



DHA Minor Works Contract

[Insert Project Name]

CWB-xxx

SAMPLE

Version History

Version Number	Implemented By	Revision Date	Approved By	Approval Date	Description of Change
1.0	PMO		GM PPG	20 Aug 2012	Document creation
1.1	PMO	7 Nov 12			Document formatting
1.2	PMO	4 Dec 12			Document formatting
1.3	PMO	11 Feb 13			Document formatting
2.0	PPG Legal	13 Aug 13	PMO	13 Aug 13	Updating of DLP Clauses
2.1	OP&C	09 Aug 2016	OP&C	09 Aug 16	DLP Period 52 weeks. Minor changes to reflect CWB number

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Minor Works Standard Form Contract

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THIS MINOR WORKS CONTRACT is made on the _____ day of _____ Year.

BETWEEN

Defence Housing Australia ('DHA') ABN 72 968 504 934 of 26 Brisbane Avenue, Barton ACT 2600 and the **Contractor** identified in Item 3 of the Contract Details Table.

1. DHA appoints and engages the Contractor to carry out the Works by the Date for Practical Completion.
2. The Contractor agrees to carry out the Works in return for payment of the Contract Sum fees in accordance with and subject to the requirements of this Contract.
3. This Contract comprises:
 - a. this Minor Works Standard Form Contract;
 - b. the Contract Details Table (Schedule 1);
 - c. the Scope of Works (Schedule 2);
 - d. the Conditions of Contract (Schedule 3); and
 - e. the Commonwealth Policies applicable to this Contract (Schedule 4).
4. Terms with special meanings used throughout this Contract are defined in the General Conditions of Contract.
5. By signing this Contract, the Contractor:
 - a. offers to carry out the Works on the terms and conditions of this Contract; and
 - b. agrees that this Contract is not binding unless DHA executes the Contract and the Contractor is notified of DHA's execution.

Executed by or on behalf of the Contractor as follows:

X..... or X..... + X.....

Sign at x and complete details directly below

Name: or Name: + Name:

or or

Name: Name: Name:

Individual/Sole Trader **Company** Sole Director **Company** Director 2

ABN or Director 1 or Secretary

Company ACN *(This 2nd signature not required if company has sole director)*

Executed for and on behalf of DHA as follows:

Defence Housing Australia
ABN 72 968 504 934

X.....

Name: _____

Authorised representative of DHA

Schedule 1 – Contract Details Table

Item	Item Name	Detail
1.	DHA	Defence Housing Australia ABN 72 968 504 934
2.	DHA's Representative and contact for service of notices	Name: [Insert DHA's Representative] Position: [Insert DHA Representative's Position] Email: [Insert DHA Representative's Email] Phone: [Insert DHA Representative's Phone] Postal Address: [Insert DHA Representative's Address]
3.	Contractor	Entity Name: [Insert Entity Name including Trading Name if applicable] Address: [Insert Address] Postal Address: [Insert Postal Address OR N/A] (if different from above) ABN: [Insert ABN] or ACN: [Insert ACN]
4.	Contractor's Representative and contact for service of notices	Name: [Insert Contractor's Representative] Position: [Insert Representative's Position] Email: [Insert Representative's Email] Phone: [Insert Representative's Phone] Mobile: [Insert Representative's Mobile] Postal Address: [Insert Postal Address]
5.	Contract Sum	Site Address: Copy and paste this section for the number of addresses \$[Insert Contract Lump Sum Amount] (inclusive of GST and builders margin, but exclusive of Item 6, Schedule 1 Provisional Sum Work) Site Address: Copy and paste this section for the number of addresses \$[Insert Contract Lump Sum Amount] (inclusive of GST and builders margin, but exclusive of Item 6, Schedule 1 Provisional Sum Work)
6.	Provisional Sum Work	No Provisional Sum Work is involved Or Provisional Sum listed below includes GST and Builders Margin
7.	Start Date	1 Week after Contract Execution
8.	Date for Practical Completion	8 Weeks from Start Date
9.	Site	[Site Address] Copy and paste this field for the number of addresses
10.	Is Site on a Defence Base?	Yes or No
11.	Security	Retention of 3% of the Contract Sum from the first payment claim made under this Contract or if the first payment is not sufficient, then also from subsequent payments.

Item	Item Name	Detail										
12.	Payment Terms and Invoice Date(s)	<p>Invoice Dates for payment in accordance with these terms, will be as follows:</p> <p>In accordance with the table below, where the payments are to be made at the completion of a stage or stages of the Works:</p> <table border="1"> <thead> <tr> <th>Stage - Invoice Date</th> <th>Percentage payment of Contract Sum or amount</th> </tr> </thead> <tbody> <tr> <td>Stage 1 – 50% of Works done by value less 3% retention amount.</td> <td>47%</td> </tr> <tr> <td>Stage 2 – 100% of Works completed by value.</td> <td>50%</td> </tr> <tr> <td>Stage 3 – if required Highlight both cells and delete “Entire Row” if not required</td> <td>Highlight both cells and delete “Entire Row” if not required</td> </tr> <tr> <td>At end of Defects Liability Period</td> <td>3%</td> </tr> </tbody> </table>	Stage - Invoice Date	Percentage payment of Contract Sum or amount	Stage 1 – 50% of Works done by value less 3% retention amount.	47%	Stage 2 – 100% of Works completed by value.	50%	Stage 3 – if required Highlight both cells and delete “Entire Row” if not required	Highlight both cells and delete “Entire Row” if not required	At end of Defects Liability Period	3%
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At end of Defects Liability Period	3%											
13.	Date for final payment claim	10 working days after the expiry of the Defects Liability Period										
14.	Workers Compensation	As legislated										
15.	As applicable by state – Home Warranty Insurance, Builders Insurance or Builders Warranty Insurance	Replacement Value of \$ [Amount] per house										
16.	Public Liability Insurance	Cover of \$10,000,000 for any one occurrence.										
17.	Professional Indemnity Insurance	Not Required OR Required as to \$ xxx M.										
18.	Defects Liability Period (DLP)	<p>The DLP is 52 weeks commencing at 4.00pm on date of issue of the Certificate of Practical Completion.</p> <ul style="list-style-type: none"> However if an item/appliance has a warranty/guarantee period longer than the above, the DLP is extended accordingly for that item/appliance. <p>NOTE: Appliances guarantees/warranties apply. All such guarantees must be filled in and nominate Defence Housing Australia (DHA) the beneficiary and must be dated as per day of installation.</p>										
19.	Liquidated Damages	\$X per calendar week (pro rata)										
20.	Additional Conditions	Nil or note conditions										
21.	Builders Margin (applicable only to variations and any costs over and above the provisional sum amounts)	10%										

Item	Item Name	Detail
22.	Is the Contractor the 'principal contractor' for the purposes of WHS Law?	Insert 'yes' or 'no'
23.	If the answer to 22 is 'no', is the Contractor to have full management and control of the Site?	Insert 'yes' or 'no' or If the answer to 22 is 'yes', add "not applicable" (If in Doubt, speak with Russell Stephenson)_

Schedule 2 – Scope of Works (SOW)

1 PROJECT DESCRIPTION

[Insert description of overall project, if any of which the Works are part.]

2 THE SITE DETAILS AND PLANS

[Insert details of Site OR reference attachment which contains the details and include at Item 9 of Schedule 2 Attachment to Scope of Works]

3 PRECONDITIONS TO START DATE AND COMMENCEMENT OF WORK ON SITE

Nil

4 THE WORKS

[Insert description of the Works required OR reference attachment which contains the details and include at Item 9 of Schedule 2 Attachment to Scope of Works. Don't forget to add a list of any specific documentation you require, including WHS documents if not covered elsewhere.]

Note:

Remember to outline any special "restoration of site" or works requirements, that differ from 11.1c. eg. restoration after demolition.

5 SPECIFICATIONS

Refer: Attachment A - General Specification Upgrade & Minor Work

6 EXISTING CONDITIONS

Not known

7 ON DEFENCE BASE REQUIREMENTS (only applies if Item 10 of Schedule 1 is YES)

Base Induction

- a) The Contractor must ensure that its employees, subcontractors and any other person engaged by the Contractor to carry out the Works undertakes any induction training, processing or security clearances necessary to obtain access to the Site.
- b) DHA will advise the Contractor of the contact person in order for the Contractor to arrange for any necessary induction training, processing or security clearance for Site access.
- c) The contractor must at its cost comply with any requirements referred to in this clause.

Safe Base Alert State System

- a) Nothing that the Contractor is or may be required to do under this clause will derogate from, or otherwise limit, the Contractor's other obligations under this Contract.
- b) The Contractor must be, and must ensure that its subcontractors are, fully familiar with the requirements of the SAFE BASE Alert State System as amended from time to time ('SAFE BASE').
- c) The Contractor must attend, and must arrange for its subcontractors to attend, a security briefing as requested by the Project Manager from time to time.
- d) In carrying out the Works, the Contractor must, and must ensure that its subcontractors, comply with the requirements of SAFE BASE.
 - i. Subject to subparagraph (b), at the level set out in the Contract Details; and
 - ii. at any alternative level (or individual measure from a higher alert state to meet a specific threat or threats) applicable to the Site from time to time.

- e) Where agreed in writing, DHA is to pay the Contractor the extra costs (if any) reasonably incurred by it which arise directly from a change to the SAFE BASE level or individual measure in accordance with the preceding paragraph, as determined by DHA.
- f) The Contractor's entitlement (if any) under this clause will be a limitation on DHA's liability to the Contractor arising out of, or in any way in connection with:
 - i. DHA's direction; or
 - ii. The application of the alternative level or individual measure of SAFE BASE to the Works,

and the Contractor will not be entitled to make, nor will DHA be liable upon, any claim in these circumstances other than for the amount (if any) which is payable by DHA under this clause 7.

The Contractor must, and must ensure that its subcontractors participate in a rehearsal of SAFE BASE as directed by DHA from time to time.

8 PAYMENT AND PRICING
NOT USED

9 SCHEDULE OF RATES
NOT USED

10 ADDITIONAL CONDITIONS
Nil

11 WORK HEALTH AND SAFETY ARRANGEMENTS

- a) **Work health and safety:** The Contractor should note its additional obligations under the WHS Law set out in clause 22. In particular, if Item 22 of Schedule 1 says that the Contractor is engaged as a 'principal contractor' for the purposes of the WHS Law, the Contractor should note its obligations in clause 22.5.
- b) **Health and safety awareness and communication:** The Contractor is to inform the DHA Representative (by email or as requested) if it becomes aware whilst carrying out the Works of any site conditions or other factors specific to this site or project which may pose a health and safety risk to Workers or others.
- c) **Your Appointment as Principal Contractor:** The Contractor is appointed as Principal Contractor for WHS Law purposes, where this contract has a value over \$250,000.00 .
- d) Where this Contract has a value less than \$250,000, DHA authorises and directs the Contractor to have management and control of the Site.

12 ATTACHMENTS TO SCOPE OF WORK
[List and number all known attachments relevant to the Works]

Schedule 3 – Conditions of Contract

1. WORKS

1.1. Performance of the Works

The Contractor must carry out the Works:

- a) on and from the Start Date;
- b) in accordance with the requirements of the Scope of Works (including in accordance with all designs, plans and specifications in the Scope of Works);
- c) for the Contract Sum;
- d) in accordance with DHA's reasonable directions;
- e) in accordance with the Building Laws; and
- f) otherwise in accordance with the terms and conditions of this Contract.

1.2. Completion

The Contractor must complete all the Works by the Date for Practical Completion varied in accordance with this Contract.

1.3. Notification of issues

If the Contractor discovers any error, inconsistency, ambiguity or discrepancy in or between any document, direction or schedule forming part of this Contract, the Contractor must immediately seek DHA's direction as to the interpretation to be followed.

1.4. Obligation to provide everything necessary for Works

The Contractor must provide everything necessary or implied to carry out the Works including using only qualified, experienced and competent personnel to carry out the Works.

1.5. Engagement of subcontractors

The Contractor may employ or engage others to complete some but not all of the Works. The use of subcontractors does not relieve the Contractor from liability or performance under this Contract.

1.6. Testing of the Works

The Contractor must comply with any direction of DHA to uncover and recover the Works or carry out additional testing or retesting.

1.7. Liability for cost of testing of the Works

The Contractor will be liable for the cost of testing if required by DHA under clause 1.6. However, if the work uncovered or tested is in conformity with this Contract, DHA will pay the costs of the work or testing as reasonably determined by DHA.

2. ACCEPTANCE OF EXISTING CONDITIONS

2.1. Acceptance of Existing Conditions as satisfactory

The Contractor is deemed to have accepted the Existing Conditions as satisfactory at the commencement of this Contract.

2.2. Variation in Existing Conditions

If during the performance of the Works the Contractor discovers any material problem or issue with or difference in the Existing Conditions (problem), the Contractor must:

- a) immediately notify DHA of the problem;
- b) provide DHA with a recommendation on the proposed method, time and likely cost of rectifying the problem; and
- c) perform any additional work if the Contractor is instructed by DHA to carry out that additional work.

2.3. Payment for additional work

The Contractor is not entitled to payment for additional work carried out as a result of problematical Existing Conditions, unless, in DHA's reasonable opinion:

- a) an experienced and competent contractor who had examined the Existing Conditions would not have detected or anticipated the issue or problem; or
- b) DHA did not permit (after a request in writing) the Contractor to inspect the Existing Conditions and an inspection would have disclosed the problem.

2.4. Calculation of payment for additional work

If the Contractor is entitled to payment for additional work under clause 2.3, then the amount to be paid by DHA for that additional work will be determined on the Agreed Basis.

3. INSURANCE

3.1. Requirement to take out insurance

Prior to commencement, the Contractor must, at its own cost, take out and maintain until the completion of the Works:

- a) a policy of insurance in respect of loss or damage to the Works for not less than the amount specified in the Contract Details;
- b) Builder's Insurance as required by the relevant Building Law;
- c) public liability insurance for not less than the amount specified in the Contract Details;
- d) workers compensation or any like insurance as required by law; and
- e) where the Contractor is a sole trader, personal accident and disability insurance providing cover at least equivalent to that provided to an employee under insurance referred to in sub-clause 3(c).

3.2. Proof of existence of insurance cover

When asked by DHA, the Contractor must, within 3 days, produce evidence of the existence and currency of any insurance policy required under this clause 3.

4. WARRANTIES

4.1. Contractor's warranties

The Contractor warrants that:

- a) the Works will be carried out in a proper and skilful manner consistent with best industry standards;
- b) the Works will be fit for their intended purpose;
- c) any materials used by it will be suitable, new and free of defects;
- d) any goods provided by it as part of the Works will have manufacturers warranties that expire no earlier than the end of the Defects Liability Period; and

- e) it holds all licences or approvals required to carry out the Works.

4.2. Assignment of warranties

The Contractor must transfer to DHA at Practical Completion all product and manufacturers warranties.

5. SECURITY

5.1. Provision of the Security

- a) Where the Security is specified in the Contract Details as a Bank Guarantee the Contractor must provide the Security to DHA prior to the Start Date.
- b) Where the Security is specified in the Contract Details as retention or an amount of money, DHA may retain the Security amount from payments to be made under clause 6.

5.2. Recourse to the Security

In addition to exercising any rights of set off under this Contract, DHA may have recourse to the Security for the payment of Liquidated Damages, any costs incurred by DHA in rectifying Defects where the Contractor has failed to comply with clause 12 or any other money owed to DHA by the Contractor under this Contract.

5.3. Release of the Security

The Security must be released at the end of the Defects Liability Period subject to:

- a) the completion of works to rectify any Defects notified to the Contractor prior to that date; and
- b) the deduction from the Security of any amount referred to in clause 5.2.

6. PAYMENT

6.1. Obligation to make payments

- a) DHA must pay the Contractor the Contract Sum subject to and in accordance with this Contract.
- b) Subject to the terms of the Security of Payments Laws, DHA is not obliged to make a payment to the Contractor unless a valid Invoice has been issued in accordance with the terms and conditions of this Contract and DHA must be satisfied, acting reasonably, that the work is sufficiently complete for the invoice to be issued. See also "Invoice" definition- Clause 25..

6.2. Timing for Issue of Invoices

On each Invoice Date, the Contractor must deliver to DHA a valid Invoice.

6.3. Access to records

The Contractor must allow DHA or its nominees access to its records to check the accuracy of the Invoice and any other matter relating to the Works.

6.4. Timing for payment by DHA

DHA will pay the Contractor the amount approved for payment in the Invoice by the end of the month following the month in which the Invoice was submitted and approved for payment.

6.5. Condition precedent to payment by DHA

If required by DHA as a precondition to lodgement of an Invoice, the Contractor must give DHA, a signed statutory declaration that all its subcontractors and employees have been paid all amounts then due for work under this Contract.

6.6. Payment on account only

Any payment, other than a final payment, by DHA to the Contractor is payment on account only.

6.7. Release

After the date for submitting the final Invoice specified in the Contract Details, the Contractor releases DHA from any claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Contract.

6.8. Right of set-off

DHA has the right to deduct from or set off against amounts owing to the Contractor any amounts of money owing by the Contractor to DHA or otherwise. This includes the deduction of any Liquidated Damages assessed as payable by the Contractor or amounts payable by the Contractor because of a failure by the Contractor to 'make good' or rectify Defects.

6.9. GST

a) If the Contractor provides goods, materials, services, or labour under this Contract, then

the Contractor must include the proper amount of GST in all Invoices.

b) All amounts specified in this Contract are GST inclusive unless otherwise stated.

c) Each Invoice issued by the Contractor must be a tax invoice.

7. PROVISIONAL SUM

7.1. Provisional Sum Work

Where Provisional Sum Work is included in the Contract Details, the Contractor agrees to perform this work in accordance with this clause 7.

7.2. Pricing of Provisional Sum Work

Upon request, the Contractor will provide to DHA its proposed price for the Provisional Sum Work and the basis of calculation of that amount. The Contractor must price the Provisional Sum Work using the Agreed Basis.

7.3. Provisional Sum Work instruction and price

DHA may:

a) at any time have contractors, other than the Contractor, perform the Provisional Sum Work; or

b) refer the matter to the Quantity Surveyor for determination in accordance with the Agreed Basis, if DHA disputes the price provided by the Contractor and the parties do not reach agreement. The price determined by the Quantity Surveyor will be final; and

c) for urgent work, by giving a written instruction, direct the Contractor's to carry out the Provisional Sum Work even if the price has not been agreed at the time of the instruction.

7.4. Completion of the Provisional Sum Work

Upon completion of the Provisional Sum Work, the amount either agreed by DHA or determined under 7.3c, will be payable by DHA in addition to the Contract Sum, subject to these terms.

8. VARIATION

8.1. Restriction on Variations

The Contractor must not:

a) make any changes to the Works;

- b) carry out any extra work or supply any extra goods; or
 - c) leave any of the Works unfinished,
- unless directed by DHA in writing.

8.2. Variation Request

The Contractor must within two (2) business days of a request provide from DHA to vary the Contract or the Scope of Works provide DHA with:

- a) the proposed price of the Variation calculated on the Agreed Basis;
- b) details of how the Contractor calculated the price of the Variation in accordance with Agreed Basis (if requested); and
- c) any additional time required by the Contractor to carry out the Variation.

8.3. Instruction to perform Variation

For urgent work, DHA may by giving a written Variation instruction, require the Contractor to carry out a Variation even if the price or additional time has not been agreed at the time of the instruction.

8.4. Determination of Price of Variation

- a) If the parties cannot agree on the price of the Variation, the price will be determined by DHA using (as far as practicable) the Agreed Basis and this will be notified to the Contractor.
- b) If the Contractor objects to the amount determined by DHA, it must within 5 days of notification, give DHA notice setting out the reasons for the objection. If DHA does not agree with the objection, DHA will appoint the Quantity Surveyor to determine the amount payable for the Variation. The price determined by the Quantity Surveyor will be final.

8.5. Adjustment of Contract Sum for Variation

The Contract Sum is to be adjusted by the price of a Variation and paid in accordance with clause 6.

9. WORKING HOURS

The working hours and working days on the Site will be unless otherwise notified by DHA 7.30am to 5.00 pm Monday to Friday. DHA must approve any variation to working hours.

10. PROTECTION OF PEOPLE AND PROPERTY

10.1. Obligation of protection

The Contractor must at the Site:

- a) take all steps to protect people and property;
- b) where there is no existing occupant on the Site, keep the Site secure;
- c) avoid unnecessary interference with others on the Site; and
- d) prevent nuisance and unreasonable noise disturbance.

10.2. Obligation to rectify damage

If the Contractor, its employees or agents damage any property, the Contractor must promptly rectify the damage and pay any compensation necessary.

11. CLEANING AND MAKE GOOD

11.1. Obligation to keep clean and make good

The Contractor is responsible for as part of the Works:

- a) keeping the Contractor's areas clean at all times,
- b) the removal of its tools, plant and equipment, and the removal daily (unless DHA otherwise agrees) of all waste, debris and refuse arising out of the Works; and
- c) restoring the site and adjoining areas to a reasonable standard acceptable to DHA at completion of the Works.

11.2. Right to remedy

If the Contractor fails to comply with clause 11.1, DHA may rectify the breach and the cost of that rectification is recoverable as a debt due and payable by the Contractor to DHA.

12. DEFECTS LIABILITY PERIOD

12.1. Defects during DLP

In addition to any statutory warranties, in the event of any defects in the Works appearing during the Defects Liability Period, DHA may either:-

- a) direct the Contractor to correct, remedy or replace any Defect promptly in which case the Contractor must, at its own cost, make good any Defect before the end of the Defects Liability Period; or

- b) Where urgent or out of hours works are required, appoint another tradesperson on DHA's repair and maintenance panel, to undertake the rectification works or replace the goods at the Contractors costs under 12.2 b) below.

12.2. Cost recovery re DLP

DHA may:-

- a) if the Contractor does not comply with the direction in 12.1a) have that work carried out or the goods replaced by others; or
- b) claim or seek reimbursement from the Contractor, of the costs of the other tradesperson referred to in 12.1 b) provided that or to the extent that the costs are reasonable;

and the cost is a debt due and payable by the Contractor to DHA. In event of disagreement over reasonable costs, DHA may refer to matter to its Quantity Surveyor for final determination.

13. COMPLETION

13.1. Notice of Practical Completion

The Contractor must give DHA at least 5 Business Days written notice of the date upon which the Contractor anticipates achieving Practical Completion.

13.2. Certificate of Practical Completion

If DHA is of the opinion, acting reasonably, that Practical Completion has been achieved, DHA will issue a Certificate of Practical Completion.

13.3. Works Not Complete

- a) If DHA is of the opinion, acting reasonably, that Practical Completion has not been achieved, it will notify the Contractor of the work needed to be carried out to achieve Practical Completion.
- b) The Contractor will carry out the work referred to in clause 13.3(a) and notify DHA in accordance with clause 13.1 and clauses 13.2 or 13.3(a) will apply again as appropriate.

13.4. Final Completion

On expiration of the Defects Liability Period and rectification of all defects notified to the Contractor, DHA will issue the Contractor with a certificate confirming the Works are complete and the Contractor has no further obligation to

DHA (**Final Completion**) subject to the Warranties in clause 4.

14. DAMAGES

14.1. Liquidated Damages

If the Works (or any part of them) do not reach Practical Completion by the Date for Practical Completion, then the Contractor must pay the Liquidated Damages per day from the Date for Practical Completion until the date the Works reach Practical Completion. This does not exclude DHA from seeking damages other than those contemplated by this clause.

15. EXTENSION OF TIME

15.1. Claim for extension of time

The Contractor will be entitled to make a claim for an extension of time to the Date for Practical Completion if:

- a) the Contractor is or will be delayed in reaching Date for Practical Completion by an Event of Delay; and
- b) the Contractor gives DHA, within 3 days of when the Contractor should reasonably have become aware of the Event of Delay, a written claim for an extension of time outlining the cause of the delay.

15.2. Grant of extension of time

Upon receipt of the written claim, DHA, may, in its absolute discretion but acting reasonably, grant an extension of time to the Date for Practical Completion for a reasonable amount of days as determined by DHA by written notification to the Contractor. The Contractor will not be entitled to additional amounts or costs for the extension.

16. INTELLECTUAL PROPERTY

16.1. Copyright

Copyright in any plans or designs supplied by DHA to the Contractor or any material, plans or designs created by the Contractor under this contract belong or are assigned to DHA.

16.2. Restriction on use

The Contractor must not reproduce or use any plans or designs, in whole or in part, other than for the purpose of completing the Works.

16.3. Moral rights

To the extent permitted by law and for the benefit of DHA, the Contractor consents to the use by DHA of the material under this Clause 16 and of any pre-existing material supplied by it to DHA, even if the use may otherwise be an infringement of their moral rights.

16.4. Licence to use intellectual property

The Contractor grants to DHA and its nominees a perpetual, irrevocable royalty free, non exclusive, world wide licence to use and reproduce for the Project or any related project any material developed for this agreement or provided by the Contractor to DHA. This licence includes any pre existing material of the Contractor or third party owned material incorporated into the material so developed or provided.

16.5. Other material

The Contractor must ensure that each author of material supplied by it to DHA (if any), consents in writing to the rights of DHA under this clause 16 (including 16.4 and 16.3.

17. CONFIDENTIALITY

The Contractor, its employees, agents and subcontractors must not, without written consent of DHA:

- a) disclose or make public any of DHA's Confidential Information; or
- b) make any public announcement regarding this Contract or the Works.

18. SUSPENSION

18.1. Suspension of Works by DHA

DHA may suspend the Works or any part of the Works at any time by written notice to the Contractor.

18.2. Costs arising from suspension of Works

If the suspension:

- a) is due to a default by the Contractor, then the Contractor is not entitled to any costs or damages arising from the suspension; or
- b) arises for any other reason, then the Contractor is entitled to its actual direct costs (established to DHA's reasonable satisfaction) arising from the suspension.

18.3. Recommencement of the Works

The Contractor must recommence as soon as practicable after notice from DHA.

19. TERMINATION

19.1. Default

A party is in default under this Contract if it:

- a) is in substantial breach of this Contract;
- b) wrongfully fails to carry out the Works;
- c) ceases to be able to pay its creditors;
- d) ceases, or threatens to cease, to carry on its business;
- e) becomes insolvent, bankrupt or makes an assignment of that party's estate for the benefit of creditors;
- f) makes an arrangement or composition with creditors, or
- g) being a company, goes into liquidation or comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or an order is made to place the company under external administration.

19.2. Right to terminate

If a party remains in default 5 Business Days after the other party had given it written notice requiring the default to be remedied then, without prejudice to any other rights or remedies, the non defaulting party may, by giving a further written notice, end this Contract.

19.3. Termination for convenience

DHA may, by giving notice in writing to the Contractor, terminate (or reduce the scope of) this Contract at any time without reason or cause. Upon receipt the Contractor;

- a) Must stop (or reduce work) in accordance with the notice, and
- b) Must mitigate all loss, costs and expenses in connection with the termination (or reduction in scope); and
- c) Must comply with DHA's reasonable directions
- d) Is only entitled to reimbursement for supplies made or work done (and related expenses) up to the date of termination (or reduction in scope); and

- e) Is not entitled to quantum meruit or profit on any part of the Contract that is terminated or subject to a reduction in scope.

20. INDEMNITY

20.1. Contractor's indemnity

Where the Contractor breaches this Contract or is otherwise in default under this Contract (including negligence) the Contractor indemnifies DHA against:

- a) loss of or damage to any property;
- b) claims in respect of personal injury or death; and
- c) any liability, loss, damage or expense (other than the obligation to pay the Contract Sum) that DHA may suffer or incur,

arising out of or in connection with that breach or default.

20.2. Limit of indemnity

The obligation of the Contractor to indemnify DHA under clause 20.1 is reduced to the extent that the event giving rise to the applicable loss, damage, costs, claim or liability suffered by DHA was caused or contributed to by DHA.

21. COMMONWEALTH REQUIREMENTS

The Contractor must comply with all policies, procedures and codes of conduct set out in Schedule 4, including the National Code of Practice.

22. COMPLIANCE WITH WHS LAW

22.1. Compliance

In carrying out the Works, the Contractor and its agents, employees and contractors must observe and take all steps required by all relevant workplace and work health and safety laws.

In carrying out the Works, the Contractor must not:

- a) breach the WHS Law; or
- b) do or allow to be done, or omit or allow to be omitted anything which may result in DHA being in breach of the WHS Law.

22.2. Directions and Documentation

- a) The Contractor shall comply with and shall ensure Workers comply with:-

- i. any work health and safety direction, policy or procedure required to be implemented by DHA in respect of work health and safety and WHS Law matters; and

- ii. any work health and safety related documentation submitted by the Contractor to DHA, as updated from time to time.

- b) The Contractor agrees that any direction given or policy or procedure required to be implemented by DHA under this Contract does not relieve the Contractor of its obligations under the WHS Law or to carry out the Works in accordance with this contract.

- c) In event of inconsistency between the requirements of this Clause 22, the Contractor will comply with that which imposes the higher level of work, health and safety.

22.3. Consultation, representation and participation

- a) The Contractor must participate and must ensure that all Workers participate in any consultation and representation to ensure compliance with the WHS Law in connection with the Works, including (without limitation) taking reasonable steps to initiate and participate in any meetings, invite Worker feedback, furnish and maintain current information and to take any other steps agreed between the parties.

- b) The Contractor must also consult, co-operate and co-ordinate activities with other persons holding a duty under a Corresponding WHS Law involved in or connected to the Works, to ensure compliance with the WHS Law, including (without limitation) taking reasonable steps to participate in any meetings, furnish and maintain current information and to take any other steps agreed between the parties and those other persons;

22.4. Safety of personnel

The Contractor must, in carrying out the Works, ensure that:

- a) any Worker or other person is not exposed to risks to their health and safety;
- b) a sufficient WHS management plan (including consultation with Workers) is developed, implemented and maintained for the Works.

22.5. Principal contractor

If the Contractor is described as a 'principal contractor' in Item 22 of Schedule 1:

- a) it has been authorised by the DHA to have management and control of the Site ; and
- b) has been engaged by the DHA as and accepts the appointment of, 'principal contractor' in relation to the Works and Site.

As principal contractor it must, in carrying out the Works, comply with and ensure compliance with the obligations of a principal contractor under the WHS Law, ensuring that at all times the requirement that imposes the higher level of work health and safety is observed.

Those duties and obligations include but are not limited to:

- a) complying with and ensuring compliance with health and safety duties in relation to all aspects of the Works;
- b) complying with consultation, representation and participation requirements;
- c) preparing and ensuring the preparation of safe work method statements for high risk construction work and ensuring that the high risk construction work is carried out in accordance with the safe work method statements;
- d) complying with and ensuring compliance with all relevant approved codes of practice under the WHS Law; and
- e) permitting entry to the Site to work health and safety entry permit holders.

22.6. Notification

The Contractor must immediately notify DHA of any notifiable incident (being an incident which is notifiable under WHS Law) or injury which arises:

- a) during the performance of the Works; or
- b) in connection with the Works.

23. TRANSFER AND ASSIGNMENT

DHA may assign or transfer to another party any right or obligation under this Contract by notice in writing to the Contractor. Any such assignment or transfer will operate to release

DHA from any further obligation or liability under this Contract. The Contractor agrees to perform its remaining obligations under this Contract for the assignee or transferee.

24. DISPUTE RESOLUTION

24.1. Dispute notice

If a dispute or difference arises between the parties in connection with this Contract, then either party may give a notice (Dispute Notice) in writing to the other party specifying:

- a) the dispute or difference;
- b) particulars of the party's reasons for being dissatisfied; and
- c) the position which the party believes is correct.

24.2. Resolution of dispute or difference by negotiation

- a) The dispute or difference identified in the Dispute Notice is to be referred to the DHA's Representative and the Contractor's Representative (collectively, **Representatives**) who must within 5 Business Days of service of a Dispute Notice, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.
- b) If the parties cannot resolve the dispute or difference, provided the parties have complied with this clause 24, the parties may have recourse to any other remedy available to them to resolve the dispute.
- c) The parties should give consideration to alternative dispute resolution processes to resolve the dispute.

25. INTERPRETATION

In this Contract the defined words have the following meaning:

Agreed Basis means the methodology to be used by any party when calculating any amount payable under this Contract being in order of application:

- a) an amount as agreed between DHA and the Contractor;
- b) an amount calculated using the Schedule of Rates (if applicable);
- c) an amount calculated using reasonable market prices; or

- d) an amount being the actual cost of the Work plus a margin for profit as set out in the Contract Details.

Building Laws means all laws, codes and standards regulating, or relating to, the building industry applicable in the Jurisdiction, including:

- a) the Building Code of Australia;
- b) all laws, ordinances, rules, codes, regulations, requirements and orders of any legislation or authority applicable to, or having jurisdiction over, the Works or the Project; and
- c) all laws, ordinances, rules, codes, regulations, requirements and orders of any legislation or authority relating to occupational health, safety and rehabilitation management.

Building Code of Australia means the Building Code of Australia, including the relevant State or Territory appendix, as amended from time to time, produced by the Australian Uniform Building Regulations Co-ordinating Council on behalf of the Commonwealth, State and Territory Governments.

Builder's Insurance means any policy of insurance required by the relevant Building Law in the Jurisdiction for the carrying out of domestic or residential work by the Contractor.

Business Day means any day which is not a Saturday, Sunday or a public holiday in the State or Territory in which the Site is located.

Certificate of Practical Completion means the certificate issued by DHA in accordance with clause 13.

Contract means the contractual relationship between the parties constituted by the documents referred to in clause 3 of the Formal Contract.

Contract Details mean the details relating to this Contract as set out in Schedule 1.

Corresponding WHS Law has the same meaning as in Regulation 6A of the WHS Regulations.

Date for Practical Completion means the date specified in the Contract Details as adjusted in accordance with this Contract.

Defect means any defect, shrinkage, deficiency, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of this Contract.

Defects Liability Period means the period commencing at 4.00pm on the date the Certificate of Practical Completion is issued and ending within the period specified in the Contract Details.

Defence means the Commonwealth Department of Defence.

Events of Delay means:

- a) an act, default, omission or direction of the DHA, or any of the DHA's consultants, agents or other contractors (not being employed by the Contractor);
- b) an event beyond the reasonable control of the Contractor; or
- c) inclement weather not contemplated in the Scope of Works,

which actually delays the Works.

Existing Conditions means the condition of the Site and the building and other improvements if any, including the work carried out by others, on or over which the Contractor is to carry out the Works.

Final Completion has the meaning in accordance with clause 13.

DHA's Confidential Information includes information that is designated by DHA as confidential (including DHA property addresses, tenant's names and contact details and Defence Base information).

Invoice means a tax invoice (including GST) which is also a claim for payment by the Contractor for all or part of the Contract Sum which:

- a) covers the amount preapproved for payment by DHA;
- b) identifies and relates to the part of the Works actually performed and completed by the Contractor;
- c) makes allowance for the Security (if applicable); and

d) includes any supporting documentation required by DHA.

Invoice Date means the date for submitting an Invoice referred to in the Contract Details or such other date as is expressly agreed by DHA in writing.

Jurisdiction means the jurisdiction in the State or Territory in which the Site is located.

Liquidated Damages means the liquidated damages specified in the Contract Details.

National Code of Practice means, collectively, the National Code of Practice for the Construction Industry 1997, the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 or reissued from time to time.

Payment Terms means the payment terms specified in the Contract Details.

Payment Certificate means the certificate issued by DHA to the Contractor in accordance with clause 6.

Practical Completion is the stage when the Works have been completed so that they are fit for their intended purpose and lawfully able to be used for that purpose, excluding minor defects which do not affect the use of the Works for their intended purpose.

Provisional Sum means the amount, if any, included in the Contract Details which is an initial assessment of the cost of carrying out work or providing goods or materials which could not be entirely foreseen or estimated at the date of this Contract.

Provisional Sum Work means the work to be carried out or goods or material to be supplied if required by DHA, under clause 7 for which a Provisional Sum is included in this Contract.

Quantity Surveyor means the quantity surveyor appointed by DHA, at the cost of DHA equally, to determine the price of Provisional Sum Work or a Variation.

Scope of Works (also SOW) means the scope of the Works specified in Schedule 2 and includes anything reasonably foreseeable as incidental to the Works and necessary to complete the Works

even if not expressly stated in the Scope of Works.

Security means the security to be provided to DHA by the Contractor specified in the Contract Details.

Security of Payments Laws means the laws relating to security of payments in the building and construction industry in the Jurisdiction.

Site means the site specified in the Contract Details.

Start Date means the date specified in the Contract Details or such later date as is notified by DHA before or after the date of this Contract.

Variation means any change to the form, quality or extent of the Works.

WHS Law means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the State or Territory where the Works are carried out) dealing with or relevant to health and safety at work and of Workers and others who may be affected by the carrying out of work, and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters and includes the Work Health and Safety Act 2011 (Cth) and the WHS Regulations as amended from time to time.

WHS Regulations means the Work Health and Safety Regulations 2011 (Cth).

Worker means any person who carries out work in any capacity for the Contractor including work as an employee; a contractor or subcontractor; an employee of a contractor or subcontractor; an employee of a labour hire company who has been assigned to undertake any part of the Works; an outworker; an apprentice or trainee; a student gaining work experience; a volunteer; or any other category of worker prescribed by the WHS Regulations.

Works means the work (including the provision of materials) which the Contractor is or may be required to carry out and complete under this Contract and includes any Variations or remedial work.

Version MWC 1.2

Schedule 4 – Commonwealth Policies Applicable to this Contract

The following Commonwealth policies apply to this Contract unless otherwise indicated. The Contractor must be familiar with the policies and by executing this Contract agrees to comply with the relevant policies.

1 AUSTRALIAN AND NEW ZEALAND GOODS AND SERVICES

The Commonwealth supports local industry purchasing to maximise opportunities for industry development in Australia and New Zealand.

2 AFFIRMATIVE ACTION

Consultants must comply with the *Equal Employment Opportunity for Women in the Workplace Act 1999*.

3 PRIVACY

Consultants must comply with the *Privacy Act 1988* and the *Privacy Amendment (Private Sector) Act 2000*.

4 NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY

The Contractor must comply with the National Code of practice for the Construction Industry (Code) and the Australian Government Implementation Guidelines for the National Code of practice for the Construction Industry, May 2012 (Guidelines). Copies of the Code and Guidelines are available at www.deewr.gov.au/building.

Compliance with the Code and Guidelines shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code and Guidelines.

Where a change in the Contract is proposed and that change would affect compliance with the Code and Guidelines, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code and Guidelines will be affected.

The Contractor must maintain adequate records of the compliance with the Code and Guidelines by;

- a) the Contractor;
- b) its Subcontractors;
- c) consultants; and
- d) its Related Entities (see Guidelines for meaning including section 3.5 of the Guidelines).

If the Contractor does not comply with the requirements of the Code or the Guidelines in the

performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Contractor may give preference to subcontractors and consultants that have a demonstrated commitment to:

- a) adding and/or retaining trainees and apprentices;
- b) increasing the participation of women in all aspects of the industry; or
- c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

The Contractor must not appoint a subcontractor or consultant in relation to the Project where:

- a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
- b) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the subcontractor or consultant has not fully complied, or is not fully complying, with the order.

The Contractor agrees to require that it and its subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- a) Inspect any work, material, machinery, appliance, article or facility;
- b) Inspect and copy any record relevant to the Project and Works the subject of this Contract; and
- c) Interview any person as is necessary to demonstrate its compliance with the Code and Guidelines.

Additionally, the Contractor agrees that the Contractor and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

For the avoidance of doubt, Clause 4 applies in relation to the Contractor's new privately funded construction work.

The Contractor must ensure that all subcontracts impose obligations on subcontractors' equivalent to the obligations under these Contract Clauses.

The Contractor in all advertisements related to DHA Works should incorporate the following statement:

The National Code of Practice for the Construction Industry, in conjunction with the Australian Government Implementation Guidelines for the National code of Practice for the Construction Industry, May 2012, apply to this project.

The Contractor shall ensure information that falls within the *Privacy Act 1988 (Cth)* is kept in a safe and secure location on site with access to the records limited.

The Contractor must ensure that the application of the Code and Guidelines will be a standing item on the agenda for site/project meetings.

The Contractor shall ensure that there is a work health safety and rehabilitation (WHS&R) plan for the project;

In carrying out the Works the Contractor must ensure that:

- a) it complies with all aspects of the National Code of Practice for the Construction Industry and for all subcontractors and consultants associated with the project to comply;
- b) it complies with all government policy relevant to the carrying out of the Works;
- c) the Works and all materials comply with all relevant Australian Standards; and
- d) it reports any dispute that may impact on project costs or timelines to DHA.

5 FREEDOM OF INFORMATION

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

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

Where DHA has received an FOI request for access to a document created by, or in the possession of the Contractor or its subcontractors that relates to the Contract, the Contractor must promptly provide the document to DHA, on request, at no cost.

6 DHA RECORDS AND ARCHIVES ACT 1983 REQUIREMENTS

The Contractor must not transfer, or permit the transfer of, custody or the ownership of any DHA record (as defined in the *Archives Act 1983 (Cth)*) without the prior written consent of DHA.

7 OTHER POLICIES AND LEGISLATION

Consultants must also comply with policies, such as, work health and safety requirements and industry development policies or any policies as notified by DHA