

Design and Construct - Medium Works Contract (Short Form)

Contract 1A in the Commonwealth
Model Contract Series



The Commonwealth

Model Contracts for Infrastructure, Extractives and Energy Industries in Commonwealth Countries

The Commonwealth Secretariat recognises the need for standardised contracts within the infrastructure, extractives and energy industries across its member countries.

The lack of uniformity in these contracts has led to inefficiencies, imbalances and loopholes that do not serve the best interests of the member countries. To address this issue, the Secretariat is developing model contracts that foster fairness, balance and sustainability in investment relationships, while protecting the interests of governments and citizens.

The core purpose of this standardisation is to consolidate a comprehensive array of infrastructure contracts, facilitating easy access for relevant stakeholders. By providing a singular point of access, it eliminates redundancy and ambiguity, allowing government officials and authorised parties to efficiently source and acquire requisite contracts. This strategic initiative is poised to revolutionise and improve the procurement process within Commonwealth member countries.

This series of model contracts will serve as valuable resources for government lawyers, aiding them in drafting and reviewing foreign investment projects and related contracts. By promoting fairness, balance and sustainability, these model contracts will contribute to the overall development and economic wellbeing of Commonwealth member countries.

Moreover, the establishment of this central repository underlines the commitment of Commonwealth member countries to fostering a conducive environment for sustainable investments.

To deliver this suite of model contracts, the Commonwealth Secretariat has constituted a working group comprising of officials nominated by 19 member countries who are leveraging their expertise, and working with a designated expert, to conclude the project.

Design and Construct - Medium Works Contract (Short Form)

Contract 1A in the Commonwealth Model Contract Series



The Commonwealth

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Design and Construct Medium Works Contract (Short Form)

This agreement sets out contractual terms on which a Principal engages a Contractor to perform medium-scale construction works (valued between US\$200,000 and \$5 million), which may include both design and construction elements. The contract defines the parties' primary obligations, with the Contractor responsible for performing activities and constructing works in accordance with contract documents, obtaining necessary approvals and ensuring quality workmanship and materials. This model has been adapted from content licensed freely under the Creative Commons Attribution 4.0 license by the State of Victoria, Australia.

Design and Construct - Medium Works Contract (Short Form)

Project Title: [## insert]

[##]

(Principal)

[##]

(Contractor)

[Guidance Note: This Medium Works Contract (Short Form) is intended for use in procurements in the range of US\$200,000 (excl. [GST/VAT/Applicable Tax]) to \$5 million (excl. [GST/VAT/Applicable Tax]) that involve construction, or design and construction.

It is not intended for use where the contract value exceeds \$5 million (excl. [GST/VAT/Applicable Tax]) or where, regardless of the contract value, the procurement is large or complex (for example, where the procurement is in a sensitive operational environment, such as a prison or hospital). It does not include provisions specific to those delivery scenarios, or provisions that would typically be seen in contracts for more significant projects.

Users should consider and determine which Government procurement policies apply to their project before using this contract.

Guidance Notes are included in this document and need to be completed and/or removed as indicated. Agencies should complete items highlighted:]

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Contract Details

| | | | | |
|--|--|--|--|--|
| Project Details: | Project Title: [## insert] Project ID: [## insert] File No: [## insert] | | | |
| Approvals: (Clause 1(b)) | Approvals to be obtained by the Principal (if any): [## insert. If no Approvals are to be obtained by the Principal, insert "None stated".] | | | |
| Access Date: (Clause 2(a)) | The later of: (a) the date on which the Contractor has provided: (i) evidence of insurance in accordance with clause 12; and (ii) if applicable, Approved Security in accordance with clause 11(a); and (b) [## insert date] | | | |
| Design: (Clause 3) | Clause 3 applies: <input type="checkbox"/> Yes <input type="checkbox"/> No [## tick applicable box]. | | | |
| Authorized Representatives: (Clause 4) | Principal's Representative: Name: [## insert name] Position: [## insert position] Address: [## insert address (not a PO box)] Email: [## insert email address] Tel: [## insert Telephone Number] | | Contractor's Representative: Name: [## insert name] Position: [## insert position] Address: [## insert address (not a PO box)] Email: [## insert email address] Tel: [## insert Telephone Number] | |
| Contractor's Margin: (Clause 5(b)) | (a) Contractor's Margin (clause 5(b)(i)): [## insert percentage] % <i>(if nothing stated 10%)</i> (b) Percentage of Contractor's Margin to be applied where there is a reduction to the Contract Sum (clause 5(b)(ii)): [## insert percentage] % <i>(if nothing stated 50%)</i> | | | |
| Provisional Sums: (Clause 6) | Provisional Sum Item | Direct cost (excl. [GST/VAT/Apply cable Tax]) | Contractor's Margin (excl. [GST/VAT/Apply cable Tax]) | Provisional Sum (excl. [GST/VAT/Apply cable Tax]) |
| | [## insert. If there are no Provisional Sum Items, insert "None stated"] | [## insert. If there are no Provisional Sum Items, insert "None stated"] | [## insert. If there are no Provisional Sum Items, insert "None stated"] | [## insert. If there are no Provisional Sum Items, insert "None stated"] |
| | | | | |
| | | | | |
| Subcontracting: (Clause 7(a)) | Work that must not be subcontracted without the Principal's prior written approval (other than to Approved Subcontractors): [## insert. If there is no such work, insert "None stated".] | | | |
| Approved Subcontractors: (Clauses 7(a) and 46) | [## insert. If there are no Approved Subcontractors, insert "None stated".] | | | |

| | | | | | | | | | |
|---|--|---|----------------------------------|--|---|---|-------------|--|---|
| Does clause 11 (Security) apply?: (Clause 11) | <input type="checkbox"/> Yes <input type="checkbox"/> No [## tick applicable box]. If Yes, the required: <table border="1" data-bbox="437 228 1501 501"> <tr> <td data-bbox="437 228 1078 344">Form of Approved Security is: <i>(If nothing is stated, one Unconditional Undertaking)</i></td> <td data-bbox="1078 228 1501 344">[## insert]</td> </tr> <tr> <td data-bbox="437 344 1078 501">Amount of Approved Security is: <i>(If nothing is stated, 5% of the Contract Sum)</i></td> <td data-bbox="1078 344 1501 501">[## insert [##] (excl. [GST/VAT/Applicable Tax]) or [##] % of the Contract Sum]</td> </tr> </table> [## insert total or %] to be released within 10 Business Days of Practical Completion being achieved | | | | | Form of Approved Security is: <i>(If nothing is stated, one Unconditional Undertaking)</i> | [## insert] | Amount of Approved Security is: <i>(If nothing is stated, 5% of the Contract Sum)</i> | [## insert [##] (excl. [GST/VAT/Applicable Tax]) or [##] % of the Contract Sum] |
| Form of Approved Security is: <i>(If nothing is stated, one Unconditional Undertaking)</i> | [## insert] | | | | | | | | |
| Amount of Approved Security is: <i>(If nothing is stated, 5% of the Contract Sum)</i> | [## insert [##] (excl. [GST/VAT/Applicable Tax]) or [##] % of the Contract Sum] | | | | | | | | |
| Insurances: (Clause 12) | Policy [## insert e.g. Public liability, Works insurance, workers compensation, motor vehicle and, if design is required under clause 3, Professional Indemnity Insurance] | Persons covered [## insert] | Amount [## insert] | Deductible must not exceed [## insert] | Period to be maintained [## insert] | | | | |
| | [## insert] | [## insert] | [## insert] | [## insert] | [## insert] | | | | |
| | [## insert] | [## insert] | [## insert] | [## insert] | [## insert] | | | | |
| Appointment as Principal Contractor: (Clause 16) | Is the Contractor the Principal Contractor: <input type="checkbox"/> Yes <input type="checkbox"/> No [## tick applicable box]. | | | | | | | | |
| Site: (Clause 17) | As set out in Schedule 3 | | | | | | | | |
| Control of Site: (Clause 20(b)) | Does clause 20(b) apply: <input type="checkbox"/> Yes <input type="checkbox"/> No [## tick applicable box] | | | | | | | | |
| Contract Program: (Clauses 21 and 21(d)(iii)) | Does clause 21 apply: <input type="checkbox"/> Yes <input type="checkbox"/> No [## tick applicable box] If Yes, the intervals for updating the Contract Program are: [## insert] <i>(If nothing is stated, monthly)</i> | | | | | | | | |
| Liquidated damages: (Clause 24(e)) | Rate per day: [## insert] (excl. [GST/VAT/Applicable Tax]) | | | | | | | | |
| Payment: (Clause 26) | (a) Time for submitting payment claims (Clause 26(a)(i)): [## insert] day of each month <i>(If nothing is stated, the 5th day of each month for Contractor's Activities performed to the end of the preceding month)</i> (b) Period for payment: [## insert] Business Days after the issue of a payment certificate | | | | | | | | |

| | |
|--|---|
| | <p><i>(If nothing is stated, the period for payment is 10 Business Days after the issue of a payment certificate)</i></p> <p>(c) Interest rate where interest is payable under clause 26(k): simple interest calculated on a daily basis at the rate for the time being fixed</p> |
| Authorised nominating authority: (Clause 26(h)(iii)) | |
| Compensable Delay Events: (Clause 45) | |
| Contractor: (Clause 45) | <p>Name: [## insert name and ACN]</p> <p>Address: [## insert address (not a PO box)]</p> <p>Email: [## insert email address]</p> |
| Contract Date: (Clause 45) | [## insert] |
| Contract Documents: (Clause 45) | <p>The Contract is constituted by the following documents (in descending order of precedence):</p> <p>(a) these Contract Details;</p> <p>(b) the Contract Conditions, including:</p> <p style="padding-left: 40px;">(i) the Mandatory Government Policy Requirements; and</p> <p style="padding-left: 40px;">(ii) those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 32, but excluding the Schedules;</p> <p>(c) the Project Specific Additional Conditions (if any) set out in Schedule 1;</p> <p>(d) the Scope of Works;</p> <p>(e) the documents in the Schedule of Collateral Documents that are incorporated in the Contract in accordance with clause 33;</p> <p>(f) all other Schedules; and</p> <p>(g) programme</p> |
| Contract Sum: (Clauses 26 and 45) | A lump sum of [## insert] (excl. [GST/VAT/Applicable Tax]), inclusive of Provisional Sums |
| Date for Practical Completion: (Clause 45) | [## insert date or period of time after the Contract Date for Practical Completion.] |
| Defects Liability Period (DLP): (Clause 45) | [## insert weeks/months] following Practical Completion |
| Delay Costs Cap: (Clause 45) | [## insert] per Working Day (excl. [GST/VAT/Applicable Tax]) |
| Works: (Clause 45) | [## insert description], as more fully described in the Scope of Works. |
| Excluded Site Conditions: (Clause 45) | [## insert. If there are no other Excluded Site Conditions, insert “None stated”.] |

| | |
|---|--|
| Principal: (Clause 45) | Name: [## insert name] Address: [## insert address (not a PO box)] Email: [## insert email address] |
| Working Days: (Clause 45) | [## insert] <i>(If nothing stated, means:</i> (a) <i>where clause 21 applies, a day which is not as a working day in, and on which the Contractor is present on Site and performing the Contractor's Activities in accordance with, the Contract Program; or</i> (b) <i>where clause 21 does not apply, Monday to Friday (inclusive), excluding public holidays and RDOs)</i> |
| Schedule of Government Policy Requirements (Project Specific Government Policy Requirements) - provisions incorporated in the Contract: (Clauses 31 and 45) | [## insert list] |

Executed as an agreement

[## insert appropriate execution block for the Principal]

[## insert appropriate execution block for the Contractor]

General Conditions of Contract

1. **Contractor's primary obligations:** The Contractor must:
 - (a) perform the Contractor's Activities and construct the Works:
 - (i) in accordance with the Contract Documents, directions of the Principal (including Variation Orders), all relevant Statutory Requirements and (if applicable) the Final Design;
 - (ii) in a proper and workmanlike manner and exercising the due skill, care and diligence that would be expected of a prudent, qualified, competent and professional contractor; and
 - (iii) using quality materials that are new (unless otherwise specified) and fit for their intended purpose as set out in, or reasonably inferred from, the Contract;
 - (b) apply for and obtain all Approvals (except for Approvals identified in the Contract Details (if any) which are to be obtained by the Principal);
 - (c) if the Contract Details specify that clause 3 applies, ensure that:
 - (i) any designs it prepares (including the Final Design); and
 - (ii) the Works, if constructed in accordance with the Final Design, meet the requirements, and are fit for their intended purpose, as set out in or reasonably inferred from the Contract.
2. **Principal's primary obligations:** The Principal must:
 - (a) on and from the Access Date, give the Contractor non-exclusive access to the Site sufficient to enable it to perform the Contractor's Activities and construct the Works; and
 - (b) pay the Contractor the Contract Sum and any other amounts which are payable by the Principal to the Contractor under the Contract, in accordance with the Contract.
3. **Design:** If the Contract Details state that clause 3 applies:
 - (a) the Contractor must develop the preliminary design set out in the Scope of Works and submit a completed, detailed design to the Principal;
 - (b) if the Principal elects to review a design submitted (or resubmitted) by the Contractor:
 - (i) the Principal may, within 10 Business Days after receipt, reject the design (or any part) if it does not comply with the Contract; and
 - (ii) the Contractor must:
 - A. amend and resubmit a design rejected by the Principal, in which event clause 3(b)(i) will re-apply;
 - B. not perform any part of the Contractor's Activities to which a submitted (or resubmitted) design applies until the Principal has had the period specified in clause 3(b)(i) to review, and has not rejected, the design (Final Design);
 - C. construct the Works in accordance with the Final Design; and
 - D. if it wishes to amend a Final Design, submit proposed amendments to the Principal, in which event clause 3(b)(i) will re-apply;

- (c) the Principal does not owe any duty to the Contractor to review a design submitted or resubmitted by the Contractor, or in reviewing a design, to identify any error, omission or non-compliance with the Contract; and
- (d) no review or rejection of or comment on a design (or failure to do any of those things) will:
 - (i) constitute a direction to carry out a Variation (unless it is in a Variation Order);
 - (ii) relieve the Contractor of or alter any of its liabilities or obligations or any of the warranties given by the Contractor, whether under the Contract or otherwise at Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under the Contract or otherwise at Law.

4. Representatives:

- (a) The Principal must ensure that at all times there is a natural person appointed by it as the Principal's Representative who, as at the Contract Date, is the person specified in the Contract Details.
- (b) The Principal's Representative can give all directions, exercise all rights and perform all functions of the Principal under the Contract as agent for the Principal (and not as an independent certifier or valuer).
- (c) The Contractor must ensure that at all times there is a natural person appointed by it as the Contractor's Representative who, as at the Contract Date, is the person specified in the Contract Details.
- (d) A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

5. Variations:

- (a) At any time before Practical Completion the Principal may direct the Contractor to perform a Variation by giving the Contractor a written notice entitled "Variation Order" (Variation Order).
- (b) The Contract Sum will be adjusted for a Variation the subject of a Variation Order by an amount agreed by the parties or, failing agreement, determined by the Principal (acting reasonably and using any applicable fees or rates included in the Contract, but not including anything included in the definition of Contractor's Margin), plus:
 - (i) where there is an increase to the Contract Sum, a further amount calculated by applying the Contractor's Margin to the amount agreed or determined under this clause 5(b); or
 - (ii) where there is a reduction to the Contract Sum, a further amount calculated by applying the percentage of the Contractor's Margin specified in the Contract Details to the amount agreed or determined under this clause 5(b).
- (c) No Variation will invalidate or constitute a repudiation of the Contract.
- (d) If a Variation Order omits any part of the Contractor's Activities or the Works, the Principal may carry out, or engage others to carry out, any work omitted from, or the subject of any reduction in, the Contractor's Activities or the Works.
- (e) If the Contractor considers that a direction given by the Principal (other than a Variation Order) involves a Variation then it must, within 5 Business Days after receiving and before complying with the direction, give written notice to the

Principal. The Principal may, within 5 Business Days after receipt of the Contractor's notice under this clause 5(e):

- (i) issue a Variation Order in respect of the direction;
- (ii) withdraw the direction; or
- (iii) notify the Contractor that it does not agree the direction involves a Variation, in which case the Contractor must comply with the direction,

but if the Principal does not respond to the Contractor's notice within the time prescribed by this clause, the direction which is the subject of the Contractor's notice will be deemed to be withdrawn.

- (f) To the extent permitted by Law, the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim in respect of a direction of the nature referred to in clause 5(e) unless the Contractor has given notice in accordance with that clause.

6. Provisional Sums:

- (a) Provisional Sum Items identified in the Contract Details (if any) form part of the Contractor's Activities, but the Contractor must not perform a Provisional Sum Item unless it is directed to do so under clause 6(b)(i).
- (b) For each Provisional Sum Item the Principal will give the Contractor a direction:
 - (i) to perform the Provisional Sum Item; or
 - (ii) omitting it from the Contract.

A direction under this clause 6(b) does not constitute a Variation Order or involve a Variation.

- (c) If the Principal has not given a direction under clause 6(b) in respect of a Provisional Sum Item by the Date for Practical Completion, the Provisional Sum Item will be deemed to be omitted from the Contract.
- (d) If a Provisional Sum Item is omitted under clause 6(b)(ii) or clause 6(c), then the:
 - (i) Contract Sum is reduced by the corresponding Provisional Sum;
 - (ii) Principal may (or may engage another contractor to) carry out the Provisional Sum Item; and
 - (iii) Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with the omission of the Provisional Sum Item.
- (e) Where the Contractor performs a Provisional Sum Item under clause 6(b)(i) and:
 - (i) the Contractor considers that it has incurred costs exceeding the relevant Provisional Sum, it must promptly notify the Principal and the Contract Sum will be adjusted by the amount of that excess as determined by the Principal (if any) (acting reasonably); or
 - (ii) the Principal considers that the costs incurred by the Contractor are less than the relevant Provisional Sum, the Contract Sum will be decreased by the amount determined by the Principal (acting reasonably).

7. Subcontracting: The Contractor:

- (a) must not, without the Principal's prior written approval, subcontract any work specified in the Contract Details (except to an Approved Subcontractor);
- (b) must ensure that all Subcontracts entered into in connection with the Contract:

- (i) give effect to clauses 29 to 33 (both inclusive);
 - (ii) include provisions which may be reasonably necessary to enable the Contractor to fulfil its obligations to the Principal and are otherwise compatible and consistent with the Contract;
 - (iii) require the Subcontractor to comply with Industrial Relations Laws;
 - (iv) are consistent with the [## Relevant] Act; and
 - (v) comply with the unfair contract terms law set out under [## insert relevant legislation]; and
- (c) is not relieved of any of its obligations or liabilities (whether under the Contract or otherwise at Law) because of any subcontracting and remains responsible (and vicariously liable to the Principal) for acts, defaults and omissions of Subcontractors.
8. **Removal of persons:** If the Principal considers that a person is incompetent or negligent, it may direct the Contractor to remove that person from the Site and the Contractor's Activities.
9. **Meetings and reports:** The Contractor must prepare and submit reports, and attend and participate in meetings, as specified in the Contract or as otherwise directed by the Principal.
10. **Testing:** The Contractor must allow the Principal (and any person authorised by the Principal) to inspect or test any part of the Contractor's Activities or the Works, and must carry out:
- (a) all inspections and tests required by the Contract; and
 - (b) any additional inspections and tests directed by the Principal.
- If any additional inspection or test directed under clause 10(b) does not disclose a Defect, the Contract Sum will be increased by the extra costs reasonably and necessarily incurred by the Contractor in performing the inspection or test, as determined by the Principal (acting reasonably).
11. **Security:**
- (a) If the Contract Details state that this clause 11 applies the Contractor must, within 10 Business Days after the Contract Date, provide the Principal with security in the form of Approved Security and in the amount specified in the Contract Details.
 - (b) Subject to its rights under the Contract or at Law, the Principal must release:
 - (i) within 10 Business Days after Practical Completion, the percentage of the Approved Security then held as specified in the Contract Details; and
 - (ii) the balance of the Approved Security held within 20 Business Days after the last to occur of:
 - A. the expiry of the Defects Liability Period (DLP); and
 - B. the Contractor having rectified all Defects notified during the DLP in accordance with the Contract.
 - (c) The Principal is not obliged to pay the Contractor interest on the Approved Security or the proceeds of the Approved Security if it is converted into cash and does not hold the proceeds or money referred to in this clause on trust for the Contractor.

12. **Insurance:**

- (a) On and from the Contract Date the Contractor must have in place, and thereafter maintain, insurances in the amounts specified in the Contract Details, that comply with the other requirements specified in the Contract Details, and that are with insurers and on terms acceptable to the Principal (acting reasonably).
 - (b) Before commencing the Contractor's Activities and thereafter within 5 Business Days of a request by the Principal to do so, the Contractor must produce evidence satisfactory to the Principal of its compliance with clause 12(a), including by providing certified copies of each insurance policy or, if copies cannot reasonably be provided, certificates of currency (together with policy schedules).
 - (c) The Contractor must:
 - (i) immediately notify the Principal in writing of any occurrence that may give rise to a claim under an insurance policy under clause 12(a) and keep the Principal informed of developments;
 - (ii) comply with the terms of each insurance policy under clause 12(a);
 - (iii) not do, permit to be done or omit to do anything which prejudices any insurance policy; and
 - (iv) maintain the insurance policies required by clause 12(a) for the durations specified in the Contract Details.
 - (d) If an insurance policy under clause 12(a) is to be effected in the names of more than one insured, the Contractor must ensure that the policy includes a clause by which the insurer agrees:
 - (i) that the term 'insured' and all insuring agreements and endorsements (except for the overall limit of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
 - (ii) to waive all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
 - (iii) that any failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
 - (iv) that any non-disclosure, misrepresentation (whether fraudulent or otherwise), breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim on the policy; and
 - (v) that a notice to the insurer by one insured will be deemed to be notice by all insured parties.
 - (e) Where the Contractor is not required to effect and maintain insurances covering public liability or loss or damage in relation to the Works under clause 12(a), the Principal must obtain either or both of a policy of insurance covering public liability and loss or damage in relation to the Works and will ensure that it covers the parties and is for the amounts and periods specified in the Contract Details.
13. **Risk:** The Contractor bears the risk of any loss of or damage to the Works occurring:
- (a) before Practical Completion; and
 - (b) thereafter, during the DLP if the loss or damage arises from a Defect or any act, default or omission of the Contractor,
- except to the extent caused by a negligent act or omission of the Principal or a breach of the Contract by the Principal.
14. **Indemnity:** The Contractor indemnifies the Principal from and against any Claim or Loss suffered or incurred by the Principal arising out of or in connection with any:

- (a) loss of or damage to property of the Principal (whether owned, leased, licensed or controlled by the Principal), including the Site and any other property in or upon which the Works are being carried out; and
 - (b) liability to, or Claim against the Principal by, any person in respect of personal injury or death or loss of or damage to any property,
- which arises out of or in connection with the Contractor's Activities, except to the extent caused by a negligent act or omission of the Principal or a breach of the Contract by the Principal.
15. **Occupational Health and Safety (OH&S):** The Contractor must:
- (a) ensure, so far as is reasonably practicable, the health and safety of workers and any other persons impacted by the Contractor's Activities; and
 - (b) comply with the requirements of all OH&S Laws and not do or fail to do anything which may result in the Principal being in breach of any OH&S Law.
16. **Principal Contractor:** If the Contract Details state that the Contractor is appointed by the Principal (or owner of the Site) as the Principal Contractor, the Contractor accepts that appointment, acknowledges that it has management and control of the Site for the period of its appointment and must comply, at its own cost, with all obligations imposed on a Principal Contractor by the OH&S Laws.
17. **Site:** The Contractor:
- (a) warrants that before entering into the Contract it did everything that would be expected of a prudent, qualified, competent and professional contractor in assessing the risks which it is assuming under the Contract in respect of the Site Conditions;
 - (b) acknowledges and agrees that:
 - (i) any information provided to the Contractor by or on behalf of the Principal in respect of the Site Conditions was provided for its information only and does not form part of the Contract (Site Information); and
 - (ii) the Principal does not make any representation as to the completeness, accuracy or adequacy of any Site information; and
 - (c) to the extent permitted by Law, is not entitled to make (and the Principal will not be liable upon) any Claim in connection with any Site information.
18. **Industrial Relations**
- (a) The Contractor warrants that:
 - (i) before the Contract Date, it informed itself of all matters relevant to the engagement of labour in connection with the Contractor's Activities; and
 - (ii) all labour engaged by the Contractor or a Subcontractor in connection with the Contractor's Activities will be engaged in a manner which allows the Contractor to comply with its obligations under the Contract.
 - (b) The Contractor acknowledges and agrees that it is responsible for, at its own cost:
 - (i) the management of employees and industrial relations matters in connection with the Contractor's Activities; and
 - (ii) the prompt payment of all salaries, wages, commissions, allowances and other remuneration to employees, for the deduction and payment of applicable taxes, levies and charges, and for the remittance of such sums to tax or other authorities.

- (c) The Contractor must:
 - (i) comply (and ensure that all Subcontractors comply) with all Industrial Relations Laws and on request, provide the Principal with evidence of such compliance;
 - (ii) co-operate (and ensure that all Subcontractors co-operate) with any other contractors to maintain, to the extent permitted by Law, a stable industrial relations environment;
 - (iii) on request by the Principal, attend meetings convened by the Principal for the purpose of discussing employment or industrial relations matters relevant or relating to the Contractor's Activities or the Site;
 - (iv) immediately advise the Principal in writing of any matter that impacts the ability of the Contractor to perform the Contractor's Activities in a manner that is consistent with this clause 18; and
 - (v) if a sham contracting arrangement is proven to have been entered into in relation to the Contractor's Activities, either pay the amount of the underpayment or otherwise ensure that it is paid by the relevant Subcontractor.

19. Latent Conditions:

- (a) If the Contractor considers that it has encountered a Latent Condition it must give written notice to the Principal not later than 5 Business Days after the Latent Condition is encountered (and if possible, before it is disturbed).
- (b) A notice under clause 19(a) must specify the Latent Condition encountered and:
 - (i) the additional work and resources required to deal with the Latent Condition; and
 - (ii) the time the Contractor anticipates will be required to deal with the Latent Condition and any delay in achieving Practical Completion.
- (c) Within 10 Business Days after receipt of a notice under clause 19(a), the Principal will:
 - (i) notify the Contractor whether or not it agrees a Latent Condition has been encountered; and
 - (ii) regardless of whether or not it agrees that a Latent Condition has been encountered, direct the Contractor as to the course it must adopt to deal with the Latent Condition (or Site Condition, as the case may be).
- (d) If the Contractor has encountered a Latent Condition:
 - (i) the Latent Condition will be a Delay Event and a Compensable Delay Event; and
 - (ii) the Contractor will be entitled to have the Contract Sum increased by the extra direct (non-time related) costs reasonably incurred by the Contractor for the period after the giving of notice under clause 19(a), which arise directly from the Latent Condition and the Principal's direction under clause 19(c)(ii), as determined by the Principal (acting reasonably).
- (e) The Contractor is not entitled to recover or otherwise to make a Claim for, any costs in connection with a Latent Condition (including for delay costs under clause 23) that are incurred earlier than 5 Business Days before the date on which the Contractor gave notice under clause 19(a).
- (f) To the extent permitted by Law, the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with

a Site Condition, a Latent Condition or a Principal's direction under clause 19(c)(ii) other than as permitted by clause 19(d).

- (g) If the Principal considers that a direction under clause 19(c)(ii) has resulted in a reduction in the cost to the Contractor of performing the Contractor's Activities, the Contract Sum will be decreased by an amount determined by the Principal (acting reasonably).

20. Environment:

- (a) Without limiting its other obligations under the Contract, the Contractor must:
 - (i) comply with all environmental obligations imposed on the Contractor under any applicable Statutory Requirement, including to minimise the risks of harm to human health or the environment;
 - (ii) supervise and monitor the performance of all environmental obligations imposed on the Contractor by the Contract or by Law;
 - (iii) not cause or contribute to:
 - A. any breach of an applicable Statutory Requirement by the Principal; or
 - B. the discharge, release or emission of any contamination into the environment; and
 - (iv) keep the Principal informed of all matters relating to the performance or non-performance of the Contractor's environmental obligations.
- (b) If the Contract Details state this clause 20(b) applies, then despite anything to the contrary the Contractor acknowledges and agrees that for the period during which it has access to the Site under clause 2(a), it:
 - (i) has management or control of the Site; and
 - (ii) must comply with all obligations imposed on a person with management or control of land under any applicable Law.

21. Program

- (a) If the Contract Details state this clause 21 applies, within 5 Business Days after the Contract Date, the Contractor must give the Principal a program which must contain the details, and be in the form, required by the Contract Documents or, if requirements are not specified in the Contract, as required by the Principal.
- (b) The Principal may (acting reasonably) review and comment on or reject a program submitted or resubmitted by the Contractor within 5 Business Days after receipt.
- (c) A program which has been submitted by the Contractor under clause 21(a) and has not been rejected by the Principal under clause 21(b) will be the "Contract Program" for the purposes of the Contract.
- (d) The Contractor must:
 - (i) amend and resubmit a program rejected by the Principal, whereupon clause 21(b) will reapply;
 - (ii) not, without reasonable cause, depart from the Contract Program; and
 - (iii) update the Contract Program at the intervals specified in Contract Details (and at any other times reasonably requested by the Principal) to take account of delays or other changes, and provide the updated Contract Program to the Principal.

- (e) Any comment on or review or rejection of a program by the Principal (or failure to do any one of those things) will not:
 - (i) relieve the Contractor of any of its obligations under the Contract; or
 - (ii) evidence or constitute a direction by the Principal to accelerate, disrupt, prolong or vary any of the Contractor's Activities, extend the Date for Practical Completion or affect the time for the performance of the Principal's obligations.
- (f) The Principal may use a Contract Program to monitor progress and assess Payment Claims.

22. Progress and suspension:

- (a) The Contractor must regularly and diligently progress the Contractor's Activities.
- (b) The Principal may at any time direct the Contractor to suspend, and after a suspension has been directed, to recommence, performance of all or any part of the Contractor's Activities.
- (c) If the reason the Principal directs a suspension is due to an act, default or omission of the Contractor, then the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with the suspension or direction.
- (d) If clause 22(c) does not apply in respect of a suspension directed by the Principal, the Contractor will be entitled to:
 - (i) claim an extension of time; and
 - (ii) have the Contract Sum increased by the extra direct (non-time related) costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Principal (acting reasonably).

23. Delay:

- (a) If the Contractor has been or will be delayed in achieving Practical Completion by the Date for Practical Completion by a Delay Event, the Contractor:
 - (i) must take all reasonable steps to overcome, mitigate or minimise the delay; and
 - (ii) if it wishes to claim an extension of time as a consequence of the Delay Event, then it must, within 10 Business Days after the date on which it first became aware of the Delay Event (or the date on which a competent contractor could reasonably have first become aware of the Delay Event, whichever is earlier), give the Principal a written claim:
 - A. setting out details of the delay and the extension claimed; and
 - B. clearly demonstrating how the Delay Event affects activities that are on the critical path for achieving Practical Completion by the Date for Practical Completion in the then current Contract Program and that the Delay Event has delayed or will delay Practical Completion by the number of days claimed.
- (b) Within 10 Business Days after receipt of a notice under clause 23(a), the Principal will determine and notify the Contractor of a reasonable extension of time to the Date for Practical Completion if the Contractor has been or will be delayed in achieving Practical Completion by the Date for Practical Completion by the Delay Event. A delay in granting, or failing to grant, a reasonable extension of time will not cause the Date for Practical Completion to be set at large.

- (c) Whether or not the Contractor has given a notice under clause 23(a) or is entitled to make a claim for an extension of time, the Principal may at any time and from time to time extend the Date for Practical Completion. The Principal is not required to exercise its discretion under this clause 23(c) for the benefit of the Contractor.
- (d) Subject to clause 23(e), if the Contractor is granted an extension of time to the Date for Practical Completion in respect of a Compensable Delay Event then the Contract Sum will be increased by an amount determined by the Principal as being the extra direct costs reasonably and actually incurred by the Contractor on account of the Compensable Delay Event, for each Working Day by which the Date for Practical Completion is extended due to the Compensable Delay Event.
- (e) The costs under clause 23(d) must not:
 - (i) exceed the Delay Costs Cap per Working Day; or
 - (ii) include any amount for profit or loss of profit or offsite overheads.
- (f) The costs payable in accordance with clause 23(d) are the Contractor's sole remedy (and are a limitation on the Principal's liability) for any Loss suffered or incurred by the Contractor which arises out of or in connection with any delay or disruption in the performance of the Contractor's Activities.

24. Practical Completion and liquidated damages:

- (a) The Contractor must achieve Practical Completion by the Date for Practical Completion.
- (b) The Contractor must promptly notify the Principal in writing when it considers that Practical Completion has been achieved.
- (c) The Principal will:
 - (i) inspect the Works after receipt of a notice under clause 24(b); and
 - (ii) notify the Contractor in writing when it is satisfied that Practical Completion has been achieved (whether or not a notice under clause 24(b) has been given).
- (d) No notice issued by the Principal under clause 24(c)(ii) will:
 - (i) constitute any approval or agreement by the Principal that the Works meet the requirements of the Contract; or
 - (ii) limit or otherwise affect the Principal's rights against the Contractor, whether under the Contract or otherwise at Law.
- (e) If the Contractor does not achieve Practical Completion by the Date for Practical Completion, it must pay the Principal liquidated damages at the rate specified in the Contract Details for every day after the Date for Practical Completion until the earlier of the date on which:
 - (i) Practical Completion is achieved;
 - (ii) the Contract is terminated; or
 - (iii) the Principal takes the relevant Contractor's Activities out of the hands of the Contractor.

The amount payable under this clause 24(e) will be a debt due and payable by the Contractor to the Principal.

- (f) The parties acknowledge and agree that the liquidated damages under clause 24(e) are a genuine pre-estimate of the Principal's damages if Practical Completion occurs after the Date for Practical Completion, have been agreed in good faith, are reasonable and are not intended as a penalty.

- (g) Despite clause 24(f), if all or any part of this clause 24 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the Principal from receiving the amount of liquidated damages payable under clause 24(e), the Principal will be entitled to recover common law damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion, but the Contractor's liability for such damages will be no greater than the liability it would have had if clause 24(e) had not been void, invalid, unenforceable or otherwise inoperative.

25. Defects:

- (a) Subject to clause 25(b)(ii), the Contractor must correct all Defects:
 - (i) so that the Works comply with the Contract; and
 - (ii) to the satisfaction of the Principal (acting reasonably).
- (b) At any time before the expiry of the DLP the Principal may, if it discovers or believes there is a Defect, give written notice to the Contractor specifying the Defect and either:
 - (i) require the Contractor to rectify the Defect (or any part) within such time as the Principal directs; or
 - (ii) advise the Contractor that the Principal accepts the relevant work (or any part), despite the Defect.
- (c) If the Contractor does not comply with clause 25(b)(i), the Principal may rectify (or engage another contractor to rectify) the Defect and the cost incurred by the Principal in so doing will be a debt due and payable by the Contractor to the Principal.
- (d) If the Principal gives the Contractor a direction under clause 25(b)(ii), the amount determined by the Principal (acting reasonably) which represents the cost of rectifying the Defect will be a debt due and payable by the Contractor to the Principal.
- (e) Neither the Principal's rights nor the Contractor's liability (whether under the Contract or otherwise at Law and whether before or after the end of the DLP) will be affected or limited by the Principal's rights under this clause 25, by any failure of the Principal to exercise any such rights, or by any direction of the Principal.

26. Contract Sum and payment:

- (a) The Contractor must submit payment claims to the Principal for payment of the part of the Contract Sum that equates to the part of the Contractor's Activities performed as at the date of the payment claim, and any other amounts payable under the Contract:
 - (i) until Practical Completion or termination of the Contract (whichever is earlier), at the times specified in the Contract Details; and
 - (ii) unless terminated earlier, within 20 Business Days after:
 - A. the date on which the Principal gives notice under clause 24(c)(ii); and
 - B. the expiry of the DLP (Final Payment Claim).
- (b) Payment claims must include details of amounts claimed, supporting documents and a statutory declaration regarding payment to employees and Subcontractors engaged by the Contractor in the form set out in the Schedule of Collateral Documents (or in such other form as is required by the Principal, acting reasonably) and signed by a person authorised to do so on behalf of the Contractor.

- (c) The Final Payment Claim must comply with clause 26(b) and must include all amounts claimed by the Contractor on account of the Contract Sum and all other amounts payable under the Contract in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract.
- (d) After the time for submitting a Final Payment Claim has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract, except for any Claim included in a Final Payment Claim which is given to the Principal within the time required by, and in accordance with, clause 26(c).
- (e) Within 10 Business Days of receiving a payment claim, the Principal must issue a payment certificate setting out:
 - (i) the amount due and payable to, and which the Principal proposes paying, the Contractor (or the amount due and payable to the Principal); and
 - (ii) if an amount payable to the Contractor is less than that claimed, reasons for the difference.

If the Contractor does not submit a payment claim under clause 26(a), the Principal may nevertheless issue a payment certificate.

- (f) The Contractor must, within 3 Business Days after receipt of a payment certificate, give the Principal a tax invoice for the amount stated as payable to the Contractor in the payment certificate.
- (g) Subject to clause 26(i), within the time specified in the Contract Details the Principal must pay the Contractor (or the Contractor must pay the Principal) the amount stated in the payment certificate.
- (h) For the purposes of the [## Relevant] Act:
 - (i) each date for submitting a payment claim is a 'reference date' and each payment certificate is a 'payment schedule' (as defined in the [## Relevant] Act);
 - (ii) each amount stated as payable in a payment certificate is the amount of the 'progress payment' (as defined in the [## Relevant] Act) calculated in accordance with the Contract; and
 - (iii) the parties agree that the authorised nominating authority is as specified in the Contract Details.
- (i) The Principal may at any time and from time to time deduct from monies otherwise due to the Contractor:
 - (i) any debt or other money due from the Contractor to the Principal; or
 - (ii) any claim to money that the Principal asserts in good faith against the Contractor (for damages or otherwise),
 whether under the Contract or otherwise at Law.
- (j) Any payment under the Contract to the Contractor is:
 - (i) made on account only; and
 - (ii) not an admission or evidence that the subject Contractor's Activities have been carried out in accordance with the Contract.
- (k) If an amount is owing by the Principal under clause 26(g), is not in dispute and has been outstanding for more than 10 Business Days after the due date for payment,

the Principal will, on demand by the Contractor, pay interest on that amount at the rate set out in the Contract Details.

27. [GST/VAT/Applicable Tax]:

- (a) Subject to clause 27(b), if any supply arises out of or in connection with the Contract or Contractor's Activities for which [GST/VAT/Applicable Tax] is not otherwise provided, the party making the supply (Supplier) is entitled to increase the amount payable for the supply by the amount of any applicable [GST/VAT/Applicable Tax].
- (b) If an amount is payable to the Supplier arising out of or in connection with the Contract which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply is to be reduced by any input tax credits available to the Supplier (or a representative member on its behalf) in respect of such costs before being increased for any applicable [GST/VAT/Applicable Tax] under clause 27(a).
- (c) As a condition precedent to any amount on account of [GST/VAT/Applicable Tax] being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must give the recipient a tax invoice in respect of that supply.
- (d) If the amount paid to the Supplier in respect of the [GST/VAT/Applicable Tax] (because of an adjustment or otherwise) is:
 - (i) more than the [GST/VAT/Applicable Tax] on the supply, the Supplier must refund the excess to the recipient; or
 - (ii) less than the [GST/VAT/Applicable Tax] on the supply, the recipient must pay the deficiency to the Supplier.

28. Default and termination:

- (a) If the Contractor fails to comply with an obligation under the Contract, the Principal may give written notice requiring the Contractor to remedy the breach, or otherwise to overcome the effects of the breach to the satisfaction of the Principal (acting reasonably), within 10 Business Days (or any longer period specified by the Principal) of receiving the notice.
- (b) If the Contractor:
 - (i) does not remedy or otherwise overcome the effects of the breach to the satisfaction of the Principal (acting reasonably) within the time required under clause 28(a) (or such longer period agreed by the parties); or
 - (ii) is unable to pay its debts as and when they fall due, is wound up or declared insolvent or if a receiver, receiver and manager, controller, administrator, liquidator, provisional liquidator, trustee in bankruptcy or similar officer is appointed in respect of the Contractor or any asset of the Contractor,the Principal may immediately, by written notice to the Contractor:
 - (iii) take out of the Contractor's hands all or part of the Contractor's Activities to be completed; or
 - (iv) terminate the Contract.
- (c) If clause 28(b)(iii) applies, the Principal:
 - (i) may complete those Contractor's Activities either itself or by engaging another contractor; and
 - (ii) will determine the cost that it reasonably incurred in completing those Contractor's Activities and the difference between that amount and the

amount that would have been paid to the Contractor if it had completed those Contractor's Activities will be a debt due and payable by the Contractor to the Principal.

- (d) If clause 28(b)(iv) applies:
 - (i) the Contractor will not be entitled to further payment under the Contract; and
 - (ii) the Principal will be entitled to recover from the Contractor any Loss suffered or incurred by the Principal arising out of or in connection with the termination.
- (e) The Principal may at any time for its sole convenience and for any reason, terminate the Contract by giving the Contractor not less than 10 Business Days' prior written notice and the termination will take effect on the date specified in the notice. In that event the Contractor will be entitled to be paid:
 - (i) in accordance with the Contract, for Contractor's Activities performed up to the date of termination;
 - (ii) the cost of goods and materials reasonably ordered by the Contractor for which the Contractor is legally bound to pay (provided title in those goods and materials vests in the Principal on payment); and
 - (iii) the reasonable cost of removing from the Site all labour, plant, equipment and other things used in the Contractor's Activities.

The Contractor must take all steps possible to mitigate the costs referred to in clauses 28(e)(ii) and 28(e)(iii). In no case will the total amount payable to the Contractor under clause 28(e), when added to other amounts already paid or payable to the Contractor under the Contract, be more than the Contract Sum. The amount payable under clause 28(e) will be a limitation on the Principal's liability to the Contractor arising out of or in connection with the termination under clause 28(e). Following termination, the Principal may complete the Contractor's Activities itself or by engaging another contractor.

- (f) If the Contract is terminated, for any reason, the Contractor must:
 - (i) cease work within the time directed by the Principal;
 - (ii) hand over all documents relevant to the Contractor's Activities or the Works (including the Final Design (if applicable) and any other documents prepared by the Contractor);
 - (iii) take such action as is necessary to make the Site safe, and secure the Works, prior to de-mobilisation from Site; and
 - (iv) demobilise and remove from the Site all labour, plant, equipment and other things used in the Contractor's Activities.
- (g) If the Principal fails to pay the Contractor an amount that is due and payable under the Contract, the Contractor may give the Principal written notice requiring it to remedy the breach within 10 Business Days (or any longer period specified by the Contractor) of receiving the notice.
- (h) If, within the time specified in a notice under clause 28(g) (or such longer period agreed by the parties), the Principal fails to remedy the breach the subject of that notice, the Contractor may by written notice to the Principal suspend all or part of the Contractor's Activities.
- (i) If the Principal:

- (i) remedies a breach the subject of a notice under clause 28(g), the Contractor must promptly recommence performance of the Contractor's Activities suspended under clause 28(h); or
- (ii) fails to remedy the breach the subject of a notice under clause 28(g) within 20 Business Days from the notice of suspension under clause 28(h) (or such longer period agreed by the parties), the Contractor may, by written notice to the Principal, terminate the Contract.
- (j) If the Contract is terminated under clause 28(i), the Contractor will be entitled to claim damages but will not be entitled to a quantum meruit.
- (k) In the event that this contract was procured, facilitated, awarded and/or otherwise generated through corrupt or other improper practices, in whole or in part, it will be deemed to be void ab initio.

29. Intellectual property:

- (a) The Contractor grants to the Principal an irrevocable, non-exclusive, perpetual, transferrable, royalty-free worldwide licence to:
 - (i) exercise all rights of the owner of the Intellectual Property Rights in any design, materials and documents (including any Final Design) provided by the Contractor (Project Material), including to use, re-use, reproduce, communicate to the public, modify, adapt and update the Project Material; and
 - (ii) use the Contractor's Background IP to obtain the benefit of the Project Material and the Works, including to use, re-use, reproduce, communicate to the public, modify, adapt and update the Project Material and the Works.
- (b) The licence under clause 29(a) arises immediately upon creation in the case of the Project Material, and on the Contract Date in the case of the Contractor's Background IP, includes an unlimited right to sublicense, survives the expiry or termination of the Contract and, without limitation extends to:
 - (i) any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the Works;
 - (ii) in respect of the Project Material, use in any way for any other project delivered by, on behalf of or for the benefit of the Principal or the State; and
 - (iii) in respect of the Contractor's Background IP, the use, re-use, reproduction, communication, modification, adaptation or update of the Project Material.
- (c) The Contractor indemnifies the Principal from and against any Claim or Loss suffered or incurred by the Principal arising out of or in connection with any actual or alleged infringement of any Intellectual Property Right or Moral Right or breach of any Law, which arises out of or in connection with:
 - (i) the use or enjoyment by the Principal (or any nominee or sublicensee of the Principal) of the Project Material or the Works;
 - (ii) the exercise of any rights under clause 29(a)(i) or the use of the Contractor's Background IP under clause 29(a)(ii); or
 - (iii) the Contractor's Activities.
- (d) This clause 29 survives the expiry or termination of the Contract.

30. Moral Rights: The Contractor must:

- (a) not infringe the Moral Rights of an author in carrying out the Contractor's Activities; and

- (b) obtain irrevocable written consents, for the benefit of the Principal and the Contractor, from the authors of works to be incorporated into, or used during the design (if applicable) or construction of the Works, to any:
 - (i) non-attribution or false attribution of the work; and
 - (ii) repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the Project Material or the Works.

This clause 30 survives the expiry or termination of the Contract.

31. Confidentiality:

- (a) Subject to clauses 31(b) and 31(c), the Principal and the Contractor must keep confidential and not disclose any confidential information of the other party (Confidential Information) without the other's prior written consent.
- (b) Each party may disclose Confidential Information if such disclosure is required:
 - (i) by Law or under any government policy, court order or the listing rules of the [## relevant stock exchange];
 - (ii) in the case of the Contractor, to enable the Contractor to perform the Contractor's Activities, provided that the person to whom the information is disclosed agrees to maintain the confidentiality of such information;
 - (iii) in the case of the Principal, to enable the Principal to perform its obligations under the Contract;
 - (iv) to obtain legal or other advice from its advisers provided the adviser to whom the information is disclosed agrees to maintain the confidentiality of such information; or
 - (v) to be made to a court in the course of proceedings to which the disclosing party is a party.
- (c) Without limiting clause 31(b), the Principal (including its representatives) may:
 - (i) disclose any information (including any Confidential Information) if such disclosure is required by or is consistent with the Public Disclosure Requirements; and
 - (ii) publish (on the Internet or otherwise) the name of the Contractor and the Contract Sum together with the terms of the Contract.
- (d) If so directed by the Principal, the Contractor must immediately return to the Principal or delete or destroy any Confidential Information in the custody or control of the Contractor, unless otherwise required by Law.
- (e) Without limiting clause 31(a), the Contractor must:
 - (i) not, without the Principal's prior written consent:
 - A. disclose any information concerning the Contract for distribution through any communications media; or
 - B. make any public disclosures, announcements or statements (including on any website) in relation to the Contract; and
 - (ii) refer to the Principal any enquiries from any media concerning the Contract.
- (f) This clause 31 survives the expiry or termination of the Contract.

32. Government requirements: The Contractor:

- (a) warrants that before the Contract Date it accessed, carefully considered and satisfied itself in relation to the Mandatory Government Policy Requirements and those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 32(b); and
 - (b) agrees that:
 - (i) the Mandatory Government Policy Requirements; and
 - (ii) those of the Project Specific Government Policy Requirements identified in the Contract Details (if any),
 are incorporated in and form part of the Contract and that the Contractor must comply with those requirements.
33. **Collateral Documents:** The Contractor agrees that documents set out in the Schedule of Collateral Documents that are referred to in the Contract are incorporated in and form part of the Contract.
34. **Disputes:**
- (a) Any dispute or difference arising out of or in connection with the Contract or its subject matter or the conduct of either party prior to the Contract (including any question relating to the existence, validity or termination of the Contract) (Dispute), must be resolved in accordance with this clause 34.
 - (b) If a Dispute arises then a party must, if it wants to pursue the Dispute, and prior to the commencement of any proceedings in any court, give notice in writing to the other party specifying the Dispute, providing particulars of the Dispute and stating the position which the party believes is correct (Dispute Notice).
 - (c) If a Dispute Notice is given, then:
 - (i) the parties must procure that their authorised representatives meet and undertake genuine and good faith negotiations within 20 Business Days after the date on which the Dispute Notice is given (or any longer period agreed by the parties in writing), with a view to resolving the Dispute;
 - (ii) any agreement reached between the representatives must be recorded in writing and signed by or on behalf of each party and will be final and binding on the parties; and
 - (iii) if the Dispute is not resolved in accordance with this clause 34 by the expiration of the period referred to in clause 34(c)(i), either party may refer the Dispute to litigation in a court of competent jurisdiction.
 - (d) Despite the existence of a Dispute, each party must continue to comply with, and perform its obligations under, the Contract.
 - (e) Despite clause 34(b), this clause 34 does not prejudice any right a party may have to seek urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights or property.
35. **Notices:**
- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with the Contract must:
 - (i) be given to a party by hand delivery, courier service, prepaid express post or email (except for notices under clauses 28 and 34 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post);

- (ii) be delivered to the address or other details for the party set out in the Contract Details (or as otherwise notified by that party to the other party from time to time under this clause 35); and
 - (iii) must be in legible writing and in English.
- (b) Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with the Contract is taken to be given by the sender and received by the recipient:
- (i) in the case of delivery by hand or courier service, on delivery;
 - (ii) in the case of prepaid express post sent to an address in the same country, on the 3rd Business Day after the date of posting;
 - (iii) in the case of prepaid express post sent to an address in another country, on the 5th Business Day after the date of posting; or
 - (iv) in the case of email, whether or not containing attachments, on the earlier of:
 - A. the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - B. receipt by the sender of an automated message confirming delivery; and
 - C. the time of receipt as acknowledged by the recipient (either orally or in writing),
 provided that if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.
- (c) In the case of notices under clauses 28 and 34, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 35(a), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
- (i) the date the notice sent by email is taken to be received; or
 - (ii) the date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with clause 35(b).
36. **Governing law and jurisdiction:** The Contract is subject to and is to be construed in accordance with the Laws of [## Commonwealth State]. Each party irrevocably:
- (a) submits to the non-exclusive jurisdiction of the courts of [## Commonwealth State], and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to the Contract; and
 - (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 36(a).
37. **Assignment:**
- (a) The Principal may, at any time and without the Contractor's consent, novate the Contract or assign any payment or other right, benefit or interest under the Contract to a State Entity by written notice to the Contractor.

- (b) If the Principal gives notice under clause 37(a), the Contractor must do all things and execute all documents reasonably required by the Principal to give effect to a novation or assignment, including executing a Deed of Novation within 5 Business Days of receipt from the Principal.
 - (c) The Contractor must not assign, transfer, mortgage, pledge, charge or otherwise encumber the Contract or any payment or any other right, benefit or interest of the Contractor without the Principal's prior written consent, which will not be unreasonably withheld.
38. **Discrepancies:** If a party finds any discrepancy, error or ambiguity (Discrepancy) in or between the Contract Documents, it must promptly notify the other party of the Discrepancy. As soon as practicable, the Principal will then direct the Contractor how to resolve the Discrepancy, which will be to apply either:
- (a) if the Discrepancy is between two or more of the Contract Documents, the order of precedence in which those Contract Documents appear in the Contract Details; or
 - (b) if the Discrepancy is in one of the Contract Documents, the higher, greater or more onerous standard, quality, quantum, scope or requirement specified in that Contract Document.
39. **Severance:** Any provision of 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 of the other provisions of the Contract.
40. **Counterparts:** The Contract may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes an original of the Contract, and all together constitute one Contract.
41. **Electronic signature:** Each party warrants that immediately prior to entering into the Contract, it has unconditionally consented to:
- (a) the requirement for a signature under any Law being met; and
 - (b) any other party to the Contract executing it,
- by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.
42. **Electronic exchange:** Without limitation, the parties agree that their communication of an offer or acceptance of the Contract, including exchanging counterparts, may be by any electronic method that evidences that party's execution of the Contract.
43. **Interpretation:** Unless the Contract indicates a contrary intention:
- (a) "includes" in any form is not a word of limitation;
 - (b) a reference to "[## Currency Symbol]" or "[## Currency]" is to [## Commonwealth State] currency;
 - (c) if the day on or by which anything is to be done under the Contract is not a Business Day, that thing must be done no later than the next Business Day;
 - (d) each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision;
 - (e) a reference to time is a reference to time in [## insert location]; and
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacement.

44. **Principal's discretions:**

- (a) Unless expressly required under the Contract to act reasonably, the Principal can exercise any right, power or remedy in its absolute and unfettered discretion.
- (b) Without limiting clause 44(a) the term "may", if used in the context of a right exercisable by the Principal, means the Principal has no obligation to do so.

45. **Definitions:** In the Contract:

Access Date has the meaning given in the Contract Details.

Act of Prevention means:

- a) a breach of the Contract by the Principal;
- b) an act or omission of the Principal (other than acts or omissions permitted, authorised or required under the Contract or by Law); or
- c) a Variation Order.

Approval means any licence, permit, registration, consent, assessment, approval, authorisation, determination, certificate, accreditation, clearance, permission or the like which is required by an authority or under any Law to be issued, obtained, held or satisfied to perform the Contractor's Activities or occupy or use the Works.

Approved Security means:

- a) an Unconditional Undertaking;
- b) a bond issued by the government of [## Commonwealth State]; or
- c) such other form of security as may be approved in writing by the Principal.

Approved Subcontractor means an approved Subcontractor identified in the Contract Details.

Background IP means any Intellectual Property Rights developed by a party independent of the Contract, or prior to the Contract Date, and that are used in the performance of the Contractor's Activities.

Business Day means a day that is not:

- a) a Saturday or Sunday; or
- b) a day that is wholly or partly observed as a public holiday throughout [## Commonwealth State].

Claim includes any claim, action, demand, suit or proceeding (including by way of contribution or indemnity), made in any way in connection with, the Contract, the Contractor's Activities or the Works or otherwise at Law or in equity, including under any statute, in tort or for restitution.

Compensable Delay Event means a Delay Event specified in the Contract Details to be a Compensable Delay Event.

Confidential Information has the meaning given in clause 31(a).

Contract means the contract between the Principal and the Contractor constituted by the Contract Documents.

Contract Conditions means clauses 1 to 45 (both inclusive), the Mandatory Government Policy Requirements and those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 32(b).

Contract Date has the meaning given in the Contract Details.

Contract Details means the Contract Details set out at the commencement of the Contract.

Contract Documents means the documents so described in the Contract Details.

Contract Program has the meaning given in clause 21(c).

Contract Sum means the amount specified in the Contract Details which is inclusive of Provisional Sums but subject to adjustment in accordance with the Contract.

Contractor means the person specified in the Contract Details.

Contractor's Activities means all things and tasks which the Contractor is or may be required to do to comply with its Contract obligations, including constructing the Works, rectifying defects and, if applicable, undertaking design work (including preparing the Final Design).

Contractor's Margin means the percentage specified in the Contract Details for preliminaries, overhead costs and profit.

Date for Practical Completion means the date or period specified in the Contract Details, as adjusted under the Contract.

Deed of Novation means a deed of novation in the form set out in the Schedule of Collateral Documents (or in such other form as the Principal may approve in writing).

Defect means any:

- a) defect, deficiency, error, fault or omission in materials, workmanship or the Contractor's Activities (including in any rectification work performed under clause 25); and
- b) other aspect of the Works which is not in accordance with the Contract.

Defects Liability Period or DLP means the period specified in the Contract Details, starting on the date the Principal is satisfied Practical Completion has been achieved.

Delay Costs Cap means the amount per Working Day specified in the Contract Details.

Delay Event means any of the following:

- a) an Act of Prevention;
- b) a suspension to which clause 22(d) applies; and
- c) a Latent Condition.

Discrepancy has the meaning given in clause 38.

Dispute has the meaning given in clause 34(a).

Dispute Notice has the meaning given in clause 34(b).

Excluded Site Conditions means:

- a) any climatic conditions, including any ground condition at the Site resulting from climatic conditions, wherever occurring; and
- b) the Site Conditions specified in the Contract Details (if any).

Final Design has the meaning given in clause 3(b)(ii)B.

Final Payment Claim has the meaning given in clause 26(a)(ii)B.

[GST/VAT/Applicable Tax] has the meaning given in [## insert legislation].

Industrial Relations Law means all workplace, employment or industrial relations related Laws.

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other analogous protected right.

Latent Condition means a Site Condition which was not known to the Contractor as at the Contract Date and which differs materially from the Site Conditions that could reasonably have been ascertained or anticipated by a competent contractor as at the Contract Date if it had inspected and carefully considered:

- a) all information made available by or on behalf of the Principal for the purpose of tendering;
- b) all relevant information obtainable by the making of reasonable enquiries; and
- c) the Site and its surroundings,
- d) but does not include Excluded Site Conditions.

Law means Statutory Requirements, principles of common law and equity established by decisions of courts, Approvals and the requirements of any authority.

Local Industry Development Plan means the plan set out in Schedule 4 (if any).

Loss means any:

- a) loss, damage (including damages at common law or in equity), liability, debt, cost (including legal costs, deductibles or increased premiums), expense, fee, compensation, charge or other amount; or
- b) fine or penalty (to the extent not prohibited by Law),

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

Mandatory Government Policy Requirements means [## relevant part(s) - please specify] of the Schedule of Government Policy Requirements.

Moral Right has the meaning given in [## insert relevant Act]

OH&S Law means all Laws in connection with occupational health and safety and all other applicable occupational health and safety Laws, codes of practice, guidelines and advisory standards applicable to the Contractor's Activities.

Practical Completion means that stage when the Principal is satisfied (acting reasonably) that:

- a) the Works are complete (except for minor Defects which do not prevent the Works from being reasonably capable of use, and that can be rectified without affecting the convenient use of the Works) and are capable of being used for their intended purpose;
- b) all documents and information required by the Contract to be provided to the Principal have been so provided, including all Approvals necessary for the use and occupation of the Works; and
- c) the Contractor has done everything it is required to do under the Contract before or as a condition precedent to Practical Completion.

Principal means the person specified in the Contract Details.

Principal Contractor has the meaning given in the [## relevant statute/regulation - please specify].

Project Material has the meaning given in clause 29(a)(i).

Project Specific Government Policy Requirements means [## relevant part(s) - please specify] of the Schedule of Government Policy Requirements.

Provisional Sum means an amount payable for a Provisional Sum Item (inclusive of Contractor's Margin), as specified in the Contract Details.

Provisional Sum Item means an item of work specified in the Contract Details.

Public Disclosure Requirements means the disclosure of any information (including Confidential Information) where the disclosure is:

- a) in accordance with Laws or any policy of the Principal, the State or any authority;
- b) to comply with the disclosure requirements of the Auditor-General, the Ombudsman, the Independent Broad-based Anti-corruption Commission or the Information Commissioner;
- c) to satisfy the requirements of Parliamentary accountability or to satisfy any other recognised public requirement;
- d) in the course of the official duties of the responsible Minister, the Treasurer or the Attorney General;
- e) required for the Principal's or the State's reporting requirements; or
- f) to any agent or representative of the Principal, any authority or any person authorised or nominated by the Principal to the extent necessary in relation to the Principal's rights and obligations under the Contract, provided they agree to maintain the confidentiality of any such information.

Schedule means a Schedule to this Contract.

Schedule of Collateral Documents means the schedule of that name available at [##insert link], (or such other location notified by the Principal), as at the Contract Date.

Schedule of Government Policy Requirements means the schedule of that name available at [insert link], (or such other location notified by the Principal), as at the Contract Date.

Scope of Works means the document or documents set or described in Schedule 2.

Site means the site identified in the Contract Details.

Site Conditions means physical conditions, services and obstructions on, above or below the surface of the Site or its surroundings.

Site Information has the meaning given in clause 17(b)(i).

State Entity means [## to be defined].

Statutory Requirements includes:

- a) all Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the [## Commonwealth Member]' or similar;
- b) all Approvals; and
- c) fees and charges payable in connection with the foregoing.

Subcontract means an agreement between the Contractor and a Subcontractor (or between a Subcontractor and a secondary subcontractor) in connection with the Contractor's Activities.

Subcontractor means a person engaged by the Contractor or under a contract in connection with the Contractor's Activities (including an Approved Subcontractor and a secondary subcontractor), which is in a chain of contracts where the Contractor is the ultimate principal, including any consultants.

Unconditional Undertaking means an unconditional, irrevocable undertaking which is payable on demand and:

- a) is issued by a financial institution that is the holder of a current licence issued by [## insert authority];

- b) specifies a location in Melbourne (or such other place as the Principal may approve) where demand can be given and payment made, without further confirmation from the issuer, on any Business Day;
- c) is governed by and is to be construed according to the Laws applying in [## Commonwealth State]; and
- d) is in the form and on terms set out in the Schedule of Collateral Documents (or such other form and terms as the Principal may approve in writing).

Variation means any change to the Works or the Contractor's Activities including any increase, addition, decrease or omission or change in character or quality.

Variation Order has the meaning given in clause 5(a).

Working Days means the days identified as such in the Contract Details.

Works means the physical works which the Contractor must design (to the extent required by the Contract), construct and complete in accordance with the Contract.

Schedule 1 - Project Specific Additional Conditions

[##insert, if any.]

[##Guidance Note: Project Specific Additional Conditions must not operate as special conditions that amend the Contract Conditions. Only include conditions here if necessary to address additional, specific project needs or agency requirements that are not met by the Contract Conditions.

Consider the appropriate order of precedence of any Project Specific Additional Conditions in the Contract Details.]

Schedule 2 - Scope of Works

[[insert.]]

[[Guidance Note: clearly identify or attach such drawings, specifications and other documents that explain and/or as specify the Contractor's scope of works. If design obligations are included, the Scope of Works will also need to include preliminary design documents and a statement of the Principal's design requirements.]]

Schedule 3 - Site

[##insert.]

Schedule 4 - Local Industry Development Plan

[##Insert, if any.]

Schedule 5 - Social Procurement Commitment Schedule

[##Insert, if any.]

Commonwealth Secretariat
Marlborough House, Pall Mall
London SW1Y 5HX
United Kingdom

thecommonwealth.org

