



**PANEL AGREEMENT
FOR
DEFENCE INFRASTRUCTURE PANEL - MAJOR
CONSTRUCTION 2025 - 2030
[PANEL MEMBER]**

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SECTION 1 INTRODUCTION

INTRODUCTION

1. The Security and Estate Group within the Department of Defence has established the Defence Infrastructure Panel - Major Construction 2025 - 2030 (**Panel**) on behalf of the Commonwealth of Australia. The purpose of the Panel is to establish a standing offer for the undertaking of major construction and capital facilities works generally consistent with the works specified in the Scope of Works set out in Section 4 for and on behalf of:
 - (a) the Department of Defence; and
 - (b) Other Commonwealth Agencies.
2. This document sets out the basis of the relationship between the Commonwealth and each Contractor appointed to the Panel. The document is divided into the following sections:
 - (a) Section 1 - this Introduction;
 - (b) Section 2 - the Panel Conditions;
 - (c) Section 3 - the Engagement Process; and
 - (d) Section 4 - the Scope of Works.
3. The Contractor is one of the contractors appointed to the Panel.
4. As and when the Commonwealth requires Works to be performed by the Contractor, it will invoke an engagement process generally consistent with that set out in Section 3. This may be by way of competitive or non-competitive arrangements.
5. The Commonwealth does not guarantee any volume of work for the Contractor and the Commonwealth reserves the right to contract for works outside the Panel. However, the Commonwealth recognises the benefits that will accrue to both it and the Contractor through members of the Panel participating in the performance of the Works.
6. The primary strategic objective of the Panel is to streamline the efficient procurement and delivery of major construction and capital facilities projects to support the Commonwealth's defence capability and sustainment requirements.

SECTION 2

PANEL CONDITIONS

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FORMAL AGREEMENT

This Panel Agreement is made on

Parties **Commonwealth of Australia** **(Commonwealth)**

[Panel Member], ABN: [Panel Member ABN] **(Contractor)**

1. The parties acknowledge and agree that they must perform the obligations imposed on them by the Panel Agreement.

2. The Panel Agreement comprises the following:

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

3. The Contractor's appointment to the Panel is in respect of the jurisdictions set out in the Panel Particulars as updated from time to time in accordance with clause 2.2 of the Panel Conditions being jurisdictions in which it is licensed under applicable Statutory Requirements to carry out Works.

4. This Formal Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

5. The parties consent to the execution of this Formal Agreement by electronic means.

SIGNED as an Agreement

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

Signature of Witness

Name of Witness in full

Signature of Authorised Officer

Name of Authorised Officer in full

[S 127 OF CORPORATIONS ACT]

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

Signature of director

Full name of director who states that they are a director of the **Contractor**

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

Full name of sole director who states that they are the sole director of the **Contractor** and that the **Contractor** does not have a company secretary

Signature of company secretary/director *[delete position as appropriate]*

Full name of company secretary/director *[delete position as appropriate]* who states that they are a company secretary/director *[delete position as appropriate]* of the **Contractor**

Signature of sole director

[OR - AUTHORISED SIGNATORY OF COMPANY]

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

Signature of witness

Full name of witness

Signature of authorised signatory

Full name of authorised signatory

[OR - PARTNERSHIP]

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

Signature of witness

Full name of witness

Signature of authorised representative

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

Full name of authorised representative

PANEL CONDITIONS

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

Unless the context otherwise indicates wherever used in this document, each word or phrase in the headings in this clause 1 has the meaning given to it under the relevant heading.

Australian Privacy Principle

Has the meaning given in the Privacy Act.

Base Date

The date specified in the Panel Particulars.

Change of Control

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

Commonwealth

The Commonwealth of Australia, including:

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

Commonwealth Requirements

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

Commonwealth's Assistant Panel Manager

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

Commonwealth's Panel Manager

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

Confidential Information

- (a) Means, subject to paragraph (b):
 - (i) the Project Documents;
 - (ii) any Contract;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which is in any way connected with the Panel Agreement or any Contract which:
 - A. by its nature is confidential; or

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- B. the Contractor knows or ought to know is confidential; 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) Excludes any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth which:
- (i) is in the possession of the Contractor without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth or anyone on the Commonwealth's behalf;
- (ii) is in the public domain otherwise than due to a breach of clause 14; or
- (iii) has been independently developed or acquired by the Contractor.

Consolidated Group

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

Contract

A contract executed by the parties in respect of an Engagement.

Contractor

The contractor who is a party to this Panel Agreement, as specified in the Panel Particulars.

Contractor's Panel Manager

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

Control

Includes:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

day

Means calendar day.

Defence

Department of Defence.

Defence Strategic Interest Issue

Any issue arising out of or in relation to the Panel Agreement, the Works, the Contractor or any subcontractor (or any Related Body Corporate of the Contractor or any subcontractor) that involves an actual, potential or perceived risk of an adverse effect on the Commonwealth's international or diplomatic interests or relationships or national security interests including arising from any breach by the Contractor of its obligations in respect of compliance with all Statutory Requirements.

Defence Website

The website available at www.defence.gov.au/ or such alternative location as notified by the Commonwealth's Panel Manager.

DSPF

The Defence Security Principles Framework dated 31 July 2020 available at <https://www.defence.gov.au/security>, as amended or replaced from time to time.

Engagement

An engagement to perform the Works for the Commonwealth under the Panel on the terms specified in the relevant Contract.

Execution Date

The date upon which the Formal Agreement has been completed and signed by the Commonwealth.

Financial Viability Assessment

An assessment carried out by the Commonwealth or a third party of whether the Contractor has the necessary financial viability to perform Works (including having regard to the anticipated minimum value of individual projects to be carried out under the Panel) and otherwise meet its obligations under an Engagement.

Formal Agreement

The document of the same title which when executed by the parties gives effect to the contractual relationship between them in respect of the Panel.

GST

The tax payable on taxable supplies under the GST Legislation.

GST Group

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

GST Legislation

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

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/indigenousprocurement-policy-ipp>.

Information Security Requirements

Means the:

- (a) Australian Government's Protective Security Policy Framework available at <https://www.protectivesecurity.gov.au/>;

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- (b) Australian Government's Information Security Manual available at <https://www.cyber.gov.au/ism>; and
 - (c) DSPF,
- each as amended or replaced from time to time.

Insolvency Event

Any one of the following:

- (a) the Contractor becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Commonwealth in writing or its creditors generally that the Contractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Panel Agreement or any Engagement for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Contractor;
- (d) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt; or
 - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,by which his or her assets are subjected conditionally or unconditionally to the control of a creditor or trustee;
- (e) where the Contractor is a corporation, any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (iii) the corporation entering a deed of company arrangement with creditors;
 - (iv) a controller, restructuring practitioner, administrator, receiver and manager, provisional liquidator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to the corporation;
 - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (vi) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of the Commonwealth under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
 - (vii) a winding up order or deregistration order is made in respect of the corporation;

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- (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
 - (ix) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)); or
 - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
- (g) anything analogous to anything referred to in paragraphs (a) to (f) or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

IT Equipment

Any software, hardware or telecommunications equipment:

- (a) produced; or
 - (b) provided, or required to be provided, to the Commonwealth or a representative of the Commonwealth,
- under, for the purposes of, or in connection with, the Panel Agreement, any Contract or the Works by, for or on behalf of the Contractor.

Long Service Leave Legislation

Means:

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

Material Change

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

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or

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

Other Commonwealth Agency

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

Panel

The Defence Infrastructure Panel - Major Construction 2025 - 2030.

Panel Agreement

Has the meaning given in the Formal Agreement.

Panel Contractors

The contractors who are members of the Panel.

Panel Particulars

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

Payment Times Procurement Connected Policy

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

Personal Information

Has the meaning given in the Privacy Act.

Privacy Act

Means the *Privacy Act 1988* (Cth).

Project Documents

Any data, documents, drawings, records, programs and information and material:

- (a) produced; or
- (b) provided, or required to be provided, to the Commonwealth or the Commonwealth's Panel Manager, under, for the purposes of, arising out of or in connection with the Panel, the Panel Agreement, any Contract or Works (including by subcontractors), including any material relating to the Contractor's compliance with the WHS Legislation.

Related Body Corporate

Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).

Reserved Panel Condition

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

- (a) clause 2.4 (Withdrawal from or addition to the Panel);
- (b) clause 2.6 (Unsatisfactory Performance);
- (c) clause 6 (Conflict of Interest);
- (d) clause 9 (Performance Management); and
- (e) clause 15 (Strategic Notice Event).

Schedule of Rates

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

Scope of Works

The scope of works described in Section 4 of this Panel Agreement.

Security or Confidentiality Incident

Means:

- (a) a "Security Incident" as defined in Control 77.1 of the DSPF insofar as the relevant approach, event or action arises out of or in any way in connection with this Panel Agreement or the carrying out of the Works or otherwise relates to the Contractor or any Related Body Corporate of the Contractor; or
- (b) any other incident or circumstance involving Confidential Information (including any Sensitive and Classified Information) having been held, disclosed, accessed or used in a way that is inconsistent with the terms of the Panel Agreement.

Sensitive and Classified Information

Means:

- (a) any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Contractor by the Commonwealth, the Commonwealth's Panel Manager 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 Contractor knows or ought to know is subject to, or ought to be treated as, sensitive or classified information in accordance with any Statutory Requirement (including the Information Security Requirements); and
- (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.

Shadow Economy Procurement Connected Policy

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

Significant Event

Means:

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

and, without limiting the foregoing, includes a judicial decision against the Contractor (not including a decision under appeal) relating to employee entitlements where the Contractor has not satisfied any resulting order (e.g. where the entitlement remains unpaid).

Statement of Tax Record or STR

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

Statutory Requirements

Includes any:

- (a) 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) Commonwealth Requirements; and
- (c) Information Security Requirements.

Strategic Notice Event

Means a:

- (a) Material Change;
- (b) Defence Strategic Interest Issue; or
- (c) Significant Event.

Strategic Notice Event Remediation Plan

The plan (if any) prepared by the Contractor and finalised under clause 15.4.

Term

The period of time during which the Contractor may be engaged to carry out Works, which commences on the Execution Date and ends on the fifth anniversary of the Base Date:

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

WHS Accreditation Scheme

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

WHS Legislation

Means 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).

Works

The major construction and capital facilities works and related activities of the type generally set out in the Scope of Works which the Contractor may be engaged to carry out under an Engagement.

1.2 Interpretation

In the Panel Agreement, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Panel Agreement;
- (d) references to any party to the Panel Agreement 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 the Panel Agreement;
- (f) references to the Panel Agreement and any contract, deed, agreement or instrument are deemed to include references to the Panel Agreement or such other contract, 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 Panel Agreement or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Panel Agreement a direction is required to be given or must be complied with within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the Australian Capital Territory will not be counted in computing the number of days;
- (l) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (m) derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1; and

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- (n) a reference to a "business day" is to a day other than a Saturday, Sunday or a public holiday in the Australian Capital Territory.

1.3 Miscellaneous

- (a) None of the terms of the Panel Agreement 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.
- (b) The Panel Agreement 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 Panel Agreement; or
 - (ii) any correspondence or other documents relating to the subject matter of the Panel Agreement which may have passed between the parties prior to the Execution Date and which are not included in the Panel Agreement.
- (c) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Panel Agreement.
- (d) Any provision in the Panel Agreement 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 Panel Agreement.
- (e) The Contractor must indemnify the Commonwealth against:
- (i) any liability to or claim by a third party including a subcontractor or Other Contractor; and
 - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,
- caused by any breach by the Contractor of a term of the Panel Agreement.
- (f) All obligations to indemnify under the Panel Agreement survive termination of the Panel Agreement on any basis.
- (g) Where under this Panel Agreement the Commonwealth (or other person on its behalf) has a right, power, discretion or other function (including to accept, agree, consider, determine, 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 relevant provision or the context otherwise expressly provides.

2. NATURE OF PANEL AGREEMENT

2.1 Formation of Panel

- (a) The Commonwealth has established the Panel of Panel Contractors, of which the Contractor is one, to carry out the Works as requested from time to time by the Commonwealth.
- (b) The Commonwealth may:
- (i) add other contractors to the Panel;
 - (ii) refresh the Panel;

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- (iii) amend or supplement the Scope of Works for the Panel and undertake a separate approach to market to appoint panellists (whether under the Panel or otherwise) suitably qualified to deliver the Works contemplated by the Scope of Works as amended or supplemented;
 - (iv) amend the location(s) for which contractors are appointed to carry out the Works;
 - (v) have other contractors (not on the Panel) perform works that are similar to the Works; or
 - (vi) as part of any Engagement, require Panel Contractors to perform works outside the Scope of Works for which they are on the Panel.

2.2 Appointment Jurisdictions

- (a) The Contractor must have effected as at the Execution Date and thereafter maintain for the Term the licences, accreditations and authorisations required under applicable Statutory Requirements or this Panel Agreement to carry out the Works in the jurisdictions in which the Contractor has been appointed to the Panel.
- (b) If the Contractor:
 - (i) ceases for any reason to be licenced, accredited or authorised to carry out the Works (or such licence, accreditation or authorisation is suspended) or to be able to comply with any condition of them in any jurisdiction in which it has been appointed to the Panel; or
 - (ii) becomes aware of any matter which will, or is likely to, have an adverse affect on the ability of the Contractor to hold such a licence, accreditation or authorisation (or to comply with any condition of them) (including as a result of any actual or threatened action by an authority under Statutory Requirements),it must immediately give the Commonwealth's Panel Manager notice of that matter including all relevant details.
- (c) Without limiting any right or remedy of the Commonwealth under any Contract, if the Contractor gives a notice under paragraph (b) or the Commonwealth otherwise becomes aware of any of the circumstances specified in paragraph (b), the Commonwealth's Panel Manager may:
 - (i) suspend the Contractor's appointment to the Panel; or
 - (ii) discontinue seeking tenders from the Contractor for Works located in the jurisdiction of the licence affected under paragraph (b).
- (d) Subject to clause 2.1(b)(iv) and paragraph (e):
 - (i) the Panel Particulars specify the jurisdictions in respect of which the Contractor has been appointed to the Panel; and
 - (ii) the Contractor must not:
 - A. participate in any engagement process under the Panel for Works that are, or are anticipated to be, carried out in a jurisdiction in which the Contractor has not been appointed to the Panel; or
 - B. otherwise carry out the Works in a jurisdiction in which the Contractor has not been appointed to the Panel.
- (e) If after the Execution Date, the Contractor demonstrates to the satisfaction of the Commonwealth that it has obtained a licence under applicable Statutory Requirements to carry out the Works in a jurisdiction not specified in the Panel Particulars, the Commonwealth may, after considering such information as it requires, amend the Panel Particulars to include that jurisdiction.

2.3 Engagement Process

- (a) If at any time during the Term the Commonwealth requires the performance of the Works, it may engage the Contractor through a process generally consistent with that set out in Section 3 of this Panel Agreement.
- (b) The Contractor acknowledges that in participating in any engagement process under this Panel, it must comply with any specific requirements of the Commonwealth or an Other Commonwealth Agency (as the case may be) that are set out in the request for tender, which may include requirements with respect to:
 - (i) the format of, and timeframes for the provision of, the Contractor's response to the request for tender;
 - (ii) information or documentation to be provided by the Contractor with its response to the request for tender;
 - (iii) the Works; and
 - (iv) the proposed Contract.
- (c) The Contractor warrants that any information provided or representation made to the Commonwealth in connection with any engagement process (including any tender submitted by the Contractor in respect of an Engagement) will be true and accurate in all material respects at the time such information is provided or representation is made to the Commonwealth.

2.4 Withdrawal from or addition to the Panel

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

2.5 No Guarantee of Work

- (a) The Commonwealth does not guarantee any, or a minimum volume of, work to the Contractor under this Panel Agreement.
- (b) The Commonwealth may acquire works that are the same as or similar to the Works under:
 - (i) any other applicable whole of government arrangement that exists at the Base Date or that is otherwise implemented by the Commonwealth during the Term; or
 - (ii) any other Commonwealth arrangement.

2.6 Unsatisfactory Performance

- (a) The Contractor acknowledges that, if its performance under the Panel or any Engagement is assessed as unsatisfactory in any respect, the Commonwealth may elect to:
 - (i) require the Contractor's Panel Manager to meet with the Commonwealth's Panel Manager at a time and location notified by the Commonwealth's Panel Manager in writing to discuss the Contractor's unsatisfactory performance (and any steps that the Contractor is taking or proposes to take to address its unsatisfactory performance); or
 - (ii) suspend or discontinue seeking tenders from the Contractor for future work.
- (b) If the Commonwealth elects, under paragraph (a), to suspend or discontinue seeking tenders from the Contractor:

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- (i) the Commonwealth will give the Contractor written notice of this decision, together with reasons; and
 - (ii) the Commonwealth may, in the notice under subparagraph (i), state the matters which the Contractor must address (to the satisfaction of the Commonwealth) before the Commonwealth will reconsider its decision.

2.7 Matters Affecting the Contractor

- (a) Without limiting the Panel Agreement, the Contractor must immediately, at any time during the Term, notify the Commonwealth of:
 - (i) any material changes to its legal name, size, structure, financial viability, financial standing or of any other fact, matter or thing which could:
 - A. adversely affect its ability to perform its obligations under this Panel Agreement or any Contract;
 - B. give rise to any actual or perceived conflict of interest under clause 6 (whether under the Panel Agreement or in respect of a specific Engagement); or
 - C. require any changes to or otherwise affect the arrangements under this Panel Agreement; and
 - (ii) where it submits a notice under subparagraph (i):
 - A. all steps necessary being taken to address the matters set out in the Contractor's notice; and
 - B. all other information required by the Commonwealth.
- (b) Whether following a notification by the Contractor under paragraph (a) or not, if the Commonwealth considers that a material change to the Contractor's legal name, size, structure, financial viability, financial standing or of any other fact, matter or thing may:
 - (i) adversely affect the Contractor's ability to perform its obligations under this Panel Agreement or under a Contract; or
 - (ii) give rise to an actual or perceived conflict of interest under clause 6 (whether under the Panel Agreement or in respect of a specific Engagement),and without limiting its other rights under this Panel Agreement or any Contract, it may elect to suspend or discontinue to seek tenders from the Contractor for future work.
- (c) If the Commonwealth elects to suspend or discontinue to seek tenders from the Contractor:
 - (i) the Commonwealth will give the Contractor written notice of this decision, together with reasons; and
 - (ii) the Commonwealth may, in the notice under subparagraph (i), state the matters which the Contractor must address (to the satisfaction of the Commonwealth) before the Commonwealth will reconsider its decision.

2.8 Mandatory Training

- (a) The Contractor (including, as a minimum, the Contractor's Panel Manager) must attend mandatory training either in person in Canberra or by webinar (or equivalent) as advised by the Commonwealth. This training will be held on a date or dates notified by the Commonwealth. The Contractor may also be required as part of any Engagement, and agrees, to attend a specific and separate training session in relation to the Works the subject of an Engagement.
- (b) The Contractor must bear its own costs and disbursements in connection with the training and will have no entitlement to claim from, or to be paid by, the Commonwealth for such costs or disbursements.

2.9 Other Commonwealth Agencies

The Contractor acknowledges that:

- (a) a copy of the Panel Agreement may be given to Other Commonwealth Agencies; and
- (b) an Other Commonwealth Agency may engage the Contractor to carry out the Works including through a process generally consistent with that set out in Section 3 of this Panel Agreement.

2.10 Deed of Guarantee and Undertaking

If the Panel Particulars include the name of a Related Body Corporate of the Contractor, then the Contractor acknowledges and agrees that the provision of a duly executed and binding deed of guarantee and undertaking in the form published on the Defence Website for the relevant form of contract applicable to that Engagement will be a condition of the Commonwealth entering into any Contract with the Contractor.

3. PERSONNEL

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

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

3.2 Contractor's Panel Manager

- (a) The Contractor's Panel Manager will act as the point of contact between the Commonwealth and the Contractor for the purposes of this Panel Agreement.
- (b) The Contractor must obtain the Commonwealth's prior written approval if it proposes to replace the Contractor's Panel Manager.
- (c) In seeking the Commonwealth's written approval for the replacement of the Contractor's Panel Manager under paragraph (b), the Contractor must:
 - (i) provide a written request to the Commonwealth's Panel Manager which must include a curriculum vitae for the proposed replacement setting out details of their experience, ability and expertise;
 - (ii) if requested by the Commonwealth's Panel Manager, arrange for the proposed replacement to attend an interview with the Commonwealth's Panel Manager to enable the Commonwealth's Panel Manager to determine their suitability; and
 - (iii) provide a written undertaking to the Commonwealth's Panel Manager that the proposed Contractor's Panel Manager has been fully informed of the Contractor's Panel Manager's responsibilities and the Contractor's obligations under this Panel Agreement.

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- (d) The Contractor's Panel Manager is responsible for, at a minimum:
- (i) keeping the Contractor's personnel fully and regularly informed of the Commonwealth's business and its support and service requirements;
 - (ii) keeping the Commonwealth fully and regularly informed on issues which affect the Commonwealth's activities with respect to the Works and the Panel, including all matters affecting the Contractor described in clause 2.7;
 - (iii) ensuring that the most appropriate, experienced and suitably qualified personnel are allocated to the Works for each Engagement;
 - (iv) ensuring that the Contractor complies with its quality obligations under the Panel Agreement and in respect of any Engagement;
 - (v) ensuring that the Contractor performs its obligations under the Panel Agreement and in respect of any Engagement in a timely and responsive manner;
 - (vi) participating in and carrying out all activities required by the Commonwealth in assessing the Contractor's performance at a Panel and Engagement level;
 - (vii) ensuring that the Commonwealth's business and its support and service requirements are:
 - A. regularly (no less than every 6 months) communicated to its personnel; and
 - B. understood and delivered by the Contractor in a timely and effective manner and in accordance with the requirements of the Panel Agreement;
 - (viii) working with the Commonwealth's Panel Manager to resolve issues affecting the relationship between the Commonwealth and the Contractor, including ensuring timely responses;
 - (ix) addressing any performance issues in relation to any Engagement including any performance arising from any non-complying or defective Works; and
 - (x) otherwise generally doing all things reasonably necessary to establish, maintain and enhance a collaborative relationship between the Commonwealth and the Contractor.
- (e) Notwithstanding paragraphs (b) and (c), the Contractor must ensure that at all times its Contractor's Panel Manager has the necessary authority, capability and capacity to perform the roles set out in paragraph (d).
- (f) Without limiting clause 7, the Contractor must ensure that at all times during the Term it performs and otherwise fulfils the promises, undertakings and representations it made in its submission for inclusion on the Panel with respect to the role of its Contractor's Panel Manager including in respect of its approach to quality, reporting and meetings.

3.3 Maintenance of resourcing

Without limiting any other clause of the Panel Conditions:

- (a) the Contractor must:
- (i) ensure that for the duration of the Term it retains at all times sufficient appropriate, experienced and suitably qualified personnel with the capability to tender for and carry out the activities contemplated by the Scope of Works;
 - (ii) take reasonable steps to enhance and maintain the skills of its personnel for the purpose of the Panel throughout the Term as necessary to ensure that it complies at all times with subparagraph (i), including training, internal communication and succession planning; and
 - (iii) if the Contractor cannot at all times comply with its obligations under subparagraph (i), the Contractor must:

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- A. immediately notify the Commonwealth's Panel Manager in writing; and
 - B. take all such reasonable steps (including those required by the Commonwealth's Panel Manager) to effect and maintain alternative arrangements to mitigate the risk to the Commonwealth of its failure to comply with its obligations in subparagraph (i); and
 - (b) if the Contractor fails to comply with its obligations in paragraph (a), then the Commonwealth may elect to suspend or discontinue seeking tenders from the Contractor for future work in accordance with clause 2.6.

3.4 Succession, internal communication and training

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

4. INSURANCE

4.1 Contractor Insurance Obligations

- (a) The Contractor acknowledges and agrees that:
 - (i) its obligations in respect of insurance will be set out in each Contract; and
 - (ii) it will be required under the applicable Contract to effect and maintain appropriate insurances having regard to the nature of the works comprising the Engagement informed by the Scope of Works, and which may, without limiting the terms of the Contract, include:
 - A. construction risks insurance;
 - B. public liability insurance;
 - C. workers compensation insurance;
 - D. employer's liability insurance; and
 - E. professional indemnity insurance,for the amounts of cover and on the terms set out in the applicable Contract.
- (b) The Contractor warrants that it has the capacity to:
 - (i) obtain the insurances referred to in paragraph (a)(ii); and
 - (ii) comply with any Statutory Requirements which require it to satisfy prescribed minimum insurance requirements, including for the purpose of holding any licence necessary to perform the Works.

5. SCHEDULE OF RATES

5.1 Role of Schedule of Rates

- (a) Subject to paragraph (b), the Schedule of Rates has the following roles:
 - (i) where the Contractor is engaged in accordance with the procedures set out in Section 3 of the Panel Agreement in whole or in part on a schedule of rates basis, the Schedule of Rates to the extent applicable and subject to the terms of the relevant Contract will apply;
 - (ii) where the Contractor is engaged on a phased basis, the Schedule of Rates may be taken into account in determining the adjustment (if any and subject to the terms of the relevant Contract) of the contract price for any subsequent phase;

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- (iii) the Schedule of Rates may, subject to the terms of the relevant Contract, be used for the valuation of any "Variation" under any Engagement; and
 - (iv) to the extent determined by the Commonwealth, as part of any value for money assessment of a tender.
 - (b) For the avoidance of doubt, where the Contractor is engaged under a lump sum basis in respect of any Engagement, that lump sum fee will not (unless elsewhere stated in the relevant Contract) be subject to rise and fall in costs.

5.2 Rise and Fall

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

5.3 Rates and Prices in the Schedule of Rates

- (a) The Contractor's Panel Manager may, within 30 days before or after each anniversary of the Base Date (and, after the expiry of the Term, for so long as the Contractor is performing the Works in respect of an Engagement), notify the Commonwealth's Panel Manager in writing of the adjustment to the rates and prices in the Schedule of Rates calculated in accordance with clause 5.2 for rise and fall (if any).
- (b) If the Contractor fails to notify the Commonwealth's Panel Manager of an adjustment to its rates and prices in the Schedule of Rates in accordance with paragraph (a):
 - (i) the Contractor will have no entitlement to an adjustment of the rates and prices in the Schedule of Rates for the relevant year; and
 - (ii) the previously notified and agreed rates and prices will apply.

Clause 5.3 will survive the expiry of the Term.

5.4 Escalation under a Contract

To the extent that the Contractor is entitled under a Contract to indexation or escalation of the labour component of the relevant contract price, the Contractor will not be entitled to apply any escalation determined under this clause 5 to such Contract so that there is no duplicate entitlement to escalation in respect of the same roles.

6. CONFLICT OF INTEREST

- (a) The Contractor warrants that:
 - (i) as at the Execution Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Panel Agreement;
 - (ii) it will ensure that no conflict of interest exists or is likely to arise at any time during the Term whether in performance of its obligations:
 - A. under this Panel Agreement;
 - B. in respect of any Engagement; or
 - C. otherwise in the performance of works for any third party;
 - (iii) if any such conflict of interest or risk of such conflict of interest arises, the Contractor will:
 - A. immediately notify the Commonwealth's Panel Manager in writing of the conflict or risk;
 - B. include in the notice provided to the Commonwealth's Panel Manager under subsubparagraph A details of the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and

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- C. take such steps as may be required by the Commonwealth to remove or minimise the conflict or risk of conflict; and
 - (iv) it will not submit a tender for any Engagement if the Contractor has a conflict of interest or if there is a risk of conflict of interest in respect of the Engagement.
 - (b) The Commonwealth's Panel Manager may, at any time during the Term, notify the Contractor in writing that it considers that an actual, potential or perceived conflict of interest has arisen between the interests of the Commonwealth and the Contractor in respect of the:
 - (i) Panel Agreement; or
 - (ii) any Engagement (including any tender submitted by the Contractor in respect of any Engagement).
 - (c) If a notice is given under paragraph (b), the Contractor must:
 - (i) immediately respond to the Commonwealth's Panel Manager in writing, providing details of:
 - A. the actual, potential or perceived conflict of interest identified in the Commonwealth's Panel Manager's notice; and
 - B. the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest; and
 - (ii) comply with any direction given by the Commonwealth's Panel Manager in relation to the actual, potential or perceived conflict of interest.
 - (d) Without limiting any other paragraph in this clause 6 or any relevant request for tender (or equivalent) issued under the Panel, the Commonwealth may exclude the Contractor from any engagement process under this Panel where the Commonwealth considers that:
 - (i) the Contractor has an actual, potential or perceived conflict of interest in respect of the relevant engagement process or Works; and
 - (ii) the actual, potential or perceived conflict of interest has not been or cannot be resolved to the satisfaction of the Commonwealth.

7. CONTRACTOR'S SUBMISSION

The Contractor:

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

8. QUALITY ASSURANCE

The Contractor:

- (a) must implement the quality assurance systems and process in its submission for inclusion on the Panel;
- (b) must allow the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth access to the quality assurance systems and process of the Contractor and its subcontractors so as to enable auditing or other monitoring;
- (c) will not be relieved from compliance with any of its Panel obligations or from any of its liabilities whether under the Panel Agreement, any Contract or otherwise according to law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Panel Agreement or any Contract;
 - (ii) any direction by the Commonwealth's Panel Manager concerning the Contractor's quality assurance systems and process or its compliance or non-compliance with the systems and process;
 - (iii) any audit or other monitoring by the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth of the Contractor's compliance with the quality assurance systems and process; or
 - (iv) any failure by the Commonwealth's Panel Manager, or anyone else acting on behalf of the Commonwealth, to detect:
 - A. all or any part of the Contractor's performance of its obligations under the Panel Agreement; or
 - B. any Works,which are not in accordance with the requirements of the Panel Agreement or any Contract (as the case may be), including where any such failure arises from any negligence on the part of the Commonwealth's Panel Manager or other person; and
- (d) must, if it receives a notice under a Contract from the Commonwealth in respect of non-complying or defective Works or any other failure in respect of the performance of the Contractor's obligations under any Contract:
 - (i) update its quality assurance systems and process to ensure that it is adequate to prevent a reoccurrence in that or similar Engagements; and
 - (ii) take any other steps necessary to avoid a reoccurrence in that or similar Engagements,and must upon request provide evidence of its compliance with subparagraphs (i) and (ii) to the Commonwealth's Panel Manager.

9. PERFORMANCE MANAGEMENT

- (a) The Contractor's Panel Manager must participate in performance management discussions with the Commonwealth as required by the Commonwealth's Panel Manager, which will:
 - (i) subject to subparagraph (iii), be held at a time and location required by the Commonwealth's Panel Manager and notified to the Contractor in writing;
 - (ii) be conducted using any system required by the Commonwealth's Panel Manager;
 - (iii) be conducted at not less than 12 monthly intervals; and
 - (iv) consider the Contractor's:
 - A. Panel-wide performance; and

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- B. individual Engagement level performance.
- (b) The Contractor must:
- (i) no later than four weeks before each performance management discussion conducted under paragraph (a), submit to the Commonwealth's Panel Manager such information as the Commonwealth's Panel Manager requires for the purpose of monitoring the Contractor's performance (at Panel-wide level and individual Engagement level) and for the purposes of conducting the performance management discussions under paragraph (a); and
 - (ii) in the event of any significant issue with respect to the performance of the Contractor (at Panel-wide level or at an individual Engagement level) immediately notify the Commonwealth's Panel Manager in writing, providing full details of:
 - A. the significant performance issue; and
 - B. the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of the significant performance issue.
- (c) Without limiting the Contractor's obligations under this Panel Agreement, under an Engagement or otherwise, the Contractor must:
- (i) ensure it maintains a consistently high standard of performance;
 - (ii) capture, manage and report on data regarding the Contractor's performance (including any processes and systems for managing performance);
 - (iii) report to the Commonwealth on its performance and management of performance issues that may arise from time to time (including the performance of its key personnel and subcontractors); and
 - (iv) ensure that it will otherwise meet the Commonwealth's requirements and best practice, under this Panel Agreement and in respect of each Engagement.

10. WORKPLACE RELATIONS AND WORK, HEALTH AND SAFETY

10.1 Compliance with WHS Legislation

Without limiting any other clause of this Panel Agreement or any Contract, the Contractor must comply with all Statutory Requirements relating to workplace relations including:

- (a) the *Fair Work Act 2009* (Cth);
- (b) the applicable WHS Legislation; and
- (c) all applicable workers compensation legislation.

10.2 WHS Accreditation Scheme

The Contractor must, at all times, during the period of its appointment to the Panel:

- (a) maintain accreditation;
- (b) comply with all conditions of accreditation; and
- (c) immediately notify the Commonwealth's Panel Manager in writing of any change to, or cessation of, its accreditation,

under the WHS Accreditation Scheme.

11. GENERAL

11.1 Governing Law

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

11.2 Authority to Act

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

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

12.1 General

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

- (a) publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of \$10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);
- (b) report and post on the internet a list of contracts valued at \$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
- (c) report and post on the internet information about its contracts in other ways pursuant to its other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.

12.2 Commercial-in-Confidence Information

- (a) Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Contractor's information described in the Panel Particulars and received from the Contractor (**Commercial-in-Confidence Information**).
- (b) The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
 - (i) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with this Panel Agreement;
 - (ii) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth's management, reporting or auditing requirements;
 - (iii) disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
 - (iv) disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;
 - (v) disclosed to any Commonwealth department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;
 - (vi) authorised or required by law to be disclosed; or
 - (vii) in the public domain otherwise than due to a breach of paragraph (a).

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- (c) The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Contractor as confidential in nature for the justifications given by the Contractor in the Panel Particulars and for the period asserted by the Contractor in the Panel Particulars.
 - (d) The Contractor:
 - (i) must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
 - (ii) acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

12.3 Joint and Several Liability

The Contractor acknowledges and agrees:

- (a) that the joint and several liability of each entity comprising the Contractor under any Contract, and the Contractor's obligations under this Panel Agreement and that Contract, will not be qualified or otherwise limited by any matter whatsoever including as a result of, and notwithstanding, the operation of any provision in any joint venture or other agreement between the entities comprising the Contractor entered into for the purposes of, or in any way in connection with, tendering for or performing its obligations under that Contract or the relationship between the Commonwealth and the Contractor established by it; and
- (b) that the Commonwealth has entered into this Panel Agreement in reliance upon the Contractor's acknowledgement and agreement in paragraph (a).

13. COMPLIANCE WITH GOVERNMENT POLICY

13.1 Generally

The Contractor:

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

13.2 Workplace Gender Equality

The Contractor must:

- (a) comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth);
- (b) provide a letter of compliance with the *Workplace Gender Equality Act 2012* (Cth) to the Commonwealth's Panel Manager 18 months from the Base Date and annually thereafter;
- (c) if it becomes non-compliant with the *Workplace Gender Equality Act 2012* (Cth) during the Term of this Panel Agreement, notify the Commonwealth's Panel Manager as soon as practicable after it becomes aware of such non-compliance; and
- (d) not enter into a subcontract made in connection with any Works with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

13.3 Defence's Security Alert System

- (a) The Contractor must be fully familiar with the requirements of Defence's Security Alert System as amended from time to time.

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

13.4 Fraud and Corruption Control

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

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

- (d) The Contractor's obligations under this clause 13.4 survive the termination or expiry of this Panel Agreement.

13.5 Modern Slavery

- (a) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with this Panel Agreement and any Contract, including in the operations and supply chains used in the performance of the Works.
- (b) The Contractor must ensure that all personnel responsible for managing the operations and supply chains used in the performance of the Works have undertaken suitable training to be able to identify and report Modern Slavery.
- (c) If at any time the Contractor becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the carrying out of the Works, the Contractor must:

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- (i) promptly notify the Commonwealth's Panel Manager of the Modern Slavery practices and provide any relevant information requested by the Commonwealth's Panel Manager;
 - (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 Panel Manager of the steps taken by it in accordance with subparagraph (ii).
- (d) For the purposes of this clause 13.5, **Modern Slavery** and **Modern Slavery Statement** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

13.6 Compliance with the Commonwealth Supplier Code of Conduct

- (a) For the purposes of this clause 13.6, **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 Contractor must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of the Panel Agreement and a Contract.
- (c) The Contractor must:
- (i) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (ii) on request from the Commonwealth's Panel Manager, promptly provide information regarding:
 - A. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
 - B. the Contractor's compliance with paragraph (b).
- (d) The Contractor must immediately notify the Commonwealth's Panel Manager in writing upon becoming aware of any breach of paragraph (b). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
- (e) Where the Commonwealth's Panel Manager identifies a possible breach of paragraph (b), it may notify the Contractor in writing, and the Contractor must, within three days of receiving the notice, either:
- (i) where the Contractor considers a breach has not occurred - advise the Commonwealth's Panel Manager that there has not been a breach and provide information supporting that determination; or
 - (ii) where the Contractor considers that a breach has occurred - notify the Commonwealth's Panel Manager under paragraph (d) and otherwise comply with its obligations under this clause 13.6.
- (f) Notwithstanding paragraph (e), the Commonwealth's Panel Manager may notify the Contractor in writing that it considers that the Contractor has breached paragraph (b), in which case the Contractor must notify the Commonwealth's Panel Manager in writing under paragraph (d) and otherwise comply with its obligations under this clause 13.6.
- (g) A failure by the Contractor to comply with its obligations under any part of this clause will be a breach of this clause 13.6.
- (h) Nothing in this clause or the Code limits, reduces or derogates from the Contractor's other obligations under the Panel Agreement or a 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 Panel Agreement or a Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Commonwealth.

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- (i) The Contractor acknowledges and agrees that the Commonwealth may take the Contractor's compliance with the Code into account in any engagement process under the Panel Agreement or in connection with any other Commonwealth project.

14. INFORMATION SECURITY

14.1 DISP Membership

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

14.2 Confidential Information and Information Security

- (a) The Contractor acknowledges and agrees that:
- (i) the Confidential Information is confidential to the Commonwealth and that any unauthorised use or disclosure of the Confidential Information may cause loss or damage to the Commonwealth; and
 - (ii) part of the Confidential Information may be Sensitive and Classified Information.
- (b) Except as expressly provided in this clause 14.2, the Contractor must:
- (i) hold the Confidential Information in strict confidence and must not disclose, use or deal with it or otherwise make it available to any person; and
 - (ii) ensure all Confidential Information is strictly kept secure and protected from all unauthorised access and use.
- (c) The Contractor may disclose Confidential Information where such disclosure is required by law provided that the Contractor:
- (i) only discloses such of the Confidential Information as is strictly required by law to be disclosed, including by taking all reasonable steps in consultation with the recipient (whether by agreed redaction or otherwise) to limit the Confidential Information which is disclosed;
 - (ii) where legally permitted to do so, immediately notifies the Commonwealth's Panel Manager in writing of such requirement and provides such details as would enable the Commonwealth to independently seek to protect the confidentiality of the Confidential Information; and
 - (iii) ensures that any recipient is made aware of the confidential status of the Confidential Information and takes all reasonable steps to obtain confidentiality undertakings from the recipient.
- (d) The Contractor may disclose the Confidential Information to:

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- (i) an employee, officer, agent, legal adviser, insurer, subcontractor or proposed subcontractor of the Contractor who needs to know the Confidential Information to enable the Contractor to perform its obligations under the Panel Agreement; and
 - (ii) such other persons, provided the Contractor has obtained the prior written approval of the Commonwealth's Panel Manager (including on such conditions as the Commonwealth's Panel Manager may impose),

provided that the Contractor must ensure that:

- (iii) all such persons strictly comply with equivalent obligations as are imposed on the Contractor by this clause 14 in respect of all Confidential Information disclosed to them; and
- (iv) in the case of disclosure to a subcontractor or proposed subcontractor in respect of any Engagement and prior to making any disclosure, the Contractor has entered into a written agreement with the relevant person, which:
 - A. imposes equivalent obligations as are imposed on the Contractor by this Panel Agreement in respect of all Confidential Information disclosed to them; and
 - B. is expressed to be made for the benefit of both the Contractor and the Commonwealth.
- (e) The Contractor must strictly comply with all:
 - (i) Information Security Requirements, including as set out in Control 10 of the DSPF; and
 - (ii) additional information security or confidentiality requirements notified by the Commonwealth's Panel Manager, including in respect of any Security or Confidentiality Incident.
- (f) Within such period as the Commonwealth's Panel Manager may direct, the Contractor must, in accordance with the other terms of the direction, provide:
 - (i) evidence of the Contractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 14; and
 - (ii) a statutory declaration in a form and from an authorised officer satisfactory to the Commonwealth (acting reasonably) in respect of the Contractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 14.

14.3 Security or Confidentiality Incidents

The Contractor must:

- (a) detect all actual or potential Security or Confidentiality Incidents;
- (b) immediately notify the Commonwealth's Panel Manager if it becomes aware of any actual or potential Security or Confidentiality Incident;
- (c) take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Security or Confidentiality Incident; and
- (d) take all other steps as may be notified by the Commonwealth's Panel Manager under clause 14.2(e)(ii) in respect of the Security or Confidentiality Incident or as necessary to comply with an Information Security Requirement.

14.4 Return and Retention of Confidential Information

- (a) Subject to paragraph (b), the Contractor must return to the Commonwealth or destroy all documents in its possession, power or control which contain any Confidential Information:

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- (i) in accordance with the Information Security Requirements; and
 - (ii) without limiting subparagraph (i), where the Confidential Information is no longer required for the purposes of the Panel Agreement or any Engagement.
 - (b) Subject to ongoing compliance with the other requirements of this clause 14 in respect of confidentiality and information security, the Contractor may retain Confidential Information in its records if retention is required to comply with the Information Security Requirements or any other Statutory Requirement, insurance obligation or otherwise with the prior written approval of the Commonwealth's Panel Manager (including on such conditions as the Commonwealth's Panel Manager may impose).
 - (c) If the Contractor is aware that documents containing the Confidential Information are beyond its possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and procure compliance by such persons with paragraphs (a) and (b) as applicable.

14.5 Release and Indemnity

The Contractor:

- (a) must bear, and releases the Commonwealth in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with a Security or Confidentiality Incident or the exercise of any of the Commonwealth Panel Manager's or the Commonwealth's absolute discretions under clause 14; and
- (b) 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 a Security or Confidentiality Incident.

15. STRATEGIC NOTICE EVENT

15.1 Contractor's Warranty on Execution Date

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

15.2 Contractor to Give Notice

If, at any time, the Contractor becomes aware of any Strategic Notice Event, the Contractor must, as soon as reasonably practicable, notify the Commonwealth's Panel Manager, providing details, to the extent such details are known by or reasonably available to the Contractor, of:

- (a) the Strategic Notice Event, including:
 - (i) whether the Contractor considers that it is a Material Change, Defence Strategic Interest Issue or a Significant Event;
 - (ii) the date or dates on or during which the Strategic Notice Event occurred and the date on which the Contractor became aware of the Strategic Notice Event; and
 - (iii) whether any of the Contractor's key people, other personnel engaged in connection with the Panel Agreement or any Engagement or any officers or employees of any subcontractors of the Contractor for any Engagement were involved; and
- (b) the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Strategic Notice Event on the interests of the Commonwealth.

15.3 Commonwealth Rights Upon Occurrence of Strategic Notice Event

- (a) Without limiting any other right or remedy of the Commonwealth (under the Panel Agreement or otherwise at law or in equity), if:

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- (i) the Contractor:
 - A. notifies the Commonwealth's Panel Manager under clause 15.2; or
 - B. has given a false warranty in any respect under clause 15.1 or has failed to strictly comply with clause 15; or
 - (ii) the Commonwealth otherwise considers that there exists (or is likely to exist) a Strategic Notice Event,

the Commonwealth's Panel Manager may do any one or more of the following:

- (iii) notify the Contractor that it is required to provide further information, documents or evidence in relation to, and otherwise clarify, the:
 - A. nature and extent of the Strategic Notice Event to the extent such information, documents or evidence are known or reasonably available to the Contractor; and
 - B. steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Strategic Notice Event on the interests of the Commonwealth,

within 3 business days of the request (or longer period agreed in writing by the Commonwealth's Panel Manager); and
- (iv) regardless of whether or not the Contractor has received a notice under subparagraph (iii), notify the Contractor that:
 - A. the Contractor may continue to perform its obligations under the Panel Agreement or any Contract, whether with or without such conditions as the Commonwealth thinks fit including the Contractor immediately:
 - 1) preparing and implementing a Strategic Notice Event Remediation Plan in accordance with clause 15.4; and
 - 2) completing, duly executing and returning a deed,

by the time and date specified in the notice, in each case in a form and on terms acceptable to the Commonwealth in its absolute discretion; or
 - B. the Commonwealth has elected to treat the Strategic Notice Event as an Insolvency Event for the purposes of clause 17 and (without limiting its other rights) terminate the Contractor's Panel Agreement under clause 17.
- (b) Without limiting any other provision of the Panel Agreement, if the Contractor is in breach of clause 15 then the Commonwealth's Panel Manager may notify the Contractor that the Commonwealth has elected to treat the Strategic Notice Event as an Insolvency Event for the purposes of clause 17 and (without limiting its other rights) immediately terminate the Contractor's Panel Agreement under clause 17.

15.4 Strategic Notice Event Remediation Plan

- (a) If notified by the Commonwealth's Panel Manager under clause 15.3(a)(iv)A.1), the Contractor must prepare and submit a draft Strategic Notice Event Remediation Plan to the Commonwealth's Panel Manager for approval within 10 business days of the Commonwealth's Panel Manager's notice (or longer period agreed in writing by the Commonwealth's Panel Manager).
- (b) A draft Strategic Notice Event Remediation Plan prepared by the Contractor under paragraph (a) must include the following information:
 - (i) how the Contractor will address the Strategic Notice Event in the context of the Panel Agreement and the Works, including confirmation that the implementation of the Strategic Notice Event Remediation Plan will not in any way impact on the performance of the Works

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- under any Contract or compliance by the Contractor with its other obligations under the Panel Agreement;
- (ii) how the Contractor will seek to ensure that any events of a similar nature to the Strategic Notice Event do not occur again;
 - (iii) if the Strategic Notice Event involves a Material Change, how the Material Change will impact the Contractor's original agreement with the Commonwealth; and
 - (iv) any other matter reasonably requested by the Commonwealth's Panel Manager.
- (c) The Commonwealth's Panel Manager will review the draft Strategic Notice Event Remediation Plan and either approve it or provide the Contractor with the details of any changes that are required. The Contractor must make any changes reasonably requested by the Commonwealth's Panel Manager and resubmit the draft Strategic Notice Event Remediation Plan to the Commonwealth's Panel Manager within 3 business days of the request (or longer period agreed in writing by the Commonwealth's Panel Manager). This paragraph (c) will apply to any resubmitted draft Strategic Notice Event Remediation Plan.
- (d) Without limiting its other obligations under the Panel Agreement, the Contractor must:
- (i) comply with each Strategic Notice Event Remediation Plan as approved by the Commonwealth's Panel Manager; and
 - (ii) provide such reports and other information about the Contractor's progress in implementing the Strategic Notice Event Remediation Plan as reasonably requested by the Commonwealth's Panel Manager.

15.5 Financial Viability Assessment

- (a) Where the Contractor gives a notice under clause 2.7 or clause 15.3(a)(i) or (ii) applies and the relevant notice or Strategic Notice Event (as the case may be) relates to the Contractor's financial viability, the Commonwealth may (in its absolute discretion) procure a Financial Viability Assessment in respect of the Contractor.
- (b) The Contractor must ensure that it co-operates with and does everything necessary to assist the Commonwealth and any third party engaged by the Commonwealth in undertaking the Financial Viability Assessment.
- (c) The Commonwealth may, but is under no obligation to, consider and rely upon any outcome of the Financial Viability Assessment in exercising its rights and discretions under clause 2.7 or this clause 15.

15.6 Release

The Contractor must bear, and releases the Commonwealth in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the Strategic Notice Event or the exercise of any of the Commonwealth's Panel Manager's or the Commonwealth's absolute discretions under clause 15.

15.7 Contractor's Compliance

- (a) Nothing in this clause 15 requires the Contractor to act in any manner or disclose any information which would:
 - (i) breach an obligation of confidentiality that existed prior to the date the Strategic Notice Event occurred, that is owed to an unrelated third party;
 - (ii) cause the Contractor to breach any law or regulation or contractual obligation regarding privacy or security (in Australia or outside of Australia);
 - (iii) have the effect of waiving legal professional privilege (or any equivalent privilege in Australia or outside of Australia) in relation to the information; or

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- (iv) breach the rules of a stock exchange or any similar body on which the Contractor, or any Related Body Corporate of the Contractor, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Contractor must disclose the information to the Commonwealth's Panel Manager promptly after disclosure is made to the stock exchange or body.
 - (b) Notwithstanding any restriction that may apply in respect of specific information, such as that described in paragraph (a), the Contractor must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 15 is achieved.

16. ACCESS TO PROJECT DOCUMENTS

The Contractor must:

- (a) at the request of the Commonwealth's Panel Manager, at any time during the Term and for the period of 10 years following the end of the Term, provide and make available:
 - (i) the Project Documents immediately for inspection and copying by the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth;
 - (ii) such copies of the Project Documents as the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth may require, in such formats as may be required;
 - (iii) all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth, including to identify the amounts being (or proposed to be) incurred or expended by the Contractor in performing the Works under any Engagement; and
 - (iv) any officers, employees, agents or subcontractors for interviews with the Commonwealth's Panel Manager or anyone else acting on behalf of the Commonwealth;
- (b) within the time required by the Commonwealth's Panel Manager prior to the end of the Term, deliver to the Commonwealth's Panel Manager a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Works, in a storage medium reasonably satisfactory to the Commonwealth, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that it maintains copies of all Project Documents in such a manner as to enable convenient and efficient review by the Commonwealth when required.

17. TERMINATION FOR INSOLVENCY OR BREACH

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

- (a) suffers an Insolvency Event;
- (b) fails to comply with clause 14; or
- (c) is in breach of any other clause of this Panel Agreement, and such breach remains unremedied after the Commonwealth has given not less than 7 days notice to remedy such breach,

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

18. GENERAL

18.1 Privacy

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

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- (ii) comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of this Panel Agreement, as if it were an agency as defined in the Privacy Act;
 - (iii) use Personal Information received, created or held by the Contractor for the purposes of this Panel Agreement only for the purposes of fulfilling its obligations under this Panel Agreement;
 - (iv) not disclose Personal Information received, created or held by the Contractor for the purposes of this Panel Agreement without the prior written approval of the Commonwealth's Panel Manager;
 - (v) not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor for the purposes of this Panel Agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Commonwealth's Panel Manager;
 - (vi) co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Commonwealth's Panel Manager in relation to the management of Personal Information in connection with this Panel Agreement;
 - (vii) ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of this Panel Agreement is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
 - (viii) comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
 - (ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of this Panel Agreement are, at the expiration or earlier termination of the Contractor's Panel Agreement, at the Commonwealth's Panel Manager's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Commonwealth's Panel Manager to oversee such deletion or destruction;
 - (x) agree to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;
 - (xi) ensure that any subcontract made in connection with this Panel Agreement or any Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 18.1, as if the subcontractor were the Contractor;
 - (xii) enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Commonwealth's Panel Manager may give;
 - (xiii) not use Personal Information collected by the Contractor in connection with the Panel Agreement for, or in any way relating to, any direct marketing purpose; and
 - (xiv) indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - A. a breach of the obligations of the Contractor under clause 18.1;
 - B. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held in connection with this Panel Agreement by the Contractor or a subcontractor; or

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- D. the disclosure of Personal Information held in connection with this Panel Agreement by the Contractor or a subcontractor in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of, or in any way in connection with, a breach of clause 18.1 by the Contractor.
- (c) The Contractor must immediately notify the Commonwealth in writing if the Contractor:
- (i) becomes aware of a breach of the obligations under clause 18.1 by itself or by a subcontractor;
 - (ii) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Contractor acknowledges that, in addition to the requirements of clause 18.1, the Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
- (e) Nothing in clause 18.1 limits any of the Contractor's other obligations or liabilities under the Panel Agreement.
- (f) In clause 18.1, **received** includes collected.

18.2 Freedom of Information

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

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

18.3 Long Service Leave

This clause 18.3 only applies if the Long Service Leave Legislation applies to the Works.

- (a) Without limiting its other obligations or liabilities under this Panel Agreement or otherwise, the Contractor must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by the Long Service Leave Legislation, the Contractor must pay any levy, charge, contribution or associated amount in respect of the Works.
- (c) The Contractor will have no Claim against the Commonwealth arising out of or in connection with its obligations under this clause 18.3 or any other obligation under the Long Service Leave Legislation.

18.4 Assignment

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

18.5 Publicity

- (a) Without limiting clause 14, the Contractor must:
- (i) not furnish any information or issue any document or other written or printed material arising out of or in connection with the Panel, this Panel Agreement, the Works or any Engagement for publication in the media or on social media without the prior written approval of the Commonwealth's Panel Manager; and
 - (ii) refer any enquiries from the media arising out of or in connection with the Panel, this Panel Agreement, the Works or any Engagement to the Commonwealth's Panel Manager.
- (b) If the Commonwealth considers that the Contractor has failed to comply with the requirements of this clause 18.5, the Commonwealth may exercise its rights under clause 2.6.

19. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

- (a) As at the Execution Date, the Contractor is a Reporting Entity if so specified in the Panel Particulars for the purposes of the Payment Times Procurement Connected Policy.
- (b) If, during the Term, the Contractor becomes a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy, then it must promptly give notice of this to the Commonwealth's Panel Manager and thereafter comply with the requirements of the Payment Times Procurement Connected Policy in respect of each Engagement as set out in the applicable Contract.

20. SHADOW ECONOMY PROCUREMENT CONNECTED POLICY

- (a) The Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontractor) if the total value of all work under the subcontract is expected to exceed \$4 million (inclusive of GST) unless the Contractor has obtained and holds the STRs required for the relevant subcontractor's entity type referred to in the table below.

If the subcontractor to enter into the subcontract is:	STRs required:
a. a body corporate or natural person	a valid and satisfactory STR in respect of that body corporate or person.
b. a partner acting for and on behalf of a partnership	a valid and satisfactory STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the subcontract.
c. a trustee acting in its capacity as trustee of an Australian trust	a valid and satisfactory STR in respect of the: (i) trustee; and (ii) Australian trust.
d. a trustee acting in its capacity as trustee of a foreign trust without an Australian tax record of at least 4 years	a valid and satisfactory STR in respect of the: (i) trustee; and (ii) foreign trust.
e. a joint venture participant	a valid and satisfactory STR in respect of:

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

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

If the Contractor or subcontractor is:	Additional STRs required arising from changed circumstance:
a. a partner acting for and on behalf of a partnership	a valid and satisfactory STR in respect of any additional partner that becomes directly involved in the delivery of a Contract or subcontract (as applicable).
b. a trustee acting in its capacity as trustee of an Australian or foreign trust	a valid and satisfactory STR in respect of any new trustee appointed to the trust.
c. a joint venture participant	a valid and satisfactory STR in respect of any new: (i) participant in the joint venture; and (ii) joint venture operator if the new operator is not already a participant in the joint venture.
d. a member or head company of a Consolidated Group	a valid and satisfactory STR in respect of any new head company of the Consolidated Group.
e. a member of a GST Group	a valid and satisfactory STR in respect of any new representative for the GST Group.

- (c) The Contractor must provide the Commonwealth's Panel Manager with copies of the STRs referred to in paragraph (a) or (b) within 5 business days after a written request by the Commonwealth's Panel Manager.

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- (d) The Contractor:
- (i) warrants that at the Execution Date and on the date of each Contract it holds all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy;
 - (ii) must hold all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy at all times during the Term (and, after the expiry of the Term, for so long as the Contractor is performing the Works in respect of an Engagement) and, on request by the Commonwealth's Panel Manager, provide to the Commonwealth's Panel Manager a copy of any such STR;
 - (iii) must ensure that any subcontractor, if the total value of all work under the subcontract is expected to exceed \$4 million (inclusive of GST), holds all valid and satisfactory STRs required for its entity type at all times during the term of the relevant subcontract; and
 - (iv) must obtain and retain a copy of any STR held by any subcontractor in accordance with subparagraph (iii) and must, on request by the Commonwealth's Panel Manager, provide to the Commonwealth's Panel Manager a copy of any such STR.
- (e) For the purposes of the Contract, an STR is taken to be:
- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
 - (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

APPENDIX 1 - PANEL PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS

Base Date: 1 July 2025
(Clause 1)

Contractor:
(Clause 1)

Contractor's Panel Manager:
(Clause 1)

Name:
Phone:
Email:

CLAUSE 2 - NATURE OF PANEL AGREEMENT

Appointment Jurisdictions:
(Clause 2.2)

☐ ACT	☐ NT	☐ QLD
☐ NSW	☐ SA	☐ VIC
☐ WA	☐ TAS	☐ All Australian states and territories

Deed of Guarantee and Undertaking – Related Body Corporate:
(Clause 2.10)

CLAUSE 11 - COMMERCIAL-IN-CONFIDENCE INFORMATION

Information which is Commercial-in-Confidence Information: (Clause 12.2)	Specific information	Justification (Confidentiality Test)	Period of Confidentiality
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CLAUSE 19 - PAYMENT TIMES PROCUREMENT CONNECTED POLICY

Reporting Entity: The Contractor **[is/is not]** a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy.
(Clause 19(a))

APPENDIX 2 - SCHEDULE OF RATES

1. Hourly and daily rates

The hourly and daily rates set out below.

DIP-MC - Rates as at the Execution Date:

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

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

2. Price Revision Formula

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

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

Where:

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

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

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

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

Price Revision Index is the index set out below:

Description of Index	Table	Group
ABS Catalogue 6345.0 Wage Price Indexes	Table 5b - Total Hourly Rates of Pay excluding Bonuses (Series ID A2603019J)	Private Sector - Construction

- (c) If the Price Revision Index described in paragraph (b) above is no longer published, the Commonwealth will apply the index which provides the most similar calculation as determined by the Commonwealth's Panel Manager (acting reasonably).

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- (d) For the avoidance of doubt, the Contractor's Panel Manager, in accordance with clause 5.3 of the Panel Conditions, may notify the Commonwealth's Panel Manager in writing of the adjustment to the rates and prices in this Schedules of Rates after the expiry of the Term, for so long as the Contractor is performing the Works in respect of an Engagement.

SECTION 3

ENGAGEMENT PROCESS

DESCRIPTION OF ENGAGEMENT PROCESS

1. Engagement Process

- (a) Without limiting clause 2.3 of this Panel Agreement, as and when Works are required to be performed by a Panel Contractor, the engagement process is anticipated to be generally as set out in this Section 3 (**Engagement Process**) but the Commonwealth may vary the process as set out in this Section 3 or elect to use a different process.
- (b) The Engagement Process may include the following:
 - (i) the Commonwealth may request one or more Panel Contractor(s) to confirm promptly in writing whether or not the Panel Contractor(s) intends to submit a tender in response to the Commonwealth's request for tender (which may be titled an "expression of interest");
 - (ii) the Commonwealth will generally conduct a single stage procurement process by sending a request for tender to one or more Panel Contractor(s) which will include the applicable request for tender and the proposed Contract;
 - (iii) each Panel Contractor who receives a request for tender must:
 - A. provide a tender, which (provided that it complies with any conforming tender requirements specified in the request) will be evaluated; or
 - B. if the Commonwealth has not made a request in accordance with subparagraph (i), submit a written response promptly after receiving the Commonwealth's request declining to provide a tender;
 - (iv) the Panel Contractor may be informed (without the Commonwealth accepting, or being taken to have accepted, the tender) that the Commonwealth will negotiate certain or all aspects of the Panel Contractor's tender (such negotiations may be subject to satisfaction of certain conditions as stated, including the execution of a negotiation protocol setting out the basis on which the Commonwealth will negotiate with the Panel Contractor);
 - (v) if the original or revised tender is accepted, then the Commonwealth and the successful Panel Contractor will complete and execute the contract attached to the request for tender;
 - (vi) if the original or revised tender is not accepted, then a notice will be issued to the unsuccessful Panel Contractor; and
 - (vii) the successful and unsuccessful Panel Contractor(s) will be offered the opportunity to participate in a debrief.

2. Role of the Scope of Works

- (a) The Scope of Works attached to this Panel Agreement:
 - (i) is indicative of the type of Works that the Commonwealth anticipates it will procure under the Panel Agreement;
 - (ii) does not limit the basis and terms on which the Commonwealth may elect to finance, procure and deliver Works under the Panel; and
 - (iii) may be amended by the Commonwealth from time to time in order to reflect changes in Statutory Requirements and its evolving requirements in relation to the procurement and delivery of Works under the Panel.
- (b) Where any Engagement is for any Other Commonwealth Agency and the Scope of Works refers to Defence policies, standards, practices, Statutory Requirements or other Defence

specific requirements, the Scope of Works may be amended to apply to the Other Commonwealth Agency and its relevant policies, standards, practices, or other requirements.

- (c) Nothing in the Scope of Works will be taken to limit or otherwise affect the Panel Contractor's obligations or liabilities under the Panel Agreement or any Contract.



Australian Government
Department of Defence
Security and Estate Group

SECTION 4

SCOPE OF WORKS

SCOPE OF WORKS - DEFENCE INFRASTRUCTURE PANEL - MAJOR CONSTRUCTION 2025 - 2030

1. Work the subject of the Panel

Panel Contractors will be engaged under the Panel to deliver major construction and capital facilities projects and carry out related activities. The projects to be delivered under the Panel will:

- (a) generally (but need not) constitute a "work" as defined in the *Public Works Committee Act 1969* (Cth);
- (b) be carried out within Australia; and
- (c) be valued at or above \$200 million (exclusive of GST), with the average value of projects anticipated to be between \$200 million (exclusive of GST) and \$600 million (exclusive of GST).

To the extent that the Department of Defence is the procuring agency, the types of projects which are anticipated to be delivered under the Panel include those relating to airfields, heavy civil, fuel infrastructure, UXO remediation, environmental remediation, marine, engineering services and utilities and explosive ordnance.

2. Delivery Methods

Panel Contractors may be engaged under any delivery method specified by the relevant Contract. Such delivery methods may include the following:

Construct only

A construct only model is used for the engagement of a contractor for the delivery component of a project only. The principal will provide the design and the contractor is engaged to construct the project in accordance with that design. A construct only contract is predicated on the contractor being provided with a fully documented design at the time of tender with no further design work needed except for shop drawings, the documentation of any variations and any design for provisional sum work.

Design and construct

A design and construct model is used for the engagement of a contractor to design and construct the project so as to meet the needs of the principal. A works description or design documentation may include some basic or incomplete designs and specifications which the contractor will be required to complete.

Document and construct

A document and construct model is used where the principal has commenced (and possibly advanced) the design of the project, usually through the engagement of design consultants. The contractor will then take over the design (and will usually have the design consultants novated to it) and so bears single line responsibility to the principal for design in a similar manner to a design and construct contractor.

Early contractor involvement (whether construct only or design and construct)

The early contractor involvement (ECI) model is used for the engagement of a design services consultant and one or more head contractors in the planning or design phase of a project.

Under this delivery model, the Commonwealth enters into separate contractual arrangements during the planning phase with the ECI contractors. Subcontractors and subconsultants may also be engaged to provide input into the preparation and finalisation of the design.

The planning phase contract is the first of a 2 phase contract engagement on the project for the head contractor. The contractor may be engaged for the construction phase under a delivery phase lump sum contract. This is subject to the terms of the planning phase contract.

Managing contractor (whether single or two phase)

The managing contractor model provides for the involvement of a contractor at an early stage of the project.

The contractor is primarily responsible for the planning, design and delivery of the project, including the engagement of approved subcontractors for major works, medium works and design services.

The contract price comprises both lump sum components and reimbursable costs. The contractor has an obligation to ensure the contract price does not exceed the target cost and to achieve completion of the works by the specified target dates.

3. Forms of Contract

Panel Contractors may be engaged under varying forms of contract as specified by the Department of Defence or an Other Commonwealth Agency (as applicable) for the purposes of an Engagement and having regard to the specific circumstances of that Engagement.

To the extent that the Department of Defence is the procuring agency:

- (a) it is anticipated that the relevant Contract will be based upon the contract templates available on the Defence website including, but not limited to, the Defence Head Contract (including construct only, design and construct and document and construct), the Defence Early Contractor Involvement Head Contract – Two Contractor Planning Phase Approach and the Defence Managing Contractor Contract; and
- (b) the Department of Defence may, but is not required to, elect to engage an external service provider to act as project manager and also contract administrator.

4. Minimum Requirements

The specific requirements for the Works will be set out in the relevant Contract. However, it is anticipated that as a minimum the relevant Contract will require compliance with:

- (a) applicable Government policy (including any reporting requirements) including the Defence Policy for Industry Participation (in the case of the Department of Defence), the Australian Industry Participation policy, the Indigenous Procurement Policy, the WHS Accreditation Scheme, the Shadow Economy Procurement Connected Policy, the Workplace Gender Equality Procurement Principles, the Payment Times Procurement Connected Policy, the Commonwealth Supplier Code of Conduct, the Environmentally Sustainable Procurement Policy and the Australian Skills Guarantee Procurement Connected Policy;
- (b) applicable Statutory Requirements;
- (c) applicable technical standards and requirements including Australian Standards, the Building Code of Australia and the National Construction Code;
- (d) minimum standards relating to quality, including in respect of the integration of the quality assurance systems and processes implemented for an Engagement by the Panel Contractor with that established by the Panel Contractor under the Panel Agreement;
- (e) requirements in relation to information security, including (where the Department of Defence is the procuring agency) in respect of the Defence Industry Security Program;

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- (f) requirements in relation to insurances; and
 - (g) requirements in relation to the provision of security.

The Panel Contractor will be expected to maintain an ability to readily source expert subcontractors, including in the specific areas noted in clause 1 above.

Further information relating to the Indigenous Procurement Policy, the Defence Policy for Industry Participation (in the case of the Department of Defence), the Environmentally Sustainable Procurement Policy and the Australian Skills Guarantee Procurement Connected Policy is set out in clauses 5 to 8 below respectively.

5. Indigenous Procurement Policy

Further to clause 4(a) above, the Indigenous Procurement Policy (available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>) seeks to stimulate Indigenous entrepreneurship and business development and provide Indigenous Australians with more opportunities to participate in the economy. More information on Indigenous Enterprises (as defined in the Indigenous Procurement Policy) is available at www.supplynation.org.au and in the Indigenous Procurement Policy.

6. Defence Policy for Industry Participation

Further to clause 4(a) above, local industry participation is an expected outcome of Commonwealth expenditure. This expectancy builds on the Commonwealth Procurement Rules, which require procurement practices that do not unfairly discriminate against Small and Medium Enterprises (SMEs) and provide appropriate opportunities for SMEs to compete for Commonwealth funded work. Panel Contractors are also referred to the Defence Policy for Industry Participation (available at <https://www.defence.gov.au/business-industry/programs/defence-policy-industry-participation>).

7. Environmentally Sustainable Procurement Policy

Further to clause 4(a) above, the Environmentally Sustainable Procurement Policy (available at www.dcceew.gov.au/sustainable-procurement) seeks to reduce the environmental impact of Australian Government procurements and support Australia's transition to a net zero, circular economy. More information on the Environmentally Sustainable Procurement Policy is available at www.dcceew.gov.au/sustainable-procurement.

8. Australian Skills Guarantee Procurement Connected Policy

Further to clause 4(a) above, the Australian Skills Guarantee Procurement Connected Policy (available at <https://www.dewr.gov.au/australian-skills-guarantee>) seeks to address gender segregation and acute skills shortages by introducing the Australian Skills Guarantee Targets (as defined in the Australian Skills Guarantee Procurement Connected Policy).

9. Related Goods and Services

As part of undertaking the activities forming part of an Engagement, Panel Contractors may be required to:

- (a) undertake design, programming and cost planning;
- (b) develop project plans, drawings, operations and maintenance manuals and other documentation;
- (c) participate in early contractor involvement processes;
- (d) undertake stakeholder consultation;

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- (e) provide support in connection with obtaining Government and other approvals;
 - (f) engage specialist subcontractors, including in accordance with any process prescribed in the relevant Contract; and
 - (g) participate in project reporting and governance activities.