



Australian Government

Defence

SECTION 4B TERMS OF ENGAGEMENT (PMCA)

[NOTE: THIS VERSION OF THE SECTION 4B TERMS OF ENGAGEMENT REFLECTS PROPOSED AMENDMENT AGREEMENTS CIRCULATED TO PANEL CONSULTANTS FOR SIGNATURE IN SEPTEMBER 2023 AND JULY 2025.]

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

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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 in the 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.

Act of Prevention

Any act or omission (including breach of contract) of the Commonwealth or those for whom it is responsible.

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.

ASEE

Assistant Secretary Environment and Engineering.

Award Date

The date specified in the Contract Particulars.

Brief

The brief as specified in the Contract Particulars, which describes 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.

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 Entity

Has the meaning given in the *Public Governance, Performance and Accountability Act 2013* (Cth).

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 specified 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

Includes all policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Departmental requirements which are, or may become, applicable to the Site, the Services or the Works.

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 16; or
 - (iii) has been independently developed or acquired by the Consultant.

Confidential Information Incident

A single breach or a series of breaches of clause 16, 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 person specified 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 specified in the Contract Particulars or any other person from time to time appointed as the 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.

Correctly Rendered Invoice

An invoice which is:

- (a) rendered in accordance with all of the requirements of the PT PCP Subcontract; and
- (b) for amounts that are correctly calculated and due for payment and payable under the PT PCP Subcontract.

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.

Date for Delivery Phase Agreement

The date set out in the Contract Particulars, as adjusted (if at all) in accordance with clause 8.

Date for Delivery Phase Approval

The date set out in the Contract Particulars, as adjusted (if at all) in accordance with clause 8.

day

Has the meaning set out in clause 1.2.

DCAP Workshop

Means a workshop conducted in accordance with option 2 of clause 5.8 (if applicable) to consider the Project DCAP and any amendments that may be required to the Project DCAP including to ensure consistency with the Contract, the Brief and the Commonwealth's requirements for the Services.

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 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.

Defence Strategic Interest Issue

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

- (a) protecting Australia's national security requirements, in accordance with all Statutory Requirements (including the Information Security Requirements);
- (b) ensuring that the whole (or any part of) the Sensitive and Classified 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 Statutory Requirements (including the Information Security Requirements).

Delivery Phase

Means the Delivery Phase (if any) described in the Brief.

Delivery Phase Agreement

Means:

- (a) the resource plan is approved in writing under clause 8.2(d); and
- (b) the Commonwealth's Representative has issued written certification under clause 8.3(c)(ii) that the Commonwealth is satisfied with the performance of the Consultant under the Contract up to the Date for Delivery Phase Agreement.

Delivery Phase Approval

Means:

- (a) Delivery Phase Agreement and Delivery Phase Approval under the Project Contract (if any) have been achieved;
- (b) the Consultant has achieved Delivery Phase Agreement under the Contract;
- (c) all relevant departmental, government and parliamentary approvals required for the Project have been obtained; and
- (d) the Consultant has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date for Delivery Phase Approval.

Defence Website

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

Development Phase

Means the Development Phase (if any) described in the Brief.

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>.

Engagement

An engagement to perform the Services for the Commonwealth under the Panel Agreement on the terms specified 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 paragraphs (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 5.13 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 the:

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

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.

Fee

The amount set out in or determined in accordance with the Fee Schedule, as adjusted, subject to clause 14.5 (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

The tax payable on taxable supplies under 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.

High Value Contract

Has the meaning in the Indigenous Procurement Policy.

Indicative Delivery Phase Fee

The Indicative Delivery Phase Fee (if any) as set out in the Fee Schedule (as finalised and specified in the Contract Particulars) as adjusted (if at all) in accordance with clause 8.

Indicative Delivery Phase Fee Proposal

The Indicative Delivery Phase Fee Proposal (if any) as set out in the Fee Schedule (as finalised and specified in the Contract Particulars).

Indicative Delivery Phase Resource Plan

The Indicative Delivery Phase Resource Plan (if any) set out in the Fee Schedule (as finalised and specified in the Contract Particulars).

Indicative Project End Date

The date specified in the Contract Particulars.

Indigenous Enterprise

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 15.1 applies - prepared by the Consultant in accordance with clause 15.1(b); or
- (b) if option 2 of clause 15.2 applies - specified in the Official Order.

Indigenous Procurement Policy

The Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.

Information Security Requirements

Means the:

- (a) Australian Government's Protective Security Policy Framework available at <https://www.protectivesecurity.gov.au>;
- (b) Australian Government's Information Security Manual dated 10 March 2022; and
- (c) Defence Security Principles Framework dated 31 July 2020,

each as amended from time to time.

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:
 - (v) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (vi) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (vii) the corporation entering a deed of company arrangement with creditors;
 - (viii) 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;
 - (ix) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (x) 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);
 - (xi) a winding up order or deregistration order is made in respect of the corporation;
 - (xii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);

- (xiii) 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
- (xiv) 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.

IPP Contractor Portal

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

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.

Master DCAP

The "Master Detailed Consultant's Activities Proposal" provided by the Consultant in its tender for the Panel, as amended in accordance with the Panel Conditions.

Material Adverse Effect

In respect of a Prolongation Event, means a material increase in the resources required for, and the costs of, performing the Services, which a prudent, competent and experienced consultant would not have anticipated as at:

- (a) if clause 8 does not apply; the Award Date; or
- (b) if clause 8 does apply, the date that Delivery Phase Agreement is achieved under clause 8.4(a)(i).

Material Change

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, availability, capacity or ability 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 5.13, 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 that 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 Adjustment 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 provided that the:

- (a) disruption:
 - (i) arises from a change in circumstances relating to the Pandemic first occurring after the Award Date; and
 - (ii) is a direct result of the Pandemic; and
- (b) 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 2022 - 2027 between the Commonwealth and the Consultant.

Payment Times Procurement Connected Policy

The Payment Times Procurement Connected Policy available at <https://treasury.gov.au/publication/p2021-183909>, as amended from time to time.

Project

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

Project Construction Contract

Means a Project Contract under which a Project Contractor is engaged by the Commonwealth for construction of any Works.

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 specified 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) Project Plans;
- (d) Approvals;
- (e) Project DCAP;
- (f) IT Equipment, to the extent relating to software;
- (g) the documents which the Consultant is obliged to maintain under clause 10.15 or clause 10A.10 (as the case may be); and
- (h) without limiting paragraphs (a) - (g), any other data, documents, drawings, records, programs and information and material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Commonwealth or the Commonwealth's Representative,

under, for the purposes of, arising out 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":

- (a) if option 1 of clause 5.8 applies, referred to in option 1 of clause 5.8; or
- (b) if option 2 of clause 5.8 applies, referred to in option 2 of clause 5.8.

Project End Date

The date either:

- (a) as agreed under clause 7.2(e); or

- (b) agreed or determined under clause 8.5(d)(ii).

Project Plans

The plans (if any) specified 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 5.13, as amended (if at all) with the written consent of the Commonwealth's Representative.

Prolongation Event

Means:

- (a) a suspension instructed by the Commonwealth under a Project Construction Contract;
- (b) a variation directed by the Commonwealth under a Project Construction Contract; or
- (c) an Act of Prevention (as defined in the Project Construction Contract) under a Project Construction Contract,

which has the effect of extending the Project End Date.

PT PCP Evaluation Questionnaire

A questionnaire in substantially the form set out in Appendix C of the Payment Times Procurement Connected Policy.

PT PCP Policy Team

The relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.

PT PCP Purpose

Means:

- (a) the review, evaluation, monitoring, assessment and reporting on the Payment Times Procurement Connected Policy, including the compliance by those Commonwealth suppliers and their subcontractors that are Reporting Entities; or
- (b) improving payment times to PT PCP Subcontractors.

PT PCP Remediation Plan

A written remediation plan substantially in the form set out in Appendix D of the Payment Times Procurement Connected Policy.

PT PCP Subcontract

A subcontract between a Reporting Entity and another party (**Other Party**) where:

- (a) the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Contract;
- (b) both parties are carrying on business in Australia; and
- (c) the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than, or is reasonably estimated to not exceed, \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to \$1,000,000 (GST inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

- (d) subcontracts entered into prior to the Reporting Entities' tender response for the Engagement;
- (e) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
- (f) subcontracts for the purposes of:
 - (i) procuring and consuming goods or services overseas; or
 - (ii) procuring real property, including leases and licences.

PT PCP Subcontractor

The party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

PTR Act

The *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.

Recipient

Any person provided with Confidential Information, and if clause 16 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.

Reporting Entity

Has the meaning given in the PTR Act.

Reporting Entity Subcontractor

Any person that:

- (a) is Reporting Entity; and
- (b) provides goods or services directly or indirectly to the Consultant for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive),

and **Reporting Entity Subcontract** has a corresponding meaning.

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) in Western Australia:
 - (i) the *Construction Contracts Act 2004* (WA); or
 - (ii) if the Award Date is after the date on which a provision of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) commences, then the *Building and Construction Industry (Security of Payment) Act 2021* (WA) and any provision of the *Construction Contracts Act 2004* (WA) which has not been repealed;
- (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

Means:

- (a) 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:
 - (i) marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive";
 - (ii) identified at the time of issue or communication as "Sensitive Information";
 - (iii) marked with a national security classification or as "Classified Information";
 - (iv) identified at the time of issue or communication as "Classified Information"; or
 - (v) the Consultant knows or ought to know is subject to, or ought to be treated as sensitive and classified information in accordance with the Statutory Requirements (including the Information Security Requirements); and
- (b) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

A single breach or a series of breaches of clause 16, any Separation Arrangements (in respect of Sensitive and Classified Information), 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;
 - (b) will put in place; or
 - (c) is required to put in place in accordance with a Statutory Requirement or this Contract,
- for the purpose of complying with clause 16 and, if clause 17 applies, clause 17.

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.

Services for the Delivery Phase

The services for the Delivery Phase described in the Brief.

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 19.4.

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 5.13, 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 specified in the Contract Particulars;
- (b) if the Services are to be carried out on a Site that may contain Contamination, 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 available on the Defence Website (or any alternative location notified by the Commonwealth's Representative).

Statutory Requirements

Means:

- (a) any laws 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 condition or requirement under an Approval);
- (c) Commonwealth Requirements;
- (d) Environmental Requirements; and
- (e) Information Security Requirements.

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, deletion or removal to or from the Services.

WHS Legislation

Means any of the following:

- (a) *Work Health and Safety Act 2011* (Cth) and *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 (if any) prepared by the Consultant and finalised under clause 5.13, (which is either Contract specific or site specific) and which must set out in adequate detail the procedures the Consultant will implement to manage the Services from the work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation). The Work Health and Safety Plan must address, as 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 Services and the Works;
- (b) the arrangements in place, or to be implemented between any persons conducting a business or undertaking (PCBU) at the workplace where the Services and the Works are being undertaken regarding consulting, co-operating and co-ordinating activities where the PCBU(s) at the workplace and the Consultant owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
- (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 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) 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 to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
 - (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 promptly upon completion of the relevant Services and the Works;
- (g) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Consultant's work health and safety policy;
 - (ii) details of any work health and safety management system (whether certified or uncertified);
 - (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 Commonwealth's Representative in accordance with clause 5.9(e) regarding compliance with the WHS Legislation by the Consultant, subconsultants and Other Contractors;
- (i) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan in accordance with clause 5.13 (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);
- (j) procedures for the management of subconsultants, including:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in subparagraph (g)(iii);
 - (ii) the subconsultant's development and provision of safe work method statements, job safety assessments or equivalent documentation;
 - (iii) ensuring subconsultants comply with their obligation to consult, co-operate and co-ordinate activities (including information-sharing and communication of information); and
 - (iv) ensuring subconsultant compliance with the Work Health and Safety Plan;
- (k) details of the project, Services and Works specific hazards and risks identified by the Consultant and the Consultant's approach to the management of these hazards and risks including how the Consultant will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
 - (i) prior to commencing the Services and the Works; and
 - (ii) during the delivery of the Services and Works;
- (l) the approach the Consultant will adopt in identifying, controlling and managing work health and safety hazards and risks concerning hazardous substances, including, where they are used or handled in the delivery of the Services, incorporated into the Works, stored by the Consultant at the workplace or transported by the Consultant to or from the workplace;
- (m) 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;
- (n) 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);
- (o) 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 including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 5.9(o));
- (p) the approach the Consultant will adopt in identifying, controlling and managing work health and safety hazards and risks concerning high risk construction as defined in regulation 291 of the Commonwealth WHS Legislation;
- (q) any additional matters specified in the Contract Particulars; and
- (r) 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, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, 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 10.5 or 10A.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 10.4, 10.5 and 11.1(b)(i) to the extent that the Services are to be carried out in:
 - (i) the Australian Capital Territory, "business day" has the same meaning as defined at Part 1 of the *Legislation Act 2001* (ACT);
 - (ii) New South Wales, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (NSW);

- (iii) the Northern Territory, "business day" has the same meaning as "working day" as defined in section 4 of the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (iv) Queensland, "business day" has the same meaning as defined in Schedule 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (v) South Australia, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (vi) Tasmania, "business day" has the same meaning as defined in section 4A of the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (vii) Victoria, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
- (viii) Western Australia, "business day" has the same meaning as defined in section 3 of the *Construction Contracts Act 2004* (WA) or if the Award Date is after the date on which section 4 of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) commences, then "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry (Security of Payment) Act 2021* (WA);
- (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, or the date of the standard or reference document is specified in the Brief, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to:
 - (i) the submission of the relevant Consultant Material; and
 - (ii) the Award Date.

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;

- (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;
- (t) for the purposes of clauses 2.11(e)(i), 2.14(b), 2.19(d)(i), 7.4(b)(ii)A and 7.5(c)(i) a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Consultant as a direct result of the applicable event delaying the Consultant; and

- (u) requirements contained in the Brief, whether or not they include the expression "the Consultant must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise.

1.3 Miscellaneous

- (a) This 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) 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, including a subconsultant, Project Contractor or an Other Contractor; and
 - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,caused by 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) 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 the purposes as set out in, or reasonably to be inferred from, the Brief;
- (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) 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 14.1 to 14.5 (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 then current 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 promptly 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 effect; and
- (f) the Consultant's recommendation as to how to minimise its effect 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 inconveniencing, 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 work carried out or to be carried out by Other Contractors.

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 12.5(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

In the carrying out of the Services, the Consultant must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable 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) 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;
- (c) 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
- (d) 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 the change or variance must promptly notify the other;
- (d) the Commonwealth's Representative will instruct the Consultant as to the course it must adopt insofar as the Services are affected by the change or variance;
- (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 Co-ordination with other Projects/Programs

This clause 2.13 does not apply unless the Contract Particulars states it applies.

The Consultant:

- (a) acknowledges that the Project is part of the project or program specified in the Contract Particulars;
- (b) must perform the Services in a manner which ensures that the way in which the Project is delivered maximises the Commonwealth's objectives for the delivery of the Project and the project or program specified 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).

2.14 Environment

This clause 2.14 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 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 or contribute to 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 2.14, 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);
 - (vi) its subconsultants comply with the requirements in clause 2.14; 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 all Statutory Requirements and other requirements of the Contract, the Fee will be increased by the extra costs reasonably incurred by the Consultant which arise directly from the cleaning up and restoration of the Environment under clause 2.14, as determined by the Commonwealth's Representative.

2.15 Services Not Included

The services specified 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).

2.16 Site Restrictions

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

2.17 Additional Insurance Requirements

Without limiting clause 4 of the Panel Conditions or the Consultant's obligations under the Contract, the Consultant must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of any additional insurance specified in the Official Order, which must be:
 - (i) for the amounts specified in the Official Order;
 - (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) not do, or allow anything to be done, which reduces the insurance amounts or makes the insurance void or voidable;
- (c) immediately notify the Commonwealth's Representative in writing if the insurance required under clause 2.17 ceases to be available for the amounts of cover and in terms specified in the Official Order 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) provide all reasonable assistance in connection with any insurance claim made in connection with the Services; and
- (f) where requested from time to time provide the Commonwealth with evidence satisfactory to the Commonwealth's Representative that it has complied with the obligations in this clause 2.17.

2.18 Not Used

2.19 Pandemic Adjustment Event

- (a) If the Consultant considers that there has been a Pandemic Adjustment Event, it must promptly give the Commonwealth's Representative notice in writing, together with detailed particulars of the following:
 - (i) the relevant change in circumstances and 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 Adjustment Event;
 - (iii) the Consultant's plan to deal with the consequences of the Pandemic Adjustment 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 Adjustment Event; and
 - B. minimise any additional cost to the Commonwealth in respect of the Pandemic Adjustment Event,
- (Consultant's Pandemic Adjustment 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 Adjustment Event has occurred.
- (c) Where the Commonwealth's Representative has determined a Pandemic Adjustment 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 Adjustment Event.
- (d) If a Pandemic Adjustment 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 Adjustment Event or 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 Adjustment Event; and
 - B. subject to any amendments required by the Commonwealth's Representative, implement the Consultant's Pandemic Adjustment Plan.
- (e) To the extent permitted by law:
 - (i) the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 2.19; and
 - (ii) without limiting subparagraph (i), 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 Adjustment 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 Adjustment 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.

2.20 Cost Control

- (a) Without limiting clause 2.2(d), the Consultant must:
 - (i) use its best endeavours to ensure that the Project is completed in accordance with the Commonwealth's requirements for the lowest possible cost;
 - (ii) review the cost plan(s) for the Project with the Commonwealth's Representative on a regular basis (including at all times required by the Commonwealth's Representative) to:
 - A. ensure that the cost of the Project is in accordance with any cost plans for the Project approved by the Commonwealth; and
 - B. advise the Commonwealth's Representative how the design or any other aspect of the Project could be modified to ensure that the cost of the Project is in accordance with approved cost plans; and
 - (iii) initiate a system of cost control (to the satisfaction of the Commonwealth's Representative) throughout design and construction of the Project for the purposes of subparagraph (i) and (without limitation) advise the Commonwealth's Representative as to all alternative steps available where:
 - A. the tenders for any package of work forming part of the Project exceed the amount included for that work in the relevant approved cost plan; or
 - B. the out-turn cost incurred under any Project Contract exceeds (or appears likely to exceed) the amount included for that contract in the relevant approved cost plan.
- (b) Without limiting paragraph (a), in performing the Services during the Development Phase (if any), the Consultant must identify all project structuring, packaging, scoping, choice of delivery method, risk allocation, procurement, programming, costing and other issues which could have an effect on the out-turn cost of the Project.

2.21 Administration of Project Contracts

The Consultant must ensure that all issues in relation to payment by Project Contractors to subcontractors are administered strictly in accordance with the terms of the relevant Project Contract including all:

- (a) payment to subcontractors;
- (b) variations;
- (c) suspensions; and
- (d) if a Project Contract involves managing contractor delivery, all trust account administration.

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 5.13,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; and
 - (ii) 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 specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.
- (c) All references in the Contract to the Commonwealth's Representative include a reference to a representative appointed under this clause 4.4.

4.5 Key People

The Consultant must:

- (a) employ those people specified in the Project DCAP or elsewhere in the Contract, including the Consultant's Representative, in the jobs as specified in the Project DCAP or elsewhere in the Contract;
- (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 program prepared 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 obligations under the Contract or at law or equity; or
 - (ii) prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise at law or in equity.

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 occupation, use, operation and maintenance 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 sublicensee 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 in respect of all claims against, and costs, losses, damages or liabilities 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 16, and if clause 17 applies, clause 17, the Consultant will be responsible for the protection, maintenance and return of the Commonwealth Material in its possession.

5.8 Project DCAP - Option 1

This option 1 only applies if the Contract Particulars state it applies.

- (a) If this option 1 applies, the **Project DCAP** means the Project DCAP as specified in the Contract Particulars, as amended in accordance with this option 1 of clause 5.8 from time to time.
- (b) The Consultant:

- (i) must, without limiting its other Contract obligations and to the extent not inconsistent with the Contract, at all times in the performance of the Services comply with the Project DCAP;
- (ii) warrants that:
 - A. the Project DCAP complies with the requirements of this Contract; and
 - B. preparation of the Consultant Material in accordance with the Project DCAP will ensure that the Consultant Material complies with the requirements of this Contract and that the Consultant otherwise discharges its obligations under this Contract;
- (iii) acknowledges that the Project DCAP:
 - A. does not limit the Consultant's obligations under this Contract or otherwise at law or in equity; and
 - B. may require updating and refining throughout the performance of the Services:
 - 1) 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
 - 2) without limiting subparagraph (b)(iii)B1), on account of Variations;
- (iv) must update and refine the Project DCAP as required by subparagraph (iii)B with the written approval of the Commonwealth's Representative;
- (v) to the extent permitted by law, 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 do under paragraphs (iii) or (iv); and
- (vi) 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 subparagraphs (ii)A and (ii)B.

5.8 Project DCAP - Option 2

This option 2 only applies if the Contract Particulars state it applies.

- (a) If this option 2 applies, the **Project DCAP** means the:
 - (i) Master DCAP applicable as at the closing date and time of the request for proposal for the relevant Engagement; and
 - (ii) the additional document(s) as specified in the Contract Particulars, which may include details of the Consultant's approach to key issues and risks, a minimum resources schedule, the Consultant's key people and proposed subconsultants, each in respect of the relevant Engagement,

as amended in accordance with this option 2 of clause 5.8 from time to time.
- (b) Following the Award Date, the Consultant must:
 - (i) schedule a DCAP Workshop with the Commonwealth's Representative, to be held within 6 weeks of the Award Date at a time and place approved by the Commonwealth's Representative; and

- (ii) prepare for, attend and participate in such DCAP Workshop, including in accordance with any other requirements notified to the Consultant by the Commonwealth's Representative in writing.
- (c) The Consultant acknowledges that the Project DCAP as applicable at the Award Date:
 - (i) without limiting the Consultant's obligations under the Contract, is intended to set out as a minimum the Consultant's proposed approach to performing the Services;
 - (ii) must be refined by the Consultant following the DCAP Workshop in accordance with the requirements of the Commonwealth's Representative, including finalisation of the following matters to the satisfaction of the Commonwealth:
 - A. to reflect the outcomes of the DCAP Workshop;
 - B. the insertion of wording identified by the Commonwealth as clarifying or otherwise improving the Project DCAP; and
 - C. any other amendments required to ensure consistency with the Contract and the requirements for the Services set out in the Contract, including the Brief; and
 - (iii) the Consultant must prepare a revised Project DCAP incorporating the matters set out in subparagraph (ii), to the satisfaction of the Commonwealth's Representative within 7 days of the DCAP Workshop or such later date as directed by the Commonwealth's Representative in writing.
- (d) The Consultant will not be entitled to reimbursement of any costs, or to bring any other Claim against the Commonwealth, arising out of or in connection with:
 - (i) preparing for, attending or participating in the DCAP Workshop in accordance with paragraph (b); or
 - (ii) any work which the Consultant is required to carry out arising out of or in connection with paragraph (c).
- (e) The Consultant:
 - (i) must, without limiting its other Contract obligations and to the extent not inconsistent with the Contract, at all times in the performance of the Services comply with the Project DCAP;
 - (ii) warrants that:
 - A. the Project DCAP complies with the requirements of the Contract;
 - B. preparation of the Consultant Material in accordance with the Project DCAP will ensure that the Consultant Material complies with the requirements of this Contract and that the Consultant otherwise discharges its obligations under this Contract;
 - (iii) acknowledges that the Project DCAP:
 - A. does not limit the Consultant's obligations under the Contract or otherwise at law or in equity;
 - B. may require further updating and refining throughout the performance of the Services;

- 1) 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
- 2) without limiting subsubparagraph B1), on account of Variations;
- (iv) must update and refine the Project DCAP as required by subsubparagraph (iii)B with the written approval of the Commonwealth's Representative;
- (v) if an amendment to the Project DCAP under subsubparagraph (iii)B relates to a matter that also requires an amendment to the Master DCAP, must promptly:
 - A. notify the Commonwealth's Panel Manager in writing; and
 - B. update and refine the Master DCAP in accordance with clause 2.11 of the Panel Conditions;
- (vi) to the extent permitted by law, 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 do under subparagraphs (iii) - (v); and
- (vii) 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 subparagraph (ii).

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, including the applicable WHS Legislation;
 - (ii) it complies with the duty under the WHS Legislation to consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iii) it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
 - (iv) it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless 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 in respect of:

- (i) notifiable incidents within the meaning of the WHS Legislation, immediately;
 - (ii) 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) 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 all:
- (i) 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) 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) 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 (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (j) are met;
- (l) immediately notify the Commonwealth's Representative giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
- (m) 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;
- (n) 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
- (o) 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 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.

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) subject to paragraphs (b) and (c) 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; and
 - (vii) other document forming part of the Contract (if any) specified in the Contract Particulars;
- (b) where the ambiguity, discrepancy or inconsistency is between the Brief and any other requirement of the Contract (including any other requirement of the Brief), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
- (c) where the ambiguity, discrepancy or inconsistency is between the Contract and any Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, paragraph (a) will prevail;
- (d) 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
- (e) the Commonwealth's Representative must instruct the Consultant as to the course it must adopt, including, where applicable, by applying the principles in paragraphs (a) to (c) above, within 14 days of the notice under paragraph (d).

5.11 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 co-ordinating the finalisation of all Project Contractor Documentation, including by providing and directing all necessary personnel to administer, supervise, review, co-ordinate 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.

5.12 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.

5.13 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 specified 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 specified 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.

5.14 Manual Of Fire Protection Engineering And National Construction Code Certification

This clause 5.14 does not apply unless the Contract Particulars state it applies.

Without limiting clauses 2.10 or 2.11, 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 (as the case may be and as defined in the Project Contract) - that the Project complies or the Stage (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.

5.15 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.

5.16 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.

5.17 Defence Industry Participation Schedule

- (a) This clause 5.17 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 5.17, **Defence Industry Participation Schedule** means the document (if any) specified in the Official Order as may be updated in accordance with this clause 5.17.

6. QUALITY

6.1 Quality Assurance

The Consultant:

- (a) must implement the quality assurance, process, system or framework specified in the Project DCAP;
- (b) must allow the Commonwealth's Representative access to the quality assurance process, system or framework 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 process, system or framework 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 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 Commonwealth's Representative concerning the Consultant's quality assurance process, system or framework 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 process, system or framework; 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

- (a) 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 a direction specifying the non-complying Services and doing one or more of the following:
 - (i) requiring the Consultant to:
 - A. re-perform the non-complying Services and specifying the time within which this must occur; and
 - B. to take all such steps as are reasonably necessary to:
 - 1) mitigate the effect on the Commonwealth of the failure to carry out the Services in accordance with the Contract; and
 - 2) 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
 - (ii) advising the Consultant that the Commonwealth will not require re-performance of the non-complying Services, despite the non-compliance; and

- (b) Without limiting any other provision of the Contract, the Commonwealth may give a written notice under clause 12.3 to the Consultant if the Commonwealth's Representative discovers or believes that any Services have not been performed in accordance with the Contract.

6.3 Re-performance of the Non-complying Services

- (a) If a direction is given under clause 6.2(a)(i), the Consultant must re-perform the non-complying Services:
 - (i) within the time specified in the Commonwealth's Representative's instruction;
 - (ii) so as to minimise any delay and disruption to the Services; and
 - (iii) so as to minimise the delay and disruption to the Project.
- (b) If the Consultant fails to comply with paragraph (a), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) itself engage an Other Contractor to correct the non-complying Services and the cost of such correction will be a debt due from the Consultant to the Commonwealth.

6.4 Acceptance of the Non-complying Services

If the Commonwealth does not require re-performance of the non-complying Services despite the non-compliance under clause 6.2(a)(ii), 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 Process, System or Framework

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

- (a) update the quality assurance process, system or framework 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 Representative.

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 program prepared 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

(a) The Consultant must:

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

(b) If clause 8 applies, without limiting subparagraph (a)(ii), prior to the Date for Delivery Phase Agreement, the Consultant must:

- (i) update the program for any changes in the Services for the Delivery Phase; and
- (ii) submit the updated program to the Commonwealth's Representative for approval no later than the date notified in writing by the Commonwealth's Representative.

(c) The updated program prepared under paragraph (b) (if any) must include a detailed recommendation as to the Project End Date having regard to:

- (i) the Indicative Project End Date; and
- (ii) any changes to the Project that have been directed or agreed by the Commonwealth during the Development Phase.

(d) If a program submitted by the Consultant under paragraph (b) is rejected by the Commonwealth's Representative (in its absolute discretion), the Consultant must submit an amended program (within the time required by the Commonwealth's Representative).

- (e) If the Commonwealth's Representative (in its absolute discretion) approves an updated program and proposed Project End Date submitted by the Consultant under paragraph (b) (or a revised program under paragraph (d)) (if any), then the Commonwealth's Representative will issue a written notice to the Consultant.
- (f) If the Commonwealth's Representative (in its absolute discretion) does not approve an updated program submitted by the Consultant under paragraph (b) (or a revised program under paragraph (d)) (if any) before the Date for Delivery Phase Agreement (if any), then the Commonwealth may (in its absolute discretion) elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.
- (g) To assist the Commonwealth's Representative in determining whether or not to approve a program submitted under paragraph (b) (or a revised updated program under paragraph (d)):
 - (i) the Commonwealth's Representative may engage a third party to perform an external review of the program; and
 - (ii) the Consultant must:
 - A. co-operate with the Commonwealth's Representative and that third party; and
 - B. without limiting clause 2.7, comply with its obligations under clause 2.7.

7.3 Consultant Not Relieved

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

- (a) relieve the Consultant from or alter its obligations under the Contract; or
- (b) affect the time for the carrying out of the Commonwealth's or Commonwealth's Representative's Contract obligations.

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, to the extent permitted by law, 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 have the Fee increased by the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Commonwealth's Representative;

- B. the Consultant must take all steps possible to mitigate any extra costs incurred by it as a result of the suspension; and
 - C. to the extent permitted by law, 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 program prepared 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).

7.6 Prolongation

- (a) If a Prolongation Event occurs:
 - (i) either:
 - A. if clause 8 applies, after the date Delivery Phase Agreement is achieved under clause 8.4(a)(i); or
 - B. if clause 8 does not apply, after the Award Date;
 - (ii) which causes, or is likely to cause, a Material Adverse Effect;
 - (iii) which is not caused or contributed to by an act or omission of the Consultant (including any failure by the Consultant to perform the Services in accordance with the Contract); and
 - (iv) in circumstances where the Consultant has done everything it is required to do under the Contract to prevent or mitigate the effect of the Prolongation Event,

the Consultant may submit a "Prolongation Proposal" to the Commonwealth's Representative within 14 days of the date the Consultant became aware, or should reasonably have become aware, of the Prolongation Event, which sets out:

- (v) full details of the Prolongation Event;
- (vi) the Material Adverse Effect directly caused by the Prolongation Event, which must be demonstrated by the Consultant on a fully open book cost transparent basis; and
- (vii) the Consultant's proposal to address the Prolongation Event, including all possible steps to mitigate the cost and other effects of the Prolongation Event and provide the Commonwealth with value for money.

(b) If the Consultant issues a Prolongation Proposal which:

- (i) demonstrates that a Prolongation Event has occurred which has caused a Material Adverse Effect, and otherwise complies with paragraph (a), then the Commonwealth's Representative must give the Consultant a written response within 20 days of the Prolongation Proposal, stating that the Commonwealth:
 - A. accepts the Prolongation Proposal;
 - B. requires the Consultant to submit an amended Prolongation Proposal having regard to the matters stated in the Commonwealth's response to the Prolongation Proposal, after which this paragraph (b) will reapply; or
 - C. requires a meeting with the Consultant to negotiate the Prolongation Proposal having regard to the matters stated in the Commonwealth's response; or
- (ii) does not demonstrate that a Prolongation Event has occurred which has caused a Material Adverse Effect, or does not otherwise comply with paragraph (a), then:
 - A. the Commonwealth's Representative may give the Consultant a written notice rejecting the Prolongation Proposal; and
 - B. the Consultant will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with the Prolongation Proposal.

(c) If the Commonwealth's Representative requires a meeting to negotiate the Prolongation Proposal, then:

- (i) the parties must undertake good faith negotiations (and exchange such documents and information and make available such people as may be necessary) to agree the costs payable to the Consultant as a result of the Material Adverse Effect; and
- (ii) if the parties are unable to agree an amount under subparagraph (i) within 40 days of the Prolongation Proposal being received by the Commonwealth (or such longer period as the Commonwealth and the Consultant may agree), the Consultant will be entitled to the reasonable extra costs incurred by the Consultant as a result of the Material Adverse Effect as determined by the Commonwealth's Representative.

(d) 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 Prolongation Event, other than under this clause 7.6.

- (e) Notwithstanding the existence of a Prolongation Event, the Consultant must:
 - (i) continue to carry out the Services; and
 - (ii) otherwise comply with its obligations under the Contract.

8. PHASES - DEVELOPMENT PHASE AND DELIVERY PHASE

This clause 8 applies unless the Contract Particulars state that it does not apply.

8.1 General

- (a) The Services are divided into two distinct phases, being the Development Phase and the Delivery Phase.
- (b) The Consultant acknowledges and agrees that the purpose of this division is to:
 - (i) enable the Commonwealth to ascertain (in its absolute discretion) whether it will maximise value for money by having the Consultant proceed with the Services for the Delivery Phase;
 - (ii) allow for various departmental, government and parliamentary approvals required for the Works; and
 - (iii) give the Commonwealth an opportunity to establish whether it is satisfied (in its absolute discretion) with the performance of the Consultant before proceeding from the Development Phase to the Delivery Phase.
- (c) The Consultant acknowledges and agrees that as a result of the matters described in paragraph (b):
 - (i) there may not be a Delivery Phase;
 - (ii) if there is a Delivery Phase, the Consultant may not be engaged to carry out the Services for the Delivery Phase; and
 - (iii) there may be periods of inactivity of various durations in and between the Development Phase and the Delivery Phase (if any), whether as a result of a delay in any direction under clause 8.3(b) or 8.3(c) or otherwise. Such periods of inactivity will not amount to a suspension under clause 7.4 or entitle the Consultant to any Claim against the Commonwealth.
- (d) Notwithstanding paragraph (c), the Consultant must ensure that, in and between the Development Phase and the Delivery Phase (if any), it retains appropriate, suitably qualified personnel available to perform the Services.

8.2 Resources for Delivery Phase

- (a) Prior to the Date for Delivery Phase Agreement, the Consultant must:
 - (i) prepare a resource plan, based on the Indicative Delivery Phase Resource Plan, for the Services for the Delivery Phase; and
 - (ii) submit the resource plan to the Commonwealth's Representative for approval.
- (b) The resource plan to be prepared under paragraph (a) must:
 - (i) identify in detail all services required for completion of the Project, which a competent and experienced Consultant would anticipate and provide for in its resource plan;
 - (ii) include a detailed breakdown of cost in respect of each part of the Services for the Delivery Phase;
 - (iii) include the proposed Fee for the Services for the Delivery Phase;
 - (iv) if a Milestone Fee Payment Schedule applies, include a proposed Milestone Fee Payment Schedule for the Services for the Delivery Phase;

- (v) include all such other matters as the Commonwealth's Representative may require in writing; and
- (vi) be prepared having regard to all relevant considerations including:
 - A. the Indicative Delivery Phase Resource Plan and the Indicative Delivery Phase Fee Proposal;
 - B. the paramount importance to the Commonwealth of balancing between minimising the cost of the Services for the Delivery Phase and achieving completion of the Project (on the one hand) and optimising the level of resources provided by the Consultant for the performance of the Services for the Delivery Phase (on the other hand);
 - C. demonstrably maximising value for money for the Commonwealth and complying with the Commonwealth Procurement Rules; and
 - D. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subsubparagraphs A - C, which the Commonwealth's Representative may from time to time notify to the Consultant in writing.
- (c) The Consultant must:
 - (i) if any resource plan submitted by the Consultant is rejected by the Commonwealth's Representative, submit a revised resource plan;
 - (ii) in the process of preparing the resource plan or a revised resource plan, co-operate with the Commonwealth, the Commonwealth's Representative and all other people nominated by the Commonwealth's Representative for the purpose of furthering the considerations referred to in paragraph (b)(vi); and
 - (iii) take all possible steps necessary to ensure that the proposed Fee for the Delivery Phase does not exceed the Indicative Delivery Phase Fee, including all such reasonable steps directed by the Commonwealth's Representative.
- (d) If the resource plan is approved by the Commonwealth's Representative, then the Commonwealth's Representative will issue a written notice to the Consultant.
- (e) If the Consultant does not prepare a resource plan (or a revised resource plan) which is approved by the Commonwealth's Representative under paragraph (d) before the Date for Delivery Phase Agreement, then the Commonwealth may elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.
- (f) To assist the Commonwealth's Representative in determining whether or not to approve a resource plan (or a revised resource plan):
 - (i) the Commonwealth's Representative may engage a third party to perform an external audit of the resource plan; and
 - (ii) the Consultant must co-operate with the Commonwealth's Representative and that third party.

8.3 Adjustment of Indicative Delivery Phase Fee and any Milestone Fee Payment Schedule

- (a) As part of the process of preparing the resource plan for the approval of the Commonwealth's Representative under clause 8.2 and in any event by no later than the Date for Delivery Phase Agreement, the Consultant must undertake genuine and good faith negotiations with the Commonwealth's Representative to reach agreement as to:

- (i) the adjustment (if any) required to the Indicative Delivery Phase Fee as a result of any design development, resource planning and programming carried out by the Consultant or by the Project Contractor under the Project Contract in the Development Phase; and
- (ii) if a Milestone Fee Payment Schedule applies, the adjustment (if any) required to the Milestone Fee Payment Schedule,

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

- (b) If agreement on all of the matters in paragraph (a) is reached by the Date for Delivery Phase Agreement:
 - (i) the Commonwealth's Representative will prepare written minutes recording the agreement; and
 - (ii) the parties' rights and obligations under the Contract will be subject to the matters agreed, as recorded in the minutes.
- (c) If:
 - (i) agreement on all the matters in paragraph (a) is not reached; or
 - (ii) the Commonwealth's Representative does not issue written certification that the Commonwealth is satisfied with the performance of the Consultant under the Contract up to the Date for Delivery Phase Agreement,

by the Date for Delivery Phase Agreement, then the Commonwealth may elect to issue a notice under clause 8.4(a)(ii)A or 8.4(a)(ii)B.

8.4 Delivery Phase Agreement and Delivery Phase Approval

- (a) The Commonwealth must:
 - (i) if Delivery Phase Agreement is achieved, issue a written notice to the Consultant stating the date upon which Delivery Phase Agreement was achieved;
 - (ii) if Delivery Phase Agreement has not been achieved (whether because of the circumstances referred to in clause 8.2(e) or 8.3(c) or otherwise), issue a written notice so advising the Consultant; and:
 - A. stating that clause 8.5(d) does not apply; or
 - B. stating the date from which and to the extent to which clause 8.5(d) is to apply;
 - (iii) after a notice has been issued under subparagraph (i):
 - A. if Delivery Phase Approval is obtained, issue a written notice to the Consultant stating the date upon which Delivery Phase Approval was obtained; and
 - B. if Delivery Phase Approval has not been obtained, issue a written notice so advising the Consultant.
- (b) If the Commonwealth issues a notice under clause 8.4(a)(ii)B or 8.4(a)(iii)A, then the parties must comply with their respective obligations in accordance with the Contract, subject to clause 8.3(b)(ii).
- (c) The Consultant acknowledges that:

- (i) it will have no entitlement to perform the Services for the Delivery Phase unless the Commonwealth issues a notice under clause 8.4(a)(ii)B or 8.4(a)(iii)A; and
 - (ii) without limiting clause 8.1, the splitting of the Services as between the Development Phase and the Delivery Phase is solely for the benefit of the Commonwealth, to enable the Commonwealth to ascertain whether it will maximise value for money for the Commonwealth and otherwise further the considerations referred to in clause 8.2(b)(vi) in engaging the Consultant to perform the Services for the Delivery Phase and the rights and obligations of the parties and the functions of the Commonwealth's Representative are to be construed accordingly.
- (d) The Commonwealth may at any time and from time to time, by written notice to the Consultant unilaterally extend the Date for Delivery Phase Agreement or the Date for Delivery Phase Approval.
- (e) Neither an extension of the Date for Delivery Phase Agreement or the Date for Delivery Phase Approval under paragraph (d), nor the issue of a notice under paragraph (a)(ii) or (a)(iii)B, will:
- (i) limit or affect the Consultant's obligations or liabilities under this Contract or prejudice the right of the Commonwealth to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Consultant breaches the Contract, whether under the Contract or otherwise according to law; or
 - (ii) entitle the Consultant to bring a Claim against the Commonwealth.
- (f) The Consultant acknowledges that any Act of Prevention which prevents:
- (i) finalisation of a resource plan which is approved by the Commonwealth's Representative as required under clause 8.2(a) by the Date for Delivery Phase Agreement;
 - (ii) agreement on all the matters in clause 8.3(a)(i) - 8.3(a)(ii) as required under clause 8.3(a) by the Date for Delivery Phase Agreement; or
 - (iii) satisfaction with the performance of the Consultant under the Contract as required under clause 8.3(c)(ii) by the Date for Delivery Phase Agreement,
- will not:
- (iv) entitle the Consultant to bring a Claim against the Commonwealth; or
 - (v) limit or affect any right of the Commonwealth or the Commonwealth's Representative, including the right of the Commonwealth to elect not to engage the Consultant to perform the Services for the Delivery Phase or to issue a notice under clause (a)(ii),

whether on the basis that the obligation to finalise or agree the relevant matter or achieve the relevant satisfaction referred to in subparagraph (i) or (ii) has become an obligation to finalise or agree the relevant matter or achieve the relevant satisfaction within a reasonable time or on any other basis at law or in equity.

8.5 Failure to Achieve Delivery Phase Agreement or Delivery Phase Approval

If the Commonwealth issues a notice under clause 8.4(a)(ii)A or 8.4(a)(iii)B, then:

- (a) subject to paragraph (d), the Consultant will:

- (i) have no entitlement to perform the Services for the Delivery Phase;
 - (ii) be entitled to payment of the Fee and due and payable for the Services completed in accordance with the Contract before issue of the relevant notice; and
 - (iii) not be entitled to payment of any portion of the Fee or to make any Claim (to the extent permitted by law) against the Commonwealth arising out of, or in any way in connection with, the relevant notice, this Contract, the Services or the Project other than for the amount payable under subparagraph (ii);
- (b) subject to paragraph (d), the Consultant must:
- (i) immediately hand over to the Commonwealth copies (or, where required by the Commonwealth's Representative, originals) of all Project Documents prepared by the Consultant to the date of issue of the relevant notice (whether complete or not);
 - (ii) immediately take all steps necessary to novate to the Commonwealth any of the subconsultants required by the Commonwealth's Representative to be novated; and
 - (iii) co-operate with the Commonwealth and any third parties required by the Commonwealth's Representative and take all other steps necessary to ensure that the Commonwealth is able to re-tender or procure the performance of the Services for the Delivery Phase under paragraph (c)(i);
- (c) subject to paragraph (d), the Commonwealth may:
- (i) re-tender the performance of the Services for the Delivery Phase (whether with or without obtaining a tender from the Consultant) or procure the performance of the Services for the Delivery Phase in any other manner which the Commonwealth may determine; and
 - (ii) use the Project Documents for the purposes of re-tendering or procuring the performance of the Services under subparagraph (i); and
- (d) the Commonwealth may waive the requirement that the Consultant obtain Delivery Phase Agreement and Delivery Phase Approval before performing certain parts of the Services for the Delivery Phase, in its notice under clause 8.4(a)(ii), in which case:
- (i) the relevant provisions of the Contract will apply to those Services as if they were the only services included in the Services for the Delivery Phase; and
 - (ii) the Project End Date, Fee and any Milestone Fee Payment Schedule will be adjusted or determined (as the case may be):
 - A. as agreed by the parties; or
 - B. if not agreed within 14 days of the notice, by the reasonable Project End Date, Fee and Milestone Fee Payment Schedule as determined by the Commonwealth's Representative.

9. VARIATION

9.1 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" (or such longer period as may be agreed by the Commonwealth's Representative), 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, which must be calculated by reference to the position descriptions set out in the Schedule of Rates (to the extent applicable);
 - (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 current program.

9.2 Variation Order

Whether or not the Commonwealth's Representative has issued a "Variation Price Request" under clause 9.1, 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 set out in the Consultant's notice under clause 9.1 (if any) is agreed and the Fee will be adjusted accordingly; or
- (b) any adjustment to the Fee will be determined under clauses 9.3(b) and 9.3(c).

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

9.3 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 9.2(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) agreed between the parties; or
 - (ii) failing agreement, determined by the Commonwealth's Representative; and
- (d) if the Fee is adjusted under this clause 9.3 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.

9.4 Rates and Prices

Where any rates and prices in the Schedule of Rates are used under clause 9.3(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.

9.5 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.

9.6 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.

10. PAYMENT (OPTION 1)

10.1 Payment Obligation

Subject to clause 10.11 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.

10.2 Payment Claims

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 specified 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 10.7;
- (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.

10.3 Certification to Accompany Submission of Payment Claim

- (a) The Consultant must, with each payment claim under clause 10.2, certify to the Commonwealth's Representative that it has:
 - (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 10.16 (if applicable).

10.4 Payment Statement

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 10.2; or
- (b) may, if the Consultant fails to submit any such claim in accordance with clause 10.2, 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 previously paid to the Consultant on account of the Fee and otherwise in accordance with the Contract;
- (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 10.2 and 10.3 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.

10.5 Payment

- (a) Within 3 business days of the Consultant receiving a payment statement under clause 10.4, the Consultant must give the Commonwealth's Representative, with a copy to the email address specified in the Contract Particulars, a tax invoice for the amount stated as then payable by the Commonwealth to the Consultant in the payment statement.
- (b) Subject to clause 10.13(c), within:
 - (i) subject to subparagraph (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 10.4, the Commonwealth will pay the Consultant the amount stated as then payable by the Commonwealth to the Consultant in the payment statement.

10.6 Payment on Account

Any payment of moneys under clause 10.5 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.

10.7 Completion Payment Claim and Notice

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

- (a) a payment claim which complies with clause 10.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of the Fee and all other 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 10.7 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 14.5.

10.8 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 10.7 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 10.7 which is given to the Commonwealth's Representative within the time required by and in accordance with the terms of clause 10.7.

10.9 Interest

- (a) The Commonwealth will pay simple interest at the rate specified in paragraph (c) on any:
 - (i) amount which has been stated as then payable by the Commonwealth's Representative in a payment statement under clause 10.4, 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.

10.10 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.

10.11 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 asserts in good faith 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, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any amount which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a "Variation Order" under clause 9.2.

10.12 Payment of Workers and Subconsultants

The Consultant must with each payment claim submitted under clause 10.2 provide the Commonwealth's Representative with a duly completed declaration (in the format which the Commonwealth reasonably requires) for each applicable jurisdiction in which the Services were carried out during the relevant period.

10.13 GST

- (a) Subject to paragraph (b), where any supply arises out of 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 arising out of 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 10.13, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.

10.14 Security of Payment Legislation

- (a) The Consultant agrees with the Commonwealth that:
- (i) a payment claim submitted to the Commonwealth's Representative under clause 10.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Commonwealth's Representative as agent for the Commonwealth;
 - (ii) 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 (without affecting the Commonwealth's right to carry out those functions itself);
 - (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 10.2(a) and 10.2(b) on which the Consultant has satisfied the requirements of clause 10.3(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 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 be then payable by the Commonwealth to the Consultant will not prejudice:
- (i) the Commonwealth's Representative'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 be then payable by the Commonwealth to the Consultant; 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 stated in the payment statement as then payable by the Commonwealth to the Consultant under clause 10.4(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 and which the Consultant is entitled to be paid in respect of the Contract.
- (d) The Consultant 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 Services are to be carried out in:
- (i) the Northern Territory, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer;
 - (ii) Western Australia, the appointed adjudicator or the adjudicator (as the case may be) or, where there is no appointed adjudicator or adjudicator, the prescribed appointer or authorised nominating authority (as the case may be); or
 - (iii) 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) to the extent permitted by law, the Consultant's obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
- (ii) notwithstanding the Consultant's obligations in respect of the Information, the Commonwealth has absolute discretion to divulge or permit its servants, subconsultants or agents to divulge to any person the Information;
- (iii) the Commonwealth may divulge 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 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.

10.15 Accounting Records

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

- (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.

10.16 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.

10A PAYMENT (OPTION 2)

10A.1 Payment Obligation

Subject to clause 10A.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.

10A.2 Payment Claims

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 specified 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 10A.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.

10A.3 Certification to Accompany Submission of Payment Claim

- (a) The Consultant must, with each payment claim under clause 10A.2, certify to the Commonwealth's Representative that it has:
 - (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 10A.11 (if applicable).

10A.4 Payment

Subject to clause 10A.3 and 10A.9, within the number of days specified in the Contract Particulars of the Consultant submitting a valid payment claim under clause 10A.2, the Commonwealth will pay the Consultant the amounts then payable by the Commonwealth to the Consultant in accordance with the Contract.

10A.5 Payment on Account

Any payment of moneys under clause 10A.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.

10A.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 10A.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of all amounts payable under the Contract; and

- (a) 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 10A.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 14.5.

10A.7 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 10A.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 10A.6 which is given to the Commonwealth's Representative within the time required by and in accordance with the terms of clause 10A.6.

10A.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 asserts in good faith 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, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any amount which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a "Variation Order" under clause 9.2.

10A.9 GST

- (a) Subject to paragraph (b), where any supply arises out of 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 arising out of 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 10A.9, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.

10A.10 Accounting Records

The Consultant must keep accurate and up to date accounting records including books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or 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.

10A.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.

11. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

This clause 11 applies if the Consultant is a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy.

11.1 PT PCP Subcontracts

- (a) The Consultant must comply with the Procurement Times Procurement Connected Policy.
- (b) If the Consultant enters into a PT PCP Subcontract, the Consultant must include in the PT PCP Subcontract:
 - (i) a requirement for the Consultant to pay the PT PCP Subcontractor:
 - A. subject to paragraph (d), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
 - B. subject to paragraph (e), for payments made by the Consultant after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (e) and (f);
 - (ii) a statement that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract; and
 - (iii) a statement that the PT PCP Subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth as represented by the Commonwealth Entity specified in the Contract Particulars in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of this paragraph (b).
- (c) If the Consultant enters into a Reporting Entity Subcontract in anticipation of, or after, entering into the Contract, the Consultant must use reasonable endeavours to include in that Reporting Entity Subcontract:
 - (i) obligations equivalent to those in paragraph (b); and
 - (ii) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract will include:
 - A. obligations equivalent to those in paragraph (b); and
 - B. obligations equivalent to this subparagraph (ii) (such that the obligations in this subparagraph (ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- (d) Subsubparagraph (b)(i)A does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in subsubparagraph (b)(i)A.
- (e) The Consultant is not required to pay any interest in accordance with subsubparagraph (b)(i)B if either:
 - (i) the Commonwealth has failed to pay the Consultant in accordance with the timeframes and requirements under this Contract; or
 - (ii) the amount of interest payable is less than \$100 (GST inclusive).
- (f) Interest payable under subsubparagraph (b)(i)B:

- (i) will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Consultant effects payment; and
- (ii) will be paid at the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment.

11.2 PT PCP Evaluation Questionnaire

If requested in writing by the Commonwealth, the Consultant must properly complete and return a PT PCP Evaluation Questionnaire within 30 days of the request.

11.3 Non-Compliance and Remediation

- (a) If the Commonwealth considers or becomes aware that the Consultant has not or may not have complied with:
 - (i) the requirements of clause 11.1; or
 - (ii) the payment requirements of a PT PCP Subcontract,

the Commonwealth may direct the Consultant to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth:

 - (iii) information to enable the Commonwealth to review the Consultant's compliance; or
 - (iv) a properly completed PT PCP Remediation Plan.
- (b) The Consultant must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under subparagraph (a)(iv).
- (c) If the Commonwealth considers that the Consultant has failed to comply with any of its obligations under this clause 11, without limiting the Commonwealth's rights and remedies at law or otherwise under the Contract, the Commonwealth may do either or both of the following:
 - (i) take the failure or non-compliance into account as part of the Commonwealth's monitoring of the Consultant's performance under the Contract; or
 - (ii) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- (d) The Consultant agrees that if it is the subject of a complaint in relation to its compliance with clause 11.1 or the associated payment requirements of a PT PCP Subcontract:
 - (i) it will not take any prejudicial action against the PT PCP Subcontractor due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (ii) it will cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint.

11.4 Consent

- (a) For any PT PCP Purpose, the Consultant consents to the Commonwealth:
 - (i) using and sharing with any other Commonwealth Entity the information provided by the Consultant as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Commonwealth in connection with this Contract or PT PCP Subcontract; and

- (ii) receiving information obtained under, or in accordance with, the PTR Act (**Protected Information**) from Entrusted Person and using such Protected Information.

For the purposes of subparagraph (ii), **Entrusted Person** has the meaning given in the PTR Act.

- (b) By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the Payment Times Procurement Connected Policy that includes any personal information within the meaning of *Privacy Act 1988* (Cth), the Consultant warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 11.4. The Consultant will provide evidence of such consents to the Commonwealth on request.

11.5 Interpretation

A reference to the Commonwealth in clauses 11.2, 11.3(a), 11.3(d)(ii) and 11.4 includes the PT PCP Policy Team.

12. TERMINATION

12.1 Preservation of Rights

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

12.2 Consultant Default

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

12.3 Contents of Notice of Default

A notice under this clause 12.3 must state:

- (a) that it is a notice under clause 12.3;
- (b) the failure or breach relied upon; and
- (c) that the Commonwealth requires the Consultant to remedy the failure or breach within the number of days specified in the Contract Particulars of receiving the notice.

12.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Consultant or, where the Consultant comprises two or more persons, to any one of those persons;
- (b) the Consultant does not remedy a failure or breach the subject of a notice under clause 12.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 12.3; or
- (c) the Consultant fails to comply with:
 - (i) clause 16;
 - (ii) if clause 17 applies, clause 17; or
 - (iii) clause 18,

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

12.5 Commonwealth's Entitlements after Termination by Commonwealth

Subject to clause 12.1, if the Commonwealth terminates the Contract under clause 12.4 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 amount the subject of a payment claim under clause 10.2 or 10A.2 (as the case may be) or a payment statement under clause 10.4 (if applicable); and

- (iii) be entitled to recover from the Consultant all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth 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 16.3 and 17.4, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

12.6 Consultant's Entitlements after Termination by Consultant

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

- (a) be entitled to payment of an amount determined in accordance with clause 12.8 as if the Commonwealth had terminated the Contract under clause 12.7; and
- (b) not be entitled to a quantum meruit.

This clause 12.6 will survive the termination of the Contract.

12.7 Termination for Convenience

Without prejudice to any right or remedy of the Commonwealth under this 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 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 (at its absolute discretion), complete the uncompleted part of the Services either itself or by engaging Other Contractors.

12.8 Consultant's Entitlements after Termination for Convenience by Commonwealth

If the Commonwealth terminates the Contract under clause 12.7, 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 subparagraph (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 16.3 and 17.4, 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 12.8 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 12.7 or deemed to be under clause 12.7 through the operation of clause 12.6(a)) and to the extent permitted by law, 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 12.8.

This clause 12.8 will survive the termination of the Contract by the Commonwealth under clause 12.7 or by the Consultant following repudiation by the Commonwealth.

13. DISPUTE RESOLUTION

13.1 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 13.

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.

13.2 Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Commonwealth's Representative that is not resolved within 14 days after a notice is given under clause 13.1, the dispute or difference must be submitted to expert determination.

13.3 The Expert

- (a) The expert determination under clause 13.2 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 13.3:
 - (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 13.9(b) within 14 days of his or her appointment under this clause 13; or
 - (v) does not make a determination within the time required by clause 13.8,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (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.

13.4 Not Arbitration

An expert determination conducted under this clause 13 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

13.5 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.

13.6 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.

13.7 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.

13.8 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 13 within 28 days from the acceptance by the expert of his or her appointment.

13.9 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.

13.10 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 13.11 and 13.12, 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.

13.11 Executive Negotiation

- (a) If:
 - (i) clause 13.2 applies and a notice of appeal is given under clause 13.10; or
 - (ii) clause 13.2 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 13.2, the notice of dispute given under clause 13.1; or
 - B. otherwise, the notice of appeal given under clause 13.10; 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).

13.12 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 13.2, the notice of dispute given under clause 13.1; or
 - (ii) otherwise, the notice of appeal given under clause 13.10; 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.

13.13 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) The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under this clause 13 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.

13.14 Proportionate 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 the proportionate liability legislation of any Australian jurisdiction which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to this clause.

13.15 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.

14. NOTICES

14.1 Notice of Variation

If a direction by the Commonwealth's Representative, other than a "Variation Order" under clause 9.2, 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 14.3(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 14.1.

14.2 Notices of Other Claims

Except for claims for:

- (a) payment under clause 10 or 10A (as the case may be) on account of the unadjusted Fee;
- (b) a Variation instructed in accordance with clause 9.2 or to which clause 14.1 applies; or
- (c) contribution or indemnity for loss or damage caused or contributed to by the negligence of the Commonwealth, where 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 14.3 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) otherwise the Fee will be increased or adjusted,

as determined by the Commonwealth's Representative.

14.3 Prescribed Notices

The notices referred to in clause 14.2 are:

- (a) a written notice within 21 days of the earlier of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based and when the Consultant should reasonably have become aware of the direction of 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 in sufficient detail to permit verification.

14.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 14.1(b) or clause 14.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by clause 14.3(b) every 28 days after the written claim under clause 14.1(b) or 14.3(b) (as the case may be) was submitted or given to the 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.

14.5 Time Bar

If the Consultant fails to comply with clause 14.1, 14.2, 14.3 or 14.4:

- (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 14.1 or 14.2 applies.

14.6 Other Provisions Unaffected

Nothing in clauses 14.1 - 14.5 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.

14.7 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 12 and 13, 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) 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 14.7 of the Contract" in the subject field of the email.

14.8 Receipt of Notices

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 14.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
 - (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 12 and 13, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 14.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
 - (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).

15. INDIGENOUS PROCUREMENT POLICY

15.1 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 inclusive of GST (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 via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan, as follows:
 - 1) at least quarterly; and
 - 2) within 7 days of the expiry of the last Defects Liability Period (as defined in the Project Contract) (**End of DLP Report**).
- (c) The Consultant must set out in the End of DLP 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) Throughout the performance of the Services, the Consultant is responsible for managing the Consultant's access to the IPP Contractor 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 Commonwealth's Representative of such enabling and disabling and any other matters relating to access of the IPP Contractor Portal.
- (e) 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.

- (f) 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 arising out of or in connection with that direction.

- (g) 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 clause 3.5; 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.

15.2 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 via the IPP Contractor 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 Defects Liability Period (as defined in the Project Contract) (**End of DLP Report**).

- (c) The Consultant must set out in the End of DLP 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) Throughout the performance of the Services, the Consultant is responsible for managing the Consultant's access to the IPP Contractor 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 Commonwealth's Representative of such enabling and disabling and any other matters relating to access of the IPP Contractor Portal.
- (e) 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.
- (f) 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.
- (g) Notwithstanding any other clause of this Contract, the Consultant 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 clause 3.5; 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.

16. INFORMATION SECURITY - CONFIDENTIAL INFORMATION

16.1 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 10.2 or 10A.2 (as the case may be), it is not aware of any of any breach of this clause 16 by the Consultant or any Recipient.

16.2 Confidential Information Requirements

- (a) The Consultant must:
 - (i) strictly comply with:
 - A. this clause 16; 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 16; 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 17 applies, clause 17, 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 16; 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 16; 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:

this clause 16; or

- A. any other Confidential Information or 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 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 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**).

16.3 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 12 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. where the Confidential Information is in a tangible form, securely and appropriately return all copies of that Confidential Information 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 approved by the Commonwealth (acting reasonably) confirming that the Confidential Information 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 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 process, 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 Representative 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 16.
- (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 16.

16.4 Compliance with clause 16

Within 24 hours (or such other 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 16 (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 the Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 16 (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 environments and equipment to enable the Commonwealth's Representative and the Commonwealth to monitor and assess the Consultant's and all Recipients' compliance with clause 16 (including any Separation Arrangements and Confidential Information Requirements) by the time and date specified in the request.

16.5 Acknowledgement, release and indemnity

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

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has:
 - A. entered into the Contract; and
 - B. if applicable, made payments to the Consultant under clause 10.5 or 10A.4 (as applicable),strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in this clause 16;
 - (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Consultant:
 - A. notifies the Commonwealth's Representative under clause 16.2(d)(ii)B; or
 - B. has failed to strictly comply with:
 - 1) this clause 16; or
 - 2) 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 12.4; or
 - D. take such Confidential Information Incident or 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 16 is not capable of being the subject of a dispute or difference for the purposes of clause 13 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 this clause 16; 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 Consultant's failure to strictly comply with clause 16 or any other Confidential Information or information security requirements notified by the Commonwealth's Representative (including any Separation Arrangements); or

- (iii) the exercise of any of the Commonwealth's absolute discretions under this clause 16.

17. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

This clause 17 does not apply unless the Contract Particulars state that it applies.

17.1 Sensitive and Classified Information, generally

- (a) Nothing in this clause 17 limits or otherwise affects clause 16.
- (b) The Consultant acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.

17.2 Consultant's warranties

- (a) The Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2 or 10A.2 (as the case may be), it is not aware of any of any breach of this clause 17 by the Consultant or any Recipient.
- (b) The Consultant warrants that, except as otherwise approved in writing by the Commonwealth, 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 or in accordance with clause 17.3(d)(i)B.1) (as applicable):
 - (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.

17.3 Sensitive and Classified Information Requirements

- (a) The Consultant must:
 - (i) strictly comply with:
 - A. this clause 17; 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 17; 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 (d)(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.

- (c) 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 all proposed Recipients, and a justification as to why those Recipients have a need to know such information).
- (d) 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 any conditions:
 - A. with respect to the level/s of accreditation or certification required for the physical and information technology environments (as applicable) in which the Sensitive and Classified Information is to be kept; or
 - B. requiring the Recipient of Sensitive and Classified Information (or any part of it) to:
 - 1) properly apply for, obtain and hold a current security clearance level at or above the level/s specified in the notice 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
 - 2) enter into a deed in a form approved by the Commonwealth; or
 - (ii) refuses permission.
- (e) If the Commonwealth grants permission under paragraph (d)(i), the Consultant must strictly comply with any conditions notified under paragraph (d)(i).
- (f) The Consultant must ensure that all Recipients of Sensitive and Classified Information:
 - (i) strictly comply with:
 - A. this clause 17; 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 17; 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 17; 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).
- (g) The Consultant must:
 - (i) ensure:
 - A. the Sensitive and Classified Information (or any part of it); and
 - B. all containers, devices or systems on or in which the Sensitive and Classified Information (or any part of it) may be contained, stored, transferred, transmitted or communicated (including via electronic or similar means),

are strictly kept:

 - C. at locations in Australia only (unless otherwise approved in writing by the Commonwealth (in its absolute discretion));
 - D. in physical and information technology environments (as applicable) 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 or in accordance with paragraph (d)(i)A:
 - 1) before the Consultant (or any Recipient) was issued with the Sensitive and Classified Information; and
 - 2) at all times during the Consultant's (or any Recipient's) access to or storage of the Sensitive and Classified Information,

and are not introduced into or kept in any physical or information technology environment that is accredited or certified at a lower level;
 - E. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);
 - F. without limiting subsubparagraph E, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia (unless otherwise approved in writing by the Commonwealth (in its absolute discretion));
 - G. in accordance with all Statutory Requirements (including the Information Security Requirements) including in respect of caveats; and
 - H. 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**).

17.4 Return, destruction and erasure of Sensitive and Classified 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 12 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 (if any) and in accordance with all Statutory Requirements (including the Information Security Requirements), promptly:

- A. where the Sensitive and Classified Information is in a tangible form, securely and appropriately return all copies of that Sensitive and Classified Information to the Commonwealth's Representative;
- B. securely and appropriately 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 approved by the Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information 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) To the extent required by a Statutory Requirement, the Consultant may keep one copy of the Sensitive and Classified Information for its records subject to the Consultant:
 - (i) promptly notifying the Commonwealth's Representative 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 17.
- (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 17.

17.5 Compliance with clause 17

Within 12 hours (or such other 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 17 (including any Separation Arrangements and the Sensitive and Classified 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 the Commonwealth (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 17 (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 17 (including any Separation Arrangements and Sensitive and Classified Information Requirements).

17.6 Acknowledgement, release and indemnity

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

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has:
 - A. entered into the Contract;
 - B. if applicable, made payments to the Consultant under clause 10.5 or 10A.5 (as applicable),strictly on the basis of, and in reliance upon, the warranties, obligations, releases and indemnities set out in this clause 17;
 - (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Consultant:

- A. notifies the Commonwealth's Representative under clause 17.3(g)(ii)B; or
- B. has failed to strictly comply with:
 - 1) this clause 17; or
 - 2) 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 12.4; 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 17 is not capable of being the subject of a dispute or difference for the purposes of clause 13 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 this clause 17; 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's failure to strictly comply with clause 17 or 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); or
 - (ii) the exercise of any of the Commonwealth's absolute discretions under this clause 17.

18. DEFENCE INDUSTRY SECURITY PROGRAM

Without limiting clause 17 or any other provision of the Contract, the Consultant:

- (a) must at its cost obtain and thereafter maintain for the term of the Engagement the level of DISP membership specified in the Contract Particulars in accordance with Control 16.1 of the Defence Security Principles Framework dated 31 July 2020 (as amended from time to time);
- (b) must comply with any other direction or requirement of the Commonwealth's Representative in relation to the DISP; and
- (c) acknowledges and agrees that if the Consultant has failed to strictly comply with this clause 18 (including any direction or requirement of the Commonwealth's Representative in relation to the DISP), the Commonwealth may (in its absolute discretion):
 - (i) terminate the Contract under clause 12.4; or
 - (ii) take such failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project,

and the exercise of any of the Commonwealth's absolute discretions under this paragraph is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review

19. SIGNIFICANT EVENTS

19.1 Consultant's Warranty

Subject to clause 19.2, the Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2 or 10A.2 (as the case may be), it is not aware of any Significant Event in relation to the Consultant.

19.2 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); 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.

19.3 Commonwealth's 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 19.2; or
 - B. has failed to strictly comply with clause 19; 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 meet with the Commonwealth to provide, or otherwise 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 19.4; 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 12.4.

- (b) Without limiting any other provision of the Contract, if the Consultant is in breach of clause 19 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 12.4.

19.4 Significant Event Remediation Plan

- (a) If notified by the Commonwealth under clause 19.3(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.
- (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.

19.5 Acknowledgement and Release

The Consultant:

- (a) acknowledges and agrees that the exercise of any of the Commonwealth's absolute discretions under this clause 19 is not capable of being the subject of a dispute or difference for the purposes of clause 13 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 19.

20. FINANCIAL VIABILITY

- (a) The Consultant:
- (i) warrants that, on the Award Date and on the date of submitting each payment claim under clause 10.2 or 10A.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 10.5 or clause 10A.4 (as the case may be), strictly on the basis of and in reliance upon the warranties set out in clause 20.
- (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) ensure:
 - A. its Financial Representative is available; and
 - B. each 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 20 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 20 for the benefit of the Consultant (or any subconsultant);
- (iii) clause 20 does not give the Consultant (or any subconsultant) any rights; and
- (iv) the exercise or failure to exercise a discretion under clause 20 is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 of the Contract or otherwise subject to review.

(h) Unless otherwise approved by the Commonwealth's Representative, the Consultant must ensure that each subcontract includes provisions equivalent to the obligations of the Consultant in clause 20.

21. 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.

22. MODERN SLAVERY

- (a) The Consultant must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services.
- (b) The Consultant must ensure that the people referred to in clause 4.5(a) and other personnel responsible for managing the operations and supply chains used in the performance of the Services have undertaken suitable training to be able to identify and report Modern Slavery.
- (c) If at any time the Consultant becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services, the Consultant must:
 - (i) promptly notify the Commonwealth's Representative of the Modern Slavery practices and provide any relevant information requested by the Commonwealth's Representative;
 - (ii) as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
 - (iii) regularly update the Commonwealth's Representative of the steps taken by it in accordance with subparagraph (ii).
- (d) For the purposes of this clause 22, Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

23. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- (a) For the purposes of this clause 23, **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 23.
- (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 23.
- (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)	<p>The other documents forming part of the Contract are:</p> <p>[INSERT OTHER DOCUMENTS FORMING PART OF THE CONTRACT; OR</p> <p>No other documents form part of the Contract]</p>
Date for Delivery Phase Agreement: (Clause 1.1 and 8)	<p>[INSERT DATE FOR DELIVERY PHASE AGREEMENT; OR</p> <p>Not applicable]</p>
Date for Delivery Phase Approval: (Clause 1.1 and 8)	<p>[INSERT DATE FOR DELIVERY PHASE APPROVAL; OR</p> <p>Not applicable]</p>
Environmental Requirements (additional): (Clause 1.1)	<p>[INSERT ADDITIONAL ENVIRONMENTAL REQUIREMENTS; OR</p> <p>None specified]</p>
ESD Principles (additional): (Clause 1.1)	<p>[INSERT ADDITIONAL ESD PRINCIPLES; OR</p> <p>None specified]</p>
Executive Negotiators: (Clause 1.1)	<p>Commonwealth:</p> <p>The person holding the position of Director General, Capital Facilities and Infrastructure Branch Infrastructure Division for the time being [INSERT NAME]</p> <p>Consultant:</p> <p>The person holding the position of [INSERT POSITION TITLE] for the time being [INSERT NAME]</p>

Fee Schedule: (Clause 1.1)	[INSERT]
Indicative Project End Date: (Clause 1.1)	[INSERT DATE; OR Not applicable]
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 Plans: (Clause 1.1 and 5.13)	[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]
Work Health and Safety Plan (additional): (Clause 1.1)	
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 DESCRIPTION]	[INSERT DESCRIPTION]
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 2.13)

Clause 2.13 **[DOES/DOES NOT]** apply

Other Project/Program:

[INSERT DESCRIPTION OF OTHER PROJECT/ PROGRAM; OR

Not Applicable]

Clause 2.14 **[DOES/DOES NOT]** apply

Environment:
(Clause 2.14)

Services Not Included:
(Clause 2.15)

[INSERT DESCRIPTION OF SERVICES NOT INCLUDED; OR

None specified]

Site Restrictions:
(Clause 2.16)

[INSERT DESCRIPTION OF SITE RESTRICTIONS; OR

None specified]

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

Project DCAP:
(Clause 5.8)

Option [1/2] applies

[SPECIFY THE PROJECT DCAP]

Number of days for submission of Project Plans:
(Clause 5.13(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 5.13(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 5.14)	Clause 5.14 [DOES/DOES NOT] apply	
Defence Industry Participation Schedule (Clause 5.17)	Clause 5.17 [DOES/DOES NOT] apply (Clause 5.17 does not apply unless otherwise stated)	
CLAUSE 7 - TIME		
Maximum intervals between program updates by Consultant: (Clause 7.2(a)(ii))	[INSERT A TIME PERIOD FOR PROGRAM UPDATES, eg Monthly]	
Program software: (Clause 7.2(a)(iv))	[INSERT THE TYPE OF PROGRAM TO BE USED, ENSURING SPECIFICATION OF APPROVED EQUIVALENTS, eg Microsoft Project or approved equivalent]	
CLAUSE 8 - PHASES - DEVELOPMENT AND DELIVERY PHASE		
Phases: (Clause 8)	Clause 8 [DOES/DOES NOT] apply	
CLAUSE 10 - PAYMENT (OPTION 1)		
Payment (Option 1): (Clause 10)	Clause 10 [DOES/DOES NOT] apply	
Times for submission of payment claims by the Consultant to Commonwealth's Representative: (Clause 10.2(a))	[IF CLAUSE 10 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 10 DOES NOT APPLY INSERT, Not applicable]	
Email address for copy of tax invoice: (Clause 10.5(a))	invoices@defence.gov.au	
Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority: (Clause 10.14(d))	[IF CLAUSE 10 APPLIES, INSERT To the extent that the relevant part of the Services is carried out in: 1. the Northern Territory:	

- (a) the appointed adjudicator is ; or
- (b) if no appointed adjudicator is appointed, the prescribed appointer is the Resolution Institute of the Northern Territory Chapter; or

2. Western Australia:

- (a) the appointed adjudicator or the adjudicator (as the case may be) is ; or
- (b) if no appointed adjudicator or adjudicator is appointed, the Resolution Institute of the Western Australia Chapter;

3. Victoria, any one of the following:

- (a) Resolution Institute, Victorian Chapter;
- (b) Building Adjudication Victoria Inc; or
- (c) Rialto Adjudications Pty Ltd; or

4. any other State or Territory (save for Queensland), the Resolution Institute of the Chapter in that State or Territory.

OR IF CLAUSE 10 DOES NOT APPLY INSERT,

Not applicable]

Accounting records (additional):
(Clause 10.15)

[IF CLAUSE 10 APPLIES, INSERT DETAILS FOR ADDITIONAL ACCOUNTING RECORDS (IF ANY); OR IF CLAUSE 10 DOES NOT APPLY INSERT,

Not applicable]

Estate Information:
(Clause 10.16)

[IF CLAUSE 10 APPLIES SELECT APPLICABLE OPTION]

Clause 10.16 [DOES/DOES NOT] apply
(Clause 10.16 applies unless otherwise stated)

[IF CLAUSE 10 DOES NOT APPLY INSERT,

Not applicable]

CLAUSE 10A - PAYMENT (OPTION 2)

Payment (Option 2):
(Clause 10A)

Clause 10A [DOES/DOES NOT] apply

Times for submission of payment claims by the Consultant:
(Clause 10A.2)

[IF CLAUSE 10A 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 10A DOES NOT APPLY INSERT,

Not applicable]

Number of days for payment:
(Clause 10A.4)

[IF CLAUSE 10A APPLIES INSERT NUMBER OF DAYS FOR PAYMENT]

[INSERT] days
(30 days unless otherwise specified)

[IF CLAUSE 10A DOES NOT APPLY INSERT,

Not applicable]

Accounting records (additional):
(Clause 10A.10)

[IF CLAUSE 10A APPLIES, INSERT DETAILS FOR ADDITIONAL ACCOUNTING RECORDS (IF ANY); OR IF CLAUSE 10A DOES NOT APPLY INSERT,

Not applicable]

Estate Information:
(Clause 10A.11)

[IF CLAUSE 10A APPLIES SELECT APPLICABLE OPTION]

Clause 10A.11 **[DOES/DOES NOT]** apply
(Clause 10A.11 applies unless otherwise stated)

[IF CLAUSE 10A DOES NOT APPLY INSERT,

Not applicable]

CLAUSE 11 - PAYMENT TIMES PROCUREMENT CONNECTED POLICY

Commonwealth Entity:
(Clause 11.1(b)(iii))

[INSERT RELEVANT COMMONWEALTH ENTITY]

CLAUSE 12 - TERMINATION

Number of days to remedy breach:
(Clause 12.3(c) and 12.4(b))

[INSERT] days

CLAUSE 13 - DISPUTE RESOLUTION

Industry expert who will conduct expert determinations:
(Clause 13.3(a)(i))

[INSERT NAME, COMPANY (IF APPLICABLE) AND ABN OF SPECIFIC EXPERT; OR

None specified]

Nominating authority for expert:
(Clause 13.3(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 14 - NOTICES

Address and email address, for the giving or serving of notices, upon:
(Clause 14.7)

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 15 - INDIGENOUS PROCUREMENT POLICY

Option for Indigenous Procurement Policy:
(Clauses 15.1 and 15.2)

[OPTION 1/ OPTION 2] applies.

(Option 1 applies unless otherwise stated)

CLAUSE 17 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Sensitive and Classified Information:
(Clause 17)

Clause 17 [DOES/DOES NOT] apply.
(Clause 17 does not apply unless otherwise stated)

Current security clearance level/s:
(Clause 17.2(b))

[INSERT (IF APPLICABLE)]

Information technology environment accreditation or certification level/s:
(Clause 17.3(g)(iD))

[INSERT (IF APPLICABLE)]

CLAUSE 18 - DEFENCE INDUSTRY SECURITY PROGRAM

Level of DISP Membership:
(Clause 18(a))

DISP Membership */IS/IS NOT/* required.

Where DISP Membership is required:

DISP Membership / Security Level Domain

DISP Membership	<i>[INSERT LEVEL, WHICH MUST EQUAL THE HIGHEST DISP MEMBERSHIP REQUIRED FOR THE 4 DOMAINS BELOW. INSERT "NOT APPLICABLE" IN THIS AND BELOW ROWS IF DISP MEMBERSHIP IS NOT REQUIRED]</i>
Governance	<i>[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]</i>
Personnel Security	<i>[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]</i>
Physical Security	<i>[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]</i>
Information / Cyber Security	<i>[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]</i>