



DISCLAIMER AND CONFIDENTIALITY AGREEMENT

This agreement is made on the ^{1/09/2023}

BETWEEN WATPAC CONSTRUCTION PTY LTD (Contractor)

**AND THE PERSON OR ENTITY SPECIFIED IN ITEM 1 OF THE SCHEDULE
(Tenderer)**

1. The Tenderer acknowledges and agrees that the Confidential Information is confidential.
2. The Tenderer warrants that it will:
 - (a) strictly comply with:
 - (i) clauses 1 - 11; and
 - (ii) all other Confidential Information and information security requirements notified by the Contactor (including any Separation Arrangements); and
 - (b) immediately put in place arrangements to ensure that it strictly complies with:
 - (i) clauses 1 - 11; and
 - (ii) all other Confidential Information and information security requirements notified by the Contactor (including any Separation Arrangements).
3. Subject to clauses 12 – 25, the Tenderer warrants that it will not:
 - (a) copy or otherwise reproduce in any form or medium the contents of the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be copied or reproduced in any form or medium; or
 - (b) disclose, use or deal with, the Confidential Information (or any part of it) or otherwise cause, permit or allow the Confidential Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than preparing a Tender and if it is the successful Tenderer, carrying out the Services.
4. The Tenderer warrants that it will ensure that all Recipients of Confidential Information:
 - (a) strictly comply with:
 - (i) clauses 1 - 11; and
 - (ii) all other Confidential Information and information security requirements notified by the Contactor (including any Separation Arrangements);
 - (b) immediately put in place arrangements to ensure that all Recipients strictly comply with:
 - (i) clauses 1 - 11; and

- (ii) all other Confidential Information and information security requirements notified by the Contactor (including any Separation Arrangements); and
 - (c) do not do or omit to do anything which, if done or omitted to be done by the Tenderer, would be a breach of:
 - (i) clauses 1 - 11; or
 - (ii) any other Confidential Information or information security requirements notified by the Contactor (including any Separation Arrangements).
- 5. The Tenderer warrants that it will:
 - (a) ensure that:
 - (i) the Confidential Information (or any part of it); and
 - (ii) all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),are strictly kept:
 - (iii) secure and protected at all times from all unauthorised use, access, configuration administration (or similar); and
 - (iv) otherwise in accordance with all Separation Arrangements; and
 - (b) immediately:
 - (i) detect all actual or potential Confidential Information Incidents;
 - (ii) notify the Contractor by email if it becomes aware of any actual or potential Confidential Information Incident;
 - (iii) take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident; and
 - (iv) strictly comply with all other Confidential Information and information security requirements notified by the Contractor by email (including any Separation Arrangements),(together the **Confidential Information Requirements**).
- 6. Within 7 days of a request from the Contractor, at any time, the Tenderer warrants that it will:
 - (a) subject to clause 7, as directed by the Contractor in the request or notice promptly:
 - (i) securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Contractor at the postal address in item 5 of the Schedule;
 - (ii) securely and appropriately destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form);

- (iii) ensure all Recipients of Confidential Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in a tangible or intangible form); and
 - (iv) provide the Contractor by email with a statutory declaration in a form approved by the Contractor from an authorised officer whose identity and position is approved by Contractor (acting reasonably) confirming that the Confidential Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and
 - (b) promptly notify the Contractor by email of all Confidential Information (or any part of it) which the Tenderer knows or ought to know:
 - (i) has not been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and
 - (ii) is beyond the Tenderer's (or a Recipient's) (as the case may be) possession, power, custody or control,giving full particulars (including the nature and extent of the Confidential Information, precise location, entity in possession, custody or control and all relevant Confidential Information and information security arrangements).
- 7. To the extent required by a Statutory Requirement or to maintain compliance with the Tenderer's quality assurance procedure, system or framework, the Tenderer may keep one copy of the Confidential Information for its records, subject to the Tenderer:
 - (a) promptly notifying the Contractor by email of all Confidential Information that it proposes to keep and the detailed basis for doing; and
 - (b) maintaining the information security of the Confidential Information in accordance with clauses 1 - 11.
- 8. The Tenderer acknowledges and agrees that the return, destruction or erasure of the Confidential Information does not affect the Tenderer's obligations under clauses 1 - 11.
- 9. Within 24 hours (or such other period notified by the Contractor in its request) of receipt of a request by the Contractor by email at any time, the Tenderer warrants that it will:
 - (a) provide the Contractor by email with:
 - (i) evidence of the Tenderer's and all Recipients' compliance with clauses 1 - 11 (including any Separation Arrangements and the Confidential Information Requirements), including all arrangements that the Tenderer and all Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Contractor from an authorised officer whose identity and position is approved by Contractor (acting reasonably) in respect of the Tenderer's and all Recipients' compliance with clauses 1 - 11 (including any Separation Arrangements and the Confidential Information Requirements),by the time and date specified in the request; and
 - (b) as directed by the Contractor in the request, provide the Contractor with access to the Tenderer's and all Recipients' premises, records, information technology

environment and equipment to enable the Contactor to monitor and assess the Tenderer's and all Recipients' compliance with clauses 1 - 11 (including any Separation Arrangements and Confidential Information Requirements) by the time and date specified in the request.

10. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:

(a) acknowledges and agrees that:

- (i) the Contractor is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 1 - 11; and
- (ii) without limiting any other right or remedy of the Contractor (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if the Tenderer:

A. notifies the Contractor under clause 5(b)(ii); or

B. has failed to strictly comply with:

- 1) clauses 1 - 11; or
- 2) any other Confidential Information or information security requirements notified by the Contractor by email (including any Separation Arrangements),

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

C. notify the Tenderer by email or post that the Tenderer:

- 1) is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or
- 2) may continue to participate in the Process, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Tenderer:
 - a) implementing Separation Arrangements; or
 - b) completing, duly executing and returning to the Contractor by email a deed in a form approved by the Contractor,

by the time and date specified in the notice; or

D. take such Confidential Information Incident or failure into account in any registration of interest process, tender process or similar procurement process in connection with the Project or any other Contractor project;

- (b) releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Contractor's absolute discretions under clauses 1 - 11 or corresponding clauses in respect of any other Tenderer; and
 - (c) indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
 - (i) a Confidential Information Incident;
 - (ii) the Tenderer's failure to strictly comply with clauses 1 - 11; or
 - (iii) the exercise of any of the Contractor's absolute discretions under clauses 1 - 11 or corresponding clauses in respect of any other Tenderer.
11. For the purposes of clauses 1 - 11:
- (a) subject to paragraph (b), **Confidential Information** means:
 - (i) the Tender Documents;
 - (ii) the Information Documents;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Tenderer by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf, whether or not owned by the Commonwealth or the Contractor, which is in any way connected with the Services or the MCC Works, which:
 - A. by its nature is confidential;
 - B. the Tenderer knows or ought to know is confidential; or
 - C. is the subject of a Separation Arrangement; and
 - (iv) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things;
 - (b) **Confidential Information** does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Tenderer by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf, whether or not owned by the Commonwealth or the Contractor, which:
 - (i) is in the possession of the Tenderer without restriction in relation to its disclosure or use before the date of its receipt from the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or the Contractor's behalf;

- (ii) is in the public domain otherwise than due to a breach of clauses 1 - 11:
or
 - (iii) has been independently developed or acquired by the Tenderer;
 - (c) **Confidential Information Incident** means A single breach or a series of breaches of clause 18, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Commonwealth business and threatening Commonwealth information security; and
 - (d) **Confidential Information Security Event** means an identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.
12. The Tenderer acknowledges and agrees that:
- (a) nothing in clauses 12 - 25 limits or otherwise affects clauses 1 - 11; and
 - (b) part of the Confidential Information is Sensitive and Classified Information.
13. The Tenderer warrants that each Recipient of the Sensitive and Classified Information (or any part of it) involved in preparing the Tender and if it is the successful Tenderer, involved in carrying out the Contractor's Activities and the Works, properly applied for, obtained and held a current security clearance at or above the level/s specified by the Commonwealth in Item 6 of the Schedule:
- (a) before the Recipient was issued with the Sensitive and Classified Information; and
 - (b) at all times during the Recipient's access to the Sensitive and Classified Information.
14. The Tenderer warrants that it will:
- (a) strictly comply with:
 - (i) clauses 12 - 25; and
 - (ii) all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contactor otherwise (including any Separation Arrangements); and
 - (b) immediately put in place arrangements to ensure that it strictly complies with:
 - (i) clauses 12 - 25; and
 - (ii) all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contactor (including any Separation Arrangements).
15. Subject to clauses 16(a) and 21, the Tenderer warrants that it will not:
- (a) copy or otherwise reproduce in any form or medium the contents of the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or

- (b) disclose, use or deal with, the Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose, including preparing a Tender and if it is the successful Tenderer, carrying out the Services. If the Tenderer wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of preparing a Tender and, if it is the successful Tenderer, carrying out the Contractor's Activities and the Works, it must notify the Contractor by email, providing details of the proposed copying, reproduction, disclosure use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of all proposed Recipients).
- 16. Where a request for copying, reproduction, disclosure, use or dealing is made under clause 15, the Contractor will notify the Tenderer by email that the Contractor (in its absolute discretion) either:
 - (a) grants permission, whether with or without such conditions as the Contractor thinks fit (including conditions requiring the Recipient of Sensitive and Classified Information (or any part of it) to properly apply for, obtain and hold a current security clearance at or above the level/s specified by the Commonwealth in Item 6 of the Schedule before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient's access to the Sensitive and Classified Information or to enter into a deed in a form approved by the Contractor); or
 - (b) refuses permission.
- 17. If the Contractor grants permission under clause 16(a), the Tenderer warrants that it will strictly comply with any conditions under clause 16(a).
- 18. The Tenderer warrants that it will ensure that all Recipients of Sensitive and Classified Information:
 - (a) strictly comply with:
 - (i) clauses 12 - 25; and
 - (ii) all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contractor (including any Separation Arrangements);
 - (b) immediately put in place arrangements to ensure that all Recipients strictly comply with:
 - (i) clauses 12 - 25; and
 - (ii) all other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contractor (including any Separation Arrangements); and
 - (c) do not do or omit to do anything which, if done or omitted to be done by the Tenderer, would be a breach of:
 - (i) clauses 12 - 25; or
 - (ii) any other Sensitive and Classified Information, security procedures, security processes and information security requirements notified by the Contractor (including any Separation Arrangements).

19. The Tenderer warrants that it will:

(a) ensure that:

- (i) the Sensitive and Classified Information (or any part of it); and
- (ii) all documents, materials, media, information technology environments and all other things on or in which the Sensitive and Classified Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

- (iii) at locations in Australia only (unless the Tenderer and any Recipient is listed on the ASD Certified Cloud Services List or is otherwise approved in writing by the Contractor (in its absolute discretion));
- (iv) in information technology environments which are accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified by the Commonwealth in item 7 the Schedule:

- A. before the Tenderer (or Recipient) was issued with the Sensitive and Classified Information; and
- B. at all times during the Tenderer's (or Recipient's) access to the Sensitive and Classified Information,

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

- (v) for caveated or compartmented information (or any part of it) forming part of the Sensitive and Classified Information, in information technology environments which are specifically accredited or certified by the Commonwealth (in its absolute discretion) at or above the level/s specified in the Schedule (if applicable) required for such caveated or compartmented information (or any part of it):

- A. before the Tenderer (or Recipient) was issued with such caveated or compartmented information (or any part of it); and
- B. at all times during the Tenderer's (or Recipient's) access to such caveated or compartmented information (or any part of it),

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

- (vi) secure and protected at all times from all unauthorised use, access, configuration administration (or similar);
- (vii) without limiting subparagraph (vi) secure and protected at all times from all use, access, configuration administration (or similar) from any location outside of Australia;
- (viii) in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the

Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Manual); and

- (ix) in accordance with all Separation Arrangements; and
- (b) immediately:
 - (i) to the maximum extent possible, detect all actual or potential Sensitive and Classified Information Incidents;
 - (ii) notify the Contractor by email if it becomes aware of any actual or potential Sensitive and Classified Information Incident;
 - (iii) take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Sensitive and Classified Information Incident; and
 - (iv) strictly comply with all other Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contractor by email or otherwise (including any Separation Arrangements),

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

20. Within 7 days of receipt of a request from the Contractor, at any time the Tenderer warrants that it will:

- (a) subject to clause 21, as directed by the Contractor in the notice or request and in accordance with all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Manual) promptly:
 - (i) securely and appropriately return all copies of Sensitive and Classified Information (in a tangible form) to the Contractor at the postal address stated in Item 5 of the Schedule;
 - (ii) securely and appropriately destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form);
 - (iii) ensure all Recipients of Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Sensitive and Classified Information (whether in a tangible or intangible form); and
 - (iv) provide the Contractor by email with a statutory declaration in a form approved by the Contractor from an authorised officer whose identity and position is approved by Contractor (acting reasonably) confirming that the Sensitive and Classified Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and

- (b) promptly notify the Contractor by email of all Sensitive and Classified Information (or any part of it) which the Tenderer knows or ought to know:
 - (i) has not been securely and appropriately returned, destroyed or erased by the Tenderer and all Recipients; and
 - (ii) is beyond the Tenderer's (or a Recipient's) (as the case may be) possession, power, custody or control,giving full particulars (including the nature and extent of the Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Sensitive and Classified Information security procedures, security processes and information security arrangements).
- 21. To the extent required by a Statutory Requirement or to maintain compliance with the Tenderer's quality assurance procedure, system or framework, the Tenderer may keep one copy of the Sensitive and Classified Information for its records, subject to the Tenderer:
 - (a) promptly notifying the Contractor by email of all Sensitive and Classified Information that it proposes to keep and the detailed basis for doing so; and
 - (b) maintaining the information security of the Sensitive and Classified Information in accordance with clauses 12 – 25.
- 22. The Tenderer acknowledges and agrees that the return, destruction or erasure of the Sensitive and Classified Information does not affect the Tenderer's obligations under clauses 12 – 25.
- 23. Within 12 hours (or such period notified by the Contractor in its request) of receipt of a request by the Contractor by email, at any time, the Tenderer warrants that it will:
 - (a) provide the Contractor by email with:
 - (i) evidence of the Tenderer's and all Recipients' compliance with clauses 12 - 25 (including any Separation Arrangements and the Sensitive and Classified Information Requirements), including all arrangements that the Tenderer or the Recipients have in place; and
 - (ii) a statutory declaration in a form approved by the Contractor from an authorised officer whose identity and position is approved by Contractor (acting reasonably) in respect of the Tenderer's and all Recipients' compliance with clauses 12 - 25 (including any Separation Arrangements and Sensitive and Classified Information Requirements),by the time and date specified in the request; and
 - (b) as directed by the Contractor in the request, provide the Contractor with access to the Tenderer's and all Recipients' premises, records, information technology environment and equipment to enable the Contractor to monitor and assess the Tenderer's and all Recipients' compliance with clauses 12 - 25 (including any Separation Arrangements and Sensitive and Classified Information Requirements) by the time and date specified in the request.
- 24. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:
 - (a) acknowledges and agrees that:

- (i) the Contractor is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 12 - 25; and
 - (ii) without limiting any other right or remedy of the Contractor (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if the Tenderer:
 - A. notifies the Contractor under clause 19(b)(ii); or
 - B. has failed to strictly comply with:
 - 1) clauses 12 - 25; or
 - 2) any other Sensitive and Classified Information or information security requirements notified by the Contractor by email or otherwise (including any Separation Arrangements),
- the Contractor may (in its absolute discretion) do any one or more of the following:
- C. notify the Tenderer by email or post that the Tenderer:
 - 1) is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or
 - 2) may continue to participate in the Process, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Tenderer:
 - a) implementing Separation Arrangements; or
 - b) completing, duly executing and returning to the Contractor by email a deed in a form approved by the Contractor,
 - by the time and date specified in the notice; or
 - D. take such Sensitive and Classified Information Incident or failure into account in any registration of interest, tender process or similar procurement process in connection with the Project or any other Contractor's project;
- (b) releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Contractor's absolute discretions under clauses 12 - 25 or corresponding clauses in respect of any other Tenderer; and
 - (c) indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:

- (i) a Sensitive and Classified Information Incident;
- (ii) the Tenderer's failure to strictly comply with clauses 12 - 25; or
- (iii) the exercise of any of the Contractor's absolute discretions under clauses 12 - 25 or corresponding clauses in respect of any other Tenderer.

25. For the purposes of clauses 12 – 25:

- (a) **Cyber Security Event** means an identified occurrence of a system, service or network state indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered occurrence of a system, service or network state which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements;
- (b) **Cyber Security Incident** means a single or series of unwanted or unexpected Cyber Security Events that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security;
- (c) **Sensitive and Classified Information** means any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Tenderer by the Commonwealth, the MCC Contract Administrator, the Contractor, the Contractor's Representative or anyone on the Commonwealth's or Contractor's behalf, whether or not owned by the Commonwealth or Contractor:
 - (i) marked as "sensitive information" or "for official use only";
 - (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 Tenderer knows or ought to know is subject to, or ought to be treated as Sensitive and Classified Information in accordance with, the provisions of all Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Principles Framework and the Defence Security Principles Framework); and
 - (vi) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

- (d) **Sensitive and Classified Information Incident** means a single breach or a series of breaches of clauses 12-25, any Separation Arrangements, any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security; and
 - (e) **Sensitive and Classified Information Security Event** means an identified fact, circumstance, occurrence or event indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.
- 26. The Tenderer warrants that, at the time of returning the Disclaimer and Confidentiality Agreement to the Contractor, it is not aware of any:
 - (a) Material Change; or
 - (b) Defence Strategic Interest Issue,in relation to the Tenderer.
- 27. If, at any time after returning the Disclaimer and Confidentiality Agreement to the Contractor but before lodging its Tender, the Tenderer becomes aware of any:
 - (a) Material Change; or
 - (b) Defence Strategic Interest Issue,the Tenderer must immediately notify the Contractor by email, providing details of:
 - (c) the Material Change or Defence Strategic Interest Issue; and
 - (d) the steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Defence Strategic Interest Issue on the interests of the Commonwealth.
- 28. Without limiting any other provision of the Disclaimer and Confidentiality Agreement, the Tenderer:
 - (a) acknowledges and agrees that:
 - (i) the Contractor is proceeding with the Process strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clauses 26 to 29; and
 - (ii) without limiting any other right or remedy of the Contractor (under the Disclaimer and Confidentiality Agreement or otherwise at law or in equity), if:
 - A. the Tenderer:
 - 1) notifies the Contractor under clause 27;
 - 2) has failed to strictly comply with clauses 26 to 29; or

- B. the Contractor otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Material Change or Defence Strategic Interest Issue in relation to the Tenderer,

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

- C. notify the Tenderer by email or post that the Tenderer is required to:
- 1) meet with the Contractor to provide further information, documents or evidence in relation to, and otherwise clarify, the:
 - a) nature and extent of the Material Change or Defence Strategic Interest Issue; and
 - b) steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Defence Strategic Interest Issue on the interests of the Commonwealth,

by the time and date specified in the notice; or

- 2) provide the Contractor by email with further information, documents or evidence in relation to, and otherwise clarify, the:
 - a) nature and extent of the Material Change or Defence Strategic Interest Issue; and
 - b) steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Defence Strategic Interest Issue on the interests of the Commonwealth,

by the time and date specified in the notice;

- D. regardless of whether or not the Contractor has notified the Tenderer under subsubparagraph C:

- 1) notify the Tenderer by email or post that the Tenderer:
 - a) is specifically excluded from participating in the Process and its Tender will not be evaluated (or continue to be evaluated); or

- b) may continue to participate in the Process, whether with or without such conditions as the Contractor thinks fit (in its absolute discretion) including the Tenderer:
 - i) implementing Separation Arrangements; or
 - ii) completing, duly executing and returning to the Contractor by email a deed in a form approved by the Contractor,
 - by the time and date specified in the notice; or
 - E. take such Material Change or Defence Strategic Interest Issue or failure into account in any registration of interest, tender process or similar procurement process in connection with the Project or any other Contractor project;
 - (b) releases the Contractor in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Contractor's absolute discretions under clauses 26 to 29 or corresponding clauses in respect of any other Tenderer; and
 - (c) indemnifies the Contractor in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor arising out of or in connection with:
 - (i) a Material Change or Defence Strategic Interest Issue;
 - (ii) the Tenderer's failure to strictly comply with clauses 26 to 29; or
 - (iii) the exercise of any of the Contractor's absolute discretions under clauses 26 to 29 or corresponding clauses in respect of any other Tenderer.
29. For the purposes of clauses 26 to 29:
- (a) **Material Change** means any actual, potential or perceived material change to the circumstances of the Tenderer including any change:
 - (i) arising out of or in connection with:
 - A. a Change of Control;
 - B. an Insolvency Event; or
 - C. the Tenderer's financial viability, availability, capacity or ability to perform the Services, achieve completion and otherwise meet its obligations under the subcontract; or
 - (ii) which affects the truth, completeness or accuracy of any information, documents, evidence or clarifications provided by the Tenderer to the

Contractor arising out of or in connection with its Disclaimer and Confidentiality Agreement or the Process.

- (b) **Defence Strategic Interest Issue** means any issue that involves an actual, potential or perceived risk of an adverse effect on the interests of the Commonwealth including:
- (i) protecting Australia's national security requirements, in accordance with Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Manual);
 - (ii) ensuring that the whole (or any part of) the Confidential Information and, if applicable, Sensitive and Classified Information will be treated strictly in accordance with the Disclaimer and Confidentiality Agreement and the Tender Documents; and
 - (iii) ensuring compliance by all Tenderers and the successful Tenderer with Australia's national security requirements, in accordance with Commonwealth requirements and policies, Statutory Requirements and Defence Requirements (including the Australian Government Protective Security Policy Framework, the Australian Government Physical Security Management Protocol, the Australian Government Personnel Security Management Protocol, the Australian Government Information Security Manual and the Defence Security Manual).

30. For the purposes of the Disclaimer and Confidentiality Agreement:

- (a) **ASD Certified Cloud Services List** means the list as amended from time to time located at http://www.asd.gov.au/infosec/irap/certified_clouds.htm;
- (b) **Australian Government Information Security Manual** is a reference to that document as amended from time to time;
- (c) **Australian Government Personnel Security Management Protocol** is a reference to that document as amended from time to time;
- (d) **Australian Government Physical Security Management Protocol** is a reference to that document as amended from time to time;
- (e) **Australian Government Protective Security Policy Framework** is a reference to that document as amended from time to time;
- (f) **Commonwealth** means the Commonwealth of Australia;
- (g) **Claim** includes (without limitation) any claim:
 - (i) under, arising out of, or in any way in connection with:
 - A. the Process;
 - B. this Disclaimer and Confidentiality Agreement;
 - C. the Tender Documents; or

- D. without limiting subsubparagraph C, any contract which the Tenderer may enter into with the Contractor with respect to the Services;
 - (ii) arising out of, or in any way in connection with, any task, thing or relationship connected with the Contractor's Activities, the Works or the Project; or
 - (iii) otherwise at law or in equity including (without limitation):
 - A. by statute;
 - B. in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
 - C. for restitution;
 - (h) **Defence Security Manual** is a reference to that document as amended from time to time;
 - (i) **Managing Contractor Contract** means the managing contractor contract between the Contractor and the Commonwealth for the design and construction of the works.
 - (j) **MCC Contract Administrator** means any person nominated by the Commonwealth from time to time under the Managing Contractor Contract to administer the Managing Contractor Contract.
 - (k) **Recipient** means any person provided with Confidential Information or Sensitive and Classified Information or any part of Confidential Information or Sensitive and Classified Information (whether in a tangible or an intangible form) including potential or actual subcontractors, suppliers and material suppliers;
 - (l) **Separation Arrangement** means any arrangement that the Tenderer:
 - (i) has in place;
 - (ii) will put in place; or
 - (iii) is required to put in place under clause 28;for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Defence Strategic Interest Issue.
 - (m) **Services** means the professional services for the Planning Phase described in, or reasonably inferred from, the tender documents.
31. All obligations under this agreement survive the expiration or earlier termination of the Process or the expiration or earlier termination of this agreement.
32. If the Tenderer consists of more than one party, the provisions of this agreement jointly and severally bind, and apply to, each such party.
33. This agreement is governed by the law of the State or Territory specified in Item 8 of the Schedule.

Schedule

Item 1	Tenderer:	PLUMBNORTH PTY LTD - ABN 52603421638
Item 2 (Recital A)	ATM ID:	AZ6277
	Project No:	EST04016
	Project Name:	NCIS-8A BUILDING AND MARITIME WORKS, HMAS CAIRNS AND ADJACENT SITES, QUEENSLAND
Item 3	Information Documents:	(a) The following documents: The documents identified as information documents which are issued with the invitation to tender; and
		(b) any other document or amendment to a document published or issued prior to the ATM Close Date and ATM Close Time and at the time of being published or issued, expressly stated to be an Information Document or an amendment to an Information Document.
Item 4	Email address of Contactor:	dtracey@besixwatpac.com
Item 5	Postal address of Contractor:	Level 7, 470 St Pauls Terrace, Fortitude Valley, QLD, 4006
Item 6	Security clearance level/s:	Baseline
Item 7	Certification/ accreditation level/s:	OFFICIAL: Sensitive
Item 8	Governing Law:	Queensland

SIGNED as an agreement.

Signed for and on behalf of the **Contractor** in the presence of:

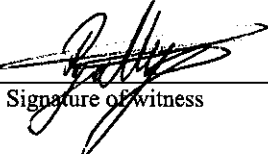
Signature of Witness

Signature of Authorised Officer

Name of Witness in Full

Name of Authorised Officer in Full

Signed for and on behalf of **PLUMBNORTH PTY LTD**
by its authorised signatory in the presence of:



Signature of witness



Signature of authorised signatory

RYAN HAYES

BRENTON MATTHEWS

Full name of witness

Full name of authorised signatory