Information; and
 - (e) the Remediation Validation Report;

2. inspect the Site, the Contractor's Activities and the Remediation Works from time to time;
3. provide the Site Audit Statement in relation to the Site; and
4. perform such other tasks as specified in the Technical Specification as being the responsibility of the Accredited Environmental Site Auditor.

ANNEXURE 2 - SPECIAL CONDITIONS

1. INSURANCE AMENDMENTS IF THE CONTRACTOR IS SELF INSURED AND/OR A NON-COMMONWEALTH LICENSEE

This special condition applies if the Contractor is a non-Commonwealth licensee.

1.1 Amendments to Clause 1.1

- (a) "Employers' Liability Insurance" in clause 1.1 of the Conditions of Contract is deleted and replaced as follows:

Employers' Liability Insurance

A policy of insurance or a self-insurer's authorisation or licence in the form prescribed by the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations 2002* (Cth) or Statutory Requirement in the State or Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside covering the liability of the Contractor 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.

- (b) "Workers Compensation Insurance" in clause 1.1 of the Conditions of Contract is deleted and replaced as follows:

Workers Compensation Insurance

A policy of insurance or a self-insurer's authorisation or licence in the form prescribed by the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations 2002* (Cth) or Statutory Requirement in the State or Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to make payments to its employees for death or injuries arising out of or in connection with their employment (and including Employers' Liability Insurance if applicable).

1.2 Amendments to clause 5.4

Clause 5.4 of the Conditions of Contract is deleted and replaced as follows:

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of:
- (i) Construction Risks Insurance;
 - (ii) Public Liability Insurance; and
 - (iii) Workers Compensation Insurance; and
 - (iv) if the Contract requires the Contractor to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - (v) such other insurances on such terms as are specified in the Contract Particulars, each of which must be:
 - A. for the respective amounts specified in the Contract Particulars;

- B. 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
 - C. on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Workers Compensation Insurance and Employers' Liability Insurance, the Contractor must:
 - (i) comply with its legal obligations to make payments to its employees for death or injuries arising out of or in the course of their employment;
 - (ii) to the extent permitted by law, indemnify the Commonwealth in respect of any statutory and common law liability to the Contractor's employees; and
 - (iii) ensure that each of its subcontractors which is legally required to do so, has Workers Compensation Insurance and Employers' Liability Insurance covering the subcontractor in respect of its statutory and common law liability to its employees;
- (c) in relation to the Public Liability Insurance, ensure the insurance is not subject to any limits which are narrower or more restrictive than the worldwide limits and jurisdictional limits specified in the Contract Particulars;
- (d) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
 - (i) has a retroactive date of no later than the commencement of the Contractor's Activities; and
 - (ii) is not subject to any limits which are narrower or more restrictive than the worldwide limits and jurisdictional limits specified in the Contract Particulars;
- (e) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
 - (i) it has complied with clause 5.4; and
 - (ii) each insurance required under clause 5.4 is current and complies with clause 5.4,
- (f) as required by the Contract Administrator from time to time;
- (g) ensure that:
 - (i) if the:
 - A. insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy; or
 - B. Safety Rehabilitation and Compensation Commission or other relevant authority, body or other organisation under any Statutory Requirement gives the Contractor notice of expiry, cancellation or rescission of the self-insurer's authorisation or licence,

the Contractor as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld; and
 - (ii) if the Contractor cancels, rescinds or fails to renew any:
 - A. required insurance policy; or
 - B. self-insurer's authorisation or licence,

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

- (h) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iii) renews any required insurance policy or self-insurer's authorisation or licence if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (iv) does not cancel or allow an insurance policy or self-insurer's authorisation or licence to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (v) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy or self-insurer's authorisation or licence lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies and self-insurer's authorisation or licence; and
- (i) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4 for the amounts specified in the Contract Particulars.

For the purpose of paragraph (e), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement), a self-insurer's authorisation or licence and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

1.3 Amendments to clause 5.5

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

5.5 Failure to Insure or Satisfy Requirements

- (a) If the Contractor fails to comply with clause 5.4 (including any failure to cause to be effected and maintained or otherwise have the benefit of the insurance required by clause 5.4, provide evidence satisfactory to the Contract Administrator in accordance with clause 5.4(e) or satisfy all requirements of being a self-insurer or exempt employer, the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have), take out the relevant insurance and the cost will be a debt due from the Contractor to the Commonwealth.
- (b) The Contractor must take all steps necessary to assist the Commonwealth in exercising its discretion under clause 5.5. For the purpose of clause 5.5, "**all necessary steps**" includes providing all insurance information and documents (including proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.

1.4 Amendments to clause 5.6(d)(i)

Clause 5.6(d)(i) of the Conditions of Contract is deleted and replaced as follows:

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract;
- (b) keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract,

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

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify the Commonwealth if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor 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 Contract.

2. CHILD SAFETY

[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]

- (a) If any part of the Contractor's Activities involves the Contractor employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Contractor's Activities or any part of the Contractor's Activities, the Contractor agrees:
 - (i) without limiting its other obligations under the Contract, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Contractor's Activities, including mandatory reporting and working with children checks however described; and
 - (ii) if requested, provide the Commonwealth at the Contractor's cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.
- (b) 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.

SECTION 5

SCOPE OF SERVICES

