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**Australian Government**

**PROJECT NUMBER: *FIN-2024-25-00414***

**PROJECT NAME: 33**

***DESIGN SERVICES REVIEW***

**DESIGN SERVICES CONTRACT**

**(DSC-1 2021)**

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Department of Finance - Design Services Contract (DSC-1 2021) - s33 [REDACTED] – Design Services Review

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*Design***FORMAL AGREEMENT**

The Contract is made on \_\_\_\_\_ day of \_\_\_\_\_

**Parties Commonwealth of Australia (Commonwealth)****The consultant specified in the Contract Particulars (Consultant)**

The Commonwealth and the Consultant promise to carry out and complete their respective obligations in accordance with the:

- (a) attached Conditions of Contract; and
- (b) other documents referred to in the definition of "Contract" in clause 1.1 of the Conditions of Contract.

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

**SIGNED as an agreement****Signed** for and on behalf of the **Commonwealth of Australia** in the presence of:

s22

Name of Witness in full

s22

Name of Authorised Officer in full

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

s22

Signature of director Signature of authorised person

Signature of company secretary/director

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Full name of director authorised person who states that they are an Authorised person of the **Consultant**Full name of company secretary/director who states that they are a company secretary/director of the **Consultant****OFFICIAL**

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**CONDITIONS OF CONTRACT****1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS****1.1 Glossary of Terms**

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

**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 Variation the subject of a direction by the Contract Administrator,

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

**Agreed Subconsultant**

A subconsultant specified in the Contract Particulars.

**Agreed Subconsultant Agreement**

An agreement referred to in the Contract Particulars.

**Agreed Subconsultant Deed of Novation**

An Agreed Subconsultant deed of novation in the form set out in the Schedule of Collateral Documents.

**Agreed Subconsultant Services**

A part of the Services specified in the Contract Particulars.

**Australian Privacy Principle**

Has the meaning given in the Privacy Act.

**Award Date**

The date on which the Formal Agreement, to which these Conditions of Contract are attached, has been completed and signed by the Commonwealth and the Consultant.

**Brief**

The brief in Annexure 1.

**Change of Control**

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

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**Claim**

Includes any claim for an increase in the Fee, 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 Services or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution.

**Commonwealth**

Commonwealth of Australia.

**Commonwealth Environmental Requirements**

Includes any requirements specified in the Contract Particulars.

**Commonwealth Material**

All material provided to the Consultant by the Commonwealth, including documents, equipment, machinery and data (stored by any means).

**Commonwealth Requirements**

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

**Commonwealth Strategic Interest Issue**

Any issue arising out of or in relation to the Contract, the Services, the Consultant or any subconsultant (or any Related Body Corporate of the Consultant or any subconsultant) that involves an actual, potential or perceived risk of an adverse effect on the national security interests of the Commonwealth, including arising from any breach by the Consultant of its obligations in respect of compliance with all Statutory Requirements.

**Commonwealth's Program**

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

**Completion**

The point in time when, in respect of a Milestone:

- (a) the Reviewable Deliverables have been completed in accordance with the Contract;
- (b) the Services have been completed in accordance with the Contract;
- (c) Not Used;
- (d) all documents and other information (if any) required in respect of that Milestone have been submitted to the Contract Administrator in accordance with the Contract; and



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- (e) without limiting the foregoing, the Consultant has done everything which the Contract requires it to do as a condition precedent to Completion, including those things specified in the Contract Particulars.

**Confidential Information**

- (a) Means, subject to paragraph (b):
- (i) the Contract;
  - (ii) the Project Documents;
  - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth, which is in any way connected with the Services or the Works, which:
    - A. by its nature is confidential; or
    - B. the Consultant knows or ought to know is confidential; and
  - (iv) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
- (b) Excludes any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant 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 Consultant without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf;
  - (ii) is in the public domain otherwise than due to a breach of clause 18; or
  - (iii) has been independently developed or acquired by the Consultant.

**Consolidated Group**

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

**Consultant**

The person specified in the Contract Particulars.

**Consultant Deed of Covenant**

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

**Consultant Deed of Novation**

A consultant deed of novation in the form set out in the Schedule of Collateral Documents.

**Consultant's Representative**

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

**Contract**

The contractual relationship between the parties constituted by:

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- (a) the Formal Agreement;
- (b) these Conditions of Contract;
- (c) the Contract Particulars;
- (d) the Special Conditions;
- (e) the Brief; and
- (f) the other documents (if any) specified 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 4.2 to replace that person.

**Contract Particulars**

The particulars annexed to these Conditions of Contract and entitled "Contract Particulars".

**Contractor**

Any contractor engaged or to be engaged by the Commonwealth to construct or design and construct the Works including any subcontractor of such contractor.

**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.

**Date for Completion**

The date or period of time (if any) specified in the Contract Particulars for Completion of a Milestone, as adjusted under the Contract.

**Delivery Phase Services**

The services described in, or reasonably to be inferred from, the Contract as Delivery Phase Services, including those Services described in the Brief.

**direction**

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

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

**Environmental Clearance Certificate**

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

**Environmental Requirements**

Includes the:

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

**Executive Negotiators**

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

**Expert Determination Agreement**

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

**Fee**

If the sum of the Planning Phase Fee and the Delivery Phase Fee.

**Fee Payment Schedule**

The fee payment schedule (if any) set out in Annexure 3, as adjusted from time to time in accordance with clause 11.18, setting out:

- (a) the instalments in which the Fee (or any part of the Fee) will be payable; and
- (b) if applicable, the milestones which must be achieved for each instalment to become payable (failing which the Consultant's entitlement to be paid the relevant instalment of the Fee will not arise until such time as the applicable milestone is achieved).

**Financial Representative**

Means:

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

**GST**

The tax payable on taxable supplies under the GST Legislation.

**GST Group**

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

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**GST Legislation**

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

**Indigenous Enterprise**

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

**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) DSPF,

each as amended or replaced from time to time.

**Insolvency Event**

Any one of the following:

- (a) the Consultant becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Commonwealth in writing or its creditors generally that the Consultant is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against the Consultant by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Consultant;
- (d) where the Consultant is an individual person or a partnership including an individual person, the Consultant:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt; or
  - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
    - A. a moratorium of any debts; or
    - B. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,
 by which his or her assets are subjected conditionally or unconditionally to the control of a creditor or trustee;
- (e) where the Consultant is a corporation, any one of the following:

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- (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.

**Material Adverse Effect**

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

**Material Change**

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

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

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- (iii) the Consultant's financial viability, availability, capacity or ability to perform the Services and otherwise meet its obligations under the Contract; or
- (b) which affects the truth, completeness or accuracy of:
  - (i) if the Consultant lodged a registration of interest, the Consultant's registration of interest;
  - (ii) if the Consultant lodged a tender, the Consultant's tender; or
  - (iii) any other information, documents, evidence or clarifications provided by the Consultant 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 or the Services.

**Milestone**

A milestone described in the Contract Particulars.

**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).

**Other Contractor**

Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person (including the Contractor) engaged to do work other than the Consultant and its subconsultants.

**Personal Information**

Has the meaning given in the Privacy Act.

**Planning Phase Fee**

The amount specified in the Contract Particulars, as adjusted in accordance with the Contract.

**Planning Phase Services**

The services described or reasonably to be inferred from the Contract as Planning Phase Services, including those Services described in the Brief.

**Privacy Act**

The *Privacy Act 1988* (Cth).

**Professional Indemnity Insurance**

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

- (a) civil liability for breach of professional duty (whether owed in contract or otherwise); and
  - (b) unintentional breaches of third party intellectual property,
- by the Consultant or its subconsultants in carrying out the Services.

**Project Documents**

Means:

- (a) Reviewable Deliverables;
- (b) Not Used;

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- (c) Not Used;
- (d) Not Used;
- (e) the documents which the Consultant is obliged to maintain; and
- (f) without limiting paragraphs (a) - (e), any other data, documents, drawings, records, programs and information (including information relating to the Consultant'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 or the Services by, for or on behalf of the Consultant (including by subconsultants).

**Prolongation Event**

Means:

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

which has the effect of extending the duration of the performance of the Services beyond the Services End Date.

**Public Liability Insurance**

A policy of liability insurance covering the:

- (a) Consultant and all subconsultants 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 Consultant (or any subconsultant),

to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with, the Services.

This policy is not required to cover liabilities or losses insured under Workers Compensation Insurance or Professional Indemnity Insurance.

**Reviewable Deliverables**

All deliverables required to be brought into existence by the Consultant in accordance with the Brief as part of, or for the purpose of, carrying out the Services.

**Schedule of Collateral Documents**

The schedule of proforma contracts and other documents applicable to the Defence Design Services Contract (DSC-1 2021):

- (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.

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**Security or Confidentiality Incident**

Means:

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

**Sensitive and Classified Information**

Means:

- (a) any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Consultant by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:
  - (i) marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive";
  - (ii) identified at the time of issue or communication as "Sensitive Information";
  - (iii) marked with a national security classification or as "Classified Information";
  - (iv) identified at the time of issue or communication as "Classified Information"; or
  - (v) the Consultant knows or ought to know is subject to, or ought to be treated as, sensitive or classified information in accordance with any Statutory Requirement (including the Information Security Requirements); and
- (b) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

**Services**

The professional services described in, or reasonably to be inferred from, the Brief, including the Planning Phase Services and the Delivery Phase Services.

**Significant Event**

Means:

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

**Site**

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



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**Special Conditions**

The special conditions as set out in Annexure 2.

**Statutory Requirements**

Means:

- (a) any law applicable to the Services, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Not Used;
- (c) Commonwealth Requirements;
- (d) Environmental Requirements; and
- (e) Information Security Requirements.

**Strategic Notice Event**

Means:

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

**Strategic Notice Event Remediation Plan**

The plan (if any) prepared by the Consultant and finalised under clause 19.4.

**Subconsultant Deed of Covenant**

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

**Table of Variation Rates and Prices**

The table (if any) in Annexure 4, containing rates and prices to be used for the purposes of valuing Variations under clause 10.3.

**Variation**

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

**WHS Legislation**

Means any of the following:

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

**Workers Compensation Insurance**

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

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**Works**

The works described in the Contract Particulars.

**1.2 Interpretation**

In the Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Contract;
- (d) references to any party to the Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, 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 11.5),

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 8.8 and 8.9, any:
  - (i) extension of time stated in days; or
  - (ii) reference to "day",

will exclude public holidays and include only those days which are stated in the Consultant's then current program under clause 8.2 as working days;
- (n) for the purposes of clauses 11.4, 11.5 and 19, "business day" has the same meaning as defined at Part 1 of the *Legislation Act 2001* (ACT);

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- (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 "subconsultant" will include Agreed Subconsultants, subconsultants, subcontractors and suppliers, and the word "subcontract" will include a contract with a subconsultant;
- (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 Brief, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the submission of the relevant Reviewable Deliverable. If requested by the Contract Administrator, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Reviewable Deliverables available to the Contract Administrator;
- (u) for the purposes of clauses 2.11(c), 8.4(b)(ii)B and 8.10(c), a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Consultant as a direct result of the applicable event delaying the Consultant;
- (v) requirements contained in the Brief:
  - (i) whether or not they include the expression "the Consultant must" or "the Consultant shall" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise;
  - (ii) represent the Commonwealth's minimum requirements, which must be met or exceeded by the Consultant in performing the Services; and
  - (iii) will not operate to limit or exclude the Consultant's obligations under the Contract; 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 Consultant; 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 13.1 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.
- (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

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- (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 Consultant must indemnify the Commonwealth against:
  - (i) any liability to or claim by a third party including a subconsultant, Contractor or Other Contractor; and
  - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth,caused by any breach by the Consultant of a term of 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 Consultant by other means.
- (i) Unless expressly stated to the contrary in the Contract, the Consultant must perform the Services at its cost.

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**2. ROLE OF THE CONSULTANT****2.1 Engagement**

The Consultant must carry out the Services in accordance with the Contract.

**2.2 Standard of Care**

The Consultant:

- (a) must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
- (b) warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of the service being provided by the subconsultant;
- (c) must:
  - (i) ensure that the Reviewable Deliverables comply with the requirements of the Contract; and
  - (ii) use its best endeavours to ensure that the Reviewable Deliverables will be fit for the purposes as set out in, or reasonably to be inferred from, the Brief;
- (d) must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Commonwealth notified to the Consultant; and
- (e) must exercise the utmost good faith in the best interests of the Commonwealth and keep the Commonwealth fully and regularly informed as to all matters affecting or relating to the Services and the Works.

**2.3 Authority to Act**

- (a) Other than as expressly authorised, the Consultant has no authority to, and must not:
  - (i) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Commonwealth; or
  - (ii) take any act or step to bind or commit the Commonwealth in any manner, whether as a disclosed agent of the Commonwealth or otherwise.
- (b) The Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Commonwealth.

**2.4 Knowledge of the Commonwealth's Requirements**

The Consultant must:

- (a) inform itself of the Commonwealth's requirements for the Services and the Works;
- (b) refer to the Commonwealth Material and the Commonwealth's Program; and
- (c) consult the Commonwealth during the Services and the Works.

**2.5 Notice of Matters Impacting on the Services or the Works**

Without limiting clauses 14.1 - 14.5, if the Consultant becomes aware of any matter which:

- (a) is likely to change or which has changed the scope, timing or cost of the Services or the Works;
- (b) affects or may affect the Commonwealth's Program or the Consultant's then current program under clause 8.2;

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- (c) involves any error, omission or defect in any continuing or completed aspect of the Services; or
- (d) involves any error, omission or defect in the design or construction of any continuing or completed aspect of the Works,

the Consultant must promptly give written notice of that matter to the Contract Administrator containing, as far as practicable in the circumstances:

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

## **2.6 Co-operation with Other Contractors**

Without limiting clause 6.15(a)(iii), the Consultant must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and integrate the Services with the work carried out or to be carried out by Other Contractors;
- (d) carry out the Services so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors; and
- (e) without limitation, provide whatever advice, support and co-operation is reasonable to facilitate the work carried out or to be carried out by Other Contractors.

## **2.7 Access to Consultant's Premises**

Without limiting clause 6.11, the Consultant must at all reasonable times:

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

## **2.8 Conflict of Interest**

The Consultant warrants that:

- (a) at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract;
- (b) it will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subconsultants; and
- (c) if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
  - (i) notify the Contract Administrator immediately in writing of that conflict or risk; and
  - (ii) take all steps required by the Contract Administrator to avoid or minimise the conflict of interest or risk of conflict of interest.

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**2.9 Subcontracting**

(a) The Consultant:

- (i) must not, without the prior written approval of the Contract Administrator (which will not be unreasonably withheld), subcontract any Services, except:
  - A. for a part of the Services specified in the Contract Particulars, to a subconsultant named in the Contract Particulars; or
  - B. to an Agreed Subconsultant in accordance with paragraph (b);
- (ii) will:
  - A. not be relieved of any of its liabilities or obligations under the Contract, including those under clauses 2.1 and 2.2; and
  - B. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services,

whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
- (iii) will be vicariously liable to the Commonwealth for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with, the Services;
- (iv) must ensure that each subcontract contains provisions:
  - A. which bind the subconsultant to participate in any novation required by the Commonwealth under clause 12.5(a); and
  - B. as otherwise required by the Contract; and
- (v) must, if requested by the Contract Administrator:
  - A. execute;
  - B. procure the relevant subconsultant to execute; and
  - C. deliver to the Contract Administrator,

a Subconsultant Deed of Covenant, duly completed with all relevant particulars:

  - D. as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
  - E. where such approval is not required, within the time required by the Contract Administrator and in any event before commencement of any Services by the relevant subconsultant.

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

(b) The Consultant:

- (i) must subcontract the Agreed Subconsultant Services to the Agreed Subconsultants on the terms of either:
  - A. the Agreed Subconsultant Agreement; or

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- B. a contract as novated in accordance with paragraph (c); and
- (ii) acknowledges and agrees that:
  - A. paragraphs (a)(ii) and (a)(iii) apply to all Agreed Subconsultants;
  - B. neither the requirement to engage the Agreed Subconsultants nor any act, omission or default of the Agreed Subconsultants will:
    - 1) relieve the Consultant from, or alter or affect, the Consultant's liabilities or obligations; or
    - 2) prejudice the Commonwealth's rights against the Consultant, under the Contract or otherwise at law or in equity; and
  - C. it has made an adequate allowance in its Fee and in its program for the performance of the Services (including to complete each Milestone by its Date for Completion) for the performance of the Agreed Subconsultant Services by the Agreed Subconsultants and to the extent permitted by law, will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the Agreed Subconsultants, the Agreed Subconsultant Services or any act, omission or default of the Agreed Subconsultants other than:
    - 1) claims for payment under clause 11 of the original Fee specified in the Contract Particulars; or
    - 2) Variations instructed in accordance with clause 10.2 or to which clause 14.1 applies.
- (c) Not Used;
- (d) Not Used.

## **2.10 Statutory Requirements**

In carrying out the Services, the Consultant must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
- (b) Not Used;
- (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
- (d) promptly give the Contract Administrator copies of all documents (including other notices) that any authority, body or organisation having jurisdiction over the Site, the Services or the Works issues to the Consultant.

## **2.11 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.



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- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Consultant as to the course it must adopt insofar as the Services are affected by the change or variance.
- (c) Subject to paragraph (d), the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant 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 Fee will be decreased by any savings made by the Consultant which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
- (e) To the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under paragraph (b), other than under paragraph (c).

**2.12 Novation**

- (a) The Commonwealth may at any time, without the consent of the Consultant, novate the Contract to a Contractor.
- (b) If the Commonwealth elects to novate the Contract, the Consultant must:
  - (i) execute a Consultant Deed of Novation to give effect to the novation within 7 days of receipt of the Consultant Deed of Novation from the Commonwealth; and
  - (ii) if requested by the Contract Administrator, execute a Consultant Deed of Covenant, duly completed with all relevant particulars, within the period specified by the Contract Administrator in such request and deliver the executed Consultant Deed of Covenant to the Contract Administrator.
- (c) No Consultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Commonwealth against the Consultant under the Contract or otherwise at law or in equity.

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**3. ROLE OF THE COMMONWEALTH****3.1 Information and Services**

The Commonwealth must as soon as practicable make available to the Consultant:

- (a) all relevant information, documents and particulars relating to the Services and to the Commonwealth's requirements for the Services, including the Commonwealth's Program; and
- (b) details of the budget for the Services.

**3.2 Additional Information**

If:

- (a) the Consultant, in its reasonable opinion, considers that any additional information, documents or particulars are needed to enable it to carry out the Services; and
- (b) the additional information, documents or particulars are not provided by the Commonwealth under the Contract or by an Other Contractor,

then:

- (c) the Consultant must give notice in writing to the Contract Administrator of the details of the additional information, documents or particulars and the reasons why they are required; and
- (d) the Commonwealth must, if the Contract Administrator believes that the additional information, documents or particulars are needed by the Consultant, use its best endeavours to arrange the provision of the additional information, documents or particulars.

**3.3 Access to the Site**

Subject to:

- (a) Not Used;
- (b) any agreement or arrangement with a party other than the Consultant (including any Other Contractor);
- (c) Not Used;
- (d) the Consultant having provided to the Contract Administrator evidence satisfactory to the Contract Administrator under clause 5.1(f) that the Consultant has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.1; and
- (e) any other conditions specified in the Contract Particulars or elsewhere in the Contract,

the Commonwealth must:

- (f) as soon as practicable, provide the Consultant with access to the Site; and
- (g) arrange access to any other property,

which may be necessary for the Consultant to carry out the Services.

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**4. PERSONNEL****4.1 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 Consultant 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.

**4.2 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 Consultant of that appointment.
- (b) Any substitute Contract Administrator appointed under clause 4.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

**4.3 Parties' Conduct**

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

**4.4 Contract Administrator's Representative**

- (a) The Contract Administrator may:
  - (i) by written notice to the Consultant 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 Consultant.
- (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 4.4.

**4.5 Key People for the Services**

- (a) The Consultant must:
  - (i) employ those people specified in the Contract Particulars, including the Consultant's Representative in the jobs specified in the Contract Particulars;
  - (ii) subject to subparagraph (iii), not replace the people referred to in subparagraph (i) without the Contract Administrator's prior written approval; and

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

- (b) A direction is deemed to be given to the Consultant if it is given to the Consultant's Representative.

**4.6 Removal of Persons**

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

**4.7 Monthly Meeting**

- (a) The Consultant must:
  - (i) meet at such other times as the Contract Administrator may require with the Contract Administrator and any other persons whom the Contract Administrator nominates;
  - (ii) discuss the report it has prepared under clause 4.8 and such other matters as the Contract Administrator may from time to time require;
  - (iii) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
  - (iv) if it requires instructions from the Commonwealth, make all necessary recommendations with respect to the instructions required.
- (b) The Contract Administrator must:
  - (i) before each meeting:
    - A. prepare an agenda for the meeting; and
    - B. issue an agenda for the meeting; and
  - (ii) after each meeting:
    - A. prepare minutes of the meeting; and
    - B. issue minutes of the meeting.

**4.8 Consultant's Monthly Report**

At least 7 days prior to each meeting under clause 4.7, the Consultant must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include, at a minimum:

- (a) detailed particulars of the progress of the Services including:
  - (i) key activities, meetings and other events in the previous month;
  - (ii) Not Used;
  - (iii) Not Used;
  - (iv) Not Used; and
  - (v) any deviations from the Consultant's then current program under clause 8.2;

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- (b) Not Used;
- (c) detailed particulars of any risks, opportunities, issues or matters which in the Consultant's opinion:
  - (i) are significantly impacting; or
  - (ii) have the potential to significantly impact, the Services or the 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) Not Used;
- (e) confirmation of compliance with, and (as applicable) an update in respect of:
  - (i) Not Used;
  - (ii) Not Used;
  - (iii) Not Used;
  - (iv) Not Used;
  - (v) Not Used;
  - (vi) indigenous employment and procurement requirements;
  - (vii) information security requirements, including clause 18; and
  - (viii) any other security requirements,together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (viii) above;
- (f) Not Used; and
- (g) any other matters required by the Contract Administrator.

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**5. INSURANCE****5.1 Consultant Insurance Obligations**

The Consultant must:

- (a) from the Award Date cause to be effected and maintained or otherwise have the benefit of the following insurance:
  - (i) Not Used.
  - (ii) Workers Compensation Insurance;
  - (iii) Not Used;
  - (iv) Professional Indemnity Insurance; and
  - (v) such other insurances on such terms as are specified in the Contract Particulars,
 each of which must be:
  - (vi) for the amounts specified in the Contract Particulars;
  - (vii) with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
  - (viii) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Public Liability Insurance, ensure the insurance:
  - (i) names the Commonwealth as a party to whom the benefit of the insurance cover extends; and
  - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services are being carried out;
- (c) in relation to the Workers Compensation Insurance, ensure that:
  - (i) to the extent permitted by law the insurance extends to provide indemnity to the Commonwealth as the Consultant's principal in respect of any statutory and common law liability to the Consultant's employees; and
  - (ii) each of its subconsultants has Workers Compensation Insurance to the extent required by law, covering the subconsultant in respect of its statutory and common law liability to its employees, in the same manner as the Consultant is required to do under subparagraph (i);
- (d) in relation to the Professional Indemnity Insurance, ensure the insurance:
  - (i) has a retroactive date of no later than the commencement of the Services; and
  - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Services are being carried out;
- (e) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
  - (i) it has complied with clause 5.1; and
  - (ii) each insurance required under clause 5.1 is current and complies with clause 5.1,
 as required by the Contract Administrator from time to time;

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- (f) ensure that:
  - (i) if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant 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 Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by the Contract and informs the Commonwealth in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
- (g) ensure that it:
  - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
  - (ii) 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 Consultant 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;
- (h) ensure that all subconsultants also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Consultant under this clause 5.1 for the amounts specified in the Contract Particulars; and
- (i) bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Consultant under this clause 5.1. Any excess borne by the Commonwealth will be a debt due from the Consultant to the Commonwealth.

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For the purpose of paragraph (e), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.1.

The obtaining of insurance as required under clause 5.1 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Consultant under the Contract or otherwise at law or in equity.

## **5.2 Failure to Insure**

- (a) If the Consultant fails to comply with clause 5.1, 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 Consultant to the Commonwealth.
- (b) The Consultant 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 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.

## **5.3 Period of Insurance**

The insurance which the Consultant is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.1 must be maintained:

- (a) in the case of Public Liability Insurance:
  - (i) written on an occurrence basis, until the completion of the Services; or
  - (ii) written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the completion of the Services;
- (b) in the case of Workers Compensation Insurance, until the completion of the Services; and
- (c) in the case of Professional Indemnity Insurance, until the expiration of the run-off period specified in the Contract Particulars following the completion of the Services.

## **5.4 Notice of Potential Claim**

The Consultant must:

- (a) as soon as possible inform the Commonwealth in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.1 or any claim actually made against the Consultant or the Commonwealth which may be covered by an insurance policy required by clause 5.1;
- (b) keep the Commonwealth informed of all significant developments concerning the claim, except in circumstances where the Commonwealth is making a claim against the Consultant; and
- (c) ensure that its subconsultants similarly inform the Consultant 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 Consultant, the subconsultant or the Commonwealth which may be covered by an insurance policy required by the Contract,

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

- (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 Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a



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policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

## **5.5 Cross Liability**

Clause 5.5 does not apply to Professional Indemnity Insurance or Workers Compensation Insurance.

Where the Contract requires insurance to provide cover to more than one insured, the Consultant must ensure that, to the extent permitted by law, the insurance policy provides that:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
- (e) the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
  - (i) liability of the insured is limited by the operation of the proportionate liability legislation of any Australian jurisdiction; or
  - (ii) proportionate liability legislation of any Australian jurisdiction is lawfully excluded by the contract.

## **5.6 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 Consultant 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.

## **5.7 Exclusion of Consequential Loss and Limitation on Liability**

- (a) Subject to paragraphs (b) and (c):
  - (i) neither the Commonwealth nor the Consultant 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 Consultant 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 Consultant:
  - (i) for any deliberate breach or repudiation of the Contract;
  - (ii) under the indemnities in clauses 1.3(f)(i), 6.8(b), 16.6(a)(xiv) and 18.5(b);
  - (iii) for Fraud;
  - (iv) to the extent that:

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- A. payments are received by the Consultant; or
- B. the Consultant 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 Consultant or the Consultant would have been entitled to be indemnified under such insurance policy or policies but for:
- C. the failure of the Consultant to effect and maintain the required insurance policy or insurance policies;
- D. any failure of an insurance policy to respond due to the misconduct of the Consultant (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 Consultant 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 5.7 to deny liability on the basis that the party has no liability to the Commonwealth; and
- (v) for fines or penalties incurred by the Commonwealth arising from the Services.
- (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 Consultant arising from an act or omission of the Commonwealth.
- (d) For the purposes of this clause 5.7:
  - (i) **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 Works or other Commonwealth property) or loss of production or financing costs, whether present or future, fixed or unascertained, actual or contingent; and
  - (ii) **Fraud** includes dishonesty (such as obtaining a benefit, or causing loss, by deception or other means).

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**6. REVIEWABLE DELIVERABLES AND PROJECT DOCUMENTS****6.A Consultant's Obligations**

To the extent the Consultant's performance of the Services includes review, monitoring, observation or inspection:

- (a) it will not be a full independent verification of the correctness, completeness or adequacy of the documents, design expressed or any calculations nor intended to be exhaustive or continuous;
- (b) it is not intended to supplant, supplement, reduce or affect the responsibility, obligations or liability of any other third party (each a "third party provider") providing or rendering of works, services or supplies to the Commonwealth (including the engineer of record, any construction contractor or equipment or materials supplier); and
- (c) the Consultant has no liability for the work of, the performance or non-performance by the third party provider or that third party provider's compliance with its contractual obligations,

provided that nothing in this clause 6.A is intended to relive from, or alter or affect, the Consultant's obligations under the Contract or otherwise at law or in equity, or prejudice the Commonwealth's rights against the Contract under the Contract or otherwise at law or in equity.

**6.1 Consultant's Documentation Program**

The Consultant must as part of the program it is to prepare under clause 8.2, submit to the Contract Administrator for approval a documentation program which makes allowance for the Reviewable Deliverables 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 Reviewable Deliverables within the period of time within which the Contract Administrator may review the Reviewable Deliverables under clause 6.3.

**6.2 Consultant's Reviewable Deliverables**

The Consultant must:

- (a) perform the Services which the Contract requires it to in accordance with the Brief and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Reviewable Deliverables;
- (b) Not Used; and
- (c) submit the Reviewable Deliverables it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 6.1.

**6.3 Contract Administrator May Review Reviewable Deliverables**

- (a) The Contract Administrator may (in its absolute discretion):
  - (i) review any Reviewable Deliverables, or any resubmitted Reviewable Deliverables, prepared and submitted by the Consultant; and
  - (ii) within the number of days specified in the Contract Particulars of the submission by the Consultant of such Reviewable Deliverables or resubmitted Reviewable Deliverables, reject the Reviewable Deliverables.
- (b) If any Reviewable Deliverables is rejected, the Consultant must submit amended Reviewable Deliverables to the Contract Administrator.

**6.4 No Obligation to Review the Reviewable Deliverables**

- (a) The Contract Administrator does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Reviewable Deliverables submitted by the Consultant for errors, omissions or compliance with the Contract.

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- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Reviewable Deliverables prepared by the Consultant 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 Reviewable Deliverables will:
  - (i) relieve the Consultant from, or alter or affect, the Consultant's obligations under the Contract or otherwise at law or in equity; or
  - (ii) prejudice the Commonwealth's rights against the Consultant whether under the Contract or otherwise at law or in equity.

**6.5 Not Used****6.6 Licence over Project Documents**

- (a) The Consultant grants to the Commonwealth a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.
- (b) The licence referred to in paragraph (a):
  - (i) arises, for each Project Document, immediately when the Project Document is:
    - A. produced; or
    - B. 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 Services by, for or on behalf of the Consultant;
  - (ii) includes an unlimited right to sub-licence;
  - (iii) without limitation, extends to:
    - A. any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the Works; and
    - B. use in any way for any other Commonwealth project; and
  - (iv) survives the termination of the Contract on any basis.

**6.7 Intellectual Property Warranties**

The Consultant warrants that:

- (a) the Consultant 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).

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**6.8 Intellectual Property Rights**

The Consultant must:

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

**6.9 Commonwealth Material**

- (a) The Commonwealth Material will remain the property of the Commonwealth.
- (b) The Commonwealth must inform the Consultant of any Commonwealth Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
- (c) Without limiting clause 18, the Consultant will be responsible for the protection, maintenance and return of the Commonwealth Material in its possession.

**6.10 Resolution of Ambiguities**

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Project 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 Brief and any other requirement of the Contract (including any other requirement of the Brief), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
- (c) where the ambiguity, discrepancy or inconsistency is between the Contract and any 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 Consultant 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 Consultant 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 Consultant as to the course it must adopt,
 including, where applicable, by applying the principles in paragraphs (a) to (c) above.

**6.11 Access to Premises and Project Documents**

The Consultant must:

- (a) at the request of the Commonwealth at any time during the Services and the period of 10 years following the completion of the Services, provide and make available:
  - (i) 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;

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- (ii) 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;
- (iii) 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
- (iv) any officers, employees, agents or subconsultants for interviews with the Contract Administrator or anyone else acting on behalf of the Commonwealth;
- (b) Not Used; and
- (c) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under clause 6.11 as if the subconsultant were the Consultant.

**6.12 Not Used****6.13 Not Used****6.14 Not Used****6.15 Work Health and Safety**

The Consultant must:

- (a) ensure that in carrying out the Services:
  - (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 Consultant 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, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
    - 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) carry out the Services to ensure the health and safety of persons is not put at risk;
- (c) without limiting the Consultant'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;

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- (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 Services, 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 4.8;
- (d) for the purposes of paragraphs (a)(iv) and (c) above, in respect of any notifiable incident:
  - (i) immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
  - (ii) promptly provide the Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
  - (iii) promptly provide the Contract Administrator with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
  - (iv) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Contract Administrator with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident;
- (e) institute systems to:
  - (i) obtain regular written assurances from each Other Contractor and subconsultant about their ongoing compliance with the WHS Legislation; and
  - (ii) provide, in a format specified by the Contract Administrator, the written assurances regarding the Consultant's ongoing compliance with the WHS Legislation:
    - A. on a monthly basis in the reports under clause 4.8;
    - B. on a quarterly basis (when requested by the Contract Administrator); and
    - C. as otherwise directed by the Contract Administrator;
- (f) provide the written assurances obtained under paragraph (e) to the Contract Administrator in accordance with paragraph (e);
- (g) without limiting the Consultant'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 Consultant or subconsultant relating to work health and safety matters;
  - (ii) formal notices issued by a health and safety representative of the Consultant or subconsultant under or in compliance with the applicable WHS Legislation; and
  - (iii) formal notices, written communications and written undertakings given by the Consultant or subconsultant 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 Services;
- (h) exercise a duty of the utmost good faith to the Commonwealth in carrying out the Services to enable the Commonwealth to discharge the Commonwealth's duties under the WHS Legislation;
- (i) ensure all subcontracts include provisions equivalent to the obligations of the Consultant in clause 6.15;

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- (j) ensure that, if any Statutory Requirement requires that:
  - (i) a person:
    - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
    - B. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
  - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (k) not direct or allow a person to carry out work, or use plant or a substance (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (j) are met;
- (l) immediately notify the 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;
- (m) without limiting the Consultant's obligations under the Contract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of the Commonwealth, provide all information or copies of documentation held by the Consultant or a subconsultant 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; and
- (n) if requested by the Contract Administrator or required by the WHS Legislation, produce evidence of 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 Consultant or any subconsultant commences such work.



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**7. QUALITY****7.1 Quality Assurance**

The Consultant:

- (a) Not Used;
- (b) without limiting clause 6.11, 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 Consultant and its subconsultants 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 Consultant's quality assurance process, system or framework or its compliance or non-compliance with the quality assurance process, system or framework;
  - (iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Commonwealth of the Consultant's compliance with the process, system or framework; or
  - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Commonwealth, to detect any Services 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.

**7.2 Non-Complying Services**

If the Contract Administrator discovers or believes that any Services have not been performed in accordance with the Contract, the Contract Administrator may give the Consultant a direction specifying the non-complying Services and doing one or more of the following:

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

**7.3 Reperformance of the Non-complying Services**

If a direction is given under clause 7.2(a), the Consultant must reperform the non-complying Services:

- (a) within the time specified in the Contract Administrator's direction; and
- (b) so as to minimise the delay and disruption to the Services or the Works.

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**8. TIME****8.1 Progress**

The Consultant must:

- (a) regularly and diligently progress the Services; and
- (b) subject to clause 8.10, achieve Completion of each Milestone by its Date for Completion.

**8.2 Programming**

The Consultant must:

- (a) within 14 days of the Award Date, prepare a program of the Services which must:
  - (i) be based upon the Commonwealth's Program and otherwise developed based on the initial program lodged by the Consultant in its tender for the Services (as may be updated prior to the Award Date with the approval of the Commonwealth); and
  - (ii) contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the program:
  - (i) periodically, at least at intervals of no less than that specified in the Contract Particulars, to take account of:
    - A. changes to the program;
    - B. changes to the Commonwealth's Program; and
    - C. delays which may have occurred, including any for which the Consultant is granted an extension of time under clause 8.8; and
  - (ii) Not Used;
- (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 8.2.

**8.3 Consultant 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 Consultant from or alter its obligations under the Contract especially (without limitation) the obligation to achieve Completion of each Milestone by its Date for 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 Services; or
- (c) affect the time for the carrying out of the Commonwealth's or Contract Administrator's Contract obligations.

**8.4 Suspension**

- (a) The Contract Administrator:

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- (i) may instruct the Consultant to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Services; and
  - (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Consultant.
- (b) If a suspension under clause 8.4 arises as a result of:
  - (i) the Consultant's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Consultant will not be entitled to make (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 Consultant's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 8.4 will entitle the Consultant to:
    - A. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 8.8; and
    - B. have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of the suspension, as determined by the Contract Administrator.

The Consultant 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 Consultant 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) The Consultant may only suspend the Services when instructed to do so under clause 8.4.

## **8.5 Delays Entitling Claim in Extension of Time**

- (a) If the Consultant becomes aware of any occurrence that is likely to delay it in carrying out the Services 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.
- (b) If the Consultant has been delayed in carrying out the Services by an Act of Prevention event in a manner which has delayed, or is likely to delay, the Consultant in achieving Completion, the Consultant may claim an extension of time.

## **8.6 Claim for Extension of Time**

To claim an extension of time, the Consultant must:

- (a) not later than 28 days after the commencement of the delay, submit a written claim to the Contract Administrator for an extension to the relevant Date for Completion, which:
  - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
  - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Completion; and
- (b) Not Used.

## **8.7 Conditions Precedent to Extension**

It is a condition precedent to the Consultant's entitlement to an extension of time that the:

- (a) Consultant gives the written claim required by clause 8.6 as required by that clause;
- (b) cause of the delay was beyond the reasonable control of the Consultant;

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- (c) Consultant must have actually been, or be likely to be, delayed; and
- (d) Consultant must not have been given a direction under clause 8.10 with which it has been able to comply.

**8.8 Extension of Time**

- (a) If the conditions precedent in clause 8.7 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Commonwealth and the Consultant within 21 days of the Consultant's written claim under clause 8.6(a) or (b) as applicable.
- (b) In determining a reasonable period under paragraph (a), the Contract Administrator must not include any period of delay in respect of which the Consultant:
  - (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.

**8.9 Unilateral Extension of Time**

- (a) Whether or not the Consultant has made, or is entitled to make, a claim for an extension of time under clause 8, the Commonwealth may (in its absolute discretion) at any time and from time to time by written notice to the Consultant and the Contract Administrator, unilaterally extend any Date for Completion.
- (b) The Consultant acknowledges that clause 8.9 does not give the Consultant any rights.

**8.10 Acceleration**

- (a) The Contract Administrator may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a date earlier than the Date for Completion (**Accelerated Date for Completion**).
- (b) If a direction is given by the Contract Administrator under paragraph (a), the Consultant must:
  - (i) use its best endeavours to:
    - A. accelerate the performance of the Services; and
    - B. otherwise do all things necessary,
      - to achieve Completion of the Milestone by the Accelerated Date for Completion; and
  - (ii) keep the Contract Administrator fully and regularly informed of the progress of the Services against the Accelerated Date for Completion.
- (c) The Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant as a direct result of complying with paragraph (b).
- (d) To the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a direction by the Contract Administrator under paragraph (a), other than under paragraph (c).
- (e) If the Consultant does not achieve Completion of a Milestone by its Accelerated Date for Completion, the Consultant must nevertheless:
  - (i) use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Date for Completion; and

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- (ii) in any event, achieve Completion of the Milestone no later than its Date for Completion.

**8.11 Prolongation**

- (a) If a Prolongation Event occurs:

- (i) after the Award Date;
- (ii) which causes, or is likely to cause, a Material Adverse Effect;
- (iii) which is not caused or contributed to by an act or omission of the Consultant (including any failure by the Consultant to perform the Services in accordance with the Contract); and
- (iv) in circumstances where the Consultant has done everything it is required to do under the Contract to prevent or mitigate the effect of the Prolongation Event,

the Consultant may submit a "Prolongation Proposal" to the Contract Administrator within 14 days of the date on which the Consultant becomes aware, or should reasonably have become aware, of the Prolongation Event, which sets out:

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

- (b) If the Prolongation Proposal submitted by the Consultant under paragraph (a):

- (i) demonstrates that a Prolongation Event has occurred which has caused a Material Adverse Effect, and otherwise complies with paragraph (a), then the Contract Administrator must give the Consultant a written response within 20 days of the Prolongation Proposal being received by the Contract Administrator, stating that the Commonwealth:
  - A. accepts the Prolongation Proposal;
  - B. requires the Consultant to submit an amended Prolongation Proposal having regard to the matters stated in the Commonwealth's response to the Prolongation Proposal, after which this paragraph (b) will reapply; or
  - C. requires a meeting with the Consultant to negotiate the Prolongation Proposal having regard to the matters stated in the Commonwealth's response; or

- (ii) does not:

- A. demonstrate that a Prolongation Event has occurred which has caused a Material Adverse Effect; or
  - B. comply with paragraph (a),
- then the:
- C. Contract Administrator may give the Consultant a written notice rejecting the Prolongation Proposal; and
  - D. Consultant will not be entitled to bring any Claim against the Commonwealth arising out of or in connection with the Prolongation Proposal.

- (c) If the Contract Administrator notifies the Consultant that the Commonwealth requires a meeting to negotiate the Prolongation Proposal under paragraph (b)(i)C, then:

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- (i) the parties must undertake good faith negotiations (and exchange such documents and information and make available such people as may be necessary) to agree the costs payable to the Consultant as a result of the Prolongation Event; and
  - (ii) if the parties are unable to agree an amount under subparagraph (i) within 40 days of the Prolongation Proposal being received by the Contract Administrator (or such longer period as the Contract Administrator and the Consultant may agree), the Consultant will be entitled to the reasonable extra costs incurred by the Consultant as a result of the Material Adverse Effect after the date of the Consultant's "Prolongation Proposal" under paragraph (a) as determined by the Contract Administrator.
- (d) To the extent permitted by law, the Consultant will not be entitled to make (nor will the Commonwealth be liable upon) any Claim arising out of or in connection with a Prolongation Event, other than under this clause 8.11.
- (e) Notwithstanding the existence of a Prolongation Event, the Consultant must:
  - (i) continue to carry out the Services; and
  - (ii) otherwise comply with its obligations under the Contract.

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9. NOT USED



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**10. VARIATIONS****10.1 Variation Price Request**

- (a) At any time prior to completion of the Services, the Contract Administrator may issue a document titled "**Variation Price Request**" to the Consultant which will set out details of a proposed Variation which the Commonwealth is considering.
- (b) The Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant that would be involved in carrying out the proposed Variation.
- (c) Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contract Administrator), the Consultant must provide the Contract Administrator with a written notice in which the Consultant sets out the:
  - (i) adjustment (if any) to the Fee to carry out the proposed Variation; and
  - (ii) effect (if any) which the proposed Variation will have on the then current program, including each Date for Completion.

**10.2 Variation Order**

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 10.1, the Contract Administrator may, at any time prior to completion of the Services, instruct the Consultant to carry out a Variation by a written document titled "**Variation Order**", in which the Contract Administrator will state one of the following:

- (a) the proposed adjustment to the Fee set out in the Consultant's notice under clause 10.1 (if any) is agreed and the Fee will be adjusted accordingly; or
- (b) any adjustment to the Fee will be determined under clauses 10.3(b) and 10.3(c).

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

**10.3 Valuation of Variation**

The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Contract Administrator:

- (a) as agreed under clause 10.2(a);
- (b) if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, 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 Variation; or
- (c) to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
  - (i) agreed between the parties; or
  - (ii) failing agreement, determined by the Contract Administrator.

**10.4 Table of Variation Rates and Prices**

Where the rates and prices in the Table of Variation Rates and Prices are used under clause 10.3(b), the rates and prices will be deemed to cover:

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

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**10.5 Omissions**

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

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**11. PAYMENT****11.1 Payment Obligation**

Subject to clause 11.11 and to any other right to set-off which the Commonwealth may have, the Commonwealth will pay the Consultant:

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

**11.2 Payment Claims**

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

- (a) at the times specified in the Contract Particulars until completion of the Services or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after completion of the Services, within the time required by clause 11.7;
- (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 Variation Rates and Prices to the extent it is relevant;
- (e) which show separately the amounts (if any) claimed on account of:
  - (i) the Fee; and
  - (ii) all other amounts then payable by the Commonwealth to the Consultant under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
  - (i) to enable the 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 Consultant 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 Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally.

**11.3 Certification to Accompany Submission of Payment Claim**

The Consultant must, with each payment claim submitted under clause 11.2, certify to the Contract Administrator that it has:

- (a) if a request has been made under clause 2.9(a)(v), complied with clause 2.9(a)(v);
- (b) if an election or request has been made under clause 2.12, complied with clause 2.12;
- (c) complied with clause 5.1;
- (d) Not Used;
- (e) complied with clause 6.15;
- (f) complied with clause 8.2;
- (g) complied with clause 11.12;

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- (h) Not Used; and
- (i) Not Used.

**11.4 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 11.2; or
- (b) may, if the Consultant fails to submit any such claim in accordance with clause 11.2, at any time, give the Consultant (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 Consultant on account of the Fee 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 Consultant on account of the Fee and otherwise in accordance with the Contract and which the Commonwealth proposes to pay to the Consultant; 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 any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Contract;
- (h) a waiver of the requirements of clauses 11.2 and 11.3 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 Services or that the Services 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 Consultant's performance or compliance with the Contract.

**11.5 Payment**

- (a) Within 3 business days of the Consultant receiving a payment statement under clause 11.4, the Consultant must give the Contract Administrator, with a copy to the email address set out in the Contract Particulars, a tax invoice for the amount stated as then payable by the Commonwealth to the Consultant in the payment statement.
- (b) Subject to clause 11.13(c), within the number of business days specified in the Contract Particulars of the Commonwealth receiving a payment statement under clause 11.4, the Commonwealth will pay the Consultant the amount stated as then payable by the Commonwealth to the Consultant in the payment statement.

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**11.6 Payment on Account**

Any payment of moneys under clause 11.5 will not constitute:

- (a) approval of the Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment has been satisfactorily carried out in accordance with the Contract;
- (b) a waiver of the requirements of clauses 11.2 and 11.3 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 Services or that the Services 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 Consultant's performance or compliance with the Contract,

but is only to be taken as payment on account.

**11.7 Completion Payment Claim and Notice**

- (a) Within 28 days (or such longer period agreed in writing by the Contract Administrator) of completion of the Services, the Consultant must give the Contract Administrator:
  - (i) a payment claim which complies with clause 11.2 and which must include all amounts which the Consultant claims from the Commonwealth on account of the Fee and all other amounts payable under the Contract; and
  - (ii) notice of any other amounts which the Consultant claims from the Commonwealth, in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract which occurred prior to completion of the Services.
- (b) The payment claim and notice required under paragraph (a) are in addition to the other notices which the Consultant 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 Consultant cannot include in this payment claim or notice any Claims which are barred by clause 14.5.

**11.8 Release after Completion Payment Claim and Notice**

After the date for submitting the payment claim and notice under clause 11.7 has passed, the Consultant releases the Commonwealth from any Claim in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract which occurred prior to completion of the Services, except any Claim:

- (a) included in a payment claim or notice under clause 11.7 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 11.7; or
- (b) directly arising as a result of a Claim made by a third party against the Consultant which could not have been reasonably foreseen by the Consultant at the time of submitting the payment claim and notice under clause 11.7.

**11.9 Interest**

- (a) The Commonwealth will pay simple interest at the rate specified in the Contract Particulars on any:
  - (i) amount stated as then payable by the Commonwealth in a payment statement under clause 11.4, but which is not paid by the Commonwealth within the time required by the Contract; and

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- (ii) damages.
- (b) This will be the Consultant's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

**11.10 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.

**11.11 Right of Set-Off**

The Commonwealth may:

- (a) deduct from moneys otherwise due to the Consultant:
  - (i) any debt or other moneys due from the Consultant to the Commonwealth; and
  - (ii) any claim to money which the Commonwealth asserts in good faith against the Consultant whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with the Services or the 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 amount which may be or thereafter become payable to the Consultant by the Commonwealth in respect of any Variation the subject of a Variation Order under clause 10.2.

**11.12 Payment of Workers and Subconsultants**

The Consultant must with each payment claim submitted under clause 11.2 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 Services were carried out during the relevant period.

**11.13 GST**

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

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- (e) In clause 11.13, subject to clause 1.1, terms defined in GST Legislation have the meaning given to them in GST Legislation.

**11.14 Not Used**

**11.15 Not Used**

**11.16 Not Used**

**11.17 Not Used**

**11.18 Fee Payment Schedule**

If the Fee is adjusted under the Contract and a Fee Payment Schedule applies, the Fee Payment Schedule will be adjusted:

- (a) as agreed between the parties; or
- (b) failing agreement, as determined by the Contract Administrator.

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**12. TERMINATION****12.1 Preservation of Rights**

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

**12.2 Consultant Default**

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

**12.3 Contents of Notice of Default**

A notice under clause 12.3 must state:

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

**12.4 Termination for Insolvency or Breach**

If:

- (a) an Insolvency Event occurs to the Consultant or, where the Consultant comprises two or more persons, to any one of those persons;
- (b) the Consultant does not remedy a failure or breach the subject of a notice under clause 12.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 12.3;
- (c) a direction has been given under clause 7.2, the Consultant fails to comply with clause 7.3; or
- (d) the Consultant fails to comply with:
  - (i) clause 18; or
  - (ii) clause 19,

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

**12.5 Commonwealth's Entitlements after Termination by Commonwealth**

Subject to clause 12.1, if the Commonwealth terminates the Contract under clause 12.4 or if the Consultant repudiates the Contract and the Commonwealth otherwise terminates the Contract:

- (a) the Commonwealth will:
  - (i) be entitled to require the Consultant to novate to the Commonwealth or the Commonwealth's nominee, any or all subcontracts between the Consultant and its subconsultants as required by the Commonwealth;
  - (ii) not be obliged to make any further payments to the Consultant, including any amount the subject of a payment claim under clause 11.2 or a payment statement under clause 11.4; and
  - (iii) be entitled to recover from the Consultant all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with such termination; and



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- (b) the Consultant must comply with clause 18.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

Clause 12.5 will survive the termination of the Contract.

## **12.6 Consultant's Entitlements after Termination by Consultant**

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

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

Clause 12.6 will survive the termination of the Contract.

## **12.7 Termination for Convenience**

Without prejudice to any right or remedy of the Commonwealth under 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 Consultant terminate the Contract effective from the time stated in the Commonwealth's notice or if no such time is stated, at the time the notice is given to the Consultant; and
- (b) thereafter (at its absolute discretion), complete the uncompleted part of the Services either itself or by engaging Other Contractors.

## **12.8 Consultant's Entitlements after Termination for Convenience by Commonwealth**

- (a) If the Commonwealth terminates the Contract under clause 12.7, the Consultant:

- (i) will be entitled to payment of the following amounts, as determined by the Contract Administrator:

- A. for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
- B. the cost of goods or materials reasonably ordered by the Consultant for the Services for which the Consultant is legally bound to pay provided that:
  - 1) the value of the goods or materials is not included in the amount payable under subparagraph A; and
  - 2) title in the goods and materials will vest in the Commonwealth upon payment; and

- (ii) must:

- A. take all steps possible to mitigate the costs referred to in subparagraph (i)B; and
- B. comply with clause 18.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

- (b) The amounts to which the Consultant is entitled under paragraph (a)(i) will be a limitation upon the Commonwealth's liability to the Consultant arising out of or in connection with the termination of the Contract (whether under clause 12.7 or deemed to be under clause 12.7 through the operation of clause 12.6(a)) and, to the extent permitted by law, the Consultant will not be entitled to make (nor will the

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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 12.8.

- (c) Clause 12.8 will survive the termination of the Contract by the Commonwealth under clause 12.7 or by the Consultant following repudiation by the Commonwealth.

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**13. DISPUTES****13.1 Notice of Dispute**

- (a) If a dispute or difference arises between the Consultant and the Commonwealth or between the Consultant and the Contract Administrator in respect of any fact, matter or thing arising out of or in connection with the Services, the 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 13.
- (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.

**13.2 Expert Determination**

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the 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 13.1, the dispute or difference must be submitted to expert determination.

**13.3 The Expert**

- (a) The expert determination under clause 13.2 is to be conducted by:
  - (i) the independent industry expert specified in the Contract Particulars; or
  - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under clause 13.3:
  - (i) is unavailable;
  - (ii) declines to act;
  - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
  - (iv) does not enter into the Expert Determination Agreement or other agreement in accordance with clause 13.9(b) within 14 days of his or her appointment under clause 13.3; or
  - (v) does not make a determination within the time required by clause 13.8,

the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

**13.4 Not Arbitration**

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

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**13.5 Procedure for Determination**

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

**13.6 Disclosure of Interest**

The expert must:

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

**13.7 Costs**

Each party will:

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

**13.8 Conclusion of Expert Determination**

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 13 within 28 days from the acceptance by the expert of his or her appointment.

**13.9 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.

**13.10 Determination of Expert**

The determination of the expert:

- (a) must be in writing;

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- (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 13.11 and 13.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

**13.11 Executive Negotiation**

- (a) If:
  - (i) clause 13.2 applies, and a notice of appeal is given under clause 13.10; or
  - (ii) clause 13.2 does not apply,
 the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
  - (i) 21 days of:
    - A. if the dispute or difference is not one which is to be referred to expert determination under clause 13.2, the notice of dispute given under clause 13.1; or
    - B. otherwise, the notice of appeal given under clause 13.10; or
  - (ii) such longer period of time as the Executive Negotiators may agree in writing, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

**13.12 Arbitration Agreement**

If, within:

- (a) 21 days of:
    - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 13.2, the notice of dispute given under clause 13.1; or
    - (ii) otherwise, the notice of appeal given under clause 13.10; or
  - (b) such longer period of time as the Executive Negotiators may agree in writing,
- the Executive Negotiators:
- (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
  - (d) cannot resolve the dispute or difference; or
  - (e) have not reached agreement upon a procedure to resolve the dispute or difference,
- the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

**13.13 Arbitration**

- (a) Arbitration pursuant to clause 13.13 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 13.13.

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- (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 13 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
  - (ii) any arbitration conducted pursuant to clause 13.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
  - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
  - (i) the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
  - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
  - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
  - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

### **13.14 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 13.14.

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**13.15 Continuation of Services**

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

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

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**14. NOTICES****14.1 Notice of Variation**

If a direction by the Contract Administrator, other than a Variation Order under clause 10.2, constitutes or involves a Variation, the Consultant 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 services the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 14.3(b); and
- (c) continue to carry out the Services in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 14.1.

**14.2 Notices of Other Claims**

Except for claims for:

- (a) an extension of time under clause 8.6;
- (b) payment under clause 11 of the original Fee specified in the Contract Particulars;
- (c) a Variation instructed in accordance with clause 10.2 or to which clause 14.1 applies; or
- (d) contribution or indemnity for loss or damage caused or contributed to by the negligence of the Commonwealth where a third party (other than a subconsultant of the Consultant or other party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

the Consultant must give the Contract Administrator the notices required by clause 14.3 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 Services or the Contract, including anything in respect of which:

- (e) it is otherwise given an express entitlement under the Contract; or
- (f) the Contract expressly provides that:
  - (i) amounts are to be added to the Fee; or
  - (ii) otherwise the Fee will be increased or adjusted,
 as determined by the Contract Administrator.

**14.3 Prescribed Notices**

The notices referred to in clause 14.2 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 Consultant proposes to make a Claim; and
  - (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under paragraph (a), which must include:



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- (i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
- (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification.

**14.4 Continuing Events**

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

**14.5 Time Bar**

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

- (a) Commonwealth will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Consultant; and
- (b) Consultant 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 14.1 or 14.2 applies.

**14.6 Other Provisions Unaffected**

Nothing in clauses 14.1 - 14.5 will limit the operation or effect of any other provision of the Contract which requires the Consultant to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Commonwealth.

**14.7 Address for Service**

Any notice to be given or served under or arising out of a provision of 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 12 and 13 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 14.7 of the Contract" in the subject field of the email.

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**14.8 Receipt of Notices**

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 14.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
- (i) delivery by hand, on delivery;
  - (ii) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
  - (iii) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
  - (iv) email, the earlier of:
    - A. delivery to the email address to which it was sent; or
    - B. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
- (b) In the case of notices under clauses 12 and 13, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 14.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of the:
- (i) date the notice sent by email is taken to be received; or
  - (ii) date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with paragraph (a).

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15. NOT USED

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**16. GENERAL****16.1 Workplace Gender Equality**

The Consultant must:

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

**16.2 Indigenous Procurement Policy**

- (a) The Consultant must use its reasonable endeavours to increase its:
  - (i) purchasing from Indigenous Enterprises; and
  - (ii) employment of Indigenous Australians,
 in carrying out the Services, in accordance with the Indigenous Procurement Policy.

- (b) Not Used

**16.3 Not Used****16.4 Not Used****16.5 Not Used****16.6 Privacy**

- (a) The Consultant must:
  - (i) comply with its obligations under the Privacy Act;
  - (ii) comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;
  - (iii) use Personal Information received, created or held by the Consultant for the purposes of, 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 Consultant 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 Consultant 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 Consultant allows to access Personal Information which is received, created or held by the Consultant 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;

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- (viii) comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
- (ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of, 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 Consultant in reports by the Federal Privacy Commissioner;
- (xi) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of clause 16.6 as if the subconsultant were the Consultant;
- (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 Consultant 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 Consultant under clause 16.6;
  - B. a breach of a subconsultant'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 Consultant or a subconsultant; or
  - D. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Consultant or a subconsultant in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of the Commonwealth to settle a complaint arising out of or in connection with a breach of clause 16.6.
- (c) The Consultant must immediately notify the Commonwealth in writing if the Consultant:
  - (i) becomes aware of a breach of the obligations under clause 16.6 by itself or by a subconsultant;
  - (ii) becomes aware of a breach of a subconsultant's obligations under a subcontract as contemplated by paragraph (a)(xi);
  - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
  - (iv) is approached or contacted by, or becomes aware that a subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Consultant acknowledges that, in addition to the requirements of clause 16.6, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.

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- (e) Nothing in clause 16.6 limits any of the Consultant's obligations under the Contract or otherwise at law or in equity.
- (f) In clause 16.6, **received** includes collected.

**16.7 Moral Rights**

- (a) The Consultant must:
  - (i) to the extent permitted by law and for the benefit of the Commonwealth, ensure that each of the Consultant and subconsultant personnel engaged by the Consultant in the production or creation of Project Documents or the Works gives genuine consent in writing to the use of the Project Document or the Works (as applicable) for the Specified Acts, notwithstanding that such use would otherwise be an infringement of their Moral Rights; and
  - (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 16.7, **Specified Acts** means:
  - (i) falsely attributing the authorship of any Project Document or the Works, or any content in a Project Document or the 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 Works and dealing in any way with the altered Project Document or Works;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Project Document or the Works; and
  - (iv) adding any additional content or information to a Project Document or the Works.

**16.8 Freedom of Information**

- (a) The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (b) The Consultant acknowledges that Commonwealth requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

**16.9 Not Used****16.10 Assignment**

- (a) The Consultant 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.

**16.11 Publicity**

Without limiting clause 18, the Consultant must:

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- (a) not furnish any information or issue any document or other written or printed material concerning the Services or the 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 Services or the Works to the Contract Administrator.

**16.12 Not Used****16.13 Applicable Standards**

- (a) The Consultant acknowledges that the Contract identifies:
  - (i) the Australian standards which are applicable to the Services; or
  - (ii) in the absence of an applicable Australian standard, the relevant international standards which are applicable to the Services,

and that it must comply with all relevant standards of Standards Australia to the extent required (collectively, the **Applicable Standards**).
- (b) Without limiting the Consultant's obligations under this Contract, the Consultant must comply with the Applicable Standards in performing the Services.
- (c) The Contract Administrator may, at any time, request that the Consultant provides:
  - (i) a certificate which certifies that the Reviewable Deliverables or the Services complies with the Applicable Standards; and
  - (ii) a corresponding certificate from each relevant subconsultant which certifies that (to the extent then applicable) all design carried out by that subconsultant or the Services performed by that subconsultant (as the case may be) complies with the Applicable Standards.
- (d) The Consultant acknowledges that the Commonwealth may exercise any of its rights under this Contract (including under clause 6.11) to carry out periodic auditing of the Consultant's compliance with clause 16.13.

**16.14 Fraud Control**

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

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

**16.15 Not Used****16.16 Commonwealth Publication and Reporting Requirements**

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

- (a) publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of \$10,000 or more on AusTender (the Commonwealth's business opportunity website located at [www.tenders.gov.au](http://www.tenders.gov.au));
- (a) report and post on the internet a list of contracts valued at \$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
- (b) 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.

**16.17 Modern Slavery**

- (a) The Consultant must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services.
- (b) The Consultant must ensure the Consultant's key people under clause 4.5 and other personnel responsible for managing the operations and supply chains used in the performance of the Services have undertaken suitable training to be able to identify and report Modern Slavery.
- (c) If at any time the Consultant becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services, the Consultant must:
  - (i) promptly notify the 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 16.17, Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).



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**17. COMMERCIAL-IN-CONFIDENCE INFORMATION**

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

- (a) Subject to paragraph (b), the Commonwealth must keep confidential any information provided to the Commonwealth by the Consultant before or after the Award Date when:
- (i) a written request to keep specific information confidential and the justification for keeping such information confidential has been expressly made by the Consultant to the Commonwealth in its tender;
  - (ii) the Commonwealth agrees (in its absolute discretion) that such information is commercial-in-confidence information;
  - (iii) the Contract Administrator notifies the Consultant in writing that the Commonwealth (in its absolute discretion) agrees, including the terms of any agreement, under subparagraph (ii); and
  - (iv) such information and the terms of any agreement are expressly specified in the Contract Particulars,
- (Commercial-in-Confidence Information).**
- (b) The Commonwealth's obligation 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 the Contract;
  - (ii) disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Commonwealth's management, reporting or auditing requirements;
  - (iii) disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
  - (iv) disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;
  - (v) disclosed to any Commonwealth department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;
  - (vi) authorised or required by law to be disclosed; or
  - (vii) in the public domain otherwise than due to a breach of paragraph (a).

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**18. INFORMATION SECURITY****18.1 Not Used****18.2 Confidential Information and Information Security**

- (a) The Consultant acknowledges and agrees that:
- (i) the Confidential Information is confidential to the Commonwealth and that any unauthorised use or disclosure of the Confidential Information may cause loss or damage to the Commonwealth; and
  - (ii) part of the Confidential Information may be Sensitive and Classified Information.
- (b) Except as expressly provided in this clause 18.2, the Consultant must:
- (i) hold the Confidential Information in strict confidence and must not disclose, use or deal with it or otherwise make it available to any person; and
  - (ii) ensure all Confidential Information is strictly kept secure and protected from all unauthorised access and use.
- (c) The Consultant may disclose Confidential Information where such disclosure is required by law provided that the Consultant:
- (i) only discloses such of the Confidential Information as is strictly required by law to be disclosed, including by taking all reasonable steps in consultation with the recipient (whether by agreed redaction or otherwise) to limit the Confidential Information which is disclosed;
  - (ii) where legally permitted to do so, immediately notifies the Contract Administrator and the Commonwealth in writing of such requirement and provides such details as would enable the Commonwealth to independently seek to protect the confidentiality of the Confidential Information; and
  - (iii) ensures that any recipient is made aware of the confidential status of the Confidential Information and takes all reasonable steps to obtain confidentiality undertakings from the recipient.
- (d) Subject to paragraph (e)(ii)B, the Consultant may disclose Confidential Information to:
- (i) an employee, officer, agent, legal adviser, insurer, subconsultant or proposed subconsultant of the Consultant who needs to know the Confidential Information to enable the Consultant to perform its obligations under the Contract; and
  - (ii) such other persons, provided the Consultant has obtained the prior written approval of the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion),
- provided that the Consultant must ensure that:
- (iii) all such persons strictly comply with equivalent obligations as are imposed on the Consultant by this clause 18 in respect of all Confidential Information disclosed to them; and
  - (iv) in the case of disclosure to a subconsultant or proposed subconsultant and prior to making any disclosure, the Consultant has entered into a written agreement with the relevant person, which:
    - A. imposes equivalent obligations as are imposed on the Consultant by this Contract in respect of all Confidential Information disclosed to them; and

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- B. is expressed to be made for the benefit of both the Consultant and the Commonwealth.
- (e) The Consultant must:
  - (i) strictly comply with all:
    - A. Information Security Requirements, including as set out in Control 10 of the DSPF; and
    - B. additional information security or confidentiality requirements notified by the Contract Administrator or the Commonwealth, including in respect of any Security or Confidentiality Incident; and
  - (ii) without limiting paragraph (d) or subparagraph (i), ensure:
    - A. that persons performing the roles specified in the Contract Particulars hold and maintain a security clearance at or above the level specified in the Contract Particulars;
    - B. that no Sensitive and Classified Information is released to any third party, without the prior written approval of the originator through the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion); and
    - C. all subcontracts include provisions equivalent to the obligations of the Consultant in this clause 18.
- (f) Without limiting the Consultant's strict obligations under paragraph (e)(i), the security classification of the information and assets accessible to the Consultant in connection with the Contract is anticipated to be at or below the level specified in the Contract Particulars, provided that if the Consultant is required to access information and assets above the specified level, this will be deemed to be a change in Statutory Requirements for the purposes of clause 2.11.
- (g) Within such period as the Contract Administrator or the Commonwealth may direct, the Consultant must, in accordance with the other terms of the direction, provide:
  - (i) evidence of the Consultant's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 18; and
  - (ii) a statutory declaration in a form and from an authorised officer satisfactory to the Commonwealth (acting reasonably) in respect of the Consultant's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 18.

### **18.3 Security or Confidentiality Incidents**

The Consultant must:

- (a) detect all actual or potential Security or Confidentiality Incidents;
- (b) immediately notify the Contract Administrator and the Commonwealth if it becomes aware of any actual or potential Security or Confidentiality Incident;
- (c) take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Security or Confidentiality Incident; and
- (d) take all other steps as may be notified by the Contract Administrator or the Commonwealth under clause 18.2(e)(i)B in respect of the Security or Confidentiality Incident or as necessary to comply with an Information Security Requirement.

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**18.4 Return and Retention of Confidential Information**

- (a) Subject to paragraph (b), the Consultant must return to the Commonwealth or destroy all documents in its possession, power or control which contain any Confidential Information:
  - (i) in accordance with the Information Security Requirements; and
  - (ii) without limiting subparagraph (i), where the Confidential Information is no longer required for the purposes of the Contract.
- (b) Subject to ongoing compliance with the other requirements of this clause 18 in respect of confidentiality and information security, the Consultant may retain Confidential Information in its records if retention is required to comply with the Information Security Requirements or any other Statutory Requirement, insurance obligation or otherwise with the prior written approval of the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion).
- (c) If the Consultant is aware that documents containing the Confidential Information are beyond its possession or control, then the Consultant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and procure compliance by such persons with paragraphs (a) and (b) as applicable.

**18.5 Release and Indemnity**

The Consultant:

- (a) must bear, and releases the Commonwealth in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with a Security or Confidentiality Incident or the exercise of any of the Contract Administrator's or the Commonwealth's absolute discretions under clause 18; and
- (b) indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with a Security or Confidentiality Incident.

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**19. STRATEGIC NOTICE EVENT****19.1 Consultant's Warranty on Award Date**

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

**19.2 Consultant to Give Notice**

If, at any time, the Consultant becomes aware of any Strategic Notice Event, the Consultant must, as soon as reasonably practicable, notify the Contract Administrator, providing details, to the extent such details are known by or reasonably available to the Consultant, of:

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

**19.3 Commonwealth Rights Upon Occurrence of Strategic Notice Event**

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

- (a) the Consultant:
  - (i) notifies the Contract Administrator under clause 19.2; or
  - (ii) has given a false warranty in any respect under clause 19.1 or has failed to strictly comply with clause 19; or
- (b) the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Strategic Notice Event,

the Commonwealth may (in its absolute discretion) and either itself, or through the Contract Administrator, do any one or more of the following:

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

within 3 business days of the request (or longer period agreed in writing by the Commonwealth);
- (d) regardless of whether or not the Consultant has received a notice under paragraph (c), notify the Consultant that the Consultant may continue to perform the Services, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Consultant

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preparing and implementing a Strategic Notice Event Remediation Plan in accordance with clause 19.4; and

- (e) regardless of whether or not the Commonwealth has notified the Consultant under paragraphs (c) or (d), take into account the occurrence of a Strategic Notice Event at any time, including when:
  - (i) deciding whether to consent to the subcontracting of any of the Services or the Works (including where required under clause 2.9(a)(i));
  - (ii) conducting performance reviews, providing a direction to remove a person from the Site or the Services (including in accordance with clause 4.6), or exercising any rights of the Commonwealth in relation to access, audit or the treatment of documentation under or in connection with the Contract (including in accordance with clause 6.11);
  - (iii) deciding whether to exercise any rights in relation to termination or to omit parts of the Works by Variation Order; and
  - (iv) Not Used.

#### **19.4 Strategic Notice Event Remediation Plan**

- (a) If notified by the Commonwealth under clause 19.3(d), the Consultant must prepare and submit a draft Strategic Notice Event Remediation Plan to the Contract Administrator for approval within 10 business days of the Commonwealth's notice (or longer period agreed in writing by the Contract Administrator).
- (b) A draft Strategic Notice Event Remediation Plan prepared by the Consultant under paragraph (a) must include the following information:
  - (i) how the Consultant will address the Strategic Notice Event to minimise the impact of the Strategic Notice Event on the Services and the Works;
  - (ii) confirmation that the implementation of the Strategic Notice Event Remediation Plan will not in any way impact on the compliance by the Consultant with its other obligations under the Contract;
  - (iii) how the Consultant will seek to ensure that any events of a similar nature to the Strategic Notice Event do not occur again;
  - (iv) if the Strategic Notice Event involves a Material Change, how the Material Change will impact the Consultant's original agreement with the Commonwealth; and
  - (v) any other matter reasonably requested by the Commonwealth.
- (c) The Contract Administrator will review the draft Strategic Notice Event Remediation Plan and either approve it or provide the Consultant with the details of any changes that are required. The Consultant must make any changes reasonably requested by the Contract Administrator and resubmit the draft Strategic Notice Event Remediation Plan to the Contract Administrator within 5 business days of the request (or longer period agreed in writing by the Contract Administrator). This paragraph (c) will apply to any resubmitted draft Strategic Notice Event Remediation Plan.
- (d) Without limiting its other obligations under the Contract, the Consultant must:
  - (i) comply with each Strategic Notice Event Remediation Plan as approved by the Contract Administrator; and
  - (ii) provide such reports and other information about the Consultant's progress in implementing the Strategic Notice Event Remediation Plan as may be reasonably requested by the Contract Administrator.

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**19.5 Release**

The Consultant must bear, and releases the Commonwealth in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the Strategic Notice Event or the exercise of any of the Contract Administrator's or the Commonwealth's absolute discretions under clause 19.

**19.6 Consultant's Compliance**

- (a) Nothing in this clause 19 requires the Consultant to act in any manner or disclose any information which would:
- (i) breach an obligation of confidentiality that existed prior to the date the Strategic Notice Event occurred, that is owed to an unrelated third party;
  - (ii) cause the Consultant to breach any law or regulation or contractual obligation regarding privacy or security (in Australia or outside of Australia);
  - (iii) have the effect of waiving legal professional privilege (or any equivalent privilege in Australia or outside of Australia) in relation to the information; or
  - (iv) breach the rules of a stock exchange or any similar body on which the Consultant, or any Related Body Corporate of the Consultant, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Consultant must disclose the information to the Contract Administrator promptly after disclosure is made to the stock exchange or body.
- (b) Notwithstanding any restriction that may apply in respect of specific information, such as that described in paragraph (a), the Consultant must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 19 is achieved.

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**20. FINANCIAL VIABILITY**

- (a) The Consultant:
- (i) warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2:
    - A. it has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants in accordance with paragraph (b)); and
    - B. each subconsultant engaged in the Services has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
  - (ii) acknowledges and agrees that the Commonwealth has:
    - A. entered into the Contract;
    - B. if applicable, made payments to the Consultant under clause 11.5; and
    - C. Not Used,

strictly on the basis of, and in reliance upon, the obligations and warranties set out in clause 20.
- (b) The Consultant must pay all subconsultants in accordance with the payment terms in all subcontracts.
- (c) The Consultant must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
- (i) the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; and
  - (ii) a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any potential or actual change in:
  - (iii) the Consultant's financial viability; or
  - (iv) a subconsultant's financial viability.
- (d) The Contract Administrator may (in its absolute discretion) at any time request the Consultant to:
- (i) provide the Contract Administrator with a solvency statement in the form required by the Commonwealth with respect to:
    - A. the Consultant, properly completed and duly executed by the Consultant; or
    - B. a subconsultant, properly completed and duly executed by the subconsultant; and
  - (ii) ensure:
    - A. its Financial Representative is available; and
    - B. each subconsultant 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:



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- C. the Consultant has the financial viability necessary to perform the Services, achieve Completion and otherwise meet its obligations under the Contract (including the payment of all subconsultants in accordance with paragraph (b)); or
  - D. a subconsultant has the financial viability necessary to perform its activities in accordance with the relevant subcontract.
- (e) If the Commonwealth considers (in its absolute discretion) that there could be or has been a change in:
  - (i) the Consultant's financial viability; or
  - (ii) a subconsultant's financial viability,
 which could adversely affect:
  - (iii) the Consultant's ability to perform the Services, achieve Completion or otherwise meet its obligations under the Contract; or
  - (iv) a subconsultant's ability to perform its activities in accordance with the relevant subcontract,
 the Contract Administrator may (in its absolute discretion) direct the Consultant to take such steps as the Commonwealth considers necessary to secure the performance of the Services, Completion and the meeting of its obligations under the Contract, including requiring the Consultant to:
  - (v) provide a deed of guarantee and undertaking in the form required by the Commonwealth;
  - (vi) establish a trust account for the payment of subconsultants on the terms (including any trust deed) required by the Commonwealth;
  - (vii) provide Subconsultant Deeds of Covenant or Consultant Deeds of Covenant; or
  - (viii) provide collateral warranties in the form required by the Commonwealth.
- (f) If the Contract Administrator gives a direction under paragraph (e), then the Consultant must take such steps as the Commonwealth considers necessary to better secure a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Commonwealth.
- (g) The Consultant acknowledges and agrees that:
  - (i) nothing in clause 20 will limit, reduce, or otherwise affect any of the rights of the Commonwealth under other provisions of the Contract or otherwise at law or in equity; and
  - (ii) clause 20 does not give the Consultant (or any subconsultant) any rights.

Unless otherwise approved by the Contract Administrator, the Consultant must ensure that each subcontract includes provisions equivalent to the obligations of the Consultant in clause 20.

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CONTRACT PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Agreed Subconsultants: (Clause 1.1)	Agreed Subconsultants:  Agreed Subconsultant Agreement:  Agreed Subconsultant Services:	NIL  NIL  NIL
Completion - additional conditions precedent to Completion: (Clause 1.1)	NIL	
Consultant: (Clause 1.1)	GHD Pty Ltd	
Consultant's Representative: (Clause 1.1)	s22	
Contract - other documents forming part of the Contract: (Clause 1.1)	NIL	
Contract Administrator: (Clause 1.1)	s22 Project Officer, s33 Department of Finance	
Date for Completion (of a Milestone): (Clause 1.1)	Milestone  Planning Phase Milestones:  90% DDR (Part A – Midpoint Submission) review  90% DDR (Part A – Final Submission) review  Delivery Phase Milestones:  AFT and AFC documentation review  Construction activities  End of Defects Liability	Date for Completion  s47
Environmental Requirements (additional): (Clause 1.1)	NIL	

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**Executive Negotiators:**  
(Clause 1.1)

**Commonwealth:** George Stellios - Assistant Secretary, s33  
Department of Finance

**Consultant:** s22  
, GHD Pty Ltd

**Fee:**  
(Clause 1.1)

**Planning Phase Fee:** s47

**Delivery Phase Fee:**

**Total Fee:**

Milestones: (Clause 1.1)	Milestone	Description
	<b>Planning Phase Milestones:</b>	
	90% DDR (Part A – Midpoint Submission) review	As described in Annexure 1 – Brief
	90% DDR (Part A – Final Submission) review	As described in Annexure 1 – Brief
	<b>Delivery Phase Milestones:</b>	
	AFT and AFC documentation review	As described in Annexure 1 – Brief
	Construction activities	As described in Annexure 1 – Brief
	End of Defects Liability	As described in Annexure 1 – Brief

- Schedule of Collateral Documents:**  
(Clause 1.1)
- Payment Claim
  - Payment Statement
  - Expert Determination Agreement
  - Consultant Deed of Novation
  - Consultant Deed of Covenant
  - Subconsultant Deed of Covenant
  - Agreed Subconsultant Deed of Novation

**Site:**  
(Clause 1.1)

**Works:**  
(Clause 1.1)

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**Governing law:**  
(Clause 1.3(a))

Australian Capital Territory (ACT)

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**CLAUSE 2 - ROLE OF THE CONSULTANT**

**Services which may be let to one of the named subconsultants:**

(Clause 2.9(a)(i)A)

**Services**

NIL

**Subconsultants**

NIL

**Statutory Requirements with which the Consultant does not need to comply:**

(Clause 2.10(a))

Not Applicable

**CLAUSE 3 - ROLE OF THE COMMONWEALTH**

**Other conditions precedent to Site access:**

(Clause 3.3(e))

Not Applicable

**CLAUSE 4 - PERSONNEL**

**Contract Administrator's representatives and their functions:**

(Clause 4.4)

**Representative**

s22 [REDACTED]

**Function(s)**

Contract Administrator

**Consultant's key people:**

(Clause 4.5(a)(i))

**Person**

s22 [REDACTED]

**Position**

Consultant's Representative

**CLAUSE 5 - INSURANCE**

**Insurance policies required to be effected by the Consultant:**

(Clause 5.1)

**Public Liability Insurance**

Not Applicable

**Workers Compensation Insurance**

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

**Professional Indemnity Insurance**

s47 [REDACTED]

**Other Insurances:** (Clause 5.1(a)(v))

Not Applicable

**Minimum amounts of subconsultants' Professional Indemnity Insurance:**

(Clause 5.1(h))

**Professional Indemnity Insurance**

s47 [REDACTED]

**Run-off period for Public Liability Insurance if written on a claims made basis:**

(Clause 5.3(a)(ii))

Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.

Otherwise: 7 years

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**Run-off period for Professional Indemnity Insurance:**

(Clause 5.3(c))

Where any part of the Services are carried out 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 Consultant to the Commonwealth:**

(Clause 5.7)

s47 [REDACTED]

**CLAUSE 6 - REVIEWABLE DELIVERABLES AND PROJECT DOCUMENTS****Number of days for review:**

(Clause 6.3(a)(ii))

30 days

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

(Clause 6.10(a))

1. Formal Agreement
2. Conditions of Contract
3. Special Conditions
4. Contract Particulars
5. Brief
6. Any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)
7. Reviewable Deliverables (which has not been rejected under clause 6.3)

**CLAUSE 8 - TIME****Maximum intervals between program updates by Consultant:**

(Clause 8.2(b))

Not Applicable

**Program format to be compatible with:**

(Clause 8.2(d))

**PRIMAVERA SURETRAK or MICROSOFT PROJECT** or equivalent requested by the Consultant and approved by the Contract Administrator

**CLAUSE 11 - PAYMENT****Times for submission of payment claims by the Consultant to Contract Administrator:**

(Clause 11.2(a))

Monthly on the 25<sup>th</sup> day of each month, but, where applicable, subject to the achievement of the applicable milestone in the Fee Payment Schedule (Annexure 3)

**Email address for copy of tax invoice:**

(Clause 11.5(a))

invoiceonly@sdo.gov.au

**Number of business days for payment:**

(Clause 11.5(b))

5 business days

**Interest Rate:**

(Clause 11.9)

1. In the case of damages - the Australian Taxation Office-sourced General Interest Charge Rate current at the due date

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for payment or such other rate nominated in writing from time to time by the Contract Administrator; or

2. In the case of late payments - the rate in paragraph (1).

**CLAUSE 12 - TERMINATION**

**Number of days to remedy breach:** 30 days  
(Clauses 12.3(c) and 12.4(b))

**CLAUSE 13 - DISPUTE RESOLUTION**

**Directions to be subject of an expert determination if disputed:** Directions under clauses 2.11(c), 2.11(d), 8.4(b)(ii)B, 8.8, 10.3(b), 10.3(c)(ii), 11.4, 11.18(b) and 12.8(a)(i).  
(Clause 13.2)

**Industry expert who will conduct expert determinations:** President of the relevant institute (dependant on services in question), or as agreed by both parties  
(Clause 13.3(a)(i))

**Nominating authority for industry expert:** The President for the time being of the Resolution Institute unless otherwise specified  
(Clause 13.3(a)(ii))

**CLAUSE 14 - NOTICES**

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

**Commonwealth:**

Address (not PO Box): One Canberra Avenue, Forrest ACT 2600  
Email address: s33 [REDACTED]@finance.gov.au  
Attention: Mr George Stellios

**Contract Administrator:**

Address (not PO Box): One Canberra Avenue, Forrest ACT 2600  
Email address: s22 [REDACTED]@finance.gov.au  
Attention: s22 [REDACTED]

**Consultant:**

Address (not PO Box): Level 7, 17 Marcus Clarke Street Canberra ACT 2601  
Email address: [ausfedgov@ghd.com](mailto:ausfedgov@ghd.com) or s22 [REDACTED]@ghd.com  
Attention: s22 [REDACTED]

**CLAUSE 17 - COMMERCIAL-IN-CONFIDENCE INFORMATION**

**Commercial-in-Confidence Information:** Clause 17 **does** apply.  
(Clause 17)

**Information which is Commercial-in-Confidence Information:**  
(Clause 17)

Specific Information	Justification	Period of confidentiality
Tender Response - Schedule F – Financial	Commercial in Confidence	7 Years

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Tender Response – Security Clearance Details and Schedule B – Proposed Resources	Disclosure of personal information	10 years
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CLAUSE 18 - INFORMATION SECURITY - SENSITIVE AND CLASSIFIED INFORMATION

Minimum level of security clearance and roles required to hold such clearance: (Clause 18.2(e)(ii)A)	Role	Minimum level of security clearance
	All GHD personnel	s33 [redacted]
	All subcontractors	[redacted]
Anticipated highest security classification of information and assets: (Clause 18.2(f))	s33 [redacted]	

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**ANNEXURE 1 - BRIEF****Planning Phase Services:**

Consultant is to provide a lump sum price associated with a review of the following items:

- Disciplines for review
  - Architecture
  - Building services (vertical transport, electrical, mechanical, BMS, wet and dry fire, hydraulics, etc.)
  - ICT, communication and cabling services
  - Fire safety engineering
  - Civil engineering including traffic impact assessment
  - Structural engineering including wind, blast and geotechnical
  - Façade design
  - ESD
  - Security design principles (EMSEC, physical and electronic, etc.)

Consultant is to provide an itemised provisional sum for the following items:

- To be included at Finance's discretion:
  - SCEC consultancy
  - Building surveying/certification (including accessibility)
  - Planning
  - Landscape
  - Retail consultant
  - Hazardous areas/dangerous goods consultant
  - Acoustic design review
  - Logistics including waste management

The Consultant will note that the price breakdown, requested above, is to be broken down into the following milestones:

- 90% Detailed Design Report (Part A – Midpoint Submission)
  - High level review and report to capture whether the recommendations provided in the 50% Schematic Design Review have been incorporated
    - Report due within 1 week of submission.
  - Value Management
    - Participation at VM meetings and presentation to tenants
    - Review and verification of proposed VM items and recommendation of further VM items for Finance consideration



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- Presentation to Commonwealth on the overall design including individual presentation to tenants.
- 90% Detailed Design Report (Part B – Final Submission)
  - Progressive review of design documentation (designs, schedules, reports, briefs, etc.) to ensure the precinct is designed to an appropriate standard, complies with all nominated design standards, statutory requirements and specifications and, aligns with the project brief.
  - Provide a schedule or report detailing their review and any recommendations.
    - Report against the major changes due within 1 week of submission.
    - Full report due 4 weeks post submission.
    - These will be non-binding on the Contractor unless they are formed from statutory requirements. Attendance at follow up meetings will be required in these instances to work through solutions to these issues.
  - Presentation to Commonwealth on the overall design including individual presentation to tenants.
  - Value Management
    - Participation at VM meetings and presentation to tenants
    - Review and verification of proposed VM items and recommendation of further VM items for Finance consideration.

For the above items, the Consultant is to clearly detail the hours allocated to each milestone noting that these hours may be utilised across multiple reviews, if sufficient hours are available.

**Delivery Phase Services:**

- AFT & AFC Documentation Review
  - Progressive review of design documentation (designs, schedules, reports, briefs, etc.) to ensure the precinct is designed to an appropriate standard, complies with all nominated design standards, statutory requirements and specifications and aligns with the project brief.
  - Provide a schedule or report detailing their review and any recommendations.
    - These will be non-binding on the Contractor unless they are formed from statutory requirements. Attendance at follow up meetings will be required in these instances to work through solutions to these issues.
  - Value Management
    - Participation at VM meetings and presentation to tenants
    - Verification of proposed VM items

The Consultant is to provide a lump sum allowance for the following ad-hoc services to be undertaken throughout the life of the project:

- Supporting Tenant review of their design requirements up to Delivery Phase Agreement
  - Proposed 400 hours (2hrs per week per tenant x 10 months)
  - Include a detailed schedule of the consultants' proposed resources and rates until end of 2025

The Consultant is to provide an itemised break-up for the following items:

- Construction Activities:

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- Site inspections to validate quality and compliance of works on site
- Hold points reviews
- Monitoring preparation for, review of Commissioning data and reports, and overseeing of, the commissioning activities (in consideration of optional Commissioning Agent)
- Review of commissioning plan against appropriate standards and compliance with the design intent.
- Review trade commissioning plan against appropriate standards and compliance with the design intent.
- Review maintenance testing regimes/schedules.
- Defect inspections for the following disciplines:
  - Architectural
  - Electrical
  - ICT
  - Mechanical
  - Hydraulics
  - Fire
  - Civil
  - Security
- Review Operation and Maintenance Manuals
- Review of completion documentation
- Make allowance for reimbursable ad- hoc works (billed on an hourly rate basis) – assume up to 150hrs per annum (600hrs total) in aggregate for (but not limited to):
  - Independent technical review of subcontractor claims where triggered by design error or omission
  - Review of RFI's (for both Finance and Tenant's) where requested
  - Include a detailed schedule of the consultants' proposed resources and rates until end of 2028
- Defects Liability Period (DLP)
  - Post-completion commissioning tests and reports
  - Seasonal commissioning activities over the DLP
  - Produce a close out report at the end of DLP

For the above items, the Consultant is to clearly detail the hours allocated to each milestone noting that these hours may be utilised across multiple reviews, if sufficient hours are available.

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**ANNEXURE 2 - SPECIAL CONDITIONS****1. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT**

- (a) For the purposes of this clause 1, **Code** means the Commonwealth Supplier Code of Conduct dated 1 July 2024, available at <https://www.finance.gov.au/government/procurement/commonwealth-supplier-code-conduct/commonwealth-supplier-code-conduct>, as amended from time to time.
- (b) The Consultant must comply with, and ensure that its officers, employees, agents and subconsultants comply with, the Code in connection with the performance of the Contract.
- (c) The Consultant must:
  - (i) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
  - (ii) on request from the 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 Consultant's compliance with paragraph (b).
- (d) The Consultant must immediately notify the Contract Administrator in writing upon becoming aware of any breach of paragraph (b). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
- (e) Where the Contract Administrator identifies a possible breach of paragraph (b), it may notify the Consultant in writing, and the Consultant must, within three days of receiving the notice, either:
  - (i) where the Consultant considers a breach has not occurred - advise the Contract Administrator that there has not been a breach and provide information supporting that determination; or
  - (ii) where the Consultant considers that a breach has occurred - notify the Contract Administrator under paragraph (d) and otherwise comply with its obligations under this clause 1.
- (f) Notwithstanding paragraph (e), the Contract Administrator may notify the Consultant in writing that it considers that the Consultant has breached paragraph (b), in which case the Consultant must notify the Contract Administrator in writing under paragraph (d) and otherwise comply with its obligations under this clause 1.
- (g) A failure by the Consultant to comply with its obligations under any part of this clause will be a breach of the Contract.
- (h) Nothing in this clause or the Code limits, reduces or derogates from the Consultant's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Consultant of its obligations under this clause will be at no additional cost to the Commonwealth.
- (i) The Consultant acknowledges and agrees that the Commonwealth may take the Consultant's compliance with the Code into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

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ANNEXURE 3 - FEE PAYMENT SCHEDULE

Payment milestone	Payment milestone name	Payment milestone description	Amount (GST exclusive)	Times for submission of payment claims
Planning Phase:				
1.	90% DDR (Part A – Midpoint Submission) review	As described in Annexure 1 - Brief	s47	Subject to the achievement of this milestone
2.	90% DDR (Part B – Final Submission) review	As described in Annexure 1 - Brief		Subject to the achievement of this milestone
Delivery Phase:				
3.	AFT and AFC documentation review	As described in Annexure 1 - Brief		Subject to the achievement of this milestone, per works package
4.	Construction activities	As described in Annexure 1 - Brief		Monthly on the 25th day of each month
5.	End of Defects Liability	As described in Annexure 1 - Brief		Monthly on the 25th day of each month

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ANNEXURE 4 - TABLE OF VARIATION RATES AND PRICES

Role/Position/Item	Name	Employment Classification	Unit	Rate/Price (GST Exclusive)
Core Resources				
Consultant's representative	s22			
Electrical / Communications / Dry Fire				
Electrical / Communications / Dry Fire				
Architecture				
Architecture				
Architecture				
Architecture				
Interiors				
Structural				
Structural				
Structural				
Blast				
Geotech				
Façade				
Vertical transport				
High voltage				
Mechanical / BMS				
Mechanical / BMS				
Hydraulics / Wet Fire				
Hydraulics / Wet Fire				
Fire Safety Engineering				
Fire Safety Engineering				
Fire Safety Engineering				

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Civil Engineering	s22 [REDACTED]
Civil Engineering	
Traffic	
Ecologically Sustainable Design	
Security – Physical and Electronic	
Security – Physical and Electronic	
EMSEC	
Discretionary Specialists	
SCEC consultancy	
Landscape	
Hazardous areas / dangerous goods	
Acoustics	

Employment Classification	24/25 (GST exclusive)
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s22 [REDACTED]
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The parties agree that:

- (a) the Fee is not subject to rise and fall; and

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- (b) the above rates and prices in the Table of Variation Rates and Prices are subject to an increase adjustment (using the formula set out below), in line with the published Producer Price Index, at the start of each Financial Year (commencing 1 July). Specifically, this index is reflective of Table 24 “Professional, Scientific and Technical Services” Index 6923 “Engineering Design and Engineering Consulting. The rates will be adjusted as follows:

$$P_n = P_o \times \frac{I_n}{I_o}$$

$P_n$  = the revised rate or price applying from the most recent annual anniversary of the award date.

$P_o$  = the rate or price applying at the Award Date.

$I_n$  = the latest of the preceding March, June, September or December Price Revision Index published prior to the annual anniversary of the Award Date.

$I_o$  = the latest of the preceding March, June, September or December Price Revision Index published prior to the Award Date.