



Australian Government

Defence

SECTION 4B TERMS OF ENGAGEMENT CONTAMINATION REMEDIATION WORKS AND UNEXPLODED ORDNANCE REMEDIATION

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

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



Australian Government

Defence

GENERAL REMEDIATION CONTRACT

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TERMS OF ENGAGEMENT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

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

Abandoned Explosive Ordnance

Means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned Explosive Ordnance may or may not have been primed, fuzed, armed or otherwise prepared for use.

Accredited Environmental Site Auditor

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

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

Accredited Environmental Site Auditor's Functions

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

ACM

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

Act of Prevention

Any one of:

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

but excluding any act or omission of any person specified in paragraph (b) in accordance with or otherwise permitted by the Contract.

Apprentice

A person (also known as a trainee or an Australian apprentice) who is:

- (a) employed under a Training Contract which has been registered with, and validated by, the relevant State or Territory Training Authority;

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- (b) undertaking paid work and structured training which comprises both on and off the job training;
 - (c) undertaking a negotiated training program that involves obtaining a nationally recognised qualification; and
 - (d) either directly employed by the Contractor or its subcontractors or indirectly employed through a Group Training Organisation to work on the Contractor's Activities or the Remediation Works.

Approval

Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Contractor's Activities or the Remediation Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:

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

Approved Security

An unconditional undertaking (duly stamped) in the form set out in the Schedule of Collateral Documents and otherwise on terms and given by a financial institution (including an Australian Prudential Regulation Authority-regulated insurer) approved by the Commonwealth.

Asbestos

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

Asbestos Management Plan

The Security and Estate Group Asbestos Management Plan (including Annex A – Asbestos in Soils and Surface Contamination) dated 1 September 2025, available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/security-and-estate-asbestos-management-plan>, as amended or replaced from time to time.

Asbestos Related Activities

Any activity relating to Asbestos, including the:

- (a) management, handling, removal of Asbestos;
- (b) disposal of Asbestos, whether on or off Site; or
- (c) remediation of an Asbestos affected area including the enclosure or sealing of an affected area.

Australian Government Information Security Manual

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

Australian Government Personnel Security Management Protocol

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

Australian Government Physical Security Management Protocol

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

Australian Government Protective Security Policy Framework

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

Australian Privacy Principle

Has the meaning given in the Privacy Act.

Australian Skills Guarantee Procurement Connected Policy

The Australian Skills Guarantee Procurement Connected Policy available at <https://www.dewr.gov.au/australian-skills-guarantee>, as amended from time to time.

Award Date

The date specified in the Contract Particulars.

Black Economy Procurement Connected Policy

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

Bond

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

Change of Control

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

Claim

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

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

Collateral Warranty

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

Commonwealth

Commonwealth of Australia.

Commonwealth Heritage Management Principles

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

Commonwealth Heritage Place

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

Commonwealth Heritage Values

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

Commonwealth Premises

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

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

Commonwealth Procurement Rules

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

Commonwealth Risk

Any one of:

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

Confidential Information

- (a) Means, subject to paragraph (b):
 - (i) the Contract;
 - (ii) the Project Documents;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way connected with the Contractor's Activities or the Remediation Works which:
 - A. by its nature is confidential;
 - B. the Contractor knows or ought to know is confidential; or
 - C. is the subject of a Separation Arrangement; and
 - (iv) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
- (b) Excludes any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which:
 - (i) is in the possession of the Contractor without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf;

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- (ii) is in the public domain otherwise than due to a breach of clause 18; or
 - (iii) has been independently developed or acquired by the Contractor.

Confidential Information Incident

A single breach or a series of breaches of clause 18, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security.

Confidential Information Security Event

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

Consolidated Group

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

Construction Risks Insurance

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

Contamination

The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

Contract

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

Contract Administrator

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

Contract Administrator's Office

The office provided by the Contractor pursuant to clause 8.22.

Contract Particulars

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

Contract Price

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

Contractor

The person specified in the Contract Particulars.

Contractor Estate Information Obligation

Means:

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- (a) the requirements set out in the Contract Particulars; and
 - (b) any task, function, requirement or obligation relating to the assessment, creation, recording, updating and management of Estate Information which a Defence Estate Information Management Requirement allocates, or would reasonably be inferred as allocating, to the Contractor including (as applicable to the Contractor's Activities) those allocated to a Data Supplier.

Contractor HOTO Obligation

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

Contractor's Activities

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

Contractor's Representative

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

Control

Includes:

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

Cyber Security Event

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

Cyber Security Incident

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

Dangerous Goods

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

Data Provision Checklist

The worksheets contained within the excel workbook titled "Data Provision Checklist" available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy>, as amended or replaced from time to time.

Data Supplier

Any person identified as a "Data Supplier" or "Estate Data Supplier" in the Defence Estate Information Management Requirements, including a contract administrator, designer, contractor, subcontractor or any person engaged by the Commonwealth to design, construct or otherwise provide services in relation to the Contractor's Activities or the Remediation Works.

Date for Remediation Completion

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

Date of Remediation Completion

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

Deed of Guarantee and Undertaking

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

Defence

Department of Defence.

Defence Asbestos Register

The document or documents specified in the Contract Particulars, as amended or replaced from time to time.

Defence Environmental Management System

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

Defence Environmental Plan

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

Defence Environmental Requirements

The Defence Environmental Management System and Defence Environmental Plan applicable to the Site, the Contractor's Activities or the Remediation Works, including any procedures, instructions, requirements and standing orders which have been developed or issued under the Defence Environmental Management System or Defence Environmental Plan.

Defence Estate

The properties owned, leased or otherwise occupied by the Commonwealth from time to time.

Defence Estate Information Management Requirements

The requirements published on the Defence Website in respect of the assessment, creation, recording, updating and management of Estate Information (and whether referred to as "Estate Information", "Estate Data", "GEMS" or otherwise), including:

- (a) the documents set out at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy>;
- (b) any requirements contained in:
 - (i) GEMS; and
 - (ii) the Spatial Data Management Plan; and

-
- (c) any other requirement published on the Defence Website relating to the assessment, creation, recording, updating and management of Estate Information,

each as amended or replaced from time to time.

Defence Requirements

Includes all policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Defence requirements which are, or may become, applicable to the Site, the Contractor's Activities or the Remediation Works.

Defence Security Principles Framework

The Defence Security Principles Framework dated 19 July 2024 available at <https://www.defence.gov.au/business-industry/industry-governance/defence-security-principles-framework>, as amended from time to time.

Defence Strategic Interest Issue

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

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

Defence Website

The website available at www.defence.gov.au/ or such alternative location as notified by the Contract Administrator.

direction

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

Discarded Military Munitions

Means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal.

DISP

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

Employers' Liability Insurance

A policy of insurance covering the liability of the Contractor to its employees at common law for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Engagement

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

Environment

Includes:

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

Environmental Clearance Certificate

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

Environmental Consultant

The person specified in the Contract Particulars.

Environmental Consultant's Functions

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

Environmental Consultant's Representative

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

Environmental Harm

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

Environmental Incident

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

Environmental Management and Sustainability Plan

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

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

The Environmental Management and Sustainability Plan must address, at a minimum:

- (c) all Environmental Requirements;
- (d) without limiting paragraph (a), all Statutory Requirements;
- (e) all Environmental Objectives;
- (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's key people under clause 3.6) regarding the Environment;

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- (g) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the Environment during the Contractor's Activities and the Remediation Works;
 - (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding the Environment;
 - (i) the procedure for preparing (including tailoring) and finalising the Environmental Management and Sustainability Plan under clause 7.7;
 - (j) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Remediation Works;
 - (k) the procedure for regularly reviewing, updating and amending the Environmental Management and Sustainability Plan under clause 7.7 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on Commonwealth property or the Site during the Contractor's Activities and the Remediation Works);
 - (l) the procedure for ensuring subcontractor compliance with the Environmental Management and Sustainability Plan;
 - (m) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Environmental Management and Sustainability Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Remediation Works;
 - (n) the procedure and approach to ensure the alignment of the Environmental Management and Sustainability Plan with other Project Plans, including the Work Health and Safety Plan and the Site Management Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
 - (o) all matters in the Smart Infrastructure Handbook and the Sustainable Procurement Guide;
 - (p) the additional matters specified in the Contract Particulars; and
 - (q) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Environmental Objectives

The following objectives:

- (a) to encourage best practice environmental management through the planning, development, implementation and continuous improvement of environmental management procedures during the Contractor's Activities and the Remediation Works;
- (b) to prevent and minimise adverse impacts on the Environment;
- (c) to ensure that no hazardous substance is stored on Commonwealth land without Approval;

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- (d) to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
 - (e) the additional objectives specified in the Contract Particulars.

Environmental Requirements

Includes the:

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

EPBC Act

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

Environmentally Sustainable Procurement Policy

The Environmentally Sustainable Procurement Policy July 2024 available at www.dcceew.gov.au/sustainable-procurement, as amended from time to time.

Errors and Omissions Insurance

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

ESP Policy Reporting Template

Means the relevant Environmentally Sustainable Procurement Policy template available at <https://www.dcceew.gov.au/environment/protection/waste/sustainable-procurement/toolkit>.

Estate Information

Information and data created in connection with and relating to the Contractor's Activities and that part of the Defence Estate upon which they are carried out.

Estate Information Provision Plan

The plan prepared by the Contractor and finalised under clause 7.7 in accordance with and for the purposes of the Defence Estate Information Management Requirements (and whether referred to as the "Data Provision Plan", "Estate Information Provision Plan" or otherwise), which must:

- (a) set out in adequate detail all procedures the Contractor will implement to manage the assessment, provision, creation, recording and updating of Estate Information in accordance with this Contract;
- (b) be prepared in accordance with the Data Provision Checklist;
- (c) meet all applicable Defence Estate Information Management Requirements;
- (d) meet all applicable HOTO Requirements;
- (e) include a program for the provision of all Estate Information in accordance with the Contract, including to provide for the deliverables and timeframes as required by the Defence Estate Information Management Requirements and clause 12.24; and
- (f) include any other materials required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Executive Negotiators

The representatives of the parties specified in the Contract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Expert Determination Agreement

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

Financial Representative

Means:

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

Fraud

Dishonestly obtaining (including attempting to obtain) a gain or benefit, or causing a loss or risk of loss, by deception or other means.

Furniture, Fittings and Equipment

Means operating assets that have no permanent connection to the structure of a building.

GEMS

The Garrison and Estate Management System established and managed by the Commonwealth to record and manage Estate Information including to define the classifications, attributes and formats for recording data for each element on the Defence Estate.

Gender Equality Action Plan

The plan (if any) specified in the Contract Particulars.

Group Training Organisation

An organisation that employs Apprentices under a Training Contract and places them with a Host Employer. The Group Training Organisation undertakes the employer responsibilities for the quality and continuation of the Apprentices' employment and training, including payment of Apprentices' wages. The Group Training Organisation also manages the additional care and support necessary to achieve the successful completion of the Training Contract.

GST

The tax payable on taxable supplies under the GST Legislation.

GST Group

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

GST Legislation

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

Hazardous Chemical

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

- (a) prohibited carcinogen, as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);

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

Hazardous Substances

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

Heritage Act

The *Heritage Act 2017* (Vic).

Heritage Department

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

Heritage Inventory

The "Heritage Inventory" established under the Heritage Act.

Heritage Register

The "Heritage Register" established under the Heritage Act.

Host Employer

An employer who hires an Apprentice through a Group Training Organisation.

HOTO Plan and Checklist

The worksheets contained within the excel workbook titled "HOTO Plan & Checklist" available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy>, as amended or replaced from time to time.

HOTO Process

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

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

in accordance with the HOTO Requirements.

HOTO Requirements

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

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- (a) the documents set out at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/estate-project-handover-takeover-policy>, and all applicable requirements referred to therein; and
 - (b) any other requirement published on the Defence Website expressed as applying to the commissioning, handover and takeover of projects on the Defence Estate,

each as amended or replaced from time to time.

ICT Goods

Means computers and peripheral equipment, communication equipment, consumer electronic equipment, electronic components and other information and technology goods.

Indigenous Enterprise

Has the meaning given to it in the Indigenous Procurement Policy.

Indigenous Participation Plan

The plan (if any) either:

- (a) if option 1 of clause 17.2 applies - prepared by the Contractor in accordance with clause 17.2(c); or
- (b) if option 2 of clause 17.2 applies – the plan prepared by the Contractor and specified in the Contract Particulars.

Indigenous Procurement Policy

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

Information Security Requirements

Means the:

- (a) Australian Government's Protective Security Policy Framework available at <https://www.protectivesecurity.gov.au/>;
- (b) Australian Government's Information Security Manual available at <https://www.cyber.gov.au/ism>; and
- (c) Defence Security Principles Framework,

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 Contract for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Contractor;
- (d) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

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

Intellectual Property Rights

All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

IPP Contractor Portal

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

IT Equipment

Any software, hardware or telecommunications equipment:

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

Labour Hours

The number of hours a person worked on the Contractor's Activities or the Remediation Works, which may include:

- (a) hours worked On-Site; and
- (b) hours worked Off-Site,

provided that in circumstances where Off-Site hours are to be split between multiple projects, the sum of the reported hours must not be greater than the total hours the person worked Off-Site.

Long Service Leave Legislation

Means:

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

Lump Sum Component

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

Lump Sum Work

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

Material Change

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

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or
 - (iii) the Contractor's financial viability, availability, capacity or ability to perform the Contractor's Activities, achieve Remediation Completion and otherwise meet its obligations under the Contract; or
- (b) which affects the truth, completeness or accuracy of:
 - (i) if the Contractor lodged a registration of interest, the registration of interest;
 - (ii) if the Contractor lodged a tender, the tender; or
 - (iii) any other information, documents, evidence or clarifications provided by the Contractor to the Commonwealth arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Contract, the Contractor's Activities or the Remediation Works.

Method of Work Plan for Airfield Activities

The plan (if any) prepared by the Contractor and finalised under clause 7.7, which must incorporate Site specific management and control procedures and must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities on and near the Site to ensure that the Contractor's Activities do not impact aircraft operations, including procedures as they relate to:

- (a) the establishment of the Site;
- (b) access to the Site;
- (c) security passes for the Site;
- (d) personnel and vehicle identification and control on the Site;
- (e) control of personnel including a point of contact from the Contractor;
- (f) liaison with the Commonwealth and Other Contractors;
- (g) Approvals prior to carrying out Remediation Works;
- (h) rubbish, dust and debris control;
- (i) Foreign Object Damage (**FOD**) control;
- (j) noise management;
- (k) fencing;
- (l) security of the Remediation Works;
- (m) hours of work;
- (n) traffic management;
- (o) safety procedures;
- (p) fuel and hazardous material storage;
- (q) issues associated with military exercises and military expeditions;

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- (r) issues associated with aircraft movements;
 - (s) other information and details as may be required by Statutory Requirements;
 - (t) the procedure for preparing (including tailoring) and finalising the Method of Work Plan for Airfield Activities under clause 7.7;
 - (u) the procedure for regularly reviewing, updating and amending the Method of Work Plan for Airfield Activities under clause 7.7;
 - (v) the procedure for ensuring subcontractor compliance with the Method of Work Plan for Airfield Activities; and
 - (w) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Moral Rights

The right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth).

NATA

National Association of Testing Authorities Australia.

National Heritage Management Principles

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

National Heritage Place

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

National Heritage Values

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

Official Order

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

Off-Site

Labour Hours undertaken not at the physical location(s) of the Remediation Works to deliver inputs for the Contractor's Activities or the Remediation Works or to undertake Apprentice education and training contributing to their qualification and the Contractor's Activities or the Remediation Works.

On-Site

Labour Hours undertaken face-to-face by an Apprentice at the physical location(s) of the Remediation Works.

Other Contractor

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

Overarching Apprentice Target

The minimum of 10% of all Labour Hours that must be undertaken by Apprentices.

Overarching Apprentice Target for Women

The minimum target specified in the table set out in the Contract Particulars of all Apprentice Labour Hours that must be undertaken by Women Apprentices during the relevant contract period.

Ozone Depleting Substance

Any substance identified as having ozone depleting potential in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act.

Pandemic

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

Pandemic Adjustment Event

Means any of the following events which arise as a direct result of the Pandemic and first occurs after the Award Date:

- (a) a change in Statutory Requirements (including a change in border requirements or quarantine requirements);
- (b) a change in:
 - (i) the availability of local labour required for the Remediation Works; or
 - (ii) the ability to transport unfixed goods and materials to the Site where such unfixed goods and materials are located outside of the State or Territory in which the Site is located;
- (c) closure (or reopening) of a subcontractor's factory, or any other location where subcontracted activities are being carried out, in respect of the supply of goods or materials required for the Remediation Works; or
- (d) such other events as may be specified in the Contract Particulars,

in each case which impacts the performance or progress of the Contractor's Activities at the Site.

Panel Agreement

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

Panel Conditions

The Panel Conditions in Section 2 of the Panel Agreement.

Personal Information

Has the meaning given in the Privacy Act.

Plant, Equipment and Work

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

Privacy Act

The *Privacy Act 1988* (Cth).

Professional Indemnity Insurance

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

- (a) civil liability for breach of professional duty (whether owed in contract or otherwise); and

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- (b) unintentional breaches of third party intellectual property,
by the Contractor or its subcontractors in carrying out the Contractor's Activities.

Project

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

Project DCAP

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

Project Documents

Includes:

- (a) Remediation Design Documentation prepared by the Contractor under clause 7.2;
- (b) Project Plans;
- (c) Project DCAP;
- (d) Approvals;
- (e) IT Equipment to the extent relating to software;
- (f) the documents which the Contractor is obliged to maintain under clause 12.21; and
- (g) without limiting paragraphs (a) - (f), any other data, documents, drawings, records, programs and information (including Estate Information and information relating to the Contractor's compliance with the WHS Legislation) and material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Commonwealth or the Contract Administrator, under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works by, for or on behalf of the Contractor (including by subcontractors).

Project Lifecycle and HOTO Plan

The plan prepared by the Contractor in accordance with, and for the purposes of, the HOTO Requirements and finalised under clause 7.7, which must:

- (a) be prepared in accordance with the HOTO Plan and Checklist;
- (b) meet all applicable HOTO Requirements and Statutory Requirements; and
- (c) include any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Project Management Meetings

The meetings co-ordinated and facilitated by the Contract Administrator in relation to the works (including the Remediation Works) to be undertaken on or in relation to the Site, which will be held at the times and locations specified in the Contract Particulars, and at such other times and locations as may be reasonably directed by the Contract Administrator.

Project Plans

The:

- (a) Project Lifecycle and HOTO Plan;

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- (b) Environmental Management and Sustainability Plan;
 - (c) Estate Information Provision Plan;
 - (d) Quality Plan;
 - (e) Site Management Plan;
 - (f) Work Health and Safety Plan;
 - (g) if clause 7.16 applies, Method of Work Plan for Airfield Activities; and
 - (h) the additional plans specified in the Contract Particulars and finalised by the Contractor under clause 7.7,

as updated or amended under clause 7.7.

Public Liability Insurance

A policy of liability insurance covering the:

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

to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with the Contractor's Activities or the Remediation Works.

This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers' Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Quality Manager

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

Quality Objectives

Means to:

- (a) encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Contractor's Activities and the Remediation Works;
- (b) prevent and minimise adverse quality impacts during the Contractor's Activities and the Remediation Works (including Remediation Defects before, at and after Remediation Completion);
- (c) optimise the value for money achieved by the Commonwealth in respect of the Contractor's Activities and the Remediation Works; and
- (d) achieve the additional objectives specified in the Contract Particulars.

Quality Plan

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

- (a) ensure compliance with the Smart Infrastructure Handbook and Statutory Requirements; and
- (b) maximise the achievement of the Quality Objectives.

The Quality Plan must address, at a minimum:

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- (c) all Statutory Requirements;
 - (d) all Quality Objectives;
 - (e) the Contractor's quality assurance procedure, system or framework (which may or may not be a certified quality assurance procedure, system or framework);
 - (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the Quality Manager and the Contractor's key people under clause 3.6(a)) regarding quality;
 - (g) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding quality generally during the Contractor's Activities and the Remediation Works;
 - (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding quality;
 - (i) the procedure for preparing (including tailoring) and finalising the Quality Plan under clause 7.7 (including how the Contractor will ensure maximum consistency between the Contractor's quality assurance procedure, system or framework and the Quality Plan);
 - (j) the procedure for regularly reviewing, updating and amending the Quality Plan under clause 7.7;
 - (k) the procedure for ensuring subcontractor compliance with the Quality Plan;
 - (l) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Remediation Works;
 - (m) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Quality Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Remediation Works;
 - (n) all relevant Site-specific issues;
 - (o) the additional matters specified in the Contract Particulars; and
 - (p) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Recipient

Any person provided with Confidential Information and, if clause 19 applies, Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subcontractors, suppliers and material suppliers.

Related Body Corporate

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

Remediation Completion

The point in time when, in respect of the Remediation Works or a Stage:

- (a) the Remediation Works are, or the Stage is, complete except for minor Remediation Defects:

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- (i) which do not prevent the Site or the part of the Site relevant to the Stage from being used for the Specified Site Use Objective; and
 - (ii) which can be corrected without prejudicing the convenient use of the Site or the part of the Site relevant to the Stage;
 - (b) those tests which are required by the Contract to be carried out and passed before the Remediation Works or the Stage reach Remediation Completion have been carried out and passed;
 - (c) the Contractor has satisfied all Contractor HOTO Obligations and other obligations (including applicable Contractor Estate Information Obligations) which must be satisfied to achieve "Handover/Takeover (**HOTO**)" under and in accordance with the HOTO Requirements;
 - (d) all documents and other information referred to in the Contract, including all Approvals, which are required for the satisfactory completion of the Remediation Works or the Stage have been supplied to the Contract Administrator;
 - (e) without limiting paragraph (d), the Contractor has done everything which the Contract requires it to do as a condition precedent to Remediation Completion, including those things described in the Contract Particulars;
 - (f) all documents and other information reasonably required by the Environmental Consultant to prepare the Remediation Validation Report have been supplied to the Environmental Consultant and the Contract Administrator;
 - (g) the Remediation Validation Report has been obtained by the Contractor from the Environmental Consultant (and provided to the Commonwealth) in relation to:
 - (i) in the case of Remediation Completion of the Remediation Works, the Site; or
 - (ii) in the case of Remediation Completion of the Stage, the part of the Site relevant to that Stage; and
 - (h) if required by the Commonwealth under clause 8.8(a), the Contractor has executed a deed of novation in accordance with clause 8.8(b).

Remediation Completion Notice

A notice under clause 13.2(b)(i) by the Contract Administrator stating that Remediation Completion of the Remediation Works or a Stage has been achieved.

Remediation Defect

Means:

- (a) any defect, fault, failure or omission in the Remediation Works, including any aspect of the Remediation Works which is not in accordance with the requirements of the Contract; and
- (b) any damage to any property (whether of the Commonwealth or a third party) resulting from the Contractor's Activities.

Remediation Defects Rectification Period

The period which commences on the Date of Remediation Completion of the Remediation Works or a Stage, and which continues for the period specified in the Contract Particulars, as extended by clause 9.10.

Remediation Design Documentation

All design documentation (including documents, drawings, specifications, reports, models, samples and calculations, equipment technical information, plans, charts, tables, schedules, data (stored by any means) and photographs) in computer readable and written forms necessary for the Contractor to complete any part of the Remediation Works which is not fully designed and documented in the Technical Specification.

Remediation Validation Report

The report prepared by the Environmental Consultant in relation to:

- (a) in the case of Remediation Completion of the Remediation Works, the Site; or
 - (b) in the case of Remediation Completion of a Stage, the part of the Site relevant to that Stage,
- which confirms that the Remediation Works or the Stage (as the case may be) have been completed in accordance with:
- (c) the Technical Specification; and
 - (d) the Remediation Design Documentation,

and that the Site or the relevant part of the Site (as applicable) is suitable for use for the Specified Site Use Objective.

Remediation Works

The physical works, a brief description of which is set out in the Contract Particulars and the details of which are set out in the Contract (including the Technical Specification and the Remediation Design Documentation), which the Contractor must undertake, complete and hand over to the Commonwealth in accordance with the Contract, as varied (if at all) by a Remediation Works Variation, including both the Lump Sum Work and the Schedule of Rates Work.

Remediation Works Variation

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

Remote Area

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

Responsible Agency

Means the Commonwealth agency responsible for administering the Environmentally Sustainable Procurement Policy (at the Award Date being the Department of Climate Change, Energy, the Environment and Water).

Schedule 11 Hazardous Chemical

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

Schedule 15 Chemical

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

Schedule of Collateral Documents

The schedule of proforma contracts and other documents applicable to the General Remediation Contract:

- (a) posted on the Defence Website, as amended from time to time by the Commonwealth; and
- (b) which as at the Award Date include the contracts and other documents specified in the Contract Particulars.

Schedule of Rates

The schedule (if any) specified in the Contract Particulars, containing rates and prices to be used for the purpose of calculating the Contract Price.

Schedule of Rates Component

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

Schedule of Rates Work

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

Security of Payment Legislation

Means:

- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) in Western Australia:
 - (i) the *Construction Contracts Act 2004* (WA); or
 - (ii) if this contract is executed after the date on which a provision of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) commences, then the *Building and Construction Industry (Security of Payment) Act 2021* (WA) and any provision of the *Construction Contracts Act 2004* (WA) which has not been repealed;
- (e) *Construction Contracts (Security of Payments) Act 2004* (NT);
- (f) *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (g) *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (h) *Building and Construction Industry Security of Payment Act 2009* (SA); and
- (i) any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

Sensitive and Classified Information

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

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

Sensitive and Classified Information Incident

A single breach or a series of breaches of clause 19, any Separation Arrangements (in respect of Sensitive and Classified Information), any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

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

Separation Arrangement

Any arrangement that the Contractor:

- (a) has in place;
- (b) will put in place; or
- (c) is required to put in place,

for the purpose of complying with clause 18 and, if clause 19 applies, clause 19.

Significant Event

Means:

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

Significant Event Remediation Plan

The plan (if any) prepared by the Contractor and finalised under clause 21.4.

Site

The site or sites for the Remediation Works described in the Contract Particulars.

Site Audit Statement

A certificate or statement of environmental audit (or equivalent) issued in relation to the Site certifying that the Site can be used for the Specified Site Use Objective, which certificate or statement has been issued under the:

- (a) *Environment Protection Act 1997 (ACT)*, where the Site is located in the ACT;
- (b) *Contaminated Land Management Act 1997 (NSW)*, where the Site is located in NSW;
- (c) *Waste Management and Pollution Control Act 1998 (NT)*, where the Site is located in the Northern Territory;
- (d) *Environmental Protection Act 1994 (Qld)*, where the Site is located in Queensland;

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- (e) *Environment Protection Act 1993 (SA)*, where the Site is located in South Australia;
 - (f) *Environment Protection Act 1970 (Vic)*, where the Site is located in Victoria; or
 - (g) *Contaminated Sites Act 2003 (WA)*, where the Site is located in Western Australia.

Site Information

The documents specified in the Contract Particulars.

Site Management Plan

The plan prepared by the Contractor and finalised under clause 7.7, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Remediation Works on and near the Site. The Site Management Plan must address at a minimum:

- (a) all Statutory Requirements;
- (b) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's Representative and the Contractor's key people under clause 3.6(a)) regarding management of the Contractor's Activities and the Remediation Works on and near the Site;
- (c) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the occupation, use, operation and maintenance of Commonwealth property and the Site (including for the purpose of military activities, expeditions and exercises) during the Contractor's Activities and the Remediation Works;
- (d) procedures for access to:
 - (i) Commonwealth property (including any Defence location); and
 - (ii) the Site,by Contractor and subcontractor personnel, visitors, pedestrians and vehicles, including procedures for:
 - (iii) ensuring security (including identification and pass procedures and any physical security measures);
 - (iv) minimising disruption and inconvenience to the Commonwealth and Other Contractors;
 - (v) vehicle and traffic management; and
 - (vi) noise management;
- (e) without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Contractor and subcontractor personnel in respect of Commonwealth property and the Site;
- (f) procedures for:
 - (i) establishing the Site (including site amenities, laydown areas and parking zones);
 - (ii) cleaning, maintenance, waste management and debris control on Commonwealth property and the Site; and
 - (iii) any dangerous or prohibited substances, material or goods (including Commonwealth property) on the Site relevant to the Contractor's Activities and the Remediation Works;
- (g) the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 7.7;
- (h) the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 7.7 (including as a result of any Site management complaint, incident, near-miss and other situation or accident on Commonwealth property or the Site during the Contractor's Activities and the Remediation Works);
- (i) the procedure for ensuring subcontractor compliance with the Site Management Plan;

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- (j) the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on Commonwealth property and the Site associated with the Contractor's Activities and the Remediation Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Remediation Works;
 - (k) the procedure for managing the effects of the Pandemic on the carrying out of the Contractor's Activities;
 - (l) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on Commonwealth property and the Site during the Contractor's Activities and the Remediation Works;
 - (m) the procedure and approach to ensure the alignment of the Site Management Plan with other Project Plans, including the Work Health and Safety Plan and the Environmental Management and Sustainability Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
 - (n) to the extent that the Contractor's Activities include any demolition, procedures for obtaining approval from the Contract Administrator prior to undertaking such demolition and otherwise complying with any applicable Statutory Requirements or Contractor HOTO Obligation in relation to such demolition;
 - (o) the additional matters specified in the Contract Particulars; and
 - (p) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Skills Guarantee Information

Skills Guarantee Reports or other documents or information provided by the Contractor in connection with its obligations under clause 17.19.

Skills Guarantee Online Reporting System

The online tool accessed through the Apprenticeship Data Management System (ADMS) used by the Contractor to report on its performance against the Australian Skills Guarantee Targets at <https://adms.australianapprenticeships.gov.au/adms/sign-in>.

Skills Guarantee Report

A report submitted by the Contractor to the Commonwealth on its performance against the Skills Guarantee Targets.

Skills Guarantee Targets

Means the:

- (a) Overarching Apprentice Target;
- (b) Overarching Apprentice Target for Women; and
- (c) Trade-specific Apprentice Target for Women.

Smart Infrastructure Handbook

The Defence Smart Infrastructure Handbook: Planning, Design and Construction available on the Defence Website, as amended or replaced from time to time.

Spatial Data Management Plan

The plan setting out standards and specifications for spatial data management, available on the Defence Website, as amended or replaced from time to time.

Special Conditions

The special conditions as set out in Annexure 2.

Specified Site Use Objective

The Site use objective, if any, specified in the Contract Particulars, for which the Site must be capable of being used following Remediation Completion.

Stage

A stage of the Remediation Works specified in the Contract Particulars.

State or Territory Training Authority

The State or Territory government department responsible for apprenticeships and traineeships within its State or Territory, including overseeing Training Contracts, Group Training Organisations and providing information and support throughout the apprenticeship process.

Statement of Tax Record or STR

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

Statutory Requirements

Means:

- (a) any law applicable to the Contractor's Activities or the Remediation Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any condition or requirement under an Approval);
- (c) Defence Requirements;
- (d) Environmental Requirements; and
- (e) Information Security Requirements.

Subcontractor Deed of Covenant

A subcontractor deed of covenant in the form set out in the Schedule of Collateral Documents.

Supplier Environmental Sustainability Plan

The Supplier Environmental Sustainability Plan specified in the Contract Particulars.

Sustainability Information

Any information contained in the Supplier Environmental Sustainability Plan or a report submitted by the Contractor under clause 17.18(f) (as may be updated in accordance with clauses 17.18(j) and 17.18(k)).

Sustainable Procurement Guide

The Sustainable Procurement Guide published by the Department of Agriculture, Fisheries and Forestry, as amended or replaced from time to time.

Synthetic Greenhouse Gas

Any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

Table of Remediation Works Variation Rates and Prices

The table (if any) specified in the Contract Particulars, containing rates and prices to:

- (a) be used for the purposes of valuing Remediation Works Variations under clause 11.5; and
- (b) apply where the limits of accuracy specified in the Contract Particulars are exceeded in respect of any items of Schedule of Rates Works for which a corresponding rate exists in the Table of Remediation Works Variation Rates and Prices.

Technical Advisor

The person specified in the Contract Particulars.

Technical Advisor's Certification

A certificate obtained by the Contractor from the Technical Advisor in relation to the Site stating that the Remediation Works have been completed in accordance with:

- (a) the Technical Specification; and
- (b) the Remediation Design Documentation,

and that the Site is suitable for use for the Specified Site Use Objective, but which certificate is not a Site Audit Statement.

Technical Advisor's Functions

The roles and functions of the Technical Advisor, as outlined in Annexure 1, Part B.

Technical Specification

The documents specified in the Contract Particulars.

Terms of Engagement

For the purposes of the Contract, means the Conditions of Contract for the Department of Defence General Remediation Contract (GRC-1 2024) as set out in Section 4B of the Panel Agreement.

Textiles

Means fibres, threads, yarns, fabrics and leather materials and the goods made from these materials.

Trade Apprentice

A person who:

- (a) is classified as an Apprentice; and
- (b) works in a role that is classified as a trade (being sub-major occupations that are classified as "Technician and Trade Workers" using the Australian and New Zealand Standard Classification of Occupations).

Trade-specific Apprentice Target for Women

The minimum target specified in the table set out in the Contract Particulars of all Trade Apprentice Labour Hours that must be undertaken by Women as Trade Apprentices during the relevant contract period.

Training Contract

A legally binding agreement between an employer and an Apprentice administered under State or Territory legislation.

Unexploded Ordnance or UXO

Means explosive ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design or for any other cause. For the purpose of this Contract, the term 'Unexploded Ordnance' is used to describe Unexploded Ordnance, Discarded Military Munitions and Abandoned Explosive Ordnance where contextually appropriate.

Unidentified Site Conditions

Any ground conditions at the Site (including any groundwater conditions), which differ materially from those which should have been anticipated by a prudent, competent and experienced contractor if it had done those things which the Contractor is deemed to have done under clause 6.1.

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).

Woman

A person who, regardless of their sex assigned at birth, identifies as a woman irrespective of age.

Work Health and Safety Plan

The plan prepared by the Contractor and finalised under clause 7.7 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Remediation Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation) and the Asbestos Management Plan, including the obligations in clause 8.13(t). The Work Health and Safety Plan must address, at a minimum:

- (a) the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities and the Remediation Works;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (PCBU) at the workplace where the Contractor's Activities and the Remediation Works are being undertaken regarding consulting, co-operating and co-ordinating activities where the PCBU(s) at the workplace and the Contractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Contractor's Activities and the Remediation Works are carried out, including:
 - (i) incident (including notifiable incident) reporting procedures;
 - (ii) preventative and corrective action procedures; and
 - (iii) record-keeping and reporting requirements, including reporting to the Contract Administrator with respect to incidents and accidents under clause 8.13(b);

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- (d) any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
 - (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
 - (f) if the Contract requires the Contractor to design any part of the Remediation Works, the procedures for:
 - (i) conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
 - (ii) carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
 - (iii) ensuring the results of such calculations, analysis, testing or examinations are provided to the Commonwealth, including as a condition precedent to Remediation Completion and prior to the expiry of the Remediation Defects Rectification Period;
 - (g) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Contractor's work health and safety policy;
 - (ii) details of any work health and safety management system (whether certified or uncertified);
 - (iii) inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
 - (iv) emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
 - (h) procedures for ensuring the provision of written assurances to the Contract Administrator under clause 8.13(h) regarding compliance with the WHS Legislation by the Contractor, subcontractors and Other Contractors;
 - (i) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 7.7 (including as a consequence of any review of hazards, risks and control measures regarding the Contractor's Activities, the Remediation Works and any notifiable incident or systemic risk management failure);
 - (j) procedures for the management of subcontractors, including:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in paragraph (g)(iii));
 - (ii) the subcontractor's development and provision of safe work method statements, job safety assessments or equivalent documentation;
 - (iii) ensuring subcontractors comply with their obligation to consult, co-operate and co-ordinate activities (including information-sharing and communication of information); and
 - (iv) ensuring subcontractor compliance with the Contractor's Work Health and Safety Plan;
 - (k) details of the project and Contract specific hazards and risks identified by the Contractor and the Contractor's approach to the management of these hazards and risks including how the Contractor will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
 - (i) prior to commencing the Contractor's Activities and the Remediation Works; and
 - (ii) during the delivery of the Contractor's Activities and the Remediation Works;
 - (l) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning Hazardous Substances, including, where they are used or handled in the delivery of the Contractor's Activities, incorporated into the Remediation Works, stored by the Contractor at the workplace or transported by the Contractor to or from the workplace;

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- (m) the actions the Contractor will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Contractor's Activities and the Remediation Works;
 - (n) the procedures the Contractor will adopt to audit or otherwise monitor and verify its (and its subcontractors') compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
 - (o) the procedures the Contractor will adopt to ensure it provides to the Commonwealth, when conducting any handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the Remediation Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 8.13(r));
 - (p) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning (as applicable):
 - (i) high risk construction as defined in regulation 291 of the Commonwealth WHS Legislation;
 - (ii) Hazardous Substances, including, where Hazardous Substances are used or handled in the Contractor's Activities, incorporated into the Remediation Works, stored by the Contractor at the workplace or transported by the Contractor to or from the workplace (including whilst transported on, into or from Commonwealth Premises;
 - (iii) identification of insitu Unexploded Ordnance, including the carrying out of Unexploded Ordnance survey activities;
 - (iv) removal and remediation of Unexploded Ordnance;
 - (v) identification of insitu Contamination;
 - (vi) Contamination management activities and the carrying out of Remediation Works regarding Contamination; and
 - (vii) the carrying out of transportation activities regarding the removal and remediation of Contamination and Unexploded Ordnance;
 - (q) the procedure and approach to ensure the alignment of the Work Health and Safety Plan with other Project Plans, including the Site Management Plan and the Environmental Management and Sustainability Plan (including to ensure an aligned approach regarding the management of hazards and risks regarding work health and safety);
 - (r) all relevant Site-specific issues;
 - (s) any additional matters specified in the Contract Particulars; and
 - (t) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Workers Compensation Insurance

A policy of insurance prescribed by Statutory Requirements in the State and Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment.

1.2 Interpretation

In the Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;

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- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Contract;
- (d) references to any party to the Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, Schedule or exhibit of or to the Contract;
- (f) references to the Contract and any deed, agreement or instrument are deemed to include references to the Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:
- (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "dollars" or "\$" is to Australian currency;
- (k) amounts expressed in dollars are exclusive of GST;
- (l) where under the Contract:
- (i) a direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 12.5),
- within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (m) for the purposes of clauses 10.8, 10.9 and 10.10:
- (i) any extension of time stated in days; or
 - (ii) any reference to "day",
- will exclude public holidays and include only those days which are stated in the Contractor's then current program under clause 10.2 as working days;
- (n) for the purposes of clauses 12.4, 12.5, 17.13, 17.18 and 17.19, to the extent that the Contractor's Activities are carried out in:
- (i) the Australian Capital Territory, "business day" has the same meaning as defined at Part 1 of the *Legislation Act 2001* (ACT);
 - (ii) New South Wales, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (NSW);
 - (iii) the Northern Territory, "business day" has the same meaning as "working day" as defined in section 4 of the *Construction Contracts (Security of Payments) Act 2004* (NT);
 - (iv) Queensland, "business day" has the same meaning as defined in Schedule 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
 - (v) South Australia, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 2009* (SA);

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- (vi) Tasmania, "business day" has the same meaning as defined in section 4A of the *Building and Construction Industry Security of Payment Act 2009* (Tas);
 - (vii) Victoria, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
 - (viii) Western Australia, "business day" has the same meaning as defined in section 4 of the *Building and Construction Industry (Security of Payment) Act 2021* (WA);
 - (o) other than as set out in paragraphs (l), (m) and (n) references to "day" are references to calendar days;
 - (p) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
 - (q) the word "subcontractor" will include subcontractors, suppliers and consultants and the word "subcontract" will include a contract with a subcontractor;
 - (r) where a clause contains two options, the option specified in the Contract Particulars will apply;
 - (s) 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;
 - (t) unless agreed or notified in writing by the Contract Administrator or the date of the standard or reference document is specified in the Technical Specification, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Technical Specification is a reference to the edition last published prior to:
 - (i) to the extent that the Contractor's Activities include design, the submission of the relevant Design Documentation; and
 - (ii) in any other case, the Award Date.
- If requested by the Contract Administrator, the Contractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Technical Specification and Remediation Design Documentation available to the Contract Administrator;
- (u) for the purposes of clauses 2.3(b), 6.6(d)(ii), 6.9(e)(ii), 8.4(c)(ii), 8.18(d)(ii), 8.30(d)(i)B, 9.4, 10.11(b)(ii)B and 17.3(e)(ii) and the Special Conditions, a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Contractor as a direct result of the applicable event delaying the Contractor;
 - (v) requirements contained in the Technical Specification, whether or not they include the expression "the Contractor must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Contractor, unless stated otherwise; and
 - (w) where an absolute discretion is conferred on the Commonwealth or the Contract Administrator:
 - (i) neither the Commonwealth nor the Contract Administrator is required to exercise such discretion for the benefit of the Contractor; and
 - (ii) the exercise or failure to exercise such discretion is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

1.3 Miscellaneous

- (a) The Contract is subject to and is to be construed in accordance with the laws of the State or Territory specified in the Contract Particulars.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
 - (ii) otherwise, both parties agree in writing.

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- (c) The Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
- (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in the Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (f) The Contractor must indemnify the Commonwealth against:
- (i) any liability to or claim by a third party including a subcontractor or Other Contractor; and
 - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,
- caused by any breach by the Contractor of a term of the Contract.
- (g) All obligations to indemnify under the Contract survive termination of the Contract on any basis.
- (h) If a document referred to as being available on the Defence Website is not so available, the Contract Administrator may provide such document to the Contractor by other means.

2. COMMENCEMENT

2.1 Contractor's Obligations

The Contractor must:

- (a) without limiting the operation of clause 2.2(a), immediately commence to carry out the Contractor's Activities in accordance with the Contract; and
- (b) unless otherwise stated, carry out the Contractor's Activities at its cost.

2.2 Commonwealth's Obligations

The Commonwealth must:

- (a) give the Contractor sufficient access to the Site to allow it to commence work on the Site on the later of:
 - (i) satisfaction of the following conditions precedent to access:
 - A. the Contractor having provided to the Contract Administrator:
 - 1) the Approved Security required under clause 4.1; and
 - 2) evidence satisfactory to the Contract Administrator under clause 5.4(f) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.4;
 - B. the Environmental Management and Sustainability Plan, the Site Management Plan, the Work Health and Safety Plan and, if clause 7.16 applies, the Method of Work Plan for Airfield Activities having been finalised under clause 7.7; and
 - C. any other conditions specified in the Contract Particulars or elsewhere in the Contract; and
 - (ii) the date specified in the Contract Particulars; and
- (b) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities.

2.3 Delayed Access

Any failure by the Commonwealth to give access as required by clause 2.2(a) will not be a breach of the Contract but will entitle the Contractor to:

- (a) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
- (b) have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly out of the Commonwealth's failure to give the Contractor access to the Site, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Commonwealth's failure to give the Contractor access to the Site, other than under paragraphs (a) and (b).

3. PERSONNEL

3.1 Contract Administrator

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

3.2 Replacement of Contract Administrator

- (a) The Commonwealth may at any time replace the Contract Administrator, in which event the Commonwealth will appoint another person as the Contract Administrator and notify the Contractor of that appointment.
- (b) Any substitute Contract Administrator appointed under clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

3.3 Parties' Conduct

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

3.4 Contract Administrator's Representative

- (a) The Contract Administrator may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract; and
 - (ii) revoke any appointment under subparagraph (i) by notice in writing to the Contractor.
- (b) As at the Award Date, the Contract Administrator is deemed to have appointed the persons specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.
- (c) All references in the Contract to the Contract Administrator include a reference to a representative appointed under clause 3.4.

3.5 Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

3.6 Key People for the Contractor's Activities

The Contractor must:

- (a) employ those people specified in the Project DCAP, including the Contractor's Representative and the Quality Manager, in the jobs specified in the Project DCAP;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and

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- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

3.7 Removal of Persons

- (a) The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.
- (b) The Contractor must ensure that this person is not again involved in the Contractor's Activities.

3.8 Environmental Consultant

- (a) The Commonwealth may appoint an Environmental Consultant to carry out the Environmental Consultant's Functions.
- (b) The Contractor acknowledges and agrees that:
- (i) the Environmental Consultant may confer with the Contractor but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of subparagraph (i), the Contractor must not comply with any direction of the Environmental Consultant given directly by the Environmental Consultant to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(b)(i).
- (c) The Environmental Consultant may, from time to time, by written notice to the Contractor appoint a person to:
- (i) represent the Environmental Consultant during the carrying out of the Contractor's Activities; and
 - (ii) perform the Environmental Consultant's Functions under this Contract as the Environmental Consultant's Representative.
- All references to the Environmental Consultant include a reference to a representative appointed under this paragraph (c).
- (d) The Contract Administrator may revoke any appointment under paragraph (c) by notice in writing to the Contractor.
- (e) The Commonwealth may, in its absolute discretion and at any time, terminate the services of the Environmental Consultant and:
- (i) the Commonwealth's decision to terminate the services of the Environmental Consultant is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Environmental Consultant;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Environmental Consultant; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in connection with, the termination of the Environmental Consultant's services.

- (f) If the Commonwealth terminates the services of the Environmental Consultant, or if the Environmental Consultant ceases to act for any reason, the Contract Administrator will:
- (i) promptly notify the Contractor in writing; and

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- (ii) as soon as reasonably practicable, appoint another Environmental Consultant and notify the Contractor of that appointment.
 - (g) Any substitute Environmental Consultant appointed under paragraph (f) will be bound by anything done by the former Environmental Consultant to the same extent as the former Environmental Consultant would have been bound.
 - (h) No report given by the Environmental Consultant, including the Remediation Validation Report, will have any force or effect unless it is given in writing.
 - (i) The Contractor must:
 - (i) co-operate with the Environmental Consultant;
 - (ii) assist the Environmental Consultant in the performance of the Environmental Consultant's Functions (including the provision, in a timely fashion, of all information the Environmental Consultant may reasonably require);
 - (iii) co-ordinate the Contractor's Activities with the work of the Environmental Consultant; and
 - (iv) facilitate the execution of the Environmental Consultant's Functions, including the timely provision of all information and documents the Environmental Consultant may reasonably require in preparing the Remediation Validation Report.
 - (j) If the Contractor has any concern which a prudent, competent and experienced contractor would have in relation to the performance of the Environmental Consultant, it must:
 - (i) promptly notify the Contract Administrator; and
 - (ii) consult with the Contract Administrator and provide such information and take all such other steps as the Contract Administrator may require to resolve the Contractor's concern.
 - (k) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment on any of the Environmental Consultant's activities or functions.
 - (l) No review of or comment upon, or failure to review or comment upon, the Environmental Consultant's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under, the Contract or otherwise at law or in equity.
 - (m) The Contractor acknowledges and agrees that the Remediation Validation Report:
 - (i) does not constitute acceptance by the Commonwealth of the Contractor's performance of its Contract obligations; and
 - (ii) is not an audit under the relevant Statutory Requirements of the State or Territory in which the Remediation Works are carried out.
 - (n) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or omission of the Environmental Consultant (including any requirement that the Contractor provide information or documents or otherwise co-operate or co-ordinate with or assist the Environmental Consultant for the purposes of paragraph (i)) except to the extent that the act or omission (other than a requirement that the Contractor provide information or documents or otherwise co-operate or co-ordinate with or assist the Environmental Consultant for the purposes of paragraph (i)) has caused a delay to the Contractor's Activities, in which case, the Contractor may be entitled to an extension of time in accordance with clause 10.

3.9 Accredited Environmental Site Auditor

- (a) If the Contract Particulars provide that a Site Audit Statement is required in relation to the Site:
 - (i) the Commonwealth will appoint the Accredited Environmental Site Auditor to carry out the Accredited Environmental Site Auditor's Functions; and

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- (ii) the Commonwealth will ensure that the Accredited Environmental Site Auditor is accredited (or, if no process exists for accreditation, recognised) under the relevant Statutory Requirements in the State or Territory in which the Remediation Works are being carried out.
 - (b) The Contractor acknowledges and agrees that:
 - (i) the Accredited Environmental Site Auditor may confer with the Contractor but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of paragraph (i), the Contractor must not comply with any direction of the Accredited Environmental Site Auditor given directly by the Accredited Environmental Site Auditor to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(b)(i).
 - (c) No certification or report given by the Accredited Environmental Site Auditor will have any force or effect unless it is given in writing.
 - (d) The Commonwealth may, in its absolute discretion, terminate the services of the Accredited Environmental Site Auditor and:
 - (i) the Commonwealth's decision to terminate the services of the Accredited Environmental Site Auditor is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Accredited Environmental Site Auditor;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Accredited Environmental Site Auditor; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in any way in connection with, the termination of the Accredited Environmental Site Auditor's services.
 - (e) If the Commonwealth terminates the services of the Accredited Environmental Site Auditor, or if the Accredited Environmental Site Auditor ceases to act for any reason, the Contract Administrator will:
 - (i) promptly notify the Contractor in writing; and
 - (ii) as soon as reasonably practicable, appoint another Accredited Environmental Site Auditor and notify the Contractor of that appointment.
 - (f) The Contractor must assist the Accredited Environmental Site Auditor in the performance of the Accredited Environmental Site Auditor's Functions, including the timely provision of all information and documents the Accredited Environmental Site Auditor may reasonably require.
 - (g) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment upon any of the Accredited Environmental Site Auditor's activities, including:
 - (i) any Site Audit Statement issued by the Accredited Environmental Site Auditor;
 - (ii) a decision of the Accredited Environmental Site Auditor not to issue any Site Audit Statement; or
 - (iii) the issue of a Site Audit Statement subject to conditions.
 - (h) No comment upon or review of, or failure to comment upon or review, the Accredited Environmental Site Auditor's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise at law or in equity.
 - (i) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or

omission of the Accredited Environmental Site Auditor (including any requirement that the Contractor provide information or documents or otherwise co-operate or co-ordinate with or assist the Accredited Environmental Site Auditor for the purposes of paragraph (i)).

3.10 Technical Advisor

- (a) If the Contract Particulars provide that a Technical Advisor's Certification is required in relation to the Site then the Commonwealth will appoint the Technical Advisor to carry out the functions of the Technical Advisor.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Technical Advisor may confer with the Contractor, but will report directly to the Contract Administrator; and
 - (ii) except to the extent required for the purposes of subparagraph (i), the Contractor must not comply with any direction of the Technical Advisor given directly by the Technical Advisor to the Contractor (whether purported to be given under a provision of this Contract or otherwise) unless that direction is given to the Contractor as part of a direction by the Contract Administrator under clause 3.1(b)(i).
- (c) No certification given by the Technical Advisor will have any force or effect unless it is given in writing.
- (d) The Commonwealth may, in its absolute discretion, terminate the services of the Technical Advisor and:
 - (i) the Commonwealth's decision to terminate the services of the Technical Advisor is final and conclusive;
 - (ii) the Commonwealth is not under any obligation to give the Contractor any reason or explanation for its decision to terminate the Technical Advisor;
 - (iii) the Contractor acknowledges that it is not entitled to, and agrees that it will not seek to, restrain or otherwise intervene in or interfere with the termination of the services of the Technical Advisor; and
 - (iv) the Contractor acknowledges that it will not be entitled to make any Claim against the Commonwealth arising out of, or in connection with, the termination of the Technical Advisor's services.
- (e) If the Commonwealth terminates the services of the Technical Advisor, or if the Technical Advisor ceases to act for any reason, the Contract Administrator will:
 - (i) promptly notify the Contractor in writing; and
 - (ii) as soon as reasonably practicable, appoint another Technical Advisor and notify the Contractor of that appointment.
- (f) Any Technical Advisor appointed under paragraph (e)(ii) is bound by any direction given by any former Technical Advisor to the same extent as the relevant former Technical Advisor would have been bound by that direction.
- (g) The Contractor must assist the Technical Advisor in the performance of the Technical Advisor's Functions, including the timely provision of all documents and information the Technical Advisor may reasonably require.
- (h) The Commonwealth and the Contract Administrator do not assume or owe any duty to the Contractor to review or comment upon any of the Technical Advisor's activities, including:
 - (i) any Technical Advisor's Certification issued by the Technical Advisor; or
 - (ii) the decision of the Technical Advisor not to issue any Technical Advisor's Certification.

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- (i) No comment upon or review of, or failure to comment upon or review, the Technical Advisor's activities by the Commonwealth or Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise at law or in equity.
 - (j) The Contractor acknowledges and agrees that it will not be entitled to bring or maintain, and that the Commonwealth will not be liable upon, any Claim arising out of or in connection with any act or omission of the Technical Advisor (including any requirement that the Contractor provide information or documents or otherwise co-operate or co-ordinate with or assist the Technical Advisor).

3.11 Industrial Relations

In carrying out the Contractor's Activities, the Contractor must:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
- (d) comply with all other requirements of the Contract relating to industrial relations.

3.12 Monthly Meeting

The Contractor must:

- (a) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates, including the:
 - (i) Environmental Consultant;
 - (ii) Technical Advisor; or
 - (iii) Accredited Environmental Site Auditor;
- (b) discuss the report it has prepared under clause 3.13 and such other matters as the Contract Administrator may from time to time require;
- (c) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
- (d) if it requires instructions from the Commonwealth, make all necessary recommendations with respect to the instructions required.

The Contract Administrator must:

- (e) before each meeting:
 - (i) prepare an agenda for the meeting; and
 - (ii) issue an agenda for the meeting; and
- (f) after each meeting:
 - (i) prepare minutes of the meeting; and
 - (ii) issue minutes of the meeting.

3.13 Contractor's Monthly Report

At least 7 days prior to each meeting under clause 3.12, the Contractor must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include at a minimum:

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- (a) detailed particulars of the progress of the Contractor's Activities and the Remediation Works including:
- (i) key activities, meetings and other events in the previous month;
 - (ii) if the Contract requires the Contractor to design any part of the Remediation Works, the status of all Remediation Design Documentation (including any dispensations being pursued);
 - (iii) the status of all Approvals;
 - (iv) photographs of the Contractor's Activities and the Remediation Works; and
 - (v) any deviations from the Contractor's program under clause 10.2;
- (b) detailed particulars of all:
- (i) payment claims, payment statements and payments;
 - (ii) Remediation Works Variation Price Requests, responses, Remediation Works Variation Orders, Contractor requests for Remediation Works Variations under clause 11.7 and proposed adjustments to the Contract Price;
 - (iii) written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Remediation Completion;
 - (iv) other Claims made by the Contractor (including in respect of Unidentified Site Conditions, Statutory Requirements and the resolution of ambiguities under clause 7.12);
 - (v) calls, attendances, recommendations and actions taken in respect of all Remediation Defects (in accordance with clause 9.5);
 - (vi) disputes under clause 15; and
 - (vii) notices under clause 16.1 or 16.2;
- (c) detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
- (i) are significantly impacting; or
 - (ii) have the potential to significantly impact,
- the Contractor's Activities or the Remediation Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters;
- (d) confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.13, including:
- (i) the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 7.7);
 - (ii) details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Contractor's Activities and the Remediation Works;
 - (iii) written assurances from the Contractor, each Other Contractor and subcontractors confirming their ongoing compliance with the WHS Legislation in accordance with clause 8.13(h)(ii)A;
 - (iv) details of lead indicator data, including:
 - A. inductions, training and other work health and safety awareness programmes conducted;
 - B. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and

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- C. inspections of Plant, Equipment and Work;
 - (v) without limiting the Contractor's obligations to notify the Contract Administrator under:
 - A. clause 8.13(b)(i) and 8.13(c), summary data regarding notifiable incidents, including any notices issued to or from the relevant regulator, copies of all witness statements and investigation reports, actions to be taken and any impact on the Contract due to the notifiable incident;
 - B. clause 8.13(b)(ii), work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety and the preventative, corrective and remedial action which has been, is being or is proposed to be taken; and
 - C. clause 8.13(b)(iii), details of all incidents and accidents (which are not notifiable incidents) and the preventative, corrective and remedial action which has been, is being or is proposed to be taken;
 - (vi) relevant statistics and other information regarding lost time injury days; and
 - (vii) all other work health and safety matters required by the Contract or the Contract Administrator;
 - (e) confirmation of compliance with, and (as applicable) an update in respect of:
 - (i) the WHS Accreditation Scheme;
 - (ii) quality assurance requirements, including the Quality Plan;
 - (iii) Site-related requirements, including the Site Management Plan;
 - (iv) commissioning and handover requirements, including the Project Lifecycle and HOTO Plan;
 - (v) environmental requirements, including the Environmental Management and Sustainability Plan;
 - (vi) indigenous employment and procurement requirements, including:
 - A. if option 1 of clause 17.2 applies, the matters set out in clause 17.2(b); and
 - B. if required under clause 17.2, the Indigenous Participation Plan;
 - (vii) information security requirements, including clause 18 and, if clause 19 applies, clause 19; and
 - (viii) any other security requirements,together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (viii); and
 - (f) any other matters required by the Contract Administrator.

4. SECURITY

4.1 Form

The Contractor must provide security to the Commonwealth:

- (a) in the form of Approved Security;
- (b) in the amounts specified in the Contract Particulars for the Remediation Works or a Stage; and
- (c) within 14 days of the Award Date.

4.2 Release of Security

Subject to any other rights or remedies of the Commonwealth under the Contract or otherwise at law or in equity (including the right of set-off in clause 12.15), the Commonwealth must:

- (a) within 14 days of the issue of a Remediation Completion Notice for the Remediation Works or a Stage, release from the security held under clause 4.1, 50% of the security held for the Remediation Works or the Stage under clause 4.1;
- (b) within 14 days of the expiration of the last Remediation Defects Rectification Period for the Remediation Works or a Stage (excluding any extensions under clause 9.10), release such amount of the security under clause 4.1 then held for the Remediation Works or the Stage, as the Contract Administrator determines to be reasonable, having regard to the work to which any remaining Remediation Defects Rectification Periods applies, to ensure the Commonwealth's interests are not prejudiced; and
- (c) release the balance of the security then held under clause 4.1 following the latest of:
 - (i) the expiry of the last Remediation Defects Rectification Period; or
 - (ii) the Contractor has complied with all its obligations under the Contract.

4.3 Interest

- (a) The Commonwealth:
 - (i) is not obliged to pay the Contractor interest on:
 - A. the Approved Security; or
 - B. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
- (b) If the Commonwealth makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
 - (i) the Commonwealth will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which the Commonwealth is entitled at the time of such call; and
 - (ii) the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Commonwealth at the time such amounts become payable.

4.4 Deed of Guarantee and Undertaking

The Contractor must, if requested in writing by the Commonwealth, provide to the Commonwealth a Deed of Guarantee and Undertaking duly executed by the Contractor and the Related Body Corporate of the Contractor nominated in the Commonwealth's request by the time and date set out in the request.

5. RISKS AND INSURANCE

5.1 Risk of Remediation Works

Except to the extent that it arises from a Commonwealth Risk, the Contractor will bear the risk of and indemnify the Commonwealth against:

- (a) any loss of or damage to:
 - (i) the Remediation Works or a Stage;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Commonwealth to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss of or damage to the Remediation Works or a Stage, a Remediation Completion Notice is issued for the Remediation Works or the Stage; and
 - (v) otherwise, a Remediation Completion Notice is issued for the Remediation Works or the last Stage to reach Remediation Completion; and
- (b) after the issue of a Remediation Completion Notice for the Remediation Works or the Stage, any loss of or damage to the Remediation Works or the Stage arising from any act or omission of the Contractor during the Remediation Defects Rectification Period or from an event which occurred prior to the issue of the Remediation Completion Notice for the Remediation Works or the Stage.

5.2 Other Risks

Except to the extent that it arises from a Commonwealth Risk, the Contractor will bear the risk of and indemnify the Commonwealth against:

- (a) any loss of or damage to property of the Commonwealth (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by or arising out of or in connection with the Contractor's Activities or the Remediation Works, provided that the Contractor's responsibility to indemnify the Commonwealth will be reduced to the extent that an act or omission of the Commonwealth, the Contract Administrator or an Other Contractor contributed to the loss, damage, injury or death.

5.3 Reinstatement

- (a) During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:
 - (i) subject to subparagraph (ii), promptly replace or otherwise make good any loss of, or repair the damage to, the Remediation Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
 - (ii) where the loss or damage arises from a Commonwealth Risk, only comply with subparagraph (i) to the extent directed by the Contract Administrator.
- (b) If paragraph (a)(i) applies, the Contractor will bear the cost of such replacement, making good or repair. If paragraph (a)(ii) applies, the replacement, making good or repair directed by the Contract Administrator will be treated as if it were a Remediation Works Variation the subject of a direction by the Contract Administrator and clause 11.5 applied.

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurance:
 - (i) Construction Risks Insurance;
 - (ii) Public Liability Insurance;
 - (iii) Workers Compensation Insurance;
 - (iv) if the Contractor's Activities are performed, or the Contractor's employees perform work, are employed or normally reside, in any jurisdiction outside Australia, Employers' Liability Insurance;
 - (v) if the Contract requires the Contractor to design any part of the Remediation Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - (vi) such other insurances on such terms as are specified in the Contract Particulars, each of which must be:
 - (vii) for the amounts specified in the Contract Particulars;
 - (viii) with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (ix) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to Construction Risks Insurance and Public Liability Insurance, ensure that each of these policies name the Commonwealth as a party (within the definition of 'Insured') to whom the benefit of the insurance cover extends;
- (c) in relation to the Workers Compensation Insurance and Employers' Liability Insurance ensure that:
 - (i) to the extent permitted by law the insurance extends to provide indemnity to the Commonwealth as the Contractor's principal in respect of any statutory and common law liability to the Contractor's employees; and
 - (ii) each of its subcontractors has Workers Compensation Insurance to the extent required by law, and Employers' Liability Insurance (if the relevant Contractor's Activities are performed or the subcontractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia), covering the subcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Contractor is required to do under subparagraph (i);
- (d) in relation to the Public Liability Insurance, ensure the insurance is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
- (e) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
 - (i) has a retroactive date of no later than the commencement of the Contractor's Activities; and
 - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
- (f) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
 - (i) it has complied with clause 5.4; and

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- (ii) each insurance required under clause 5.4 is current and complies with clause 5.4, as required by the Contract Administrator from time to time;
 - (g) ensure that:
 - (i) if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and
 - (ii) if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
 - (h) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) complies at all times with the terms of each insurance policy;
 - (iii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iv) punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contract Administrator copies of receipts for payment of premiums upon request by the Contract Administrator;
 - (v) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (vi) immediately notifies the Contract Administrator (in writing) if the Contractor fails to renew any required insurance policy or pay a premium;
 - (vii) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (viii) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
 - (ix) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies;
 - (x) does everything reasonably required by the Commonwealth and the Contract Administrator to enable the Commonwealth to claim and to collect or recover money due under any of the insurances in respect of which it is required to have the benefit of coverage under this Contract; and
 - (xi) maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
 - (i) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4 for the amounts specified in the Contract Particulars; and
 - (j) bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under this clause 5.4. Any excess borne by the Commonwealth will be a debt due from the Contractor to the Commonwealth.

For the purpose of paragraph (f), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

5.5 Failure to Insure

- (a) If the Contractor fails to comply with clause 5.4, the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Contractor to the Commonwealth.
- (b) The Contractor must take all necessary steps to assist the Commonwealth in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.

5.6 Period of Insurance

The insurance which the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.4 must be maintained:

- (a) in the case of Construction Risks Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
- (b) in the case of Public Liability Insurance:
 - (i) written on an occurrence basis, until the completion of the Contractor's Activities; or
 - (ii) written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
 - A. end of the last Remediation Defects Rectification Period;
 - B. date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - C. completion of the Contractor's Activities;
- (c) in the case of Workers Compensation Insurance and Employers' Liability Insurance, until the latest of the:
 - (i) end of the last Remediation Defects Rectification Period;
 - (ii) date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) completion of the Contractor's Activities; and
- (d) in the case of Professional Indemnity Insurance or Errors and Omissions Insurance, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
 - (i) end of the last Remediation Defects Rectification Period;
 - (ii) date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) completion of the Contractor's Activities.

5.7 Notice of Potential Claim

The Contractor must:

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- (a) as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.4 or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy required by clause 5.4;
 - (b) keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
 - (c) ensure that its subcontractors similarly inform the Contractor and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy required by the Contract,

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

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify the Commonwealth if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

5.8 Procedure upon Loss or Damage

If loss of or damage to any part of the Remediation Works or a Stage occurs whilst the Contractor bears the risk of loss of or damage to the Remediation Works or the Stage under clause 5.1:

- (a) the Contractor must:
 - (i) make the Remediation Works or the Stage and the Site safe and secure;
 - (ii) notify the relevant insurers and comply with any reasonable instructions from the insurer(s); and
 - (iii) promptly consult with the Contract Administrator to discuss the steps to be taken to:
 - A. comply with its obligations under clause 5.3; and
 - B. ensure that, to the greatest extent possible, the Contractor continues to comply with its other obligations under the Contract; and
- (b) upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of the Commonwealth's consultants) will:
 - (i) be paid to the Contractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Contractor replaces, makes good or repairs the loss of or damage to the Remediation Works or the Stage; and
 - (ii) be the limit of the Contractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Remediation Works or the Stage.

5.9 Cross Liability

- (a) Clause 5.9 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.
- (b) Where the Contract requires insurance to provide cover to more than one insured, the Contractor must ensure that, to the extent permitted by law, the insurance policy provides that:
 - (i) the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;

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- (ii) the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
 - (iv) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
 - (v) the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
 - A. liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction; or
 - B. proportionate liability legislation of any Australian jurisdiction is lawfully excluded by the contract.

5.10 Insurances Secondary

- (a) The Commonwealth is not obliged to make a claim or institute proceedings against any insurer under the insurances before enforcing any of its rights or remedies under the indemnities referred to in this Contract or generally.
- (b) The Contractor is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this Contract and at law regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any insurance responds or fails to respond.

5.11 Exclusion of Consequential Loss and Limitation on Liability

- (a) Subject to paragraphs (b) and (c):
 - (i) neither the Commonwealth nor the Contractor will be liable to the other for any Consequential Loss howsoever arising; and
 - (ii) to the extent permitted by law, the maximum aggregate liability of the Contractor to the Commonwealth arising out of or in connection with the Contract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Contract Particulars.
- (b) Paragraph (a) does not apply to a liability of the Contractor:
 - (i) for any deliberate breach or repudiation of the Contract;
 - (ii) under the indemnities in clauses 1.3(f)(i), 5.1, 5.2, 7.11(b), 17.5(a)(xiv), 18.5(c) and 19.6(c);
 - (iii) for Fraud;
 - (iv) to the extent that:
 - A. payments are received by the Contractor; or
 - B. the Contractor is entitled to be indemnified (other than in circumstances where the relevant insurer is insolvent),

under any insurance policy or policies required to be effected and maintained under the Contract in relation to that liability or payments would have been received by the Contractor or the Contractor would have been entitled to be indemnified under such insurance policy or policies but for:
 - C. the failure of the Contractor to effect and maintain the required insurance policy or insurance policies;

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- D. any failure of an insurance policy to respond due to the misconduct of the Contractor (including a misrepresentation to the insurer or failure to make proper disclosure or to comply with the requirements of the policy);
 - E. the failure by the Contractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
 - F. the reliance by the insurer of the required insurance on this clause 5.11 to deny liability on the basis that the party has no liability to the Commonwealth;
- (v) for fines or penalties incurred by the Commonwealth arising from the Contractor's Activities; and
 - (vi) in respect of paragraph (a)(i) only, for liquidated damages under clause 13.7.
- (c) Paragraph (a)(i) does not apply to a liability of the Commonwealth for:
- (i) any deliberate breach or repudiation of the Contract;
 - (ii) Fraud; or
 - (iii) fines or penalties incurred by the Contractor arising from an act or omission of the Commonwealth.
- (d) For the purposes of this clause 5.11, **Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the Remediation Works or other Commonwealth property) or loss of production or financing costs, whether present or future, fixed or unascertained, actual or contingent.

6. SITE ACCESS AND CONDITIONS

6.1 Contractor to Inform Itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract, including:
 - (i) in relation to the Site; and
 - (ii) conducting a detailed review of the Site Information; and
- (b) ensuring that the Contract Price contains sufficient allowances to protect it against any of these risks eventuating.

6.2 Site Information

Without limiting clause 6.5 the:

- (a) Commonwealth has made available to the Contractor before the Award Date, or may make available to the Contractor on or after the Award Date, certain information, data and documents obtained by the Commonwealth (including the Site Information) for the purpose of the Remediation Works, including from investigations it carried out as to the conditions on, in, under or in the vicinity of the Site;
- (b) Commonwealth does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Contractor (including the Site Information);
- (c) Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 6.5 applies to the information, data and documents; and
- (d) Contractor acknowledges and agrees that, to the extent permitted by law, it will not be liable to make (nor will the Commonwealth be liable upon) any Claim by the Contractor arising out of or in connection with such information, data and documents.

6.3 Site Access

The Commonwealth:

- (a) is not obliged to:
 - (i) provide the Contractor with sole access to the Site; or
 - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
- (b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
- (c) must use reasonable endeavours to ensure that any Other Contractors engaged by the Commonwealth comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, insurance and work health and safety.

6.4 Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to the Commonwealth, Other Contractors and any person authorised by the Commonwealth or the Contract Administrator to occupy, use, operate, maintain or access the Site in their occupation, use of, operation or maintenance of or access to any part of the Site, including any occupation, use, operation or maintenance of or access to part of the Remediation Works or a Stage under clause 13.5;

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- (b) at all reasonable times give the Commonwealth, the Contract Administrator, Other Contractors and any person authorised by either the Commonwealth or the Contract Administrator access to the Remediation Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
 - (c) provide the Commonwealth and the Contract Administrator with every reasonable facility necessary for the supervision, examination, inspection and testing of the Contractor's Activities.

6.5 Non-Reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Commonwealth or anyone on behalf of the Commonwealth (including any information, data and documents provided under clause 6.2(a)); or
 - (ii) the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract and will carry out the Contractor's Activities based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges and agrees that the Commonwealth has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

6.6 Unexploded Ordnance

- (a) This clause does not apply unless the Contract Particulars states that it applies.
- (b) If the Contractor considers it has or is likely to have encountered any Unexploded Ordnance having commenced carrying out Remediation Works at the Site, it must:
 - (i) suspend the Remediation Works and any other Contractor's Activities in the vicinity of the encountered Unexploded Ordnance;
 - (ii) immediately verbally notify the Contract Administrator, and a representative of the Defence Estate where the Remediation Works are being carried out, of the location of the encountered Unexploded Ordnance;
 - (iii) within 24 hours of the verbal notification under subparagraph (ii), provide written notice to the Contract Administrator and the representative of the Defence Estate setting out specific details of the encountered Unexploded Ordnance present or thought to be present on or at the Site;
 - (iv) not attempt to handle, remove, dispose of, destroy or demolish any encountered Unexploded Ordnance;
 - (v) immediately implement control measures that prevent persons, other than those authorised by the Commonwealth, accessing the area of the Site containing the encountered Unexploded Ordnance;
 - (vi) ensure all persons and any Plant, Equipment and Work are kept clear of the encountered Unexploded Ordnance;
 - (vii) comply with any instructions of the Contract Administrator in relation to the encountered Unexploded Ordnance; and
 - (viii) comply with clause 8.13.
- (c) The Contract Administrator must, within 14 days of receipt of the Contractor's notice under paragraph (b)(iii):

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- (i) notify the Contractor and the Commonwealth of its determination as to whether Unexploded Ordnance has been identified on or at the Site; and
 - (ii) instruct the Contractor as to the course of action it must adopt insofar as the Contractor's Activities and the Remediation Works are affected by the presence of any Unexploded Ordnance identified at or on the Site.
 - (d) If the Contract Administrator determines that Unexploded Ordnance has been identified in accordance with paragraph (c)(i) and the Contractor has otherwise complied with its obligations under clause 6.6, the Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) be paid by the Commonwealth any extra costs reasonably incurred by the Contractor after the giving of a notice under paragraph (b)(iii) arising from the identification of Unexploded Ordnance, as determined by the Contract Administrator and added to the Contract Price, subject to the Contractor taking all steps possible to mitigate those extra costs.
 - (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any identified Unexploded Ordnance or the Contract Administrator's instruction under paragraph (c)(ii), other than under paragraphs (d)(i) and (d)(ii).
 - (f) If the Contract Administrator determines that Unexploded Ordnance has not been identified, then the Contractor:
 - (i) must immediately recommence the suspended Remediation Works and other Contractor's Activities; and
 - (ii) will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any action the Contractor was required to take to comply with this clause 6.6.

6.7 National Heritage Place

- (a) Clause 6.7 only applies if the Contract Particulars state it applies.
- (b) The Contractor must ensure that, in carrying out the Contractor's Activities:
 - (i) it does not take any action that has, will have or is likely to have a significant impact on the National Heritage Values of a National Heritage Place; and
 - (ii) it does not act inconsistently with or contravene:
 - A. a management plan for a National Heritage Place made under the EPBC Act; or
 - B. the National Heritage Management Principles under the EPBC Act.

6.8 Commonwealth Heritage Place

- (a) Clause 6.8 only applies if the Contract Particulars state it applies.
- (b) The Contractor must ensure that, in carrying out the Contractor's Activities:
 - (i) it does not take any action that has, will have or is likely to have a significant impact on the Commonwealth Heritage Values of a Commonwealth Heritage Place; and
 - (ii) it does not act inconsistently with or contravene:
 - A. a management plan for a Commonwealth Heritage Place made under the EPBC Act; or
 - B. the Commonwealth Heritage Management Principles under the EPBC Act.

6.9 Heritage Act Requirements (Victoria)

- (a) Clause 6.9 only applies if the Contract Particulars state it applies.
- (b) Prior to commencing the Contractor's Activities, the Contractor must carry out a search of the Heritage Register and Heritage Inventory to ascertain whether the Site (or any area within the Site) is listed on the Heritage Register or Heritage Inventory.
- (c) Without limiting clause 8.3, the Contractor must:
 - (i) obtain Approvals required under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Contractor's Activities; and
 - (ii) comply with conditions of any such Approval in carrying out the Contractor's Activities, including the engagement and supervision of any archaeological work by a qualified archaeologist.
- (d) Subject to paragraph (e), the Contractor must:
 - (i) if a Bond is required to be provided in relation to the Site, provide the amount (as amended from time to time by the Heritage Department) of the Bond to the Heritage Department; and
 - (ii) give all notices and pay all fees and other amounts required to be paid under the Heritage Act to carry out, or otherwise arising out of or in connection with, the Contractor's Activities.
- (e) The parties agree that the:
 - (i) amount of the Bond used or retained by the Heritage Department and not returned to the Contractor in accordance with the Heritage Act; and
 - (ii) extra costs reasonably incurred by the Contractor in complying with clause 6.9 and the Heritage Act (if any),will be reimbursed by the Commonwealth to the Contractor.
- (f) Any amount which the Contractor claims under paragraph (e)(i) must be included in its payment claim in accordance with clause 12.11.
- (g) Any amount to be reimbursed by the Commonwealth in accordance with paragraph (e) will be reduced to the extent that the Contractor has caused or in any way contributed to (including as a result of failing to fulfil its obligations under the Heritage Act) the Bond being used or retained or the costs being increased.

7. PLANS AND DOCUMENTATION

7.1 Commonwealth's Documents

The Commonwealth must provide to the Contractor the documents and number of copies of those documents specified in the Contract Particulars.

7.2 Contractor's Design

The Contractor must:

- (a) design the parts of the Remediation Works which the Contract requires it to design and for this purpose prepare all relevant Remediation Design Documentation in accordance with the Technical Specification and the other requirements of the Contract, if:
 - (i) the Contract Particulars state that the Contractor must prepare Remediation Design Documentation; or
 - (ii) directed to do so under clause 11.4 or 11.8(a)(ii); and
- (b) where paragraph (a)(i) applies:
 - (i) as part of the program it is to prepare under clause 10.2, submit to the Contract Administrator for approval a documentation program which makes allowance for the Remediation Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Remediation Design Documentation within the period of time within which the Contract Administrator may review the Remediation Design Documentation under clause 7.3; and
 - (ii) submit the Remediation Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under paragraph (b).

7.3 Contract Administrator May Review Remediation Design Documentation

- (a) The Contract Administrator may:
 - (i) review any Remediation Design Documentation, or any resubmitted Remediation Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within the number of days specified in the Contract Particulars of the submission by the Contractor of such Remediation Design Documentation or resubmitted Remediation Design Documentation, reject the Remediation Design Documentation if in the Contract Administrator's reasonable opinion the Remediation Design Documentation does not comply with the requirements of the Contract.
- (b) If any Remediation Design Documentation is rejected, the Contractor must submit amended Remediation Design Documentation to the Contract Administrator.
- (c) The Contractor must not commence execution of any part of the Remediation Works to which any Remediation Design Documentation it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days specified in the Contract Particulars to review the Remediation Design Documentation and has not rejected the Remediation Design Documentation.

7.4 No Obligation to Review

- (a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Remediation Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Remediation Design Documentation prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract

Administrator or otherwise by or on behalf of the Commonwealth in relation to, the Remediation Design Documentation will:

- (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
- (ii) prejudice the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.

7.5 Copies of Remediation Design Documentation

For the purposes of clauses 7.2(b)(i) and 7.3, the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Remediation Design Documentation in:

- (a) hard copy; and
- (b) electronic copy,

in accordance with the requirements specified in the Contract Particulars.

7.6 Fitness for Purpose

The Contractor warrants that:

- (a) the Remediation Design Documentation it prepares will be fit for the purposes as set out in, or reasonably to be inferred from, the Technical Specification; and
- (b) upon Remediation Completion, the Remediation Works or the Stage will, to the extent that the Remediation Works have or the Stage has been designed by the Contractor, be fit for the purposes as set out in, or reasonably to be inferred from, the Technical Specification.

7.7 Project Plans

- (a) The Contractor:
 - (i) must carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Plans;
 - (ii) for the purposes of subparagraph (i), must:
 - A. prepare draft Project Plans, based, where applicable, on the outline approach to preparing the Project Plans and performing the Contractor's Activities to be covered by the Project Plans submitted by the Contractor in its proposal for the Contractor's Activities and otherwise in accordance with the requirements of the Contract, and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event no later than the number of days set out in the Contract Particulars after the Award Date for each Project Plan;
 - B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars for each Project Plan to review the Project Plan and has not rejected the Project Plan;
 - C. if any Project Plan is rejected, submit an amended Project Plan to the Contract Administrator;
 - D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator;
 - E. after each Project Plan has been finalised:

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- 1) regularly review, update and amend each Project Plan in accordance with the process set out in each Project Plan (and otherwise at least on each anniversary of the Award Date);
 - 2) update or amend a Project Plan on request of the Contract Administrator; and
 - 3) continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor),

and submit an updated or amended Project Plan to the Contract Administrator, after which:

- 4) the Contractor must continue to comply with the requirements of the then current Project Plan until the process in subparagraph (ii) has been completed in respect of the updated or amended Project Plan; and
- 5) subsubparagraphs B - E will apply (to the extent applicable); and

F. document and maintain detailed records of all:

- 1) reviews, updates, amendments and submissions of each Project Plan;
- 2) audits or other monitoring of each Project Plan; and
- 3) training and awareness programs and communications provided to Contractor and subcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

(b) The Contractor will not be relieved from compliance with any of its obligations under the Contract or otherwise at law or in equity as a result of:

- (i) the implementation of and compliance with the requirements of any Project Plan;
- (ii) any direction by the Contract Administrator concerning a Project Plan or the Contractor's compliance or non-compliance with a Project Plan;
- (iii) any audit or other monitoring by the Contract Administrator of the Contractor's compliance with a Project Plan; or
- (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

7.8 Availability

The Contractor must:

- (a) keep available for the use of the Contract Administrator, the Commonwealth or anyone else acting on behalf of the Commonwealth one complete set of the Technical Specification, all Remediation Design Documentation and all other Project Documents directed in writing by the Contract Administrator; and
- (b) if required by any Statutory Requirement, keep such documents available on Site.

7.9 Licence over Project Documents

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

This licence:

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- (a) arises, for each Project Document, immediately when the Project Document is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Commonwealth or the Contract Administrator, under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works by, for or on behalf of the Contractor;
 - (b) includes an unlimited right to sub-licence;
 - (c) without limitation, extends to:
 - (i) any subsequent occupation, use, operation and maintenance of, or additions, alterations or repairs to the Remediation Works; and
 - (ii) use in any way for any other Commonwealth project; and
 - (d) survives the termination of the Contract on any basis.

7.10 Intellectual Property Warranties

The Contractor warrants that:

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

7.11 Intellectual Property Rights

The Contractor must:

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

7.12 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Remediation Design Documentation (which the Contractor is entitled to use under clause 7.3) or any other Project Document:

- (a) subject to paragraphs (b) and (c), the order of precedence specified in the Contract Particulars will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between the Technical Specification and any other requirement of the Contract (including any other requirement of the Technical Specification), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;

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- (c) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Remediation Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and
- (d) irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
- (i) the Contractor or the Commonwealth, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing. After receipt of a notice from a party the Contract Administrator must within 14 days of receipt of the notice instruct the Contractor as to the course it must adopt; or
 - (ii) the Contract Administrator, then the Contract Administrator must promptly give the parties notice in writing together with an instruction to the Contractor as to the course it must adopt,
- including, where applicable, by applying the principles in paragraphs (a) to (c) above.

7.13 Access to Premises and Project Documents

The Contractor must:

- (a) at the request of the Commonwealth at any time during the Contractor's Activities and the period of 10 years following the latest of the:
 - (i) end of the last Remediation Defects Rectification Period;
 - (ii) date upon which all Remediation Defects have been rectified in accordance with the Contract; and
 - (iii) completion of the Contractor's Activities,provide and make available:
 - (iv) access to its premises and make the Project Documents available for inspection by the Contract Administrator or anyone else acting on behalf of the Commonwealth;
 - (v) such copies of the Project Documents as the Contract Administrator or anyone else acting on behalf of the Commonwealth may require, in such formats as may be required;
 - (vi) all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth; and
 - (vii) any officers, employees, agents or subcontractors for interviews with the Contract Administrator or anyone else acting on behalf of the Commonwealth;
- (b) as a condition precedent to Remediation Completion, deliver to the Contract Administrator a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Remediation Works or the Stage, in a storage medium reasonably satisfactory to the Commonwealth, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under clause 7.13 as if the subcontractor were the Contractor.

7.14 Project DCAP

The Contractor:

- (a) without limiting its other Contract obligations and to the extent not inconsistent with the Contract, must at all times in the performance of the Contractor's Activities comply with the Project DCAP;
- (b) warrants that:
 - (i) the Project DCAP complies with the requirements of this Contract;

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- (ii) preparation of any Remediation Design Documentation in accordance with the Project DCAP will ensure that the Remediation Design Documentation complies with the requirements of this Contract and that the Contractor otherwise discharges its obligations under the Contract; and
 - (iii) performance of the Contractor's Activities in accordance with the Project DCAP will ensure that the Contractor's Activities comply with the requirements of the Contract and that the Contractor otherwise discharges its obligations under the Contract;
 - (c) acknowledges that the Project DCAP:
 - (i) does not limit the Contractor's obligations under this Contract or otherwise at law or in equity; and
 - (ii) may require updating and refining throughout the performance of the Contractor's Activities:
 - A. to the extent that it does not reflect all the tasks and other things to be done or provided to perform the Contractor's Activities in accordance with the Contract; and
 - B. without limiting subsubparagraph A, on account of Remediation Works Variations;
 - (d) must update and refine the Project DCAP as required by paragraph (c)(ii) with the written approval of the Contract Administrator;
 - (e) to the extent permitted by law, will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with any work which the Contractor is required to carry out arising out of or in connection with paragraph (c); and
 - (f) acknowledges that the Commonwealth has not made and does not make any representation or give any warranty as to any of the matters referred to in paragraph (b).

7.15 Drawings

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, all drawings which the Contractor is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- (a) the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Remediation Works);
- (b) all Statutory Requirements; and
- (c) the directions of the Contract Administrator.

7.16 Method of Work Plan for Airfield Activities and Operating Airfield

- (a) Clause 7.16 does not apply unless the Contract Particulars state that it does apply.
- (b) Without limiting clause 7.7, as the Contractor's Activities or the Remediation Works are to be carried out on or in the vicinity of an airfield, the Contractor must carry out the Contractor's Activities in accordance with, and otherwise implement, a Method of Work Plan for Airfield Activities.
- (c) The Contractor must ensure that the Contractor's Activities and the Remediation Works do not compromise aircraft operations or the safety of aircraft.
- (d) Without limiting clause 8.13(a)(iii) and as part of the Contractor's Activities, the Contractor must liaise with the Commonwealth and the Contract Administrator as required to co-ordinate the Contractor's Activities and the Remediation Works with, and prevent interruption of, Commonwealth activities including aircraft operations and the safety of aircraft.

8. EXECUTION OF REMEDIATION WORKS

8.1 Description of Remediation Works

Subject to clause 7.12, the Contractor must undertake and execute the Remediation Works in accordance with:

- (a) the Technical Specification;
- (b) if the Contract requires the Contractor to design any part of the Remediation Works, any Remediation Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for the Remediation Works under clause 7.3;
- (c) any direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Remediation Works Variation directed by the Contract Administrator by a document titled "Remediation Works Variation Order"; and
- (d) the other requirements of the Contract.

8.2 All Remediation Work Included

- (a) The Contractor has allowed for in the Lump Sum Component of its Contract Price the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Technical Specification or any Remediation Design Documentation.
- (b) Any such Plant, Equipment and Work, materials and other work:
 - (i) must be undertaken and provided by the Contractor; and
 - (ii) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.
- (c) To the extent that any such Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities are not covered by the Schedule of Rates Component of the Contract Price, the Contractor will:
 - (i) be deemed to have allowed for the undertaking or provision of those Plant, Equipment and Work, materials and other work in its Lump Sum Component; and
 - (ii) not be entitled to any adjustment to the Lump Sum Component or to make any other Claim against the Commonwealth, arising out of or in connection with the undertaking or provision of those Plant, Equipment and Work, materials and other work, unless:
 - A. the Contractor is otherwise so entitled under:
 - 1) clause 6.6(d); or
 - 2) clause 11.10(a); or
 - B. a Remediation Works Variation Order is issued by the Contract Administrator under clause 11.4.

8.3 Statutory Requirements

In carrying out the Contractor's Activities, the Contractor must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
- (b) apply for and obtain all Approvals other than those specified in the Contract Particulars;
- (c) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and

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- (d) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Contractor's Activities or the Remediation Works issues to the Contractor.

8.4 Change in Statutory Requirements or Variance with Contract

- (a) If:
- (i) there is any change in a Statutory Requirement after the Award Date; or
 - (ii) a Statutory Requirement is at variance with the Contract,
- then the party discovering the change or variance must promptly give the Contract Administrator and the other party notice in writing.
- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the change or variance.
- (c) Subject to paragraph (d), the Contractor will be entitled to:
- (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a), which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b) as determined by the Contract Administrator.
- (d) The Contract Price will be decreased by any saving made by the Contractor which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under paragraph (b) other than under paragraph (c)(i) and (ii).

8.5 Subcontracting

The Contractor:

- (a) must not without the prior written approval of the Contract Administrator, subcontract any work specified in the Contract Particulars except to a subcontractor specified in the Contract Particulars;
- (b) will:
 - (i) not be relieved of any of its liabilities or obligations under the Contract, including those under clause 2.1; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted, as if it was itself executing the work,whether or not any subcontractors default or otherwise fail to observe any of the requirements of the relevant subcontract;
- (c) will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Contractor's Activities;
- (d) must ensure that all subcontract documentation is prepared and all procurement processes for subcontractors are conducted:
 - (i) consistently with the principles of the Commonwealth Procurement Rules, including the rules in relation to "value for money", "encouraging competition", "efficient, effective,

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- economical and ethical procurement", "accountability and transparency" and the need to achieve value for money, as described in the Commonwealth Procurement Rules;
 - (ii) with the highest standards of probity, fairness and equal opportunity; and
 - (iii) in accordance with all other Statutory Requirements;
 - (e) must ensure that each subcontract contains provisions:
 - (i) which bind the subcontractor to participate in any novation required by the Commonwealth under clause 14.5(a)(ii); and
 - (ii) as otherwise required by the Contract;
 - (f) must, if requested by the Contract Administrator:
 - (i) execute;
 - (ii) procure the relevant subcontractor to execute; and
 - (iii) deliver to the Contract Administrator,a Subcontractor Deed of Covenant duly completed with all relevant particulars:
 - (iv) as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
 - (v) when such approval is not required, within the time required by the Contract Administrator and in any event before commencement of work by the relevant subcontractor; and
 - (g) must obtain and hold all valid and satisfactory STRs required for the entity type of any subcontractor where the subcontract price is valued (or estimated) to be over \$4 million (inclusive of GST). For the purposes of this paragraph (g), a reference to "satisfactory" and "valid" has the meaning given in clause **Error! Reference source not found..**

No Subcontractor Deed of Covenant will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

8.6 Collateral Warranties

The Contractor must, as a condition precedent to Remediation Completion of the Remediation Works or a Stage specified in the Contract Particulars, procure and provide the Commonwealth with the warranties specified in the Contract Particulars:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
- (b) in the form of the Collateral Warranty; and
- (c) for the minimum warranty periods stated in the Contract Particulars.

No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by the Contract:

- (d) the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
- (e) the Commonwealth will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
- (f) for the purpose of paragraph (e), the Contractor irrevocably appoints the Commonwealth as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of the Commonwealth against the Contractor under the Contract or otherwise at law or in equity.

8.7 Co-operation with Other Contractors

Without limiting clause 8.13(a)(iii), the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.

8.8 Novation

- (a) The Contractor acknowledges and agrees that the Commonwealth may:
 - (i) dispose of the Site to a third party; and
 - (ii) at any time (whether on or after Remediation Completion), without the consent of the Contractor, novate the Contract to that third party after Remediation Completion or its nominees (whether in whole or in part).
- (b) If the Commonwealth elects to novate the Contract under paragraph (a)(i), the Contractor must execute a deed of novation on the terms required by the Commonwealth to give effect to the novation within 7 days of receipt of the deed of novation from the Commonwealth.

8.9 Setting Out

The Contractor must:

- (a) set out the Remediation Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

8.10 Survey

The Contractor must, as a condition precedent to Remediation Completion of the Remediation Works or a Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:

- (a) the whole of the Remediation Works or the Stage are within any particular boundaries stipulated in the Contract except to the extent that the Remediation Works or Stage are specifically required by the Contract to be outside those boundaries; and
- (b) if required by the Technical Specification, specified elements of the Remediation Works or the Stage are within the tolerances specified.

8.11 Measurements and Dimensions

Without limiting clause 8.9:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Technical Specification (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
- (c) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.11.

8.12 Safety

If the Contract Administrator reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Remediation Works, the Contract Administrator may direct the Contractor to change its manner of working or to cease working.

8.13 Work Health and Safety

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all Statutory Requirements and other requirements of the Contract in respect of work health and safety, including the applicable WHS Legislation;
 - (ii) where the applicable WHS Legislation does not prescribe a duty referred to in this Contract as one the Contractor must comply with, it complies with the duty contained in the Commonwealth WHS Legislation;
 - (iii) it complies with the duty under the WHS Legislation to consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iv) it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
 - (v) it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
 - A. it is to assist an injured person or remove a deceased person;
 - B. it is to make the area safe or to minimise the risk of a further notifiable incident; or
 - C. the relevant regulator/inspector has given permission to disturb the site;
- (b) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator in respect of:
 - (i) notifiable incidents within the meaning of the WHS Legislation, immediately;
 - (ii) work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
 - (iii) all other work health and safety matters arising out of or in connection with the Contractor's Activities and the Remediation Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 3.13;
- (c) for the purposes of paragraphs (a)(iv) and (b) above, in respect of any notifiable incident:
 - (i) immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
 - (ii) promptly provide the Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
 - (iii) promptly provide the Contract Administrator with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and

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- (iv) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Contract Administrator with a summary of the related investigations, actions to be taken and any impact on the Contract that may result from the notifiable incident;
 - (d) if the Contract Particulars state that this paragraph is applicable, maintain accreditation under the WHS Accreditation Scheme at all times whilst carrying out the Contractor's Activities and comply with all conditions of the WHS Accreditation Scheme;
 - (e) if the Contract Particulars state that this paragraph is applicable, where the Contractor is a joint venture for the purposes of the WHS Accreditation Scheme, ensure:
 - (i) all parties holding accreditation in accordance with the WHS Accreditation Scheme at the Award Date:
 - A. maintain accreditation at all times whilst carrying out the Contractor's Activities; and
 - B. comply with all conditions of the WHS Accreditation Scheme; and
 - (ii) any parties carrying out the Contractor's Activities (where those activities include building work as defined in the *Federal Safety Commissioner Act 2022* (Cth)) that do not hold accreditation in accordance with the WHS Accreditation Scheme, comply with the written undertakings provided to the Federal Safety Commissioner and lodged as part of their tender;
 - (f) carry out the Contractor's Activities safely and in a manner that does not put the health and safety of persons at risk;
 - (g) carry out the Contractor's Activities in a manner that protects property;
 - (h) institute systems to:
 - (i) obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation; and
 - (ii) provide, in a format specified by the Contract Administrator, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:
 - A. on a monthly basis in the reports under clause 3.13;
 - B. on a quarterly basis (when requested by the Contract Administrator); and
 - C. as otherwise directed by the Contract Administrator;
 - (i) provide the written assurances obtained under paragraph (h) to the Contract Administrator in accordance with paragraph (h);
 - (j) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, within 10 days of receipt provide to the Contract Administrator copies of all:
 - (i) formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or subcontractor relating to work health and safety matters;
 - (ii) formal notices issued by a health and safety representative of the Contractor or subcontractor under or in compliance with the applicable WHS Legislation; and
 - (iii) formal notices, written communications and written undertakings given by the Contractor or subcontractor to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,arising out of or in connection with the Contractor's Activities or the Remediation Works;
 - (k) exercise a duty of the utmost good faith to the Commonwealth in carrying out the Contractor's Activities to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;

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- (l) ensure all subcontracts include provisions equivalent to the obligations of the Contractor in clause 8.13;
 - (m) ensure that, if any Statutory Requirement requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - B. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (n) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (m) are met;
 - (o) immediately notify the Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
 - (p) without limiting the Contractor's obligations under the Contract (including paragraph (c) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of the Commonwealth, provide all information or copies of documentation held by the Contractor or a subcontractor to the Contract Administrator or anyone else acting on behalf of the Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation;
 - (q) if requested by the Contract Administrator or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contract Administrator before the Contractor or any subcontractor commences such work;
 - (r) where the Contractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contract Administrator as a condition precedent to Remediation Completion and before the expiry of the Remediation Defects Rectification Period information concerning:
 - (i) the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
 - (ii) the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
 - (iii) any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured;
 - (s) if the Contractor is responsible for design, ensure the Remediation Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
 - (t) ensure that it:
 - (i) reviews the Asbestos Management Plan and the Defence Asbestos Register prior to commencing any physical works at the Site; and
 - (ii) complies with the Asbestos Management Plan at all times whilst carrying out the Contractor's Activities and the Remediation Works, including by:

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- A. ensuring its subcontractors and personnel have access to and review the Asbestos Management Plan and the Defence Asbestos Register, prior to commencing any physical works at the Site;
 - B. ensuring it engages appropriately licensed Asbestos removalist subcontractors to carry out any Asbestos Related Activities;
 - C. maintaining records of all Asbestos training provided to all subcontractors and personnel and providing these to the Contract Administrator upon request; and
 - D. promptly providing the Contract Administrator with:
 - 1) all documentation associated with Asbestos Related Activities (including clearance certificates, air monitoring results and tip fee receipts); and
 - 2) all relevant information confirming all instances of Asbestos Related Activities;
- (u) not use Asbestos or ACM in carrying out the Contractor's Activities;
- (v) not use, install or incorporate Asbestos or ACM into the Remediation Works;
- (w) provide a certificate to the Contract Administrator in a form satisfactory to the Contract Administrator as a condition precedent to Remediation Works which states that:
- (i) all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) used, installed or incorporated into the Remediation Works are entirely (meaning 100%) free of Asbestos and ACM; and
 - (ii) the Contractor has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Contractor's Activities and the Remediation Works;
- (x) without limiting paragraph (w), if any imported materials, goods, products, equipment and plant have or has been used, installed or incorporated into the Remediation Works, the Contractor must provide to the Contract Administrator as a condition precedent to Remediation Completion:
- (i) sample test reports; and
 - (ii) test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method,
- in relation to the imported materials, goods, products, equipment or plant which have or has been used, installed or incorporated into the Remediation Works; and
- (y) if the Contractor is a designer of a structure or part of a structure for the purposes of the WHS Legislation, the Contractor must provide to the Contract Administrator, with each submission of Remediation Design Documentation under clause 7.2, a written report that specifies the hazard relating to the design of the structure (or part) which, as far as the Contractor is reasonably aware:
- (i) create a risk to health or safety to those carrying out construction work on the structure (or part); and
 - (ii) are associated only with that particular design.

8.14 Plant, Equipment and Work

- (a) The Contractor warrants that there will be, on Site at all times, adequate Plant, Equipment and Work required by the Contractor to carry out the Contractor's Activities in accordance with the Contract.
- (b) The Contractor must not remove from the Site any Plant, Equipment and Work specified in the Contract Particulars without the Contract Administrator's prior written approval, except for the purpose of achieving Remediation Completion as contemplated under clause 8.15(b).

8.15 Cleaning Up

The Contractor must:

- (a) in carrying out the Contractor's Activities, keep the Site and the Remediation Works clean and tidy and free of refuse; and
- (b) as a condition precedent to Remediation Completion of the Remediation Works and each Stage, remove all rubbish, materials and Plant, Equipment and Work from the part of Site relevant to the Remediation Works or the Stage.

8.16 The Environment

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (ii) it does not cause or contribute to any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies the Contract Administrator of:
 - A. any non-compliance with the requirements of clause 8.16;
 - B. any breach of a Statutory Requirement for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its subcontractors comply with the requirements in clause 8.16; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of or in connection with the Contractor's Activities or the Remediation Works, whether or not it has complied with all Statutory Requirements and other requirements of the Contract for the protection of the Environment.

8.17 Urgent Protection

The Commonwealth may take any action necessary to protect the Remediation Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor must take but does not take.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in taking such action will be a debt due from the Contractor to the Commonwealth.

8.18 Valuable, Archaeological or Special Interest Items

- (a) Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Commonwealth.
- (b) Where such an item is found on or in the Site, the Contractor must:
 - (i) immediately give the Contract Administrator and the Commonwealth notice in writing;
 - (ii) not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and

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- (iii) ensure that the item is protected until the nature of the item has been competently determined.
 - (c) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the finding of the item.
 - (d) The Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contract Administrator's instruction under paragraph (c), as determined by the Contract Administrator.
 - (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the finding of the item or the Contract Administrator's instruction under paragraph (c), other than under paragraph (d).

8.19 The Commonwealth May Act

The Commonwealth may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in so carrying out such a Contract obligation will be a debt due from the Contractor to the Commonwealth.

8.20 Access Hours

Unless otherwise agreed in writing by the Contractor and the Contract Administrator, the access hours applicable to the Contractor's Activities to be carried out on Site are those specified in the Contract Particulars.

8.21 Salvaged Materials

Subject to clause 8.18, unless expressly stated to the contrary in the Contract, directed by the Contract Administrator or otherwise as necessary to comply with a Defence Requirement, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Remediation Works are the property of the Contractor.

8.22 Contract Administrator's Office

- (a) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site, provide and erect on the Site, where directed by the Contract Administrator, the temporary office and associated facilities and services specified in the Contract Particulars for the sole use of the Contract Administrator and the Contract Administrator's representatives.
- (b) The Contract Administrator's Office will remain the property of the Contractor.
- (c) Without limiting paragraph (a), the Contractor must:
 - (i) carry out all installations and connections necessary to provide lighting, heating, air conditioning and a separate telephone line to the Contract Administrator's Office;
 - (ii) install all lighting, heating, air conditioning and telephones in the Contract Administrator's Office as directed by the Contract Administrator;
 - (iii) maintain the Contract Administrator's Office until the last Date of Remediation Completion, including all necessary cleaning and maintenance;
 - (iv) pay all costs of installation, consumption, rental and removal of all lighting, heating, air conditioning and telephone services in the Contract Administrator's Office (excluding the cost of telephone calls which are to be paid by the Contract Administrator); and

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- (v) remove the Contract Administrator's Office from the Site within 7 days of the last Date of Remediation Completion.

8.23 Project Signboards

- (a) The Contractor must provide the number of project signboards specified in the Contract Particulars, each of which must:
 - (i) be in the dimensions specified in the Contract Particulars; and
 - (ii) set out:
 - A. the name of the project;
 - B. the names of the parties to the Contract;
 - C. the name of the Contract Administrator;
 - D. a general description of the Remediation Works;
 - E. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
 - F. the Date for Remediation Completion;
 - G. the location of the Site office (if any);
 - H. an 'Acknowledgement of Country' in accordance with the requirements set out in the website specified in the Contract Particulars; and
 - I. any additional information:
 - 1) specified in the Contract Particulars; or
 - 2) required by the Contract Administrator.
- (b) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site, submit the proposed location, layout and content of the project signboards to the Contract Administrator for approval.
- (c) Once approved by the Contract Administrator, the Contractor must:
 - (i) fix the project signboards in the locations approved by the Contract Administrator;
 - (ii) maintain the project signboards until the last Date of Remediation Completion; and
 - (iii) dismantle and remove the project signboards within 7 days of the last Date of Remediation Completion.

8.24 Work Not Included

The remediation work specified in the Contract Particulars to be carried out on the Site is not included in the Contract and will be carried out during the term of the Contract by the Commonwealth or by other persons (including Other Contractors).

8.25 Dilapidation Survey

- (a) Clause 8.25 only applies if the Contract Particulars state it applies.
- (b) Prior to commencing the Contractor's Activities on the Site, the Contractor must carry out a comprehensive survey of the location and condition of existing structures, roads, carparks, access paths, footpaths, trees, services, other civil works on and around the Site and any other items areas or features specified in the Contract Particulars. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Contractor, the Contract Administrator may attend for the carrying out of the survey.

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- (c) The survey must include a comprehensive photographic record of existing conditions prior to the Contractor having access to the Site.
 - (d) A copy of the survey and the photographic record is to be provided to the Contract Administrator by no later than the number of days specified in the Contract Particulars after the Contractor is granted access to the Site.

8.26 Prior Work

- (a) Clause 8.26 only applies if the Contract Particulars state it applies.
- (b) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after the Commonwealth gives the Contractor access to the Site under clause 2.2(a) of the Contract;
 - (ii) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Contract Administrator in writing providing:
 - A. full particulars of the defects or matters identified; and
 - B. the reasons for the opinion formed by it in respect to the defects or matters identified, and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
- (c) On receipt of the Contractor's notice, the Contract Administrator will investigate the Prior Work the subject of the notice and:
 - (i) if the Contract Administrator agrees with the Contractor - issue a direction to the Contractor and value any work carried out by the Contractor by reason of that direction as a Remediation Works Variation under clause 11.5 of the Contract; or
 - (ii) if the Contract Administrator disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.
- (d) If the Contractor fails to:
 - (i) inspect the Prior Work as required by subparagraph (b)(i); or
 - (ii) notify the Contract Administrator of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

8.27 Joining Up

- (a) Clause 8.27 only applies if the Contract Particulars state it applies.
- (b) Where the method of joining up of old and new work is not specified in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c), the cutting away and joining up must be carried out by the Contractor in a manner approved by the Contract Administrator and made good in all trades to match existing adjacent work.

8.28 Existing Services and Structures

- (a) Clause 8.28 only applies if the Contract Particulars state it applies.
- (b) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c).
- (c) The Contractor must obtain the prior written approval from the Contract Administrator in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (d) Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown on the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c) or should have been shown in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c), is evident on the Site or has been notified in writing by the Contract Administrator to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
- (e) The Contractor must notify the Contract Administrator immediately upon the discovery of services or obstructions not shown in the Technical Specification and any Remediation Design Documentation the Contractor is entitled to use under clause 7.3(c) or identified by inspection.
- (f) The Contractor must immediately notify the Contract Administrator in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
- (g) The Contractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Remediation Works and must comply with the requirements of the Commonwealth, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during construction or maintenance of the Remediation Works.

8.29 Items to be Supplied by Commonwealth

- (a) Clause 8.29 only applies if the Contract Particulars state it applies.
- (b) The items specified in the Contract Particulars will be supplied by the Commonwealth without charge to the Contractor for use in the execution of the Contractor's Activities subject to the following conditions:
 - (i) the Contractor must submit a written request for any such items and, on receiving the Contract Administrator's written authority, must take delivery of the items at the time and date notified by the Contract Administrator in writing;
 - (ii) before taking delivery of any such items, the Contractor must ensure that they are in a satisfactory condition and in the quantities specified and the Contractor has all relevant information in respect of the installation, construction or commissioning of such items;
 - (iii) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the replacement of any items that the Contractor claims to be defective or deficient in quantity;
 - (iv) the Contractor is responsible for the safety of all such items until they are incorporated in the Remediation Works; and
 - (v) the Commonwealth does not represent or warrant that the quantities specified in the Contract Particulars are adequate for the Contractor's Activities and the supply of any additional quantities must be arranged by the Contractor at its cost.

8.30 Pandemic Adjustment Event

- (a) If either party considers that there has been a Pandemic Adjustment Event, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing, together with

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- detailed particulars of the relevant event and such other information as the Contract Administrator may require.
- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), notify the Contractor and the Commonwealth of its determination whether a Pandemic Adjustment Event has occurred.
- (c) Where the Contract Administrator has determined a Pandemic Adjustment Event has occurred, the Contract Administrator may, without being under any obligation to do so, instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Pandemic Adjustment Event, including to prepare (and thereafter comply with) a plan satisfactory to the Contract Administrator specifying the steps that the Contractor will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Contractor's Activities and the Remediation Works.
- (d) If a Pandemic Adjustment Event occurs:
- (i) subject to paragraph (f), the Contractor will be entitled to:
- A. an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
- B. have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator;
- (ii) subject to paragraph (f), the Contract Price will be decreased by any savings made (or which would have been made if the Contractor had taken all reasonable steps to maximise savings) by the Contractor which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator; and
- (iii) the Contractor must comply with any direction of the Contract Administrator in relation to the Pandemic Adjustment Event.
- (e) To the extent permitted by law:
- (i) the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 8.30; and
- (ii) without limiting subparagraph (i), the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), other than under paragraph (d)(i).
- (f) The Contract Administrator:
- (i) will reduce any entitlement the Contractor would have otherwise had under paragraph (d)(i)B to the extent that the Contractor has failed to take all reasonable steps to:
- A. avoid or overcome any adverse effects of the Pandemic Adjustment Event (including by complying with its obligations under the Contract); or
- B. minimise any additional cost to the Commonwealth in respect of the Pandemic Adjustment Event; and
- (ii) will take into account, for the purposes of paragraph (d)(ii), the extent that the Contractor has failed to take all reasonable steps to maximise any savings to the Commonwealth in respect of the Pandemic Adjustment Event.

9. QUALITY OF REMEDIATION WORKS

9.1 Remediation Works

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard prescribed in the Contract; or
 - B. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Remediation Works; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which:
 - A. comply with the requirements of the Contract; or
 - B. if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Remediation Works; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Remediation Works; and
- (c) comply with the requirements of the Contract.

9.2 Contract Administrator's Right to Inspect

- (a) The Contract Administrator may at any time inspect the Contractor's Activities or the Remediation Works.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Contract Administrator owes no duty to the Contractor to:
 - A. inspect the Contractor's Activities or the Remediation Works; or
 - B. review the Remediation Works for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
 - (ii) no inspection of the Contractor's Activities or review of the Remediation Works by the Contract Administrator will in any way lessen or otherwise affect:
 - A. the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - B. the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.

9.3 Sampling and Analysis

The Contractor must carry out all sampling and analysis required by the Contract or directed by the Contract Administrator. All sampling and analysis is to be carried out in accordance with any procedure:

- (a) specified in the Contract which may apply to the tests; or
- (b) if no procedure exists, as reasonably directed by the Contract Administrator.

9.4 Costs of Sampling and Analysis

If:

- (a) the Contract Administrator directs the Contractor to carry out sampling and analysis which:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Remediation Defect in respect of which the Contract Administrator gave an instruction under clause 9.5; and
- (b) the results of the sampling and analysis show the Contractor's Activities are in accordance with the Contract,

the Contractor will be entitled to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the sampling and analysis, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the sampling and analysis, other than under this clause 9.4.

9.5 Remediation Defects

Subject to paragraphs (b) and (c), the Contractor must correct all Remediation Defects.

If, prior to the expiration of the Remediation Defects Rectification Period for the Remediation Works or a Stage, the Contract Administrator discovers or believes there is a Remediation Defect, the Contract Administrator may give the Contractor an instruction specifying the Remediation Defect and doing one or more of the following:

- (a) requiring the Contractor to correct the Remediation Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to carry out a Remediation Works Variation to overcome the Remediation Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising the Contractor that the Commonwealth will accept the work, or any part of it, despite the Remediation Defect.

9.6 Correction of Remediation Defect or Remediation Works Variation

- (a) If an instruction is given under clause 9.5(a) or (b), the Contractor must correct the Remediation Defect or carry out the Remediation Works Variation:
 - (i) within the time specified in the Contract Administrator's instruction; and
 - (ii) if after Remediation Completion, at times and in a manner which cause as little inconvenience to the occupants of the Site as is reasonably possible.
- (b) If the Contractor fails to comply with paragraph (a), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have) itself engage an Other Contractor to correct the Remediation Defect and the cost of such correction will be a debt due from the Contractor to the Commonwealth.

9.7 Claim for Correction of Remediation Defect

Where an instruction is given under clause 9.5(a) and clause 9.6(b) does not apply:

- (a) the Contractor will only be entitled to make a Claim for correcting the Remediation Defect (or the relevant part) if the Remediation Defect (or the relevant part) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Remediation Defect will be treated as if it were a Remediation Works Variation the subject of a direction by the Contract Administrator and clause 11.5 applied.

9.8 Claim for Remediation Works Variation

Where a Remediation Works Variation has been instructed under clause 9.5(b) and:

- (a) the Contractor is not responsible for the Remediation Defect (or the relevant part):
 - (i) the Contract Price will be adjusted in accordance with clause 11.5; and
 - (ii) the Contractor will be entitled to an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; or
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part):
 - (i) the Contract Administrator will determine:
 - A. the value of the Remediation Works Variation in accordance with clause 11.5; and
 - B. the cost of correcting the Remediation Defect (or the relevant part) as if clause 9.7(b) applied;
 - (ii) the Contract Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
 - A. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Contract Price will be increased by the excess; or
 - B. if the cost under subparagraph (i)B is greater than the value under subparagraph (i)A, the Contract Price will be decreased by the difference and will be a debt due from the Contractor to the Commonwealth; and
 - (iii) the Contractor will not be entitled to claim an extension of time to any Date for Remediation Completion.

9.9 Acceptance of Remediation Work

If:

- (a) an instruction is given under clause 9.5(c) prior to the expiration of the Remediation Defects Rectification Period; and
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Remediation Defect (or the relevant part) will be a debt due from the Contractor to the Commonwealth.

9.10 Extension of Remediation Defects Rectification Period

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.5(a) or (b) during the Remediation Defects Rectification Period; and
- (b) the Contractor is responsible for the Remediation Defect (or the relevant part),

the Remediation Defects Rectification Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Remediation Defect (or the relevant part) or completion of the Remediation Works Variation.

9.11 Common Law Rights not Affected

Neither the Commonwealth's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Remediation Defects, whether before or after the expiration of the Remediation Defects Rectification Period, will be affected or limited by:

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- (a) the rights conferred upon the Commonwealth or Contract Administrator by this clause 9 or any other provision of the Contract;
 - (b) the failure by the Commonwealth or the Contract Administrator to exercise any such rights; or
 - (c) any instruction of the Contract Administrator under clause 9.5.

9.12 HOTO Process

Without limiting clause 8.13(a)(ii) or clause 13, the Contractor must:

- (a) fully co-operate with the Contract Administrator, the Commonwealth and Other Contractors and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
- (b) without limiting paragraph (a):
 - (i) carry out all Contractor HOTO Obligations;
 - (ii) ensure that all Contractor HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Requirements;
 - (iii) comply with:
 - A. all applicable HOTO Requirements; and
 - B. all commissioning, handover and takeover requirements described in the Contract;
 - (iv) as and when required by the Contract Administrator, provide the Commonwealth with such other specific assistance as may be required by the Commonwealth to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
 - (v) as and when required by the Contract Administrator, meet with the Contract Administrator, the Commonwealth and Other Contractors for the purpose of ensuring that the Contract Administrator, the Commonwealth and Other Contractors have sufficient Project Documents to enable the Contract Administrator, the Commonwealth and Other Contractors to:
 - A. occupy, use, operate and maintain the Remediation Works or the Stage; and
 - B. perform such other activities as may be required by the Commonwealth in respect of the Remediation Works or the Stage.

9.13 Quality Assurance

The Contractor:

- (a) must implement the quality assurance process, system or framework in its Quality Plan;
- (b) without limiting clause 7.13, must allow the Contract Administrator or anyone else acting on behalf of the Commonwealth access to the quality assurance process, system or framework of the Contractor and its subcontractors so as to enable auditing or other monitoring; and
- (c) will not be relieved from compliance with its obligations under the Contract or otherwise at law or in equity as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any direction by the Contract Administrator concerning the Contractor's quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;

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- (iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Commonwealth of the Contractor's compliance with the quality assurance process, system or framework; or
 - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any Contractor's Activities or aspects of the Remediation Works which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

9.14 Remediation Defects, Records and Reports

- (a) Clause 9.14 only applies if the Contract Particulars state it applies.
 - (b) Without limiting clause 9.5, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Remediation Defects.
 - (c) The Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator:
 - (i) before the Date of Remediation Completion:
 - A. with its reports under clause 3.13; and
 - B. as a condition precedent to Remediation Completion; and
 - (ii) after the Date of Remediation Completion:
 - A. with its reports under clause 3.13; and
 - B. within 14 days after the end of the Remediation Defects Rectification Period,
- which sets out:
- (iii) details of all calls, attendances, recommendations and actions taken in respect of each Remediation Defect;
 - (iv) recommendations for the future maintenance of the Remediation Works;
 - (v) any work health and safety matters; and
 - (vi) any other matters specified in the Contract Particulars or required by the Contract Administrator.

10. TIME FOR CONTRACTOR'S ACTIVITIES AND REMEDIATION WORKS

10.1 Progress and Time for Remediation Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) achieve Remediation Completion of the Remediation Works or each Stage by the relevant Date for Remediation Completion.

10.2 Programming

The Contractor must:

- (a) within 14 days of the Award Date, prepare a program of the Contractor's Activities which must contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than that specified in the Contract Particulars, to record and take account of:
 - (i) actual progress of the Contractor's Activities to the date which is two working days prior to the date on which the update is provided;
 - (ii) changes to the program; and
 - (iii) delays which may have occurred, or which are likely to occur, including any for which the Contractor is granted an extension of time under clause 10.8;
- (c) give the Contract Administrator copies of all programs; and
- (d) provide all programs in a format compatible with the software specified in the Contract Particulars.

The Contract Administrator may review and comment on any program given under this clause 10.2.

10.3 Contractor Not Relieved

Any review of, comment upon, or any failure to review or comment upon, a program by the Contract Administrator will not:

- (a) relieve the Contractor from or alter its obligations under the Contract, especially (without limitation) the obligation to achieve Remediation Completion by each Date for Remediation Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any or all of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Commonwealth's or Contract Administrator's Contract obligations.

10.4 Acceleration by Contractor

If the Contractor chooses to accelerate progress, then despite clause 3.3:

- (a) neither the Commonwealth nor the Contract Administrator will be obliged to take any action to assist or enable the Contractor to achieve Remediation Completion before any Date for Remediation Completion; and
- (b) the time for the carrying out of the Commonwealth's or the Contract Administrator's obligations will not be affected.

10.5 Delays, Including Delays Entitling Claim for Extension of Time

- (a) If the Contractor becomes aware of any occurrence that is likely to delay it in carrying out the Contractor's Activities it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contract Administrator in writing of the occurrence and the likely delay.

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- (b) If the Contractor has been delayed in carrying out the Contractor's Activities:
- (i) prior to the Date for Remediation Completion of the Remediation Works or a Stage, by an Act of Prevention or a cause specified in the Contract Particulars in a manner which has delayed, or is likely to delay, the Contractor in achieving Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion; or
 - (ii) after the Date for Remediation Completion of the Remediation Works or a Stage, by an Act of Prevention in a manner which has delayed, or is likely to delay, the Contractor in achieving Remediation Completion of the Remediation Works or the Stage,
- the Contractor may claim an extension of time.

10.6 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) not later than 28 days after the commencement of the delay to the carrying out of the Contractor's Activities, submit a written claim to the Contract Administrator for an extension to the relevant Date for Remediation Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number (not exceeding 28) of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Remediation Completion in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
- (b) if the delay to the carrying out of the Contractor's Activities continues beyond 28 days from the commencement of that delay, and the Contractor wishes to claim an extension of time in respect of any further period, submit a further written claim to the Contract Administrator:
 - (i) every 28 days after the last date for submitting the first written claim, provided however that the final written claim must be submitted not later than 7 days after the end of the delay to the carrying out of the Contractor's Activities; and
 - (ii) containing the information required by paragraph (a).

10.7 Conditions Precedent to Extension

Subject to clause 10.13, it is a condition precedent to the Contractor's entitlement to an extension of time that the:

- (a) Contractor gives the written claim required by clause 10.6 as required by that clause;
- (b) cause of the delay to the Contractor's Activities was beyond the reasonable control of the Contractor;
- (c) Contractor must have actually been, or be likely to be, delayed in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
- (d) Contractor must not have been given an instruction under clause 10.12.

10.8 Extension of Time

- (a) If the conditions precedent in clause 10.7 have been satisfied, the relevant Date for Remediation Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Commonwealth and the Contractor within 21 days of the Contractor's written claim under clause 10.6.
- (b) In determining a reasonable period under paragraph (a), the Contract Administrator must not include any period of delay in respect of which the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.

10.9 Unilateral Extension of Time

- (a) Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under clause 10, the Commonwealth may (in its absolute discretion) at any time and from time to time by written notice to the Contractor and the Contract Administrator, unilaterally extend any Date for Remediation Completion.
- (b) The Contractor acknowledges that clause 10.9 does not give the Contractor any rights.

10.10 Delay Damages

Clause 10.10 applies unless the Contract Particulars state that it does not apply.

The Contractor will be entitled to be paid the extra costs reasonably incurred by the Contractor up to the maximum daily amount specified in the Contract Particulars for each day by which the Date for Remediation Completion of the Remediation Works or a Stage is extended due to a breach of the Contract by the Commonwealth.

The amount determined under this clause 10.10, will be a limitation upon the Commonwealth's liability to the Contractor for any delay or disruption which:

- (a) the Contractor encounters in carrying out the Contractor's Activities; and
- (b) arises out of or in connection with the breach of the Contract by the Commonwealth,

and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any such delay or disruption, other than under clause 10.8 or clause 10.10.

10.11 Suspension

- (a) The Contract Administrator:
 - (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
 - (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
- (b) If a suspension under clause 10.11 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 10.11 will entitle the Contractor to:
 - A. an extension of time to any relevant Date for Remediation Completion where it is otherwise so entitled under clause 10.8; and
 - B. have the Contract Price increased by the extra costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Contract Administrator.

The Contractor must take all steps possible to mitigate any extra costs incurred by it as a direct result of the suspension. To the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the suspension, other than under paragraph (b)(ii).

- (c) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the Contractor's Activities when instructed to do so under clause 10.11.

10.12 Instruction to Accelerate

If the Contractor gives the Contract Administrator a written claim under clause 10.6, the Contract Administrator may:

- (a) instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion; and
- (b) give such an instruction whether or not the cause of delay for which the Contractor has given its written claim under clause 10.6 otherwise entitles the Contractor to an extension of time to any relevant Date for Remediation Completion.

10.13 Partial Acceleration

If the Contract Administrator gives the Contractor an instruction to accelerate under clause 10.12 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

10.14 Acceleration

If the Contract Administrator gives an instruction to the Contractor under clause 10.12:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Remediation Completion of the Remediation Works or the Stage by the relevant Date for Remediation Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Remediation Completion for the cause of delay, the Contractor will be entitled to be paid:
 - (i) the extra costs reasonably incurred by the Contractor as a direct result of accelerating the Contractor's Activities; and
 - (ii) that percentage of the amount under subparagraph (i) specified in the Contract Particulars; and
- (c) subject to clause 10.13, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.12, other than under paragraph (b).

10.15 Commonwealth's Rights to Liquidated Damages Not Affected

The Commonwealth's rights to liquidated damages under clause 13.7 for a failure by the Contractor to achieve Remediation Completion of the Remediation Works or a Stage by any relevant Date for Remediation Completion are not affected by the Contract Administrator giving the Contractor an instruction to accelerate under clause 10.12.

11. VARIATION TO REMEDIATION WORKS

11.1 Notice of Unidentified Site Conditions

- (a) If the Contractor considers it has encountered an Unidentified Site Condition, it must immediately give the Contract Administrator notice in writing.
- (b) The Contract Administrator must, within 21 days of receipt of the Contractor's notice under paragraph (a):
 - (i) notify the Contractor and the Commonwealth of its determination whether an Unidentified Site Condition has been encountered; and
 - (ii) instruct the Contractor as to the course it must adopt in so far as the Contractor's Activities are affected by an Unidentified Site Condition.

11.2 Contractor's Entitlement for Unidentified Site Conditions

- (a) If the Contract Administrator determines that an Unidentified Site Condition has been encountered, the Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Remediation Completion under clause 10.6 where it is otherwise so entitled under clause 10.8; and
 - (ii) to the extent to which it is reasonably required by the Contractor, request a Remediation Works Variation under clause 11.7.
- (b) To the extent permitted by law, the Contractor's entitlement under this clause 11.2 will be its only right to make a Claim arising out of, or in any way in connection with, the Unidentified Site Condition.

11.3 Remediation Works Variation Price Request Initiated by the Commonwealth

- (a) At any time prior to the Date of Remediation Completion of the Remediation Works or a Stage (but without limiting clauses 5.3 and 9.5), the Contract Administrator may issue a document titled "Remediation Works Variation Price Request" to the Contractor which will set out details of a proposed Remediation Works Variation which the Commonwealth is considering.
- (b) The Contractor must immediately take all action required under any relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Remediation Works Variation.
- (c) Within 14 days of the receipt of a Remediation Works Variation Price Request (or such longer period as may be agreed by the Contract Administrator) the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out the:
 - (i) adjustment (if any) to the Contract Price to carry out the proposed Remediation Works Variation; and
 - (ii) effect (if any) which the proposed Remediation Works Variation will have on the then current program, including each Date for Remediation Completion.

11.4 Remediation Works Variation Order

Whether or not the Contract Administrator has issued a Remediation Works Variation Price Request under clause 11.3, at any time prior to the Date of Remediation Completion (but without limiting clauses 5.3 and 9.5), the Contract Administrator may instruct the Contractor to carry out a Remediation Works Variation by a written document titled "**Remediation Works Variation Order**" in which the Contract Administrator will state one of the following:

- (a) the proposed adjustment to the Contract Price set out in the Contractor's notice under clause 11.3 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.5(b) and 11.5(c).

No Remediation Works Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Remediation Works Variation.

11.5 Valuation of Remediation Works Variation

Subject to clauses 9.8(b) and 11.9, the Contract Price will be increased or decreased for all Remediation Works Variations which have been the subject of a direction by the Contract Administrator:

- (a) as agreed under clause 11.4(a);
- (b) if paragraph (a) does not apply, in accordance with the rates and prices included in the Schedule of Rates, if and insofar as the Contract Administrator determines that those rates and prices are applicable to or it is reasonable to use them for valuing, the Remediation Works Variation, to which will be added:
 - (i) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Contract Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
 - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
 - (ii) any reasonable costs incurred by the Contractor as a direct result of the Remediation Works Variation delaying the Contractor; or
- (c) to the extent paragraph (b) does not apply, by a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Contract Administrator,to which will be added:
 - (iii) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Contract Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
 - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
 - (iv) any reasonable costs incurred by the Contractor as a direct result of the Remediation Works Variation delaying the Contractor.

11.6 Omissions

If a Remediation Works Variation the subject of a direction by the Contract Administrator omits any part of the Remediation Works, the Commonwealth may thereafter carry out this omitted work either itself or by engaging Other Contractors.

11.7 Remediation Works Variations Requested by Contractor

- (a) The Contractor may request the Contract Administrator to direct a Remediation Works Variation:
 - (i) where it reasonably considers that a Remediation Works Variation is necessary or desirable (including to minimise costs); or
 - (ii) without limiting subparagraph (i), as a consequence of an Unidentified Site Condition which has been determined by the Contract Administrator under clause 11.1(b)(i) to have been encountered.
- (b) Any request under clause 11.7(a) must be in writing and must contain the following details:
 - (i) a description of the Remediation Works Variation;
 - (ii) the reason or reasons why the Remediation Works Variation is required;

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- (iii) the additional or reduced costs or time involved in the Remediation Works Variation and any proposal for sharing any savings in costs with the Commonwealth, including the amount;
 - (iv) any benefits which will flow to the Commonwealth from the Remediation Works Variation; and
 - (v) the effect which the Remediation Works Variation will have upon the future cost of operating and maintaining the Remediation Works.

11.8 Contract Administrator's Determination

- (a) After a request is made by the Contractor in accordance with clause 11.7, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally and, if clause 11.7(a)(ii) applies, outlining any change to the requirements for Remediation Completion as a consequence of the Unidentified Site Condition.
- (b) The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.

11.9 Remediation Works Variation Approved by Contract Administrator

Subject to clause 11.10, if the Contract Administrator issues a written notice under clause 11.8(a)(ii) approving the Contractor's request under clause 11.7:

- (a) unless otherwise agreed, to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Remediation Works Variation;
- (b) if the Contractor's request offered to share savings in cost with the Commonwealth, the Contract Price will be reduced by or adjusted in accordance with the Contractor's offer; and
- (c) the Contractor will be responsible for all parts of the Remediation Works which are in any way affected by the Remediation Works Variation.

11.10 Unidentified Site Conditions and Contract Price

If the Contract Administrator issues a written notice under clause 11.8 approving the Contractor's request under clause 11.7 in relation to a Remediation Works Variation which has been requested as a consequence of an Unidentified Site Condition determined by the Contract Administrator under clause 11.1(b)(i) to have been encountered:

- (a) the Contract Price will be increased or decreased in accordance with clause 11.5(a), clause 11.5(b) or clause 11.5(c) (as appropriate); and
- (b) the requirements for Remediation Completion will (if applicable) be varied as reasonably determined by the Contract Administrator and set out in the Contract Administrator's notice under clause 11.8.

12. PAYMENT

12.1 Payment Obligation

- (a) Subject to clause 12.15 and to any other right to set-off which the Commonwealth may have, the Commonwealth will pay the Contractor:
 - (i) the Contract Price; and
 - (ii) any other amounts which are payable by the Commonwealth to the Contractor under the Contract.
- (b) The Contract Price comprises the:
 - (i) Lump Sum Component; and
 - (ii) Schedule of Rates Component.

12.2 Payment Claims

The Contractor must give the Contract Administrator claims for payment on account of the Contract Price and all other amounts then payable by the Commonwealth to the Contractor under the Contract:

- (a) at the times specified in the Contract Particulars until Remediation Completion or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after Remediation Completion or the Remediation Defects Rectification Period, within the time required by clause 12.9 or 12.11;
- (c) in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
- (d) which are based on the Table of Remediation Works Variation Rates and Prices or the Schedule of Rates to the extent these are relevant;
- (e) which show separately the amounts (if any) claimed on account of:
 - (i) the Lump Sum Component;
 - (ii) the Schedule of Rates Component; and
 - (iii) all other amounts then payable by the Commonwealth to the Contractor under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Commonwealth to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.

12.3 Certification to Accompany Submission of Payment Claim

The Contractor must, with each payment claim under clause 12.2, certify to the Contract Administrator that it has:

- (a) complied with clause 4.1;
- (b) if a request has been made under clause 4.4, complied with clause 4.4;
- (c) complied with clause 5.4;
- (d) if a request has been made under clause 8.5(f), complied with clause 8.5(f);

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- (e) complied with clause 8.13;
 - (f) complied with clause 10.2;
 - (g) complied with clause 12.16; and
 - (h) complied with clause 12.24.

12.4 Payment Statement

The Contract Administrator:

- (a) must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or
- (b) may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time, give the Contractor (with a copy to the Commonwealth), on behalf of the Commonwealth, a payment statement which is in the form set out in the Schedule of Collateral Documents and which states:
 - (c) the payment claim to which it relates (if any);
 - (d) the amount previously paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract;
 - (e) the amount (if any) which the Contract Administrator believes to be then payable by the Commonwealth to the Contractor on account of the Contract Price and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Contractor; and
 - (f) if the amount in paragraph (e) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Commonwealth has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contract Administrator will not constitute:

- (g) approval of the Contractor's Activities or the Remediation Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Remediation Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract;
- (h) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment statement;
- (i) an admission or evidence of the value of the Contractor's Activities or the Remediation Works or that the Contractor's Activities or the Remediation Works comply with the Contract;
- (j) an admission or evidence of liability; or
- (k) otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract.

12.5 Payment

- (a) Within 3 business days of the Contractor receiving a payment statement under clause 12.4, the Contractor must give the Contract Administrator and Defence Invoicing at the email address set out in the Contract Particulars a tax invoice for the amount stated as then payable by the Commonwealth to the Contractor in the payment statement.
- (b) Subject to clause 12.17(c), within the number of business days specified in the Contract Particulars of the Commonwealth receiving a payment statement under clause 12.4, the Commonwealth will pay the

Contractor the amount stated as then payable by the Commonwealth to the Contractor in the payment statement.

12.6 Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

- (a) approval of the Contractor's Activities or the Remediation Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Remediation Works covered by the payment has been satisfactorily carried out in accordance with the Contract;
- (b) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Commonwealth expressly waives such requirements in respect of the payment claim the subject of the payment;
- (c) an admission or evidence of the value of the Contractor's Activities or the Remediation Works or that the Contractor's Activities or the Remediation Works comply with the Contract;
- (d) an admission or evidence of liability; or
- (e) otherwise, any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

12.7 Unfixed Goods and Materials

- (a) Unfixed goods or materials will not be included in the value of work in a payment statement under clause 12.4 unless:
 - (i) the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
 - (ii) the Contractor gives the Contract Administrator with a payment claim under clause 12.2:
 - A. additional Approved Security equal to the amount claimed for the unfixed goods and materials; and
 - B. such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in the Commonwealth upon payment;
 - (iii) the unfixed goods and materials are clearly marked as the property of the Commonwealth and are on the Site or available for immediate delivery to the Site; and
 - (iv) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.
- (b) Upon payment by the Commonwealth of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Commonwealth.

12.8 Release of Additional Approved Security

If the Contractor has given the Commonwealth additional Approved Security for payment for unfixed goods and materials, the Commonwealth must release such security to the Contractor when those goods and materials are incorporated into the Remediation Works.

12.9 Remediation Completion Payment Claim and Notice

- (a) Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Remediation Completion Notice for the Remediation Works or a Stage, the Contractor must give the Contract Administrator:

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- (i) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from the Commonwealth,
in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract which:
 - (iii) in the case of the Remediation Works, occurred prior to the Date of Remediation Completion of the Remediation Works; or
 - (iv) in the case of a Stage, occurred prior to the Date of Remediation Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.
- (b) The payment claim and notice required under clause 12.9 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.10 Release after Remediation Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.9 has passed, the Contractor releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract which:

- (a) in the case of the Remediation Works, occurred prior to the Date of Remediation Completion of the Remediation Works; or
- (b) in the case of a Stage, occurred prior to the Date of Remediation Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.9 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.9.

12.11 Final Payment Claim and Notice

- (a) Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the end of the Remediation Defects Rectification Period for the Remediation Works or a Stage, the Contractor must give the Contract Administrator:
- (i) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Commonwealth on account of the Contract Price and all other amounts payable under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from the Commonwealth,
in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract which:
 - (iii) in the case of the Remediation Works, occurred during the Remediation Defects Rectification Period for the Remediation Works; or
 - (iv) in the case of a Stage, occurred during the Remediation Defects Rectification Period for the Stage, insofar as the fact, matter or thing relates to the Stage.
- (b) The payment claim and notice required under clause 12.11 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.12 Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Contractor releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract which:

- (a) in the case of the Remediation Works, occurred during the Remediation Defects Rectification Period for the Remediation Works; or
- (b) in the case of a Stage, occurred during the Remediation Defects Rectification Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

12.13 Interest

The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:

- (a) amount stated as then payable by the Commonwealth in a payment statement under clause 12.4, but which is not paid by the Commonwealth within the time required by the Contract; and
- (b) damages (excluding any delay damages payable under clause 10.10).

This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

12.14 Correction of Payment Statements

The Contract Administrator may, in any payment statement:

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

given by the Contract Administrator.

12.15 Right of Set-Off

The Commonwealth may:

- (a) deduct from moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to the Commonwealth (including liquidated damages payable under clause 13.7); and
 - (ii) any claim to money which the Commonwealth asserts in good faith against the Contractor whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with the Contractor's Activities or the Remediation Works; and
- (b) without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any:
 - (i) amount which may be or thereafter become payable to the Contractor by the Commonwealth in respect of any Remediation Works Variation the subject of a Remediation Works Variation Order under clause 11.4; or
 - (ii) without limiting the unconditional nature of the security held under clause 4.1, the security held under clause 4.1.

12.16 Payment of Workers and Subcontractors

The Contractor must with each payment claim submitted under clause 12.2 provide the Contract Administrator with a duly completed declaration in the form set out in the payment claim (in the format set out in the Schedule of

Collateral Documents) for each applicable jurisdiction in which the Contractor's Activities were carried out during the relevant period.

12.17 GST

- (a) Subject to paragraph (b), where any supply arises out of or in connection with the Contract, the Contractor's Activities or the Remediation Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply arising out of or in connection with the Contract, the Contractor's Activities or the Remediation Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
- (c) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In clause 12.17 subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.

12.18 Quantities in Schedule of Rates

- (a) The items of work and quantities in any Schedule of Rates are estimated and not guaranteed. The Contractor will not be entitled to make any Claim against the Commonwealth if the items of work or quantities are incorrect in that they:
 - (i) contain an incorrect quantity (subject to paragraph (b));
 - (ii) contain an item which should not have been included; or
 - (iii) omit an item which should have been included.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Schedule of Rates Work must not include work which forms part of the Lump Sum Work; and
 - (ii) the relevant quantity of work performed by the Contractor in respect of each line item in the Schedule of Rates must not exceed the quantity in the Schedule of Rates unless:
 - A. the Contractor has provided reasonable prior written notice to the Contract Administrator together with a detailed explanation of the need to exceed that quantity (including the estimated excess quantity) and such further information as the Contract Administrator may require; and
 - B. the Contract Administrator has provided written agreement to the excess quantity, in which case the relevant quantity in the Schedule of Rates will be adjusted accordingly and this subparagraph (ii) will reapply to that adjusted quantity.
- (c) The Contractor must carry out all Schedule of Rates Work so as to:
 - (i) ensure, to the maximum extent possible, that the quantities are not exceeded; and

-
- (ii) minimise the cost to the Commonwealth.

12.19 Limits of Accuracy in the Schedule of Rates

If a Schedule of Rates exists and the:

- (a) actual quantity of an item required to carry out the Contractor's Activities is greater or less than the quantity shown in the Schedules of Rates;
- (b) Commonwealth has accepted a rate for the item referred to in clause 12.18(a); and
- (c) the actual quantity of the item referred to in clause 12.18(a) is outside the limits of accuracy specified in the Contract Particulars,

the rate will only apply to the quantities within those limits of accuracy and (subject to clause 12.18(b)) quantities outside those limits of accuracy will have their value determined:

- (d) where the Table of Remediation Works Variation Rates and Prices contains a corresponding item to the relevant item in the Schedules of Rates for which the quantity required is greater or less than the quantity shown in the Schedules of Rates - in accordance with the Table of Remediation Works Variation Rates and Prices; and
- (e) where the Table of Remediation Works Variation Rates and Prices does not contain a corresponding item to the relevant item in the Schedules of Rates for which the quantity required is greater or less than the quantity shown in the Schedules of Rates:
 - (i) agreed between the parties; or
 - (ii) failing agreement, by the Contract Administrator using reasonable rates.

12.20 Security of Payment Legislation

- (a) The Contractor agrees with the Commonwealth that:

- (i) a payment claim submitted to the Contract Administrator under clause 12.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Contract Administrator as agent for the Commonwealth;
- (ii) the Contract Administrator will give payment statements and carry out all other functions of the Commonwealth under the relevant Security of Payment Legislation as the agent of the Commonwealth (without affecting the Commonwealth's right to carry out those functions itself);
- (iii) to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clauses 12.2(a) and 12.2(b) on which the Contractor has satisfied the requirements of clause 12.3; and
- (iv) a reference to a "payment statement" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.

- (b) Failure by the Contract Administrator to state in a payment statement issued under the relevant Security of Payment Legislation or otherwise an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Commonwealth to the Contractor will not prejudice:

- (i) the Contract Administrator's ability or power to state in a subsequent payment statement an amount which the Commonwealth is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Commonwealth to the Contractor; or
- (ii) the Commonwealth's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract or otherwise at law or in equity.

- (c) The Contractor agrees that the amount stated in the payment statement as then payable by the Commonwealth to the Contractor under clause 12.4(e) is, subject to clause 12.16, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress

payment" calculated in accordance with the terms of the Contract and which the Contractor is entitled to be paid in respect of the Contract.

- (d) The Contractor irrevocably chooses the person specified in the Contract Particulars as, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation and to the extent that the relevant Contractor's Activities are to be carried out in:
- (i) the Northern Territory, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer;
 - (ii) Western Australia, the appointed adjudicator or the adjudicator (as the case may be) or, where there is no appointed adjudicator or adjudicator, the prescribed appointer or authorised nominating authority (as the case may be); or
 - (iii) any other State or Territory (other than Queensland) in which Security of Payment Legislation applies, the authorised nominating authority.
- (e) The Contractor must not at any time, without the written consent of the Commonwealth, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Commonwealth or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation (in this paragraph, the **Information**).

For the avoidance of doubt:

- (i) to the extent permitted by law, the Contractor's obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
- (ii) notwithstanding the Contractor's obligations in respect of the Information, the Commonwealth has absolute discretion to divulge or permit its servants, subcontractors or agents to divulge to any person the Information;
- (iii) the Commonwealth may divulge or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and
- (iv) any Information which the Commonwealth provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to the Commonwealth's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

12.21 Accounting Records

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

- (a) all Remediation Works Variations; and
- (b) without limiting paragraph (a), all amounts paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract.

12.22 Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to report on an accrual basis, the Contractor must, with each payment claim under clause 12.2, provide the Contract Administrator with accurate information which apports monthly costs against expenses for all work completed since the Commonwealth's previous payment to the Contractor.

12.23 Remediation Works Accounting

Without limiting clause 12.2, for the purposes of assisting the Commonwealth to bring all completed Remediation Works to account, as a condition precedent to Remediation Completion of the Remediation Works or a Stage, the Contractor must provide a cost report to the Contract Administrator which sets out:

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- (a) details of the Contract Price and all other amounts payable under the Contract paid by the Commonwealth to the Contractor in respect of the Remediation Works or the Stage;
 - (b) the matters specified in the Contract Particulars; and
 - (c) any other matters required by the Contract Administrator.

12.24 Estate Information

- (a) Clause 12.24 applies unless the Contract Particulars state that it does not apply.
- (b) The Contractor must:
 - (i) carry out and fulfil all Contractor Estate Information Obligations; and
 - (ii) ensure that all Contractor Estate Information Obligations are carried out within any applicable timeframe prescribed by the Contract or the Defence Estate Information Management Requirements.
- (c) The Contractor warrants that all Estate Information assessed, created, managed, updated and recorded in accordance with this clause 12.24 will be:
 - (i) prepared and completed in accordance with the requirements of the Contract; and
 - (ii) complete, fit for purpose and free from errors and omissions.
- (d) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, any Estate Information submitted by the Contractor for errors, omissions or compliance with the Contract.
- (e) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Estate Information prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Commonwealth in relation to, any Estate Information will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - (ii) prejudice the Commonwealth's rights against the Contractor under the Contract or otherwise at law or in equity.

13. REMEDIATION COMPLETION

13.1 Contractor to Notify of Remediation Completion

- (a) Nothing in clause 13 limits the Contractor's obligations, or the Commonwealth's or the Contract Administrator's rights, under clause 9.12.
- (b) The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Remediation Completion of the Remediation Works or a Stage.

13.2 Contract Administrator to Inspect

The Contract Administrator must:

- (a) promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Remediation Works or the Stage; and
- (b) if:
 - (i) satisfied that Remediation Completion has been achieved, issue a notice to the Commonwealth and the Contractor:
 - A. stating the date upon which the Contract Administrator determines Remediation Completion was achieved; and
 - B. containing a list of any minor Remediation Defects of the type described in paragraph (a) of the definition of "Remediation Completion" in clause 1.1; or
 - (ii) not satisfied that Remediation Completion has been achieved, issue a notice so advising the Contractor and the Commonwealth.

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

- (c) proceed to bring the Remediation Works or the Stage to Remediation Completion; and
- (d) when it considers it has achieved Remediation Completion, give the Contract Administrator written notice to that effect (after which clause 13.2 will reapply).

13.3 Unilateral Issue of Remediation Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1(b) or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Remediation Completion of the Remediation Works or a Stage has been achieved, the Contract Administrator may issue a Remediation Completion Notice under clause 13.2(b)(i) for the Remediation Works or the Stage.

13.4 Take Over Upon Remediation Completion

Upon the issue of a Remediation Completion Notice, the Contractor must:

- (a) handover the Site to the Commonwealth; and
- (b) correct all Remediation Defects listed in the Remediation Completion Notice as soon as possible.

13.5 Part of the Remediation Works or a Stage

The Commonwealth may, after written notice is given to the Contractor by the Contract Administrator, occupy or use (or arrange for Other Contractors to occupy or use) any part of the Site although the whole of the Remediation Works or the Stage has not reached Remediation Completion.

If any such notice is given by the Contract Administrator:

- (a) the Commonwealth must allow the Contractor reasonable access to the part of the Site referred to in the notice and being occupied or used by the Commonwealth, to enable the Contractor to bring the

Remediation Works or the relevant Stage of which the area being occupied or used forms part to Remediation Completion; and

- (b) this will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to achieve Remediation Completion of the Remediation Works or the relevant Stage of which the area being occupied or used forms part by the relevant Date for Remediation Completion.

13.6 Effect of Remediation Completion Notice

A Remediation Completion Notice will not:

- (a) constitute approval of the Contractor's Activities, the Remediation Works or the Stage, nor will it be taken as an admission or evidence that the Contractor's Activities, the Remediation Works or the Stage have or has been satisfactorily carried out in accordance with the Contract;
- (b) constitute an admission or evidence that the Contractor's Activities, the Remediation Works or the Stage comply or complies with the Contract;
- (c) otherwise, constitute any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor's performance or compliance with the Contract; or
- (d) prejudice any rights or remedies of the Commonwealth or Contract Administrator under the Contract or otherwise at law or in equity.

13.7 Liquidated Damages

If the Date of Remediation Completion of the Remediation Works or a Stage has not occurred by the Date for Remediation Completion for the Remediation Works or the Stage, the Contractor must pay liquidated damages at the rate specified in the Contract Particulars for every day after the Date for Remediation Completion until the Date of Remediation Completion or the Contract is terminated, whichever is first.

This amount is an agreed genuine pre-estimate of the Commonwealth's damages if the Date of Remediation Completion does not occur by the Date for Remediation Completion.

The amount payable under clause 13.7 will be a debt due from the Contractor to the Commonwealth.

14. TERMINATION

14.1 Preservation of Rights

Subject to clause 14.6, nothing in clause 14 or that the Commonwealth does or fails to do pursuant to clause 14 will prejudice any right or remedy of the Commonwealth (including the recovery of damages) where the Contractor breaches (including repudiates) the Contract.

14.2 Contractor Default

The Commonwealth may give a written notice under clause 14.3 to the Contractor if the Contractor is in breach of the Contract.

14.3 Contents of Notice of Default

A notice under clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the failure or breach relied upon; and
- (c) that the Commonwealth requires the Contractor to remedy the failure or breach within the number of days specified in the Contract Particulars of receiving the notice.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises two or more persons, to any one of those persons;
- (b) the Contractor does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 14.3;
- (c) an instruction has been given under clause 9.5(a) or (b), the Contractor fails to comply with clause 9.6(a); or
- (d) the Contractor fails to comply with any of:
 - (i) clause 17.17;
 - (ii) clause 18;
 - (iii) if clause 19 applies, clause 19;
 - (iv) clause 20; or
 - (v) clause 21,

then the Commonwealth may by written notice to the Contractor immediately (and without having to first give a notice under clause 14.3, except in the case of paragraph (b)) terminate the Contract.

14.5 Commonwealth's Entitlements after Termination by Commonwealth

Subject to clause 14.1, if the Commonwealth terminates the Contract under clause 14.4, or if the Contractor repudiates the Contract and the Commonwealth otherwise terminates the Contract:

- (a) the Commonwealth will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Remediation Works;
 - (ii) be entitled to require the Contractor to novate to the Commonwealth or the Commonwealth's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Commonwealth;

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- (iii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
 - (iv) be entitled to recover from the Contractor all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of, or in connection with, such termination; and
 - (b) the Contractor must comply with clause 18.3 and, if clause 19 applies, clause 19.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Contract.

14.6 Contractor's Entitlements after Termination by Contractor

- (a) If the Commonwealth repudiates the Contract and the Contractor terminates the Contract, the Contractor will:
 - (i) be entitled to payment of an amount determined in accordance with clause 14.8 as if the Commonwealth had terminated the Contract under clause 14.7; and
 - (ii) not be entitled to a quantum meruit.
- (b) Clause 14.6 will survive the termination of the Contract.

14.7 Termination for Convenience

Without prejudice to any right or remedy of the Commonwealth under the Contract or otherwise at law or in equity, the Commonwealth may:

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

14.8 Contractor's Entitlements after Termination for Convenience by Commonwealth

If the Commonwealth terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts, as determined by the Contract Administrator:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Remediation Works for which the Contractor is legally bound to pay provided that:
 - A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - B. title in the goods and materials will vest in the Commonwealth upon payment; and
 - (iii) the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and

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- (ii) comply with clause 18.3 and, if clause 19 applies, clause 19.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

The amounts to which the Contractor is entitled under clause 14.8 will be a limitation upon the Commonwealth's liability to the Contractor arising out of or in connection with the termination of the Contract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)(i)) and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the termination of the Contract, other than for the amount payable under clause 14.8.

Clause 14.8 will survive the termination of the Contract by the Commonwealth under clause 14.7 or by the Contractor following repudiation by the Commonwealth.

15. DISPUTES

15.1 Notice of Dispute

- (a) If a dispute or difference arises between the Contractor and the Commonwealth or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in clause 15.
- (b) Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:
 - (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.

15.2 Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses specified in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

15.3 The Expert

- (a) The expert determination under clause 15.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under clause 15.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the Expert Determination Agreement or other agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under clause 15.3; or
 - (v) does not make a determination within the time required by clause 15.8,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

15.4 Not Arbitration

An expert determination conducted under clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.5 Procedure for Determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;

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- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
 - (d) examine such documents, and interview such persons, as he or she may require; and
 - (e) make such directions for the conduct of the determination as he or she considers necessary.

15.6 Disclosure of Interest

The expert must:

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

15.7 Costs

Each party will:

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

15.8 Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 15 within 28 days from the acceptance by the expert of his or her appointment.

15.9 Expert Determination Agreement

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

15.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

15.11 Executive Negotiation

- (a) If:
 - (i) clause 15.2 applies, and a notice of appeal is given under clause 15.10; or

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- (ii) clause 15.2 does not apply,
the dispute or difference is to be referred to the Executive Negotiators.
 - (b) The Executive Negotiators must within:
 - (i) 21 days of:
 - A. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - B. otherwise, the notice of appeal given under clause 15.10; or
 - (ii) such longer period of time as the Executive Negotiators may agree in writing,
meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

15.12 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - (ii) otherwise, the notice of appeal given under clause 15.10; or
 - (b) such longer period of time as the Executive Negotiators may agree in writing,
the Executive Negotiators:
 - (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
 - (d) cannot resolve the dispute or difference; or
 - (e) have not reached agreement upon a procedure to resolve the dispute or difference,
- the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

15.13 Arbitration

- (a) Arbitration pursuant to clause 15.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 15.13.
- (b) The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
- (c) The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
 - (ii) any arbitration conducted pursuant to clause 15.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

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- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
 - (e) One arbitrator will be appointed.
 - (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
 - (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
 - (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
 - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
 - (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

15.14 Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation of any Australian jurisdiction which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 15.

15.15 Continuation of Contractor's Activities

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

- (a) continue to carry out the Contractor's Activities and the Remediation Works; and
- (b) otherwise comply with its obligations under the Contract.

16. NOTICES

16.1 Notice of Remediation Works Variation

If a direction by the Contract Administrator, other than a "Remediation Works Variation Order" under clause 11.4, constitutes or involves a Remediation Works Variation, the Contractor must, if it wishes to make a Claim against the Commonwealth arising out of or in connection with the direction:

- (a) within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Remediation Works Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities and the Remediation Works in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 16.1.

16.2 Notices of Other Claims

Except for claims for:

- (a) an extension of time under clause 10.6;
- (b) payment under clause 12.2 of the original Contract Price specified in the Contract Particulars; or
- (c) a Remediation Works Variation instructed in accordance with clause 11.4 or to which clause 16.1 applies,

the Contractor must give the Contract Administrator the notices required by clause 16.3 if it wishes to make a Claim against the Commonwealth in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by the Commonwealth) under, arising out of or in connection with the Contractor's Activities, the Remediation Works or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) amounts are to be added to the Contract Price; or
 - (ii) otherwise, the Contract Price will be increased or adjusted,

as determined by the Contract Administrator.

16.3 Prescribed Notices

The notices referred to in clause 16.2 are:

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

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- (iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification.

16.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time Bar

If the Contractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

- (a) the Commonwealth will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Commonwealth,

arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

16.6 Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Commonwealth.

16.7 Address for Service

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

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 14 and 15 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
 - (i) specified in the Contract Particulars; or
 - (ii) last notified in writing to the party giving or serving the notice,for the party to whom or upon which the notice is to be given or served;
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
- (d) in the case of notices sent by email:
 - (i) be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
 - (ii) include the words "This is a notice under clause 16.7 of the Contract" in the subject field of the email.

16.8 Receipt of Notices

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
 - (i) delivery by hand, on delivery;
 - (ii) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;

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- (iii) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
 - (iv) email, the earlier of:
 - A. delivery to the email address to which it was sent; and
 - B. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
- (b) In the case of notices under clauses 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
- (i) the date the notice sent by email is taken to be received; or
 - (ii) the date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with paragraph (a).

17. GENERAL

17.1 Workplace Gender Equality

The Contractor must:

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

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

- (a) The Contractor must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,in carrying out the Contractor's Activities, in accordance with the Indigenous Procurement Policy.
- (b) The Contractor must provide to the Contract Administrator in the reports under clause 3.13 or otherwise on a monthly basis each of the following:
 - (i) at the Contract-based level:
 - A. the percentage of the Contractor's full time equivalent Australian-based workforce deployed in the Contractor's Activities and the Remediation Works which are Indigenous Australians in the relevant month and, in the first monthly report of a calendar year, in the preceding calendar year; and
 - B. the percentage of the Contract Price subcontracted to Indigenous Enterprises in the relevant month and, in the first monthly report of a calendar year, in the preceding calendar year; and
 - (ii) at the organisational-based level:
 - A. the percentage of the Contractor's full time equivalent Australian-based workforce which are Indigenous Australians in the relevant month and, in the first monthly report of a calendar year, in the preceding calendar year; and
- (c) the percentage of the value of the Contractor's Australian supply chain subcontracted to Indigenous Enterprises in the relevant month and, in the first monthly report of a calendar year, in the preceding calendar year. If at any time the Contract Price exceeds \$7.5 million inclusive of GST (such that the Contract becomes a "High Value Contract" for the purposes of the Indigenous Procurement Policy), the Contractor must:
 - (i) within 14 days of a request from the Contract Administrator, prepare and submit an Indigenous Participation Plan in accordance with the Indigenous Procurement Policy (including any requirement that applies in respect of a Remote Area) to the Contract Administrator for approval; and
 - (ii) once approved by the Contract Administrator:
 - A. comply with the Indigenous Participation Plan; and
 - B. submit a written report to the Commonwealth via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan, as follows:
 - 1) at least quarterly; and
 - 2) within 7 days of the expiry of the last Remediation Defects Rectification Period (**End of RDRP Report**).

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- (d) The Contractor must set out in the End of RDRP Report:
- (i) whether the Contractor:
 - A. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
 - B. complied with the Indigenous Participation Plan; and
 - (ii) if the Contractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
- (e) Throughout the carrying out of the Contractor's Activities, the Contractor is responsible for managing the Contractor's access to the IPP Contractor Portal including by managing the:
- (i) enabling of its authorised personnel's access; and
 - (ii) disabling of its authorised personnel's access,
- and must promptly notify the Contract Administrator of such enabling and disabling and any other matters relating to access to the IPP Contractor Portal.
- (f) If the Contract Administrator considers, in its absolute discretion at any time during the carrying out of the Contractor's Activities, that it has concerns in relation to the Contractor's:
- (i) compliance with the Indigenous Participation Plan; or
 - (ii) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
- the Contract Administrator may direct the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.
- (g) The Contractor:
- (i) must comply with all directions issued by the Contract Administrator in relation to the Contractor's implementation of the Indigenous Participation Plan; and
 - (ii) will not be entitled to make (nor will the Commonwealth be liable upon) any claim arising out of or in connection with any direction of the Contract Administrator under subparagraph (i).
- (h) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under paragraph (c)(ii):
- (i) will be recorded in a central database accessible by the Commonwealth and may be made publicly available;
 - (ii) will not be Commercial-in-Confidence Information for the purposes of clause 17.14 ; and
 - (iii) may be used by the Commonwealth for any purpose, including being taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

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

- (b) The Contractor must use its reasonable endeavours to increase its:
- (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,
- in carrying out the Contractor's Activities, in accordance with the Indigenous Procurement Policy.
- (c) The Contractor must:

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- (i) comply with the Indigenous Participation Plan; and
 - (ii) submit a written report to the Commonwealth via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan, as follows:
 - A. at least quarterly; and
 - B. within 7 days of the expiry of the last Remediation Defects Rectification Period (**End of RDRP Report**).
 - (d) The Contractor must set out in the End of RDRP Report:
 - (i) whether the Contractor:
 - A. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
 - B. complied with the Indigenous Participation Plan; and
 - (ii) if the Contractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
 - (e) Throughout the carrying out of the Contractor's Activities, the Contractor is responsible for managing the Contractor's access to the IPP Contractor Portal including by managing the:
 - (i) enabling of its authorised personnel's access; and
 - (ii) disabling of its authorised personnel's access,and must promptly notify the Contract Administrator of such enabling and disabling and any other matters relating to access to the IPP Contractor Portal.
 - (f) If the Contract Administrator considers, in its absolute discretion at any time during the carrying out of the Contractor's Activities, that it has concerns in relation to the Contractor's:
 - (i) compliance with the Indigenous Participation Plan; or
 - (ii) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,the Contract Administrator may direct the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.
 - (g) The Contractor:
 - (i) must comply with all directions issued by the Contract Administrator in relation to the Contractor's implementation of the Indigenous Participation Plan; and
 - (ii) will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any direction of the Contract Administrator under subparagraph (i).
 - (h) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under paragraph (c)(ii):
 - (i) will be recorded in a central database accessible by the Commonwealth and may be made publicly available;
 - (ii) will not be Commercial-in-Confidence Information for the purposes of clause 17.14; and
 - (iii) may be used by the Commonwealth for any purpose, including being taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

17.3 Defence's Security Alert System

- (a) Nothing that the Contractor is or may be required to do under clause 17.3 will derogate from, or otherwise limit, the Contractor's obligations under the Contract.
- (b) The Contractor must be, and must ensure that its subcontractors are, fully familiar with the requirements of Defence's Security Alert System.
- (c) The Contractor must, and must ensure that its subcontractors:
 - (i) attend any security briefing requested by the Contract Administrator from time to time; and
 - (ii) participate in any rehearsal of Defence's Security Alert System directed by the Contract Administrator from time to time.
- (d) In carrying out the Contractor's Activities, the Contractor must, and must ensure that its subcontractors, comply with the requirements of Defence's Security Alert System:
 - (i) at the level specified in the Contract Particulars; and
 - (ii) at any alternative level (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time.
- (e) If there is any change to Defence's Security Alert System level specified in the Contract Particulars (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time after the Award Date:
 - (i) the Contract Administrator will notify the Contractor of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Contractor as to the course it is to adopt insofar as the Contractor's Activities are affected by the change to the level (or individual measure from a higher level to meet a specific threat or threats); and
 - (ii) subject to subparagraph (iii), the Contractor will be entitled to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator; or
 - (iii) the Contract Price will be decreased by any saving made by the Contractor after the giving of the notice under subparagraph (i) which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator.
- (f) The amount (if any) under paragraph (e)(ii) will be a limitation on the Commonwealth's liability to the Contractor arising out of or in connection with the:
 - (i) change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats); and
 - (ii) Contract Administrator's instruction,and to the extent permitted by law, the Contractor will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with any change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats) or the Contract Administrator's instruction under paragraph (e)(i), other than under paragraph (e)(ii).

17.4 IT Equipment

- (a) Without limiting the Contractor's obligations under the Contract, the Contractor warrants that:
 - (i) each item of IT Equipment:
 - A. is free of defects in materials and workmanship;

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- B. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Equipment in the Contract or in any documentation accompanying that IT Equipment; and
 - C. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Equipment and other parts of the Remediation Works, will not be adversely affected by the date; and
- (ii) no virus will be introduced into the Commonwealth's systems as a result of the supply by the Contractor of any IT Equipment or as a result of any other act or omission of the Contractor in connection with carrying out the Contractor's Activities and the Remediation Works.
- (b) Without limiting clause 8.6, the Contractor must assign to the Commonwealth, the benefits of warranties given by any supplier from whom the Contractor sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Contractor becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to clause 17.4 does not in any way relieve the Contractor of the obligation to comply with warranties given by the Contractor under the Contract.

17.5 Privacy

- (a) The Contractor must:
 - (i) comply with its obligations under the Privacy Act;
 - (ii) comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;
 - (iii) use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract only for the purposes of fulfilling its obligations under the Contract;
 - (iv) not disclose Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Contract Administrator;
 - (v) not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;
 - (vi) co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;
 - (vii) ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
 - (viii) comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
 - (ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Contract Administrator's election, to be either returned to the Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;
 - (x) agree to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;

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- (xi) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 17.5, as if the subcontractor were the Contractor;
 - (xii) enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contract Administrator may give;
 - (xiii) not use Personal Information collected by the Contractor for the purposes of, under, arising out of or in connection with the Contract for, or in any way relating to, any direct marketing purpose; and
 - (xiv) indemnify the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - A. a breach of the obligations of the Contractor under clause 17.5;
 - B. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor; or
 - D. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 17.5.
- (c) The Contractor must immediately notify the Commonwealth in writing if the Contractor:
- (i) becomes aware of a breach of the obligations under clause 17.5 by itself or by a subcontractor;
 - (ii) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Contractor acknowledges that, in addition to the requirements of clause 17.5, the Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
- (e) Nothing in clause 17.5 limits any of the Contractor's obligations under the Contract or otherwise at law or in equity.
- (f) In clause 17.5, **received** includes collected.

17.6 Moral Rights

- (a) The Contractor must:
- (i) to the extent permitted by law and for the benefit of the Commonwealth, ensure that each of the Contractor and subcontractor personnel engaged by the Contractor in the production or creation of Project Documents or the Remediation Works gives genuine consent in writing to the use of the Project Document or the Remediation Works (as applicable) for the Specified Acts, notwithstanding that such use would otherwise be an infringement of their Moral Rights; and

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- (ii) provide copies of such consents to the Contract Administrator on request at such times as the Contract Administrator may require.
 - (b) In this clause 17.6, **Specified Acts** means:
 - (i) falsely attributing the authorship of any Project Document or the Remediation Works, or any content in a Project Document or the Remediation Works (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
 - (ii) materially altering the style, format, colours, content or layout of a Project Document or the Remediation Works and dealing in any way with the altered Project Document or Remediation Works;
 - (iii) reproducing, communicating, adapting, publishing or exhibiting any Project Document or the Remediation Works; and
 - (iv) adding any additional content or information to a Project Document or the Remediation Works.

17.7 Freedom of Information

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

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

17.8 Long Service Leave

Clause 17.8 only applies if the Long Service Leave Legislation applies to the Contractor's Activities.

- (a) Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by the Long Service Leave Legislation, the Contractor must pay any levy, charge, contribution or associated amount in respect of the Contractor's Activities.
- (c) Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Contract Price and the Contractor will have no Claim against the Commonwealth arising out of or in connection with its obligations under clause 17.8 or the Long Service Leave Legislation.

17.9 Assignment

- (a) The Contractor must not, without the prior written approval of the Commonwealth and except on such terms and conditions notified by the Commonwealth, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
- (b) For the purpose of but without limiting paragraph (a), an assignment of the Contract will be deemed to have occurred where there has been a Change of Control.

17.10 Publicity

Without limiting clause 18 and if clause 19 applies, clause 19, the Contractor must:

- (a) not furnish any information or issue any document or other written or printed material concerning the Contractor's Activities or the Remediation Works for publication in the media without the prior written approval of the Contract Administrator; and
- (b) refer any enquiries from the media concerning the Contractor's Activities or the Remediation Works to the Contract Administrator.

17.11 Not Used

17.12 Applicable Standards

- (a) Without limiting the Contractor's obligations under this Contract, the Contractor must comply with the Applicable Standards in performing the Contractor's Activities and executing the Remediation Works.
- (b) The Contract Administrator may, at any time, request that the Contractor provides:
- (i) evidence of relevant certifications demonstrating compliance with the Applicable Standards;
 - (ii) a certificate which certifies that (to the extent then applicable) the Remediation Design Documentation, the Remediation Works or any Stage complies with the Applicable Standards; and
 - (iii) a corresponding certificate from each relevant subcontractor which certifies that (to the extent then applicable) all design carried out by that subcontractor or the Remediation Works or any Stage executed by that subcontractor complies with the Applicable Standards.
- (c) The Contractor acknowledges that the Commonwealth may exercise any of its rights under this Contract (including under clause 7.13) to carry out periodic auditing of the Contractor's compliance with clause 17.12).
- (d) In this clause 17.12, **Applicable Standards** means the specific international or Australian standards which are applicable to the Contractor's Activities and the Remediation Works as identified in the Contract.

17.13 Black Economy Procurement Connected Policy

- (a) Without limiting clause 8.5, the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontract) if the total value of the work under the subcontract is expected to exceed \$4 million (inclusive of GST) unless the Contractor has obtained and holds any of the STRs set out in the table below, as applicable to the relevant subcontractor.

If the subcontractor to enter into the subcontract is:	STRs required:
a. a body corporate or natural person;	a satisfactory and valid STR in respect of that body corporate or person.
b. a partner acting for or on behalf of a partnership;	a satisfactory and valid STR: <ul style="list-style-type: none">(i) on behalf of the partnership; and(ii) in respect of each partner in the partnership that will be directly involved in the delivery of the subcontract.
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: <ul style="list-style-type: none">(i) trustee; and(ii) the trust.
d. a joint venture participant;	a satisfactory and valid STR in respect of: <ul style="list-style-type: none">(i) each participant in the joint venture; and(ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.

e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) a relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group.
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) GST Group member; and (ii) GST Group representative.

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

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

- (c) The Contractor must provide the Commonwealth with copies of the STRs referred to in paragraph (a) or (b) within 5 business days after a written request by the Commonwealth.
- (d) For the purposes of the Contract, an STR is taken to be:
- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Black Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
 - (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

17.14 Commercial-in-Confidence Information

- (a) Subject to paragraphs (b) and (c), the Commonwealth will take reasonable steps to protect the confidentiality of the Contractor's information expressly specified in the Contract Particulars or otherwise described in the Official Order and received from the Contractor (**Commercial-in-Confidence Information**).

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- (b) The obligation of confidentiality in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
- (i) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with this Contract;
 - (ii) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth's management, reporting or auditing requirements;
 - (iii) disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
 - (iv) disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;
 - (v) disclosed to any Commonwealth department, agency or authority:
 - A. by virtue of or in connection with its functions, or statutory or portfolio responsibilities; or
 - B. for any legitimate government purpose or process including policy development, research, compliance, regulatory and other non-commercial purposes;
 - (vi) authorised or required by law to be disclosed; or
 - (vii) in the public domain otherwise than due to a breach of paragraph (a).
- (c) The parties acknowledge that the Commercial-in-Confidence Information is regarded by the Contractor as confidential in nature for the justification given and period asserted by the Contractor and agreed by the Commonwealth as set out in the Contract Particulars or otherwise described in the Official Order and for the period asserted by the Contractor in the Official Order.
- (d) The Contractor:
- (i) must not, in marking information provided to the Commonwealth, misuse the term "confidential" or any similar term implying confidentiality; and
 - (ii) acknowledges that the marking of information as "confidential" or in similar terms does not affect the legal nature or character of the information.

17.15 Commonwealth Publication and Reporting Requirements

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 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;
- (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; and
- (d) disclose information to other Commonwealth departments, agencies or authorities by virtue of or in connection with their functions, or statutory or portfolio responsibilities or for any legitimate government purpose or process.

17.16 Modern Slavery

- (a) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the carrying out of the Contractor's Activities.
- (b) The Contractor must ensure the Contractor's key people under clause 3.6(a) and other personnel responsible for managing the operations and supply chains used in the performance of the Contractor's Activities 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 Contractor's Activities, the Contractor must:
 - (i) promptly notify the Contract Administrator of the Modern Slavery practices and provide any relevant information requested by the Contract Administrator;
 - (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 Contract Administrator of the steps taken by it in accordance with subparagraph (ii).
- (d) For the purposes of this clause 17.16, **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

17.17 Compliance with the Commonwealth Supplier Code of Conduct

- (a) 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 Contract.
- (b) 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 Contract Administrator, 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 (a).
- (c) The Contractor must immediately notify the Contract Administrator in writing upon becoming aware of any breach of paragraph (a). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
- (d) Where the Contract Administrator identifies a possible breach of paragraph (a), 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 Contract Administrator 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 Contract Administrator under paragraph (c) and otherwise comply with its obligations under this clause 17.17.
- (e) Notwithstanding paragraph (d), the Contract Administrator may notify the Contractor in writing that it considers that the Contractor has breached paragraph (a), in which case the Contractor must notify the Contract Administrator in writing under paragraph (c) and otherwise comply with its obligations under this clause 17.17.

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- (f) Nothing in this clause 17.17 or the Code limits, reduces or derogates from the Contractor's other obligations under the Contract. The Commonwealth's rights under this clause 17.17 are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Contractor of its obligations under this clause 17.17 will be at no additional cost to the Commonwealth.
 - (g) The Contractor acknowledges and agrees that the Commonwealth may take the Contractor's compliance with the Code into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
 - (h) For the purposes of this clause 17.17, **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.

17.18 Environmentally Sustainable Procurement Policy

Clause 17.18 does not apply unless the Contract Particulars state that it does apply.

- (a) The Contractor must comply with, keep records and maintain evidence of its compliance with, the Supplier Environmental Sustainability Plan.
- (b) The Contractor must provide relevant records and evidence of its compliance with the Supplier Environmental Sustainability Plan to the Contract Administrator or the Responsible Agency within 10 business days of a written request.
- (c) The Commonwealth and the Contractor agree their representatives will meet periodically and no fewer than once every six months prior to the end of the last Remediation Defects Rectification Period, to review the Contractor's compliance with the Supplier Environmental Sustainability Plan and reporting obligations under paragraph (f).
- (d) If the Contractor becomes aware that it may be unable to comply with the Supplier Environmental Sustainability Plan or its reporting obligations under paragraph (f), the Contractor agrees to notify the Contract Administrator as soon as possible in writing, which must be no later than 10 business days after becoming aware.
- (e) The written notice issued by the Contractor under paragraph (d) must include:
 - (i) details of how the Contractor has not complied, or anticipates it will not comply, with the Supplier Environmental Sustainability Plan or its reporting obligations;
 - (ii) reasons explaining the Contractor's failure to comply or anticipated failure to comply with the Supplier Environmental Sustainability Plan or its reporting obligations; and
 - (iii) details of the measures the Contractor proposes to take to mitigate the impacts of any failure to comply that has occurred, or to prevent any anticipated failure to comply.
- (f) The Contractor must complete and submit a report to the Contract Administrator in the form of a completed ESP Policy Reporting Template which is accurate, free of errors and up to date at the time the report is submitted. The report must be submitted to the Contract Administrator:
 - (i) at least once every six months prior to the end of the last Remediation Defects Rectification Period;
 - (ii) within 10 business days after the end of the last Remediation Defects Rectification Period; and
 - (iii) at any other time during the term of the Contract as reasonably requested by the Contract Administrator.
- (g) The Contractor must:
 - (i) use the ESP Policy Reporting Template for "Construction Services"; and

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- (ii) if the Contractor's Activities also includes the supply and/or installation of Furniture, Fittings or Equipment, Textiles or ICT Goods in excess of \$1 million (including GST), use the ESP Policy Reporting Template for "Products".
- (h) The Contractor acknowledges and agrees the Responsible Agency may vary the ESP Policy Reporting Template from time to time and that the Contractor will use the latest version of any ESP Policy Reporting Template that is current at the time of submitting the report.
- (i) Where requested by the Contract Administrator, the Contractor must provide the Contract Administrator with evidence verifying any details or information included within a report submitted under paragraph (f) (including evidence obtained from the Contractor's subcontractors) within 10 business days of the request.
- (j) Where the Contract Administrator considers that a report submitted under paragraph (f) does not comply with paragraph (f), the Contract Administrator may by written notice to the Contractor reject the report. Where the Contract Administrator rejects the report, the Contract Administrator will notify the Contractor of issues to be addressed.
- (k) Where the Contract Administrator has rejected a report under paragraph (j), the Contractor must provide the Contract Administrator with an updated report amended to address the issues notified by the Contract Administrator, and that otherwise provides the information and details required in the ESP Policy Reporting Template and that is accurate, free of errors and current at the time of submission, within 10 business days of the date the notice is issued under paragraph (j). This paragraph (k) will apply to any resubmitted report.
- (l) The Contractor warrants that all information provided by the Contractor in a report provided under this clause is accurate, free of errors and up to date at the time the report is submitted to the Contract Administrator.
- (m) The Contractor must only include, in a report provided under this clause, Personal Information to the extent that information is specifically required in the ESP Policy Reporting Template and must not otherwise include Confidential Information.
- (n) The Contractor acknowledges and agrees that:
- (i) the Commonwealth as represented by the Department of Defence or the Contract Administrator will provide the Supplier Environmental Sustainability Plan and the reports the Contractor submits under paragraph (f) (as may be updated in accordance with paragraphs (j) and (k)) to the Responsible Agency;
 - (ii) the reports it submits under paragraph (f) (as may be updated in accordance with paragraphs (j) and (k)) will be recorded in a central database by the Responsible Agency;
 - (iii) the Responsible Agency may aggregate the Sustainability Information provided by the Contractor and use it for whole-of-government reporting which may be published. Individual Contractor information and Personal Information will not be published;
 - (iv) the Responsible Agency and the Commonwealth are not liable to the Contractor for any inaccuracy or error in the Sustainability Information published in whole-of-government reports; and
 - (v) the Commonwealth or the Contract Administrator may do anything that is described in this clause 17.18 during the term of the Contract and following the expiration or earlier termination of the Contract.
- (o) The Contractor is responsible for any costs of meeting its obligations under this clause 17.18.

17.19 Australian Skills Guarantee

- (a) The Contractor must meet the Skills Guarantee Targets in its performance of the Contractor's Activities as calculated in accordance with the Australian Skills Guarantee Procurement Connected Policy.
- (b) Paragraph (a) does not limit and must not be construed as limiting the Contractor's responsibility to perform the Contractor's Activities in accordance with and otherwise comply with the requirements of the Contract.

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- (c) The Contractor must submit a Skills Guarantee Report:
- (i) via the Skills Guarantee Online Reporting System or such other form approved in writing by the Contract Administrator; and
 - (ii) otherwise in accordance with the requirements of the Australian Skills Guarantee Procurement Connected Policy.
- (d) Without limiting paragraph (c), a Skills Guarantee Report must be submitted at the intervals specified by the Skills Guarantee Online Reporting System, provided that if no such intervals are specified the Skills Guarantee Report must be submitted:
- (i) within 10 business days after the end of each quarter until the end of the last Remediation Defects Rectification Period, reporting on performance against the Skills Guarantee Targets during the preceding quarter;
 - (ii) within 10 business days after the end of each financial year until the end of the last Remediation Defects Rectification Period, reporting on performance against the Skills Guarantee Targets during the preceding financial year; and
 - (iii) within 10 business days after the end of the last Remediation Defects Rectification Period, reporting on performance against the Skills Guarantee Targets during the term of the Contract.
- (e) If the Contractor did not meet one or more of the Skills Guarantee Targets during the relevant reporting period, the Contractor must include details of the non-compliance in the relevant Skills Guarantee Report.
- (f) The Contractor consents to the Commonwealth (as represented by the Department of Defence and the Department of Employment and Workplace Relations) and the Contract Administrator using Skills Guarantee Information for the purposes of:
- (i) meeting the objectives and requirements of the Australian Skills Guarantee Procurement Connected Policy;
 - (ii) evaluation, monitoring and reporting;
 - (iii) policy research and development; and
 - (iv) administration of the Australian Skills Guarantee Procurement Connected Policy.
- (g) The Contractor acknowledges that Skills Guarantee Information may also be used and disclosed as may be otherwise authorised or required by law.
- (h) By submitting Skills Guarantee Information to the Commonwealth, which includes Personal Information of Apprentices within the meaning of the Privacy Act, the Contractor warrants and represents that:
- (i) it has made its Apprentices aware that their Personal Information will be collected by the Contractor and disclosed to the Commonwealth (as represented by the Department of Defence and the Department of Employment and Workplace Relations) and the Contract Administrator for use in the manner contemplated in paragraphs (f) to (i) and as set out in more detail at <https://www.dewr.gov.au/australian-skills-guarantee/resources/australian-skills-guarantee-privacy-notice>; and
 - (ii) it has obtained all necessary consents from its Apprentices in accordance with relevant privacy laws to the collection, use and disclosure of their Personal Information in the manner contemplated by paragraphs (f) to (i). The Contractor must provide evidence of such consents to the Contract Administrator on request.
- (i) The Contractor agrees that high level aggregated data on the Contractor's performance against the Skills Guarantee Targets may be recorded in a central repository that is able to be accessed by Commonwealth entities for the purposes of evaluation of an offer by the Contractor to provide goods and/or services to a Commonwealth entity.

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- (j) If the Contract Administrator or the Commonwealth considers, in its absolute discretion at any time during the term of the Contract, that it has concerns in relation to the Contractor's ability to meet the Skills Guarantee Targets, the Contract Administrator may direct the Contractor to provide additional information and implement strategies to ensure it meets the Skills Guarantee Targets.
 - (k) The Contractor must comply with all reasonable directions issued by the Contract Administrator under paragraph (j).

17.20 Flagship Construction Project

Clause 17.20 does not apply unless the Contract Particulars state that it does apply.

- (a) Without limiting clause 17.19(a), the Contractor must comply with the Gender Equality Action Plan.
- (b) The Gender Equality Action Plan must not be construed as limiting the Contractor's responsibility to perform the Contractor's Activities in accordance with, and otherwise comply with, the requirements of the Contract.
- (c) Without limiting clause 17.19(c) to (e), the Contractor must, in its Skills Guarantee Reports, report to the Commonwealth on its compliance with the Gender Equality Action Plan, in accordance with the requirements of the Australian Skills Guarantee Procurement Connected Policy.

17.21 Defence Industry Participation Schedule

- (a) This clause 17.21 does not apply unless the Contract Particulars state that it applies.
- (b) The Contractor acknowledges the importance to the Commonwealth of Australian industry participation, as set out in government and Defence policies, and the contribution made by the Contractor towards achieving the objectives for Australian industry participation, to:
 - (i) deliver services to Defence, from Australian industry and veterans, through solutions that provide value for money for the Commonwealth; and
 - (ii) maximise opportunities for competitive Australian industry and veterans to participate in Defence procurements.
- (c) The Contractor acknowledges that the Defence Industry Participation Schedule sets out the activities that it intends will be carried out by Australian industry (whether by the Contractor or identified subcontractors) in performing the Contract.
- (d) The Contractor must:
 - (i) ensure that the activities specified in the Defence Industry Participation Schedule are performed in Australia by the Contractor or, subject to subparagraph (iv), the relevant subcontractors identified in the Defence Industry Participation Schedule;
 - (ii) use its best endeavours to achieve the overall Contract expenditure in Australia in respect to each "Activity Value" specified in the Defence Industry Participation Schedule;
 - (iii) maintain the accuracy, completeness and currency of the Defence Industry Participation Schedule; and
 - (iv) if the Contractor or a subcontractor can no longer perform an activity specified in the Defence Industry Participation Schedule, propose an alternative entity to perform the activity for approval by the Contract Administrator, ensuring that opportunities are maximised for Australian industry and veteran participation.
- (e) The Contractor acknowledges and agrees that the Commonwealth may disclose the Defence Industry Participation Schedule in whole or in part in order to comply with its reporting and other obligations in respect of industry participation.
- (f) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the Defence Industry Participation Schedule:

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- (i) may be recorded in a central database accessible by the Commonwealth and may be made publicly available;
 - (ii) will not be Commercial-in-Confidence Information for the purposes of clause 17.14; and
 - (iii) may be used by the Commonwealth for any purpose, including being taken into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
- (g) In this clause 17.21, **Defence Industry Participation Schedule** means the document (if any) specified in the Official Order as may be updated in accordance with this clause 17.21.

18. INFORMATION SECURITY - CONFIDENTIAL INFORMATION

18.1 Contractor's Warranty

- (a) The Contractor acknowledges and agrees that the Confidential Information is confidential.
- (b) The Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 18 by the Contractor or any Recipient.

18.2 Confidential Information Requirements

- (a) The Contractor must:
 - (i) strictly comply with:
 - A. clause 18; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. clause 18; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (b) Subject to, if clause 19 applies, clause 19, the Contractor must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than performing the Contractor's Activities and achieving Remediation Completion of the Remediation Works.
- (c) The Contractor must ensure that all Recipients of Confidential Information:
 - (i) strictly comply with:
 - A. clause 18; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. clause 18; and
 - B. all other Confidential Information and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
 - A. clause 18; or

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

18.3 Return, Destruction and Erasure of Confidential Information

- (a) Within 7 days of:
- (i) a request from the Contract Administrator, at any time;
- (ii) the termination of the Contract under clause 14 or otherwise at law; or
- (iii) the expiry of the last Remediation Defects Rectification Period,
- the Contractor must:
- (iv) subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) promptly:
- A. securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Contract Administrator;
- B. securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);
- C. ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
- D. provide the Contract Administrator with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) confirming that

the Confidential Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and

- (v) promptly notify the Contract Administrator of all Confidential Information (or any part of it) which the Contractor knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - B. is beyond the Contractor's (or a Recipient's) possession, power, custody or control,giving full particulars (including the nature and extent of the Confidential Information precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).
- (b) To the extent required by a Statutory Requirement or to maintain compliance with the Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Confidential Information for its records subject to the Contractor:
 - (i) promptly notifying the Contract Administrator of all Confidential Information it proposes to keep and the detailed basis for doing so; and
 - (ii) maintaining the information security of the Confidential Information in accordance with clause 18.
- (c) The Contractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Contractor's obligations under clause 18.

18.4 Compliance

Within 24 hours (or such other period notified by the Contract Administrator in its request) of receipt of a request by the Contract Administrator, at any time, the Contractor must:

- (a) provide the Contract Administrator with:
 - (i) evidence of the Contractor's and all Recipients' compliance with clause 18 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 18 (including any Separation Arrangements and the Confidential Information Requirements),by the time and date specified in the request; and
- (b) as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environments and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 18 (including any Separation Arrangements and Confidential Information Requirements), by the time and date specified in the request.

18.5 Acknowledgement, Release and Indemnity

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

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 18;

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- (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
- A. notifies the Contract Administrator under clause 18.2(d)(ii)B; or
- B. has failed to strictly comply with:
- 1) clause 18; or
- 2) any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements),
- the Commonwealth may (in its absolute discretion) do any one or more of the following:
- C. terminate the Contract under clause 14.4; or
- D. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
- (iii) the exercise of any of the Commonwealth's absolute discretions under clause 18 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
- (b) releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 18; and
- (c) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
- (i) a Confidential Information Incident;
- (ii) the Contractor's failure to strictly comply with clause 18 or any other Confidential Information or information security requirements notified by the Contract Administrator (including any Separation Arrangements); or
- (iii) the exercise of any of the Commonwealth's absolute discretions under clause 18.

19. INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Clause 19 does not apply unless the Contract Particulars state that it applies.

19.1 Sensitive and Classified Information, generally

- (a) Nothing in clause 19 limits or otherwise affects clause 18.
- (b) The Contractor acknowledges and agrees that part of the Confidential Information is Sensitive and Classified Information.

19.2 Contractor's Warranties

- (a) The Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any breach of clause 19 by the Contractor or any Recipient.
- (b) The Contractor warrants that each Recipient of the Sensitive and Classified Information (or any part of it) involved in carrying out the Contractor's Activities and the Remediation Works properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars:
 - (i) before the Recipient was issued with the Sensitive and Classified Information; and
 - (ii) at all times during the Recipient's access to the Sensitive and Classified Information.

19.3 Sensitive and Classified Information Requirements

- (a) The Contractor must:
 - (i) strictly comply with:
 - A. clause 19; and
 - B. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (ii) immediately put in place arrangements to ensure that it strictly complies with:
 - A. clause 19; and
 - B. all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (b) Subject to paragraph (c)(i), the Contractor must not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (ii) disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

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

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- (c) Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (b), the Contract Administrator will notify the Contractor that the Commonwealth (in its absolute discretion) either:
- (i) grants permission, whether with or without such conditions as the Commonwealth thinks fit (including conditions requiring the Recipient of Sensitive and Classified Information (or any part of it) to properly apply for, obtain and hold a current security clearance level at or above the level/s specified by the Commonwealth in the Contract Particulars before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient's access to the Sensitive and Classified Information or to enter into a deed in a form approved by the Commonwealth); or
 - (ii) refuses permission.
- (d) If the Commonwealth grants permission under paragraph (c)(i), the Contractor must strictly comply with any conditions under paragraph (c)(i).
- (e) The Contractor must ensure that all Recipients of Sensitive and Classified Information:
- (i) strictly comply with:
 - A. clause 19; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements);
 - (ii) immediately put in place arrangements to ensure that they strictly comply with:
 - A. clause 19; and
 - B. all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
 - (iii) do not do or omit to do anything which, if done or omitted to be done by the Contractor, would be a breach of:
 - A. clause 19; or
 - B. any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements).
- (f) The Contractor must:
- (i) ensure:
 - A. the Sensitive and Classified Information (or any part of it); and
 - B. all documents, materials, media, information technology environments and all other things on or in which the Sensitive and Classified Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),are strictly kept:
 - C. at locations in Australia only (unless the Contractor and any Recipient is listed on the ASD Certified Cloud Services List or is otherwise approved in writing by the Commonwealth (in its absolute discretion));
 - D. in information technology environments which are accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in the Contract Particulars;

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- 1) before the Contractor (or Recipient) was issued with the Sensitive and Classified Information; and
 - 2) at all times during the Contractor's (or Recipient's) access to the Sensitive and Classified Information,
- and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;
- E. for caveated or compartmented information (or any part of it) forming part of the Sensitive and Classified Information, in information technology environments which are specifically accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in the Contract Particulars required for such caveated or compartmented information (or any part of it):
- 1) before the Contractor (or Recipient) was issued with such caveated or compartmented information (or any part of it); and
 - 2) at all times during the Contractor's (or Recipient's) access to such caveated or compartmented information (or any part of it),
- and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;
- F. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);
- G. without limiting subsubparagraph F, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia;
- H. in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework); and
- I. in accordance with all Separation Arrangements; and
- (ii) immediately:
- A. to the maximum extent possible, detect all actual or potential Sensitive and Classified Information Incidents;
 - B. notify the Contract Administrator if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
 - C. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
 - D. strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),

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

19.4 Return, Destruction and Erasure of Sensitive and Classified Information

- (a) Within 7 days of:
- (i) a request from the Contract Administrator, at any time;

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- (ii) the termination of the Contract under clause 14 or otherwise at law; or
 - (iii) the expiry of the last Remediation Defects Rectification Period,
- the Contractor must:
- (iv) subject to paragraph (b), as directed by the Commonwealth or the Contract Administrator in the notice or request (if any) and in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Principles Framework), promptly:
 - A. securely and appropriately return all copies of the Sensitive and Classified Information (in a tangible form) to the Contract Administrator;
 - B. securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
 - C. ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
 - D. provide the Contract Administrator with a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) confirming that the Sensitive and Classified Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - (v) promptly notify the Contract Administrator of all Sensitive and Classified Information (or any part of it) which the Contractor knows or ought to know:
 - A. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
 - B. is beyond the Contractor's (or a Recipient's) possession, power, custody or control,

giving full particulars (including the nature and extent of the Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).
- (b) To the extent required by a Statutory Requirement or to maintain compliance with the Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Sensitive and Classified Information for its records subject to the Contractor:
- (i) promptly notifying the Contract Administrator of all Sensitive and Classified Information it proposes to keep and the detailed basis for doing so; and
 - (ii) maintaining the information security of the Sensitive and Classified Information in accordance with clause 19.
- (c) The Contractor acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Contractor's obligations under clause 19.

19.5 Compliance

Within 12 hours (or such other period notified by the Contract Administrator in its request) of receipt of a request by the Contract Administrator, at any time, the Contractor must:

- (a) provide the Contract Administrator with:

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- (i) evidence of the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Contractor and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Commonwealth from an authorised officer whose identity and position is approved by the Commonwealth (acting reasonably) in respect of the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and the Sensitive and Classified Information Requirements); and
- (b) as directed by the Contract Administrator in the request, provide the Commonwealth and the Contract Administrator with access to the Contractor's and all Recipients' premises, records, information technology environment and equipment to enable the Commonwealth and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with clause 19 (including any Separation Arrangements and Sensitive and Classified Information Requirements).

19.6 Acknowledgement, Release and Indemnity

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

- (a) acknowledges and agrees that:
 - (i) the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 19;
 - (ii) without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if the Contractor:
 - A. notifies the Contract Administrator under clause 19.3(f)(ii)B; or
 - B. has failed to strictly comply with:
 - 1) clause 19; or
 - 2) any other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements),the Commonwealth may (in its absolute discretion) do any one or more of the following:
 - C. terminate the Contract under clause 14.4; or
 - D. take such Sensitive and Classified Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project; and
 - (iii) the exercise of any of the Commonwealth's absolute discretions under clause 19 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
- (b) releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 19; and
- (c) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
 - (i) a Sensitive and Classified Information Incident;
 - (ii) the Contractor's failure to strictly comply with clause 19 or other Sensitive and Classified Information or security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); or

-
- (iii) the exercise of any of the Commonwealth's absolute discretions under clause 19.

20. DEFENCE INDUSTRY SECURITY PROGRAM

Without limiting clause 19 the Contractor must:

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

21. SIGNIFICANT EVENTS

21.1 Contractor's Warranty

Subject to clause 21.2, the Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2, it is not aware of any Significant Event in relation to the Contractor.

21.2 Notice of Significant Event

If, at any time, the Contractor becomes aware of any Significant Event, the Contractor must immediately notify the Contract Administrator, providing details of:

- (a) the Significant Event, including:
 - (i) whether the Contractor considers that it is a Material Change, Defence Strategic Interest Issue or circumstances otherwise set out in paragraph (c) or (d) of the defined term "Significant Event";
 - (ii) the date or dates on or during which the Significant Event occurred; and
 - (iii) whether any of the Contractor's key people or other personnel engaged in connection with the Contractor's Activities were involved; and
- (b) the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Significant Event on the interests of the Commonwealth.

21.3 Commonwealth Rights Upon Occurrence of Significant Event

- (a) Without limiting any other right or remedy of the Commonwealth (under the Contract or otherwise at law or in equity), if:
 - (i) the Contractor:
 - A. notifies the Contract Administrator under clause 21.2; or
 - B. has failed to strictly comply with clause 21; or
 - (ii) the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Significant Event in relation to the Contractor,

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

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

by the time and date specified in the notice; and
 - (iv) regardless of whether or not the Commonwealth has notified the Contractor under subparagraph (iii), notify the Contractor that:
 - A. the Contractor may continue to perform the Contractor's Activities, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Contractor:

-
- 1) preparing and implementing a Significant Event Remediation Plan in accordance with clause 21.4; or
 - 2) completing, duly executing and returning to the Contract Administrator a deed,

by the time and date specified in the notice, in each case in a form and on terms acceptable to the Commonwealth in its absolute discretion; or
- B. the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 14.4.
- (b) Without limiting any other provision of the Contract, if the Contractor is in breach of clause 21, then the Commonwealth may (in its absolute discretion) notify the Contractor that the Commonwealth has elected to treat the Significant Event as an Insolvency Event for the purposes of clause 14.4.

21.4 Significant Event Remediation Plan

- (a) If notified by the Commonwealth under clause 21.3(a)(iv)A.1), the Contractor must prepare and submit a draft Significant Event Remediation Plan to the Contract Administrator for approval within 10 business days of the Commonwealth's notice.
- (b) A draft Significant Event Remediation Plan prepared by the Contractor under paragraph (a) must include the following information:
- (i) how the Contractor will address the Significant Event in the context of the Contractor's Activities, including confirmation that the implementation of the Significant Event Remediation Plan will not in any way impact on the performance of the Contractor's Activities or compliance by the Contractor with its other obligations under the Contract;
 - (ii) how the Contractor will ensure events similar to the Significant Event do not occur again;
 - (iii) if the Significant Event involves a Material Change, how the Material Change will impact the Contractor's original agreement with the Commonwealth; and
 - (iv) any other matter reasonably requested by the Contract Administrator.
- (c) The Contract Administrator will review the draft Significant Event Remediation Plan and either approve the draft Significant Event Remediation Plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft Significant Event Remediation Plan reasonably requested by the Contract Administrator and resubmit the draft Significant Event Remediation Plan to the Contract Administrator for approval within 3 business days of the request unless a different timeframe is agreed in writing by the Contract Administrator. This paragraph (c) will apply to any resubmitted draft Significant Event Remediation Plan.
- (d) Without limiting its other obligations under the Contract, the Contractor must comply with the Significant Event Remediation Plan as approved by the Contract Administrator. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the Significant Event Remediation Plan as reasonably requested by the Contract Administrator.

21.5 Acknowledgement and Release

The Contractor:

- (a) acknowledges and agrees that the exercise of any of the Commonwealth's absolute discretions under this clause 21 is not capable of being the subject of a dispute or difference for the purposes of clause 15 or otherwise subject to review; and
- (b) must bear, and releases the Commonwealth from, all Claims arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under this clause 21.

22. FINANCIAL VIABILITY

- (a) The Contractor:
- (i) warrants that, on the Award Date and on the date of submitting each payment claim under clause 12.2:
 - A. it has the financial viability necessary to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors (in accordance with paragraph (b))); and
 - B. each subcontractor engaged in the Contractor's Activities, the Remediation Completion or each Stage has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
 - (ii) acknowledges and agrees that the Commonwealth has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 22.
- (b) The Contractor must pay all subcontractors in accordance with the payment terms in all subcontracts.
- (c) The Contractor must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
- (i) the Contractor's ability to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage or otherwise meet its obligations under the Contract; and
 - (ii) a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any potential or actual change in:
 - (iii) the Contractor's financial viability; or
 - (iv) a subcontractor's financial viability.
- (d) The Contract Administrator may (in its absolute discretion) at any time request the Contractor to:
- (i) provide the Contract Administrator with a solvency statement in the form required by the Commonwealth with respect to:
 - A. the Contractor, properly completed and duly executed by the Contractor; or
 - B. a subcontractor, properly completed and duly executed by the subcontractor;
 - (ii) ensure:
 - A. its Financial Representative is available; and
 - B. each subcontractor makes its Financial Representative available,to provide the Contract Administrator and any independent financial adviser engaged by the Commonwealth with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist the Commonwealth, the Contract Administrator and the independent financial adviser engaged by the Commonwealth for the purpose of demonstrating that:
 - C. the Contractor has the financial viability necessary to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors in accordance with paragraph (b)); or

-
- D. a subcontractor has the financial viability necessary to perform its activities in accordance with the relevant subcontract.
- (e) If the Commonwealth considers (in its absolute discretion) that there could be or has been a change in:
- (i) the Contractor's financial viability; or
 - (ii) a subcontractor's financial viability,
- which could adversely affect:
- (iii) the Contractor's ability to perform the Contractor's Activities, achieve Remediation Completion of the Remediation Works or each Stage or otherwise meet its obligations under the Contract; or
 - (iv) a subcontractor's ability to perform its activities in accordance with the relevant subcontract,
- the Contract Administrator may (in its absolute discretion) direct the Contractor to take such steps as the Commonwealth considers necessary to secure the performance of the Contractor's Activities, the Remediation Completion of the Remediation Works or each Stage and the meeting of its obligations under the Contract, including requiring the Contractor to:
- (v) provide additional Approved Security in the form and for an amount required by the Commonwealth under clause 4.1(a);
 - (vi) provide a deed of guarantee and undertaking in the form required by the Commonwealth;
 - (vii) establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by the Commonwealth;
 - (viii) provide Subcontractor Deeds of Covenant; or
 - (ix) provide Collateral Warranties.
- (f) If the Contract Administrator gives a direction under paragraph (e), then the Contractor must take such steps as the Commonwealth considers necessary to better secure a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
- (g) The Contractor acknowledges and agrees that:
- (i) nothing in clause 22 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity; and
 - (ii) clause 22 does not give the Contractor (or any subcontractor) any rights.

Unless otherwise approved by the Contract Administrator, the Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in clause 22.

CONTRACT PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Accredited Environmental Site Auditor:
(Clause 1.1)

Award Date:
(Clause 1.1)

Contract - other documents forming part of the Contract:
(Clause 1.1)

Contract Administrator:
(Clause 1.1)

Contract Price:
(Clauses 1.1 and 16.2(b))

(a) for the Lump Sum Work, a Lump Sum Component of \$ (ex. GST); and

(b) for the Schedule of Rates Work, the Schedule of Rates Component calculated by multiplying the quantity of Schedule of Rates Work carried out in accordance with the Contract by the rate or price in the Schedule of Rates for that work,

neither of which is, unless elsewhere stated, subject to rise and fall in costs.

Contractor:
(Clause 1.1)

Contractor Estate Information Obligation (additional):
(Clause 1.1)

Contractor's Representative:
(Clause 1.1)

Date for Remediation Completion:
(Clause 1.1)

Where there are no Stages, for the Remediation Works is:

Where there are Stages, for each Stage is:

Stage	Date for Remediation Completion
-------	---------------------------------

Defence Asbestos Register:
(Clause 1.1)

Environmental Consultant:
(Clause 1.1)

**Environmental Management and
Sustainability Plan (additional):**
(Clause 1.1)

Environmental Objectives (additional):
(Clause 1.1)

**Environmental Requirements
(additional):**
(Clause 1.1)

Executive Negotiators:
(Clause 1.1)

Commonwealth: Assistant Secretary,
Environment and Engineering

Contractor:

Gender Equality Action Plan:
(Clause 1.1)

Indigenous Participation Plan:
(Clause 1.1)

**Overarching Apprentice Target for
Women:**
(Clause 1.1)

**Contract
period**

*[IF THE
PROJECT IS
A FLAGSHIP
CONSTRUCTI
ON PROJECT,
DELETE
THIS
COLUMN]
Major
Construction
Project
Targets*

*[IF THE
PROJECT IS
A MAJOR
CONSTRUCTI
ON PROJECT,
DELETE
THIS
COLUMN]
Flagship
Construction
Project
Targets*

1 July 2025 to
30 June 2026

1 July 2026 to
30 June 2027

1 July 2027 to
30 June 2028

1 July 2028 to
30 June 2029

1 July 2029 to
30 June 2030

1 July 2030
onwards

Pandemic Adjustment Event (additional):
(Clause 1.1)

Project DCAP:
(Clauses 1.1 and 7.14)

Project Management Meetings:
(Clauses 1.1)

Meeting frequency:

Meeting location:

Project Plans (additional):
(Clause 1.1)

***[COMMONWEALTH TO INSERT ANY
ADDITIONAL PLANS REQUIRED]***

Quality Manager:
(Clause 1.1)

Quality Objectives (additional):
(Clause 1.1)

Quality Plan (additional):
(Clause 1.1)

**Remediation Completion - additional
conditions precedent to Remediation
Completion:**
(Clause 1.1)

Remediation Defects Rectification Period:
(Clause 1.1)

Remediation Works:
(Clause 1.1)

***[INSERT BRIEF DESCRIPTION OF
REMEDATION WORKS]***

Schedule of Collateral Documents:
(Clause 1.1)

1. Approved Security (Unconditional Undertaking)
2. Collateral Warranty
3. Subcontractor Deed of Covenant
4. Deed of Guarantee and Undertaking
5. Payment Claim

6. Payment Statement
7. Expert Determination Agreement

Schedule of Rates:
(Clause 1.1)

Site:
(Clause 1.1)

Site Information:
(Clause 1.1)

Site Management Plan (additional):
(Clause 1.1)

Specified Site Use Objective:
(Clause 1.1)

Stages of the Remediation Works:
(Clause 1.1)

Supplier Environmental Sustainability Plan:
(Clause 1.1)

Table of Remediation Works Variation Rates and Prices:
(Clause 1.1)

Technical Advisor:
(Clause 1.1)

Technical Specification:
(Clause 1.1)

Trade-specific Apprentice Target for Women:
(Clause 1.1)

Contract period

[IF THE PROJECT IS A FLAGSHIP CONSTRUCTION PROJECT, DELETE THIS COLUMN] Major Construction Project Targets

[IF THE PROJECT IS A MAJOR CONSTRUCTION PROJECT, DELETE THIS COLUMN] Flagship Construction Project Targets

1 July 2025 to
30 June 2026

1 July 2026 to
30 June 2027

1 July 2027 to
30 June 2028

1 July 2028 to
30 June 2029

1 July 2029 to
30 June 2030

1 July 2030
onwards

**Work Health and Safety Plan
(additional):**
(Clause 1.1)

Governing law:
(Clause 1.3(a))

CLAUSE 2 - COMMENCEMENT

Other conditions precedent to Site access:
(Clause 2.2(a)(i)C)

Date for commencement on Site:
(Clause 2.2(a)(ii))

CLAUSE 3 - PERSONNEL

**Contract Administrator's representatives
and their functions:**
(Clause 3.4)

Representative

Function(s)

Site Audit Statement:
(Clause 3.9)

A Site Audit Statement *[IS/IS NOT]* required.
(A Site Audit Statement is required unless otherwise
stated)

Technical Advisor's Certification:
(Clause 3.10)

A Technical Advisor's Certification *[IS/IS NOT]*
required.
(A Technical Advisor's Certification is required
unless otherwise stated)

CLAUSE 4 - SECURITY

**Security to be provided by the
Contractor:**
(Clause 4.1)

Where there are no Stages, for the Remediation
Works is:

\$ or % of the Contract Price (in
the form of two Approved Securities, each for 50%
of this amount).

Where there are Stages, for each Stage is:

***[WHERE SECURITY IS TO BE PROVIDED FOR
EACH STAGE, COMMONWEALTH AND
CONTRACT ADMINISTRATOR TO CONSIDER
CUMULATIVE TOTAL AMOUNT OF THE
SECURITY BEING REQUESTED. IF A
PERCENTAGE AMOUNT IS REQUIRED,
CONSIDER INSERTING THE WORDS
"REFERABLE TO THE STAGE" AFTER THE
WORDS "CONTRACT PRICE"]***

Stage

Amount

\$ or % of the
Contract Price (in the

form of two Approved Securities, each for 50% of this amount).

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

\$ or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

To the extent that any part of the Contractor's Activities is to be carried out in Queensland, the following warning applies:

This Contract is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building and Construction Commission Act 1991* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security is not to be more than 5% of the Contract Price of the Contract, unless the Contract expressly provides otherwise. Under this Contract, the parties agree that the amount of the security provided by the Contractor is governed by clause 4.

Initialled for and on behalf of the Contractor:

Initialled for and on behalf of the Commonwealth:

Despite any other provision of the Contract, the parties agree that where:

- (a) section 67N of the *Queensland Building and Construction Commission Act 1991* (Qld) applies; and
- (b) to the extent that the Contract provides that the total of all securities held by the Commonwealth shall exceed 2.5% of the Contract Price after Remediation Completion,

the amount of the excess does not relate to the need to correct defects identified in the Remediation Defects Rectification Period, but instead to the recovery by the Commonwealth of any costs, damages, liabilities or other amounts which may become payable to the Commonwealth by the Contractor under or in connection with the Contract,

the Contractor's performance of the Contract or any breach of Contract by the Contractor.

CLAUSE 5 - RISKS AND INSURANCE

Insurance policies required to be obtained by the Contractor:
(Clause 5.4)

[INSURANCE LEVELS TO BE FINALISED IN LIGHT OF CONTRACTOR'S NOMINATED LEVELS, THE COMMONWEALTH'S RISK ASSESSMENT AND ANY NEGOTIATIONS WITH THE CONTRACTOR ARISING FROM THAT RISK ASSESSMENT.

WHERE THE COMMONWEALTH/CONTRACT ADMINISTRATOR INTENDS TO INCLUDE INDICATIVE LEVELS OF INSURANCE, THE WORDS "[To be inserted following selection of the successful Panel Consultant, indicatively \$[INSERT AMOUNT]]" AND THE RELEVANT AMOUNT SHOULD BE INCLUDED.

WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT.]

Construction Risks Insurance

Amount of Cover:

- (a) \$
(the Contract Price if no amount is specified);
- (b) \$ or % of the Contract Price to cover the costs of demolition and removal of debris;
- (c) \$ or % of the Contract Price to cover the Commonwealth's consultant fees;
- (d) \$ for the value of materials or things to be supplied by the Commonwealth; and
- (e) % of the total of the amounts in (a) to (d) to cover escalation costs.

Public Liability Insurance

If written on an occurrence basis:

Amount of Cover: \$ for each and every occurrence for public liability claims

If written on a claims made basis:

Amount of Cover: \$ per claim and \$ in the aggregate.

Workers Compensation Insurance

Amount of Cover: Amount of Cover prescribed by Statutory Requirement in the State or Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside.

Employers' Liability Insurance

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

Professional Indemnity Insurance

Amount of Cover: \$ per claim and \$ in the aggregate

Errors and Omissions Insurance

Amount of Cover: \$ per claim and \$ in the aggregate.

Other Insurances: (Clause 5.4(a)(vi))

[COMMONWEALTH AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED EG TRANSIT INSURANCE FOR KEY ITEMS TRANSPORTED TO THE SITE, PRODUCT LIABILITY INSURANCE, MOTOR VEHICLE INSURANCE, INDUSTRIAL SPECIAL RISKS INSURANCE ETC]

Minimum amount of subcontractors' Professional Indemnity Insurance or Errors and Omissions Insurance:
(Clause 5.4(i))

Professional Indemnity Insurance

Amount of Cover: \$ per claim and \$ in the aggregate.

Errors and Omissions Insurance

Amount of Cover: \$ per claim and \$ in the aggregate.

Run-off period for Public Liability Insurance (if written on a claims made basis):
(Clause 5.6(b))

Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory:
11 years.

Otherwise: 7 years.

Run-off period for Professional Indemnity Insurance or Errors and Omissions Insurance:
(Clause 5.6(d))

Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory:
11 years.

Otherwise: 7 years.

Maximum aggregate liability of the Contractor to the Commonwealth:
(Clause 5.11)

\$

CLAUSE 6 - SITE ACCESS AND CONDITIONS

Unexploded Ordnance:
(Clause 6.6)

Clause 6.6 *[DOES/DOES NOT]* apply.
(Clause 6.6 does not apply unless otherwise stated)

[THIS CLAUSE SHOULD NOT BE SELECTED TO APPLY IF THE CONTRACTOR HAS BEEN ENGAGED UNDER THE UNEXPLODED ORDNANCE REMEDIATION SERVICE CATEGORY. IN THESE CIRCUMSTANCES CLAUSE 6 OF ANNEXURE 2 SHOULD BE USED AND CLAUSE 6.6 WILL NOT APPLY]

National Heritage Place:
(Clause 6.7)

Clause 6.7 *[DOES/DOES NOT]* apply.
(Clause 6.7 does not apply unless otherwise stated)

Commonwealth Heritage Place:
(Clause 6.8)

Clause 6.8 *[DOES/DOES NOT]* apply.
(Clause 6.8 does not apply unless otherwise stated)

Heritage Act Requirements (Victoria):
(Clause 6.9)

Clause 6.9 *[DOES/DOES NOT]* apply.
(Clause 6.9 does not apply unless otherwise stated)

CLAUSE 7 - PLANS AND DOCUMENTATION

Documents and number of copies to be provided by the Commonwealth to the Contractor: (Clause 7.1)	Document	Copies
---	-----------------	---------------

Contractor to prepare Remediation Design Documentation: (Clause 7.2(a)(i))	<i>[YES/NO]</i>	
--	-----------------	--

Number of days for review of Remediation Design Documentation: (Clauses 7.3(a)(ii) and 7.3(c))	days	
--	------	--

Number of copies of Remediation Design Documentation to be submitted by the Contractor to the Contract Administrator:
(Clause 7.5)

Remediation Design Documentation hard copy requirements: (Clause 7.5(a))	Compatible with Autocad 14
	To scale
	Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator)

Remediation Design Documentation electronic copy requirements: (Clause 7.5(b))	Compatible with Autocad 14	
	CD-ROM or as determined by the Contract Administrator	
Number of days for submission of Project Plans: (Clause 7.7(a)(ii)A)	Environmental Management and Sustainability Plan:	days
	Estate Information Provision Plan:	days
	Project Lifecycle and HOTO Plan	days
	<i>[IF CLAUSE 7.16 DOES NOT APPLY, DELETE THIS ITEM]</i>	days
	Method of Work Plan for Airfield Activities:	
	Quality Plan:	days
	Site Management Plan:	days
	Work Health and Safety Plan:	days
	Other: <i>[SPECIFY]</i>	days
	Environmental Management and Sustainability Plan:	days
	Estate Information Provision Plan:	days
	Project Lifecycle and HOTO Plan	days
	<i>[IF CLAUSE 7.16 DOES NOT APPLY, DELETE THIS ITEM]</i>	days
Number of days for review of Project Plans: (Clause 7.7(a)(ii)B)	Method of Work Plan for Airfield Activities:	
	Quality Plan:	days
	Site Management Plan:	days
	Work Health and Safety Plan:	days
	Other: <i>[SPECIFY]</i>	days
	Environmental Management and Sustainability Plan:	days
	Estate Information Provision Plan:	days
	Project Lifecycle and HOTO Plan	days

Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:

(Clause 7.12(a))

1. Official Order
2. Contract Particulars
3. Terms of Engagement
4. Technical Specification
5. Panel Agreement
6. Any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)
7. Remediation Design Documentation (which the Contractor is entitled to use under clause 7.3(c))
8. Project Plans

Method of Work Plan for Airfield Activities:

(Clause 7.16)

Clause 7.16 *[DOES/DOES NOT]* apply.

(Clause 7.16 does not apply unless otherwise stated)

CLAUSE 8 - EXECUTION OF REMEDIATION WORKS

Statutory Requirements with which the Contractor does not need to comply:

(Clause 8.3(a))

Approvals which the Contractor is not to obtain:

(Clause 8.3(b))

[TO THE EXTENT THE COMMONWEALTH WILL BE RESPONSIBLE FOR OBTAINING AN APPROVAL AFTER THE AWARD DATE, THE COMMONWEALTH AND CONTRACT ADMINISTRATOR SHOULD CONSULT WITH THE PROJECT'S LEGAL ADVISER IN RESPECT OF ANY REQUIRED SPECIAL CONDITION]

Remediation Work which requires approval to subcontract or which must be let to one of the named subcontractors:

(Clause 8.5(a))

Work or Goods

Subcontractors

Stages for which Collateral Warranties required:

(Clause 8.6)

Collateral Warranties required to be procured by the Contractor from subcontractors and provided to the Commonwealth:

(Clause 8.6)

Stages for which a certificate signed by a licensed surveyor is required as condition precedent to Remediation Completion:

(Clause 8.10)

Requirement to maintain accreditation and comply with other conditions of the WHS Accreditation Scheme:

(Clauses 8.13(d) and 8.13(e))

Clauses 8.13(d) and 8.13(e) *[DO / DO NOT]* apply.

(Clauses 8.13(d) and 8.13(e) do not apply unless otherwise stated)

Plant, Equipment and Work which must not be removed from the Site without the Contract Administrator's consent:
(Clause 8.14)

Access hours for Contractor's Activities on Site:
(Clause 8.20)

Requirements for Contract Administrator's Office:
(Clause 8.22)

Number of project signboards:
(Clause 8.23(a))

Project signboard dimensions:
(Clause 8.23(a)(i))

Project signboard (Acknowledgement of Country):
(Clause 8.23(a)(ii)H)

<https://www.defence.gov.au/acknowledgment-of-country>

Project signboard information (additional):
(Clause 8.23(a)(ii)I)

Remediation work not included:
(Clause 8.24)

Dilapidation Survey:
(Clause 8.25)

Clause 8.25 **[DOES/DOES NOT]** apply.
(Clause 8.25 does not apply unless otherwise stated)

Areas or features to be included in dilapidation survey:
(Clause 8.25(b))

Number of days for submission of dilapidation survey and photographs:
(Clause 8.25(d))

Prior Work:
(Clause 8.26)

Clause 8.26 **[DOES/DOES NOT]** apply.
(Clause 8.26 does not apply unless otherwise stated)

Joining up:
(Clause 8.27)

Clause 8.27 **[DOES/DOES NOT]** apply.
(Clause 8.27 does not apply unless otherwise stated)

Existing Services and Structures:
(Clause 8.28)

Clause 8.28 **[DOES/DOES NOT]** apply.
(Clause 8.28 does not apply unless otherwise stated)

Items to be supplied by Commonwealth:
(Clause 8.29)

Clause 8.29 **[DOES/DOES NOT]** apply.
(Clause 8.29 does not apply unless otherwise stated)

Schedule of items to be supplied by Commonwealth:
(Clause 8.29(b))

Item

Quantity

CLAUSE 9 – QUALITY OF REMEDIATION WORKS

Period by which Remediation Defects Rectification Period will be extended

following rectification of a Remediation Defect:
(Clause 9.10)

Remediation Defects, Records and Reports
(Clause 9.14)

Clause 9.14 **[DOES/DOES NOT]** apply.
(Clause 9.14 does not apply unless otherwise stated)

Records and Reports (additional):
(Clause 9.14(c)(vi))

CLAUSE 10 - TIME

Maximum intervals between program updates by Contractor:
(Clause 10.2(b))

Program format to be compatible with:
(Clause 10.2(d))

[PRIMAVERA SURETRAK/MICROSOFT PROJECT] or equivalent requested by the Contractor and approved by the Contract Administrator

Additional causes of delay entitling Contractor to claim an extension of time:
(Clauses 10.5(b)(i) and 10.7(c))

1. Statewide industrial disputation or other industrial disputation caused by the Commonwealth, which in neither case is caused or contributed to by the Contractor or any subcontractor of the Contractor.
2. A change or variance in respect of a Statutory Requirement after the Award Date.
3. A Commonwealth Risk.
4. Unidentified Site Conditions which have been determined by the Contract Administrator to have been encountered under clause 11.1.
5. Valuable, archaeological or special interest items found on or in the Site.
6. A Pandemic Adjustment Event.
7. A bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Contractor's Activities.

Delay damages:
(Clause 10.10)

Clause 10.10 **[DOES/DOES NOT]** apply.
(Clause 10.10 applies unless otherwise stated)

If clause 10.10 applies:

Where there are no Stages, the daily cap is:

\$ per working day

If there are Stages, the daily caps are:

Stage

Maximum delay damages

\$ per working day

\$ per working day

\$ per working day

\$ per working day

Percentage of extra costs reasonably incurred due to acceleration:
(Clause 10.14(b)(ii))

%
(5% unless otherwise stated)

CLAUSE 11 – VARIATION TO REMEDIATION WORKS

Percentage adjustments for valuing a Variation:
(Clauses 11.5(b)(i) and 11.5(c)(iii))

% of amount determined for off-site overheads and profit

% of amount determined for non-time related on-site overheads and preliminaries

CLAUSE 12 – PAYMENT

Times for submission of payment claims by the Contractor to the Contract Administrator:
(Clause 12.2(a))

Monthly on the day of each month

Defence Invoicing email address for tax invoice:
(Clause 12.5(a))

invoices@defence.gov.au

Number of business days for payment:
(Clause 12.5(b))

To the extent that the relevant part of the Contractor's Activities is carried out in:

1. Queensland, New South Wales or the Australian Capital Territory: 5; or
2. any other State or Territory: 10.

Interest rate:
(Clause 12.13)

In the case of:

1. damages - the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator; or
2. late payments - the greater of:
 - (a) the rate in paragraph (1); and
 - (b) the rate of interest prescribed under any applicable Security of Payment Legislation.

Limits of accuracy for quantities in Schedule of Rates:
(Clause 12.19(c))

Upper Limit:
(115% unless otherwise stated)

Lower Limit:
(85% unless otherwise stated)

Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:
(Clause 12.20(d))

To the extent that the relevant part of the Contractor's Activities is carried out in:

1. the Northern Territory, the Resolution Institute of the Northern Territory Chapter;
2. Western Australia, the Resolution Institute of the Western Australian Chapter;
3. Victoria, any one of the following:
 - (a) Resolution Institute, Victorian Chapter;
 - (b) Building Adjudication Victoria Inc; or
 - (c) Rialto Adjudications Pty Ltd; or
4. any other State or Territory (save for Queensland), the Resolution Institute of the Chapter in that State or Territory.

Remediation Cost Report (additional matters):
(Clause 12.23(b))

Estate Information:
(Clause 12.24)

Clause 12.24 **[DOES/DOES NOT]** apply
(Clause 12.24 applies unless otherwise stated)

CLAUSE 13 - REMEDIATION COMPLETION

Liquidated damages payable by Contractor when Date for Remediation Completion occurs after Date for Remediation Completion:
(Clause 13.7)

If there are no Stages, for the Remediation Works is:

\$ per day.

If there are Stages, for each Stage is:

Stage	Liquidated Damages
	\$ per day
	\$ per day

CLAUSE 14 - TERMINATION

Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b))

days

CLAUSE 15 - DISPUTES

Directions to be subject of an expert determination if disputed:
(Clause 15.2)

Directions under clauses: 2.3(b), 4.2, 6.6(c), 6.6(d)(ii), 8.4(c)(ii), 8.4(d), 8.18(d)(ii), 8.30, 9.4, 9.8(b)(i), 9.9, 10.8, 10.11(b)(ii)B, 11.1(b)(i), 11.5(b), 11.5(c)(ii), 12.4, 12.19(e)(ii), 13.2(b)(ii), 14.8(a), 17.3(e)(ii) and 17.3(e)(iii)

Industry expert who will conduct expert determinations:
(Clause 15.3(a)(i))

Nominating authority for industry expert:
(Clause 15.3(a)(ii))

(The Chair for the time being of the Resolution Institute unless otherwise specified)

CLAUSE 16 - NOTICES

Address and email address, for the giving or serving of notices, upon:
(Clause 16.7(b)(i))

Commonwealth:

Address (not PO Box):

Email address:

Attention:

Contract Administrator:

Address (not PO Box):

Email address:

Attention:

Contractor:

Address (not PO Box):

Email address:

Attention:

CLAUSE 17 - GENERAL

Option for Indigenous Procurement Policy

(Clause 17.2)

[OPTION 1/OPTION 2] applies.

(Option 1 applies unless otherwise stated)

Defence's Security Alert System level:
(Clause 17.3(d)(i))

("Aware" if not otherwise specified)

Black Economy Procurement Connected Policy:
(Clause 17.13)

Clause 17.13 *[DOES/DOES NOT]* apply.
(Clause 17.13 does apply unless otherwise stated)

Information which is Commercial-in-Confidence Information: (Clause 17.14)	Specific Information	Justification	Period of confidentiality
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Environmentally Sustainable Procurement Policy: (Clause 17.18)	Clause 17.18 <i>[DOES/DOES NOT]</i> apply. (Clause 17.18 does not apply unless otherwise stated)		
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Flagship Construction Project: (Clause 17.20)	Clause 17.20 <i>[DOES/DOES NOT]</i> apply. (Clause 17.20 does not apply unless otherwise stated)		
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[CLAUSE 17.20 WILL APPLY WHERE THE PROJECT IS A "FLAGSHIP CONSTRUCTION PROJECT" (VALUED AT OR ABOVE \$100 MILLION (GST INCLUSIVE))]

Defence Industry Participation Schedule (Clause 17.21)	Clause 17.21 <i>[DOES/DOES NOT]</i> apply. (Clause 17.21 does not apply unless otherwise stated)		
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CLAUSE 19 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Sensitive and Classified Information: (Clause 19)	Clause 19 <i>[DOES/DOES NOT]</i> apply. (Clause 19 does not apply unless otherwise stated)
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Current security clearance level/s:
(Clauses 19.2(b) and 19.3(c)(i))

Information technology environment accreditation or certification level/s:
(Clauses 19.3(f)(i)D and 19.3(f)(i)E)

CLAUSE 20 - DEFENCE INDUSTRY SECURITY PROGRAM

Level of DISP Membership:
(Clause 20(a))

ANNEXURE 1 - FUNCTIONS

PART A - ENVIRONMENTAL CONSULTANT FUNCTIONS

The functions of the Environmental Consultant are to:

1. inspect the Remediation Works;
2. collect samples from the Site, and analyse those samples;
3. construct, maintain and access groundwater monitoring wells;
4. oversee the Remediation Works, having regard to the Technical Specification, Remediation Design Documentation and such other matters as the Environmental Consultant considers relevant;
5. provide such advice to the Contract Administrator as the Contract Administrator requires, or which the Environmental Consultant considers necessary;
6. produce the Remediation Validation Report which confirms whether the Specified Site Use Objective has been achieved in relation to the Site; and
7. perform such other tasks as specified in the Technical Specification as being the responsibility of the Environmental Consultant.

PART B - TECHNICAL ADVISOR'S FUNCTIONS

The functions of the Technical Advisor are to:

1. undertake a review of:
 - (a) the Technical Specification;
 - (b) Project Plans;
 - (c) Remediation Design Documentation;
 - (d) Site Information; and
 - (e) the Remediation Validation Report;
2. inspect the Site, the Contractor's Activities and the Remediation Works from time to time;
3. provide such advice to the Contract Administrator and/or the Environmental Consultant as they may require, or which the Technical Advisor considers necessary;
4. provide the Technical Advisor's Certification stating whether or not the Technical Advisor considers that the Specified Site Use Objective has been achieved in relation to the Site; and
5. perform such other tasks as specified in the Technical Specification as being the responsibility of the Technical Advisor.

PART C - ACCREDITED ENVIRONMENTAL SITE AUDITOR'S FUNCTIONS

The functions of the Accredited Environmental Site Auditor are to:

1. undertake a review of:
 - (a) the Technical Specification;
 - (b) Project Plans;
 - (c) Remediation Design Documentation;

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- (d) Site Information; and
 - (e) the Remediation Validation Report;
2. inspect the Site, the Contractor's Activities and the Remediation Works from time to time;
 3. provide the Site Audit Statement in relation to the Site; and
 4. perform such other tasks as specified in the Technical Specification as being the responsibility of the Accredited Environmental Site Auditor.

ANNEXURE 2 - SPECIAL CONDITIONS

[DEFENCE AND THE TENDER/CONTRACT ADMINISTRATOR ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE CONTRACT. DEFENCE AND THE TENDER/CONTRACT ADMINISTRATOR ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED AND ADVISE THESE TO THE DELEGATE AND THE PROJECT'S LEGAL SERVICES PROVIDER (IF ANY)]

1. WORK HEALTH AND SAFETY (AUSTRALIAN CAPITAL TERRITORY, NEW SOUTH WALES, NORTHERN TERRITORY, QUEENSLAND, SOUTH AUSTRALIA, TASMANIA OR WESTERN AUSTRALIA) - ENGAGEMENT AS PRINCIPAL CONTRACTOR

[IF THE RELEVANT JURISDICTION FOR THE PROJECT IS ACT, NSW, NT, QLD, SA, TAS OR WA ONLY, INSERT THIS CLAUSE 1. THIS CLAUSE 1 SHOULD ALSO BE USED IF A PANEL CONSULTANT/CONTRACTOR IS A NON-COMMONWEALTH LICENSEE]

- (a) In accordance with Regulation 293 of the WHS Legislation, the Commonwealth engages the Contractor as the principal contractor and authorises the Contractor to have management or control of the workplace and in carrying out the Contractor's Activities for the purpose of discharging the duties imposed on a principal contractor for the project and the Contract, pursuant to the WHS Legislation. The Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the project and the Contract, unless relieved of that engagement and authorisation by notice in writing given by the Commonwealth or the Contract Administrator.
- (b) For the purposes of the Contract, the project and the WHS Legislation, **principal contractor** means the role as authorised and engaged under this clause 1.

2. OCCUPATIONAL HEALTH AND SAFETY (VICTORIA) - APPOINTMENT AND ENGAGEMENT AS PRINCIPAL CONTRACTOR

[IF THE RELEVANT JURISDICTION FOR THE PROJECT IS VICTORIA INSERT THIS CLAUSE 2]

- (a) To the extent that the Contractor's Activities are carried out in Victoria, this clause 2 applies to the Contractor as the person who has responsibility for the management or control of the Workplace.
- (b) In accordance with regulation 333 of the *Occupational Health and Safety Regulations 2017* (Vic) and regulation 293 of the *Work Health and Safety Regulations 2011* (Cth) the Commonwealth appoints and engages the Contractor as the Principal Contractor for the project, the Contract and the Construction Work and authorises the Contractor to have management or control of the Workplace in carrying out the Contractor's Activities for the purpose of discharging the duties imposed on a Principal Contractor.
- (c) The Contractor accepts such appointment and engagement as the Principal Contractor for the project and the Contract and the Construction Work, unless relieved of that appointment and authorisation by notice in writing given by the Commonwealth or the Contract Administrator.
- (d) For the purposes of this clause 2, the following definitions apply:
 - (i) **Construction Work** has the meaning given to it in regulation 321 of the *Occupational Health and Safety Regulations 2017* (Vic) and in regulation 289 of the *Work Health and Safety Regulations 2011* (Cth) and includes:
 - A. high risk construction work as defined in regulation 322 of the *Occupational Health and Safety Regulations 2017* (Vic) and regulation 291 of the *Work Health and Safety Regulations 2011* (Cth); and
 - B. all work that is carried out by the Contractor and all subcontractors at or in relation to the Workplace during the term of the Contract.

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- (ii) **Principal Contractor** has the meaning given to it in regulation 333 of the *Occupational Health and Safety Regulations 2017* (Vic) and regulation 293 of the *Work Health and Safety Regulations 2011* (Cth).
 - (iii) **Workplace** has the meaning given to it in section 5 of the *Occupational Health and Safety Act 2004* (Vic) and section 8 of the *Work Health and Safety Act 2011* (Cth).

3. INSURANCE AMENDMENTS WHERE THE CONTRACTOR IS A SELF-INSURED LICENSEE

[RETAIN THIS SPECIAL CONDITION IF ANY OF THE PANEL CONSULTANTS CONTRACTORS ARE OR ARE LIKELY TO BE SELF-INSURED LICENSEES. THE CONTRACT ADMINISTRATOR SHOULD REFER TO THE LIST OF SELF-INSURED LICENSEES AVAILABLE AT <https://www.srcc.gov.au/current-self-insurers/list-of-current-and-former-self-insurers> TO DETERMINE WHETHER ANY OF THE PANEL CONSULTANTS ARE SELF-INSURED. THE CONTRACT ADMINISTRATOR SHOULD ALSO NOTE THAT THE CROSS-REFERENCES TO THE CLAUSES OF THE CONTRACT AND TO THE CONTRACT PARTICULARS WILL NEED TO BE CHECKED, UPDATED AND AMENDED AS APPROPRIATE]

3.1 Amendments to Clause 1.1

- (a) "Workers Compensation Insurance" in clause 1.1 of the Terms of Engagement is deleted and replaced as follows:

Workers Compensation Insurance

A policy of insurance or a self-insurer's authorisation or licence in the form prescribed by the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations 2019* (Cth) or Statutory Requirement in the State or Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment.

3.2 Amendments to clause 5.4

Clause 5.4 of the Terms of Engagement is deleted and replaced as follows:

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) ensure that it obtains and maintains the authorisations and or licences required in all relevant jurisdictions to conduct itself as a self insurer for the purposes of Workers Compensation liabilities including comply with the requirements of the *Safety Rehabilitation and Compensation Act 1988* (Cth) and the *Safety Rehabilitation and Compensation Regulations 2019* (Cth) or Statutory Requirement in the State or Territory in which an employee of the Contractor or of a subcontractor performs work, is employed or normally resides (and including Employers' Liability Insurance if applicable);
- (b) comply with its legal obligations to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment;
- (c) indemnify, to the extent permitted by law, the Commonwealth in respect of any statutory liability to the Contractor's employees;
- (d) ensure that each of its subcontractors has Workers Compensation Insurance to the extent required by law, and Employers' Liability Insurance (if the relevant Contractor's Activities are performed or the subcontractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia), covering the subcontractor in respect of its statutory and common law liability to employees;
- (e) from the Award Date cause to be effected and maintained or otherwise have the benefit of:
 - (i) Construction Risks Insurance;

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- (ii) Public Liability Insurance;
 - (iii) if the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia, Employers Liability Insurance;
 - (iv) if the Contract requires the Contractor to design any part of the Remediation Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - (v) such other insurances on such terms as are specified in the Contract Particulars, each of which must be:
 - (vi) for the amounts specified in the Contract Particulars;
 - (vii) with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (viii) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
 - (f) in relation to Construction Risks Insurance and Public Liability Insurance, ensure that each of these policies name the Commonwealth as a party (within the definition of 'Insured') to whom the benefit of the insurance cover extends;
 - (g) in relation to the Public Liability Insurance, ensure the insurance is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
 - (h) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
 - (i) has a retroactive date of no later than the commencement of the Contractor's Activities;
 - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out; and
 - (iii) includes a run-off period as referred to in the Contract Particulars;
 - (i) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
 - (i) it has complied with clause [5.4]; and
 - (ii) each insurance required under clause [5.4] is current and complies with clause [5.4], as required by the Contract Administrator from time to time;
 - (j) ensure that:
 - (i) if the:
 - A. insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy; or
 - B. Safety Rehabilitation and Compensation Commission or other relevant authority, body or other organisation under any Statutory Requirement gives the Contractor notice of expiry, cancellation or rescission of the self-insurer's authorisation or licence,the Contractor as soon as possible informs the Commonwealth in writing that the notice has been given and effects replacement insurance as required by the Contract and informs the

Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and

(ii) if the Contractor cancels, rescinds or fails to renew any:

A. required insurance policy; or

B. self-insurer's authorisation or licence,

the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer or details of the relevant self-insurer's authorisation or licence and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;

(k) ensure that it:

(i) does not do, permit to do, or omit to do anything whereby any insurance may be prejudiced;

(ii) complies at all times with the terms of each insurance policy;

(iii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;

(iv) punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contract Administrator copies of receipts for payment of premiums if and when requested by the Contract Administrator. Any increase in premium is the responsibility of, and must be borne by, the Contractor;

(v) renews any required insurance policy or self-insurer's authorisation or licence if it expires during the relevant period, unless appropriate replacement insurance is obtained;

(vi) immediately notifies the Contract Administrator (in writing) if the Contractor fails to renew any required insurance policy or pay a premium;

(vii) does not cancel or allow an insurance policy or self-insurer's authorisation or licence to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;

(viii) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy or self-insurer's authorisation or licence lapsing, being cancelled or rescinded;

(ix) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies and self-insurer's authorisation or licence;

(x) does everything reasonably required by the Commonwealth and the Contract Administrator to enable the Commonwealth to claim and to collect or recover, money due under any of the insurances; and

(xi) maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;

(l) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause [5.4] for the amounts specified in the Contract Particulars; and

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- (m) bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under clause [5.4]. Any excess borne by the Commonwealth will be a debt due from the Contractor to the Commonwealth.

For the purpose of paragraph (i), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirements), a self-insurer's authorisation or licence and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

3.3 Amendments to clause 5.5

Clause 5.5 of the Terms of Engagement is deleted and replaced as follows:

5.5 Failure to Insure or Satisfy Requirements

- (a) If the Contractor fails to comply with clause [5.4] (including any failure to cause to be effected and maintained or otherwise have the benefit of the insurance required by clause [5.4], provide evidence satisfactory to the Contract Administrator in accordance with clause [5.4(f)] or satisfy all requirements of being a self-insurer or exempt employer), the Commonwealth may (in its absolute discretion and without prejudice to any other rights it may have), take out the relevant insurance and the cost will be a debt due from the Contractor to the Commonwealth.
- (b) The Contractor must take all necessary steps to assist the Commonwealth in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of the Commonwealth.

3.4 Amendments to clause 5.7

Clause 5.7 of the Terms of Engagement is deleted and replaced as follows:

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor or the Commonwealth which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract;
- (b) keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor, the subcontractor or the Commonwealth which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract,

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

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify the Commonwealth if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

4. CHILD SAFETY

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

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

5. JOINT AND SEVERAL LIABILITY

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

The Contractor acknowledges and agrees:

- (a) that the joint and several liability of each entity comprising the Contractor, and the Contractor's obligations under this 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 tendering for or performing the Contractor's Activities or the Remediation Works or otherwise in connection with this Contract; and
- (b) that the Commonwealth has entered into this Contract in reliance upon the Contractor's acknowledgement and agreement in paragraph (a).

6. REMEDIATION WORKS ON POTENTIAL UNEXPLODED ORDNANCE CONTAINING AREA

[NOTE TO COMMONWEALTH - DELETE THE FOLLOWING SPECIAL CONDITION IF NOT REQUIRED FOR THE PROJECT. THIS SPECIAL CONDITION SHOULD ONLY BE USED IF THE SERVICE CATEGORY REQUIRED FOR THE REMEDIATION WORKS RELATES TO POTENTIAL UNEXPLODED ORDNANCE CLEARANCE ITSELF. IN SUCH CIRCUMSTANCES YOU SHOULD CONSULT WITH THE NATIONAL UNEXPLODED ORDNANCE PROGRAM REGARDING WHICH SERVICE CATEGORY IS APPROPRIATE FOR THE REMEDIATION WORKS. IF THIS CLAUSE 6 OF Annexure 2 IS USED THEN CLAUSE 6.6 OF THE TERMS OF ENGAGEMENT MUST BE MARKED AS DOES NOT APPLY]

6.1 General

The Contractor must undertake the Contractor's Activities and the Remediation Works:

-
- (a) in accordance with this clause 6; and
 - (b) following completion of the Contractor's Activities and the Remediation Works, provide to the Contract Administrator and any other persons as advised by the Commonwealth a report:
 - (i) detailing:
 - A. the location of any Unexploded Ordnances identified by the Contractor as present on or at the Site (if any); and
 - B. if relevant, all investigative activities carried out and Safety Protocols implemented by the Contractor in accordance with this clause 6;
 - (ii) certifying (to the extent applicable) that the Contractor's Activities and Remediation Works carried out in accordance with this clause 6 comply with:
 - A. the Defence Unexploded Ordnance Management Manual; and
 - B. all applicable Statutory Requirements (including those concerning work, health and safety); and
 - (iii) containing any other information requested by the Contract Administrator.

6.2 Provision of Unexploded Ordnance Information for the Site and Determination Regarding Course of Action

- (a) Prior to the Contractor commencing any of the Contractor's Activities and the Remediation Works at the Site in accordance with this clause 6, the Commonwealth must provide all available historical information in its possession or that can be reasonably obtained regarding the Site (and the possible presence of Unexploded Ordnance on or at the Site) in order for the Contractor to carry out the following activities in accordance with the Defence Unexploded Ordnance Management Manual (as applicable):
 - (i) complete a UXO Risk Assessment; and / or
 - (ii) complete a UXO Assessment Survey; and
 - (iii) determine the risk of Unexploded Ordnance being present on or at the Site.
- (b) If, having reviewed the information provided by the Commonwealth in accordance with paragraph (a) (whether it has completed a UXO Risk Assessment or not), the Contractor considers a UXO Assessment Survey is required to determine the risk of Unexploded Ordnance being present on or at the Site, the Contract Administrator must facilitate the Contractor accessing the Site to conduct a UXO Assessment Survey.

6.3 Management of Unexploded Ordnance Risks on the Site

If, following completion of a UXO Risk Assessment or UXO Assessment Survey (as applicable) the Contractor determines that works and services can be safely carried out at the Site, the Contractor must:

- (a) inform the:
 - (i) Contract Administrator; and
 - (ii) any other persons as advised by the Contract Administrator,of any Safety Protocols that are required to be implemented;
- (b) if it considers applicable, prepare and provide to:
 - (i) the Contract Administrator; and
 - (ii) any other persons as advised by the Contract Administrator,

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- a UXO Risk Management Plan for the Site and any other relevant documentation;
 - (c) consult with all persons on the Site regarding the:
 - (i) Unexploded Ordnance risks the Contractor has identified;
 - (ii) Safety Protocols; and
 - (iii) UXO Risk Management Plan (if any) and any other relevant documentation; and
 - (d) ensure that all Safety Protocols are regularly reviewed and updated.

6.4 Innocuous Material Found During UXO Assessment Survey

- (a) If, upon completing a UXO Assessment Survey, the Contractor identifies potential Unexploded Ordnance present on or at the Site as innocuous material (including Explosive Ordnance Materiel), the Contractor must safely remove and dispose of the innocuous material from the Site in accordance with all Statutory Requirements.
- (b) If the Contractor removes innocuous material from the Site in accordance with paragraph (a), the Contractor must provide a UXO Clearance Certificate to the Contract Administrator and any other persons as advised by the Contract Administrator.

6.5 Remediation of Site Containing Unexploded Ordnance

- (a) In the event the Contractor identifies Unexploded Ordnance present on or at the Site whilst carrying out investigative actions in accordance with this clause 6 that it considers is a risk to the health and safety of persons (or persons who will carry out works or services on the Site), such that removal of the Unexploded Ordnance is required, the Contractor must:
 - (i) immediately verbally notify the Contract Administrator and a representative of the Defence Estate at which the Site is located;
 - (ii) within 24 hours of the verbal notification under subparagraph (i), provide written notice to the Contract Administrator and the representative of the Defence Estate setting out specific details of the identified Unexploded Ordnance present on or at the Site;
 - (iii) immediately implement control measures that prevent persons, other than those authorised by the Commonwealth, accessing the area of the Site containing the identified Unexploded Ordnance; and
 - (iv) ensure all persons, as well as any Plant, Equipment and Work in operation at the Site are kept clear and protected from exposure to the identified Unexploded Ordnance.
- (b) Following the identified Unexploded Ordnance being removed from the Site by the Contractor, the Contractor must provide a UXO Clearance Certificate with the report submitted to the Contract Administrator in accordance with clause 6.1(b).

6.6 Definitions and interpretation

For the purposes of this clause 6:

- (a) **Defence Unexploded Ordnance Management Manual** means the Defence Unexploded Ordnance Management Manual dated September 2022 available on the Defence Website (as amended from time to time);
- (b) **Explosive Ordnance Materiel** means the general term to describe any materiel that forms, or has formed, part of an item of explosive ordnance. Explosive Ordnance Materiel refers to all by-products resulting from the functioning of munitions. This includes fragments of exploded/destroyed military munitions, shell casings, projectiles (including expended ejection munitions), fuze remnants, mortar tails, practice munitions, inert training munitions;

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- (c) **Safety Protocols** means any risk elimination strategies, risk mitigation strategies and control measures (as applicable) identified by the Contractor to be implemented at the Site to ensure that works and services can be carried out safely following the Contractor carrying out the Contractor's Activities and Remediation Works;
- (d) **UXO Assessment Survey** means a survey designed to determine, assess and report on the following (but is not limited to):
- (i) whether an area is affected by Unexploded Ordnance;
 - (ii) the boundaries of the affected area;
 - (iii) the densities of Unexploded Ordnance, including the locations and characteristics of impact areas, within the affected area; and
 - (iv) the residual depths, types and natures of Unexploded Ordnance and inert ordnance-related items within the affected area;
- (e) **UXO Clearance Certificate** means a certificate completed in accordance with the Defence Unexploded Ordnance Management Manual and issued in accordance with clause 6.4(b) or 6.5 that:
- (i) verifies that a Unexploded Ordnance search has been conducted;
 - (ii) details if any innocuous material has been removed from a Site;
 - (iii) details any necessary Contractor's Activities and Remediation Works completed if Unexploded Ordnance has been identified at the Site; and
 - (iv) confirms the risk of Unexploded Ordnance contamination on the Site has been eliminated or minimised, so far as reasonably practicable;
- (f) **UXO Risk Assessment** means a preliminary or detailed risk assessment (as described in the Defence Unexploded Ordnance Management Manual) conducted by the Contractor to determine the likelihood of the presence of Unexploded Ordnance on the Site and the risks to the Contractor in carrying out the Remediation Works; and
- (g) **UXO Risk Management Plan** means the plan developed by the Contractor detailing the proposed approach for treating Unexploded Ordnance risks on the Site, as described in the Defence Unexploded Ordnance Management Manual.