



**CONTRACT NUMBER: [INSERT]**

**CONTRACT NAME: [INSERT]**

**CONSULTANT: [INSERT]**

**CONTRACT ADMINISTRATOR SERVICES CONTRACT  
(CAS-ACT-2013)**

**VERSION: [DRAFT/FINAL - INSERT DATE]**

**[RFT ANNEXURE VERSION: LAST UPDATED 21 JULY 2021 TO INSERT NOTE FOR S126 & S127 CORPORATIONS ACT  
2001 (CTH) ON FORMAL AGREEMENT PAGE]**

## Table of Contents

<b>FORMAL AGREEMENT</b> .....	<b>1</b>
<b>CONDITIONS OF CONTRACT</b> .....	<b>3</b>
<b>1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS</b> .....	<b>3</b>
1.1 Glossary of Terms .....	3
1.2 Interpretation .....	14
1.3 Miscellaneous .....	15
<b>2. ROLE OF THE CONSULTANT</b> .....	<b>17</b>
2.1 Engagement .....	17
2.2 Standard of Care .....	17
2.3 Authority to Act .....	17
2.4 No authority to give directions or waive requirements .....	17
2.5 Knowledge of the Territory's Requirements .....	18
2.6 Notice of Matters Impacting on the Services or the Project .....	18
2.7 Co-ordination .....	18
2.8 Access to Consultant's Premises .....	18
2.9 Conflict of Interest .....	19
2.10 Subcontracting .....	19
2.11 Statutory Requirements .....	20
2.12 Change in Statutory Requirements or Variance with Contract .....	20
2.13 The Environment .....	21
2.14 Cost Control .....	21
2.15 Pandemic Relief Event .....	22
2.16 Interpretation of the Brief .....	23
2.17 Co-ordination with other Projects/Programs .....	23
<b>3. ROLE OF THE TERRITORY</b> .....	<b>25</b>
3.1 Information and Services .....	25
3.2 Additional Information .....	25
3.3 Access .....	25
3.4 Request for Territory decision by Consultant .....	25
<b>4. PERSONNEL</b> .....	<b>26</b>
4.1 Territory's Representative .....	26
4.2 Replacement of Territory's Representative .....	26
4.3 Parties' Conduct .....	26
4.4 Territory's Representative's Representative .....	26
4.5 Key People .....	26
4.6 Removal of Persons .....	27
<b>5. INSURANCE</b> .....	<b>28</b>
5.1 Consultant Insurance Obligations .....	28
5.2 Failure to Insure .....	29
5.3 Period of Insurance .....	29
5.4 Notice of Potential Claim .....	29
5.5 Cross Liability .....	30
<b>6. DOCUMENTATION</b> .....	<b>31</b>
6.1 Territory's Documents .....	31
6.2 Consultant's Documentation .....	31

6.3	Territory's Representative may Review Consultant Documentation .....	31
6.4	No Obligation to Review.....	31
6.5	Copies of Consultant Documentation .....	32
6.6	Licence over Consultant Documentation .....	32
6.7	Intellectual Property Warranties .....	32
6.8	Intellectual Property Rights .....	33
6.9	Territory Material .....	33
6.10	DCAP .....	33
6.11	Resolution of Ambiguities.....	33
6.12	Access to Premises and Project Documents .....	34
6.13	Work Health and Safety Management .....	34
6.14	Proactive Review Of All Project Contractor Documentation .....	34
6.15	Drawings.....	35
6.16	Certification .....	35
6.17	National Construction Code Certification .....	36
6.18	Requests For Information .....	36
<b>7.</b>	<b>QUALITY .....</b>	<b>38</b>
7.1	Quality Assurance .....	38
7.2	Non-Complying Services.....	38
7.3	Reperformance of the Non-complying Services .....	38
7.4	Project Plans .....	39
<b>8.</b>	<b>TIME.....</b>	<b>40</b>
8.1	Progress.....	40
8.2	Programming .....	40
8.3	Consultant Not Relieved.....	40
8.4	Suspension.....	40
8.5	Acceleration .....	41
<b>9.</b>	<b>VARIATION .....</b>	<b>43</b>
9.1	Variation Price Request .....	43
9.2	Variation Order .....	43
9.3	Cost of Variation.....	43
9.4	Rates and Prices .....	43
9.5	Omissions .....	44
9.6	All Work Included .....	44
<b>10.</b>	<b>PAYMENT .....</b>	<b>45</b>
10.1	Payment Obligation .....	45
10.2	Payment Claims .....	45
10.3	Conditions Precedent.....	45
10.4	Payment Schedules.....	46
10.5	Payment .....	47
10.6	Payment on Account.....	47
10.7	Completion Payment Claim and Notice .....	47
10.8	Release after Completion Payment Claim and Notice .....	48
10.9	Interest.....	48
10.10	Correction of Payment Schedules .....	48
10.11	Right of Set-Off.....	48
10.12	Payment of Workers and Subconsultants .....	48
10.13	GST.....	49
10.14	Security of Payment Legislation .....	49
10.15	Accounting Records .....	50
10.16	Cost Allocation Advice.....	51
10.17	Facilities and Infrastructure Accounting .....	51
10.18	Role of Schedule of Rates .....	51

<b>11.</b>	<b>TERMINATION .....</b>	<b>52</b>
11.1	Preservation of Rights .....	52
11.2	Consultant Default .....	52
11.3	Contents of Notice of Default .....	52
11.4	Termination for Insolvency or Breach .....	52
11.5	Territory's Entitlements after Termination .....	52
11.6	Consultant's Entitlements after Termination .....	53
11.7	Termination for Convenience .....	53
11.8	Costs .....	53
11.9	Copies of Project Documents .....	54
<b>12.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>55</b>
12.1	Notice of Dispute .....	55
12.2	Expert Determination .....	55
12.3	The Expert .....	55
12.4	Not Arbitration .....	55
12.5	Procedure for Determination .....	56
12.6	Disclosure of Interest .....	56
12.7	Costs .....	56
12.8	Conclusion of Expert Determination .....	56
12.9	Agreement with Expert .....	56
12.10	Determination of Expert .....	56
12.11	Executive Negotiation .....	57
12.12	Arbitration Agreement .....	57
12.13	Arbitration .....	57
12.14	Proportional Liability .....	58
12.15	Continuation of Services .....	59
<b>13.</b>	<b>NOTICES .....</b>	<b>60</b>
13.1	Notice of Variation .....	60
13.2	Notices of Other Claims .....	60
13.3	Prescribed Notices .....	60
13.4	Continuing Events .....	61
13.5	Time Bar .....	61
13.6	Other Provisions Unaffected .....	61
13.7	Address for Service .....	61
13.8	Receipt of Notices .....	62
<b>14.</b>	<b>NOT USED .....</b>	<b>63</b>
<b>15.</b>	<b>GENERAL .....</b>	<b>64</b>
15.1	Workplace Gender Equality .....	64
15.2	Protection of Personal Information .....	64
15.3	Freedom of Information .....	66
15.4	Long Service Leave .....	66
15.5	Assignment .....	66
15.6	Publicity .....	66
<b>16.</b>	<b>NON-DISCLOSURE OF CONFIDENTIAL INFORMATION ..... ERROR! BOOKMARK NOT DEFINED.</b>	
<b>17.</b>	<b>CONFIDENTIAL TEXT UNDER THE PROCUREMENT ACT .....</b>	<b>69</b>
17.1	General .....	69
17.2	Confidential Text .....	69
17.3	Territory must not disclose Confidential Text .....	69
<b>18.</b>	<b>NOT USED .....</b>	<b>70</b>

[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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<b>19.</b>	<b>REVIEWING CLAIMANT’S PAYMENT CLAIMS .....</b>	<b>70</b>
<b>20.</b>	<b>SECURE LOCAL JOBS CODE .....</b>	<b>70</b>

**FORMAL AGREEMENT**

The Territory has accepted a tender by the Consultant for the Services. Notwithstanding the date of this Formal Agreement, the date of the parties' contract is the date specified in the letter of acceptance of the Consultant's tender issued by the Territory (or, if no date is specified, the date of the letter of acceptance).

**Parties** **Australian Capital Territory**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) ("**Territory**").

**The consultant set out in the Contract Particulars ("Consultant")**

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

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

**SIGNED** as an agreement.

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**Executed** by the **Consultant** by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

**Note:**

Company: This form must be signed in accordance with either section 126 or section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary.

If the company is a proprietary company that has a sole director who is also the sole company secretary then this form must be signed by that director and witnessed.

Partnership: This form must be signed by at least one partner on behalf of all other partners and witnessed.

Individual: This form must be signed by the individual tendering for the Works and witnessed

## CONDITIONS OF CONTRACT

### 1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

#### 1.1 Glossary of Terms

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

##### **Accredited Building Surveyor**

A person who is a building surveyor accredited by the Australian Institute of Building Surveyors.

##### **Approval**

Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Works, the Project or the Services or under any other applicable Statutory Requirement, which must be obtained or satisfied in connection with the Project.

##### **Award Date**

The date specified in (or, if no date was specified, the date of) the letter of acceptance given by the Territory to the Consultant in accordance with **section 9.3 of the Standard Conditions of Tender applicable to (CAS-ACT-2013)**.

##### **Brief**

The brief attached at **Annexure 1**.

##### **Change of Control**

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

##### **Claim**

Includes any claim for an increase in the Fee, for payment of money (including damages) or for any other compensation or relief:

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Territory's Representative;
- (b) arising out of, or in any way in connection with, the Project, the Services or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution.

##### **Commonwealth**

Commonwealth of Australia.



### **Completion**

The point in time when, in respect of a Milestone, everything required by this Contract or a Project Contract to have been completed as a condition precedent to the Milestone has been completed in accordance with this Contract or the Project Contract.

### **Confidential Information**

- (a) Means, subject to paragraph (b):
- (i) the Project Documents;
  - (ii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Territory, the Territory's Representative or anyone on the Territory's behalf, whether or not owned by the Territory which is in any way connected with the project which:
    - A. by its nature is confidential; or
    - B. the Consultant knows or ought to know is confidential;
  - (iii) 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 (ii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
- (b) Does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Territory, the Territory's Representative or anyone on the Territory's behalf, whether or not owned by the Territory which:
- (i) is in the possession of the Consultant without restriction in relation to its disclosure or use before the date of its receipt from the Territory, the Territory's Representative or anyone on the Territory's behalf;
  - (ii) is in the public domain otherwise than due to a breach of **clause 16**; or
  - (iii) has been independently developed or acquired by the Consultant.

### **Construction Contract**

A building or construction contract which the Territory has entered into or will enter into with a contractor to construct or design and construct any part of the Works.

### **Consultant**

The person named in **Item 6 of the Contract Particulars**.

### **Consultant Documentation**

All material brought, or required to be brought, into existence by the Consultant as part of, or for the purpose of, carrying out the Services including documents, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards.

### **Consultant's Representative**

The person named in **Item 7 of the Contract Particulars** or any other person from time to time appointed as Consultant's Representative in accordance with **clause 4.5**.

### **Contamination**

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

### **Contract**

The contractual relationship between the parties constituted by:

- (a) the letter of acceptance;
- (b) the Formal Agreement to which these Conditions of Contract are attached (if executed);
- (c) the Special Conditions;
- (d) these Conditions of Contract;
- (e) the Contract Particulars;
- (f) the Brief;
- (g) the DCAP; and
- (h) the other documents (if any) referred to in **Item 8 of the Contract Particulars**.

### **Contract Particulars**

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

### **Control**

Includes:

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

### **Date for Completion**

The date or period of time (if any) specified in **Item 11 of the Contract Particulars** for Completion of a Milestone, as adjusted under the Contract.

### **DCAP**

The Detailed Consultant's Activities Proposal at **Annexure 2**, as amended from time to time in accordance with **clause 6.10**.

### **Direction**

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

### **Environment**

Includes:

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

### **Environmental Clearance Certificate**

Any Environmental Clearance Certificate issued by the Territory relating to the Project and any conditions incorporated in that certificate.

### **Environmental Harm**

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

### **Environmental Incident**

Any Environmental Harm or Contamination caused by or in relation to the Services.

### **Environmental Management Plan**

The environmental management plan (if required under **Item 16B of the Contract Particulars**) prepared by the Consultant and finalised under **clause 7.4** which sets out in adequate detail the procedures the Consultant will implement to manage the Project from an environmental perspective and which must describe how the Consultant proposes to ensure the Services and the Project will be performed consistently with and so as to maximise the achievement of:

- (a) the Environmental Requirements;
- (b) the Statutory Requirements;
- (c) the Consultant's environmental commitments set out in the DCAP;
- (e) the ESD Principles; and
- (f) the Environmental Objectives.

### **Environmental Objectives**

The Environmental Objectives are to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise adverse impacts on the Environment;
- (c) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Project;

- (e) establish procedures to ensure that no hazardous substance is stored on Territory land without approval;
- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and subconsultants;
- (i) ensure subconsultants implement the Environmental Management Plan;
- (j) define how the management of the Environment during the Project is reported and performance evaluated;
- (k) describe all monitoring procedures required to identify impacts on the Environment as a result of the Project;
- (l) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
- (m) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

#### **Environmental Requirements**

Includes:

- (a) any Environmental Clearance Certificate;
- (b) the Territory Environmental Requirements; and
- (c) any other matter or requirement specified in **Item 26 of the Contract Particulars**.

#### **ESD**

Ecologically sustainable development.

#### **ESD Principles**

Means:

- (a) efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
- (b) increased energy conservation and efficiency;
- (c) sustainable use of renewable energy resources;
- (d) reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
- (e) improvements to interior and exterior environments leading to increased productivity and better health;
- (f) efficiency in resource and materials utilisation, especially water resources;
- (g) selection of materials and products based on their life-cycle environmental impacts;
- (h) increased use of materials and products with recycled content;

- (i) recycling of construction waste and building materials after demolition;
- (j) reduction in harmful waste products produced during construction;
- (k) facility maintenance and operational practices that reduce or minimise harmful effects on people and the natural environment;
- (l) maintaining the cultural, economic, physical and social wellbeing of people and communities; and
- (m) the additional specific matters (if any) relating to ESD specified in **Item 27 of the Contract Particulars** of the Project Contracts.

#### **Executive Negotiators**

The representatives of the parties nominated in **Item 12 of the Contract Particulars** or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

#### **Fee**

The amount specified in **Item 13 of the Contract Particulars** as adjusted, subject to **clause 13.5** (if applicable), under the Contract.

#### **Fee Schedule**

The Fee Schedule attached at **Annexure 3**.

#### **Insolvency Event**

Any one of the following:

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

- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
  - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
  - (iii) the corporation entering a deed of company arrangement with creditors;
  - (iv) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
  - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
  - (vi) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of the Territory under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
  - (vii) a winding up order or deregistration order is made in respect of the corporation;
  - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
  - (ix) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)); or
  - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

### Intellectual Property Rights

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

### Milestone

A milestone described in **Item 15 of the Contract Particulars**.

### Milestone Fee Payment Schedule

The milestone fee payment schedule set out in **Item 14 of the Contract Particulars**, otherwise as adjusted from time to time in accordance with **clause 9.3**, setting out:

- (a) the instalments in which the Fee is to be payable; and
- (b) the Milestones which must reach Completion for each instalment to become payable.

**Moral Rights**

Has the meaning given by the *Copyright Act 1968* (Cth).

**National Construction Code**

The National Construction Code that applies in the State or Territory where the Works are located, as amended from time to time, produced and maintained by the Australian Building Codes Board on behalf of the Commonwealth Government and each State and Territory Government.

**Other Contractor**

Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person engaged or to be engaged by the Territory to do work other than the Consultant, its subconsultants and a Project Contractor.

**Pandemic**

The disease declared in section 3 Public Health ('COVID-19' AKA 'Novel Coronavirus' – Temporary Notifiable Condition) Determination 2020 (No 1) (Disallowable Instrument DI2020-18).

**Pandemic Relief Event**

A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic provided that the adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).

**Personal Informatin**

As the same meaning as provided for in the Privacy Act.

**Planning Phase**

Means the Planning Phase (if any) described in the Brief.

**Privacy Act**

The *Information Privacy Act 2014* (ACT).

**Procurement Act**

The *Government Procurement Act 2001* (ACT).

**Professional Indemnity Insurance**

A policy of insurance to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the Consultant or its subconsultants in carrying out the Services.

**Project**

The project described in **Item 17 of the Contract Particulars**.

**Project Contract**

Any contract which the Territory has entered into or will enter into with a contractor, designer or other person to design, construct or design and construct any part of the Works, including any Construction Contract.

**Project Contract Administrator**

The person named in **Item 18 of the Contract Particulars** or any other person agreed in writing by the Territory to act as the Contract Administrator.

### **Project Contractors**

Any person engaged by the Territory to deliver any aspect of the Project under a Project Contract.

### **Project Documents**

Includes:

- (a) Territory Material;
- (b) Consultant Documentation;
- (c) programs;
- (d) DCAP;
- (e) Project Plans;
- (f) Approvals;
- (g) not used;
- (h) the documents which the Consultant is obliged to maintain under **clause 10.15**;
- (i) operation and maintenance manuals and warranties from subconsultants (if any);
- (j) without limiting paragraphs (a) – (i), any other material:
  - (i) produced; or
  - (ii) provided, or required to be provided, to the Territory or the Territory's Representative, under, for the purposes of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant (including by subconsultants), including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, software, databases or other information stored in any electronically-retrievable medium, technical information, plans, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Consultant), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents and any other material of a similar nature to those materials relating to or arising out of or in connection with the Contract, the Services or the Project; and
- (k) without limiting paragraphs (a) – (j), all material at any time derived (under, for the purposes of or in connection with the Contract, the Services or the Project) from, or based on, the material described in paragraphs (a) – (j).

### **Project Plan**

The:

- (a) Environmental Management Plan (if required under **Item 21A of the Contract Particulars**);
- (b) Site Management Plan (if required under **Item 21 of the Contract Particulars**);
- (c) Work Health and Safety Plan (if required under **Item 16 of the Contract Particulars**); and
- (d) the additional plans referred to in the Contract Particulars and prepared and finalised by the Consultant under **clause 7.4(a)(ii)**,

as amended (if at all) with the written consent of the Territory's Representative.



### **Public Liability Insurance**

A policy of liability insurance covering the Territory, the Consultant, the Territory's Representative and all subconsultants for their respective liabilities:

- (a) to third parties; and
- (b) to each other,

for loss of or damage to property and death of or injury to any person arising out of, or in any way in connection with, the Services. This policy is not required to cover liabilities insured under Workers Compensation Insurance or Professional Indemnity Insurance.

### **Security of Payment Legislation**

Means *Building and Construction Industry (Security of Payment) Act 2009 (ACT)*.

### **Services**

Means:

- (a) the professional services outlined in, or reasonably to be inferred from, the Brief; and
- (b) all other services of a type generally consistent with the services referred to in paragraph (a) which may be required by the Territory in connection with the Project,

as adjusted under the Contract.

### **Schedule of Rates**

The schedule of rates set out in **Annexure 4**.

### **Site**

The site for the Works described in **Item 20 of the Contract Particulars**.

### **Site Management Plan**

The site management plan (if required under this Contract) prepared by the Consultant and finalised under **clause 7.4**, which must set out in adequate detail all procedures the Consultant will implement to manage the carrying out of the Services and the Project on and near the Site, including:

- (a) the matters set out in **Item 21 of the Contract Particulars**; and
- (b) any other matters required by the Territory's Representative.

### **Special Conditions**

The special conditions applicable to this Contract set out in **Annexure 5** (if any).

### **Statutory Requirements**

Means:

- (a) any law applicable to the carrying out of the Services, the Site or the Project, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any conditions or requirement under them);
- (c) Territory Requirements; and
- (d) Environmental Requirements.

### **Subconsultant Deed of Covenant**

A subconsultant deed of covenant in the form determined by the Territory.

### **Territory**

Means when used:

- (a) in a geographical sense, the Australian Capital Territory; and
- (b) in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

### **Territory Environmental Management System**

The environmental management system applicable to the Site (if any) available from the Territory's Representative.

### **Territory Environmental Plan**

The environmental plan applicable to the Site (if any) available from the Territory's Representative.

### **Territory Environmental Requirements**

The Territory Environmental Management System and Territory Environmental Plan which relates to the Site, the Services or the Project and includes any procedures, instructions, requirements and standing orders which have been developed or issued under the Territory Environmental Management System or Territory Environmental Plan (as the case may be).

### **Territory Material**

All material provided to the Consultant by the Territory, including documents provided in accordance with **clause 6** and any other documents, equipment, machinery and data (stored by any means).

### **Territory's Program**

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

### **Territory Requirements**

Includes all policies, plans, manuals, guidelines, instructions and other Territory requirements which are, or may become, applicable to the Site, the Project or the Services. To the extent that any of the requirements would require or suggest the insertion of provisions into this Contract, then:

- (a) those provisions will be incorporated by reference into this Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the Territory's Representative in accordance with **clause 6.11**.

### **Territory's Representative**

The person nominated in **Item 9 of the Contract Particulars** or any other person nominated by the Territory from time to time under **clause 4.2** to replace that person.

### **TPPs**

The Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Privacy Act.

### **TPP Code**

A code of practice about information privacy which, having regard to section 21(1) and (3) of the Privacy Act, binds an agency that engages the Consultant in the provision of the Services.

### **Variation**

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

### **WHS Legislation**

The *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT) and any other legislation in the Territory addressing work health and safety.

### **Work Health and Safety Plan**

The work health and safety plan prepared by the Consultant and finalised under **clause 7.4** which must set out in adequate detail the procedures the Consultant will implement to manage the Services and the Project from a work health and safety perspective and which must:

- (a) describe how the Consultant proposes to ensure the Services and the Project is performed consistently with Statutory Requirements in relation to work health and safety; and
- (b) address the matters specified in **Item 16 of the Contract Particulars**.

### **Workers Compensation Insurance**

A policy of insurance in the form prescribed by Statutory Requirements in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside, to insure against liability for death of or injury to persons employed by the Consultant as required by the Statutory Requirements.

### **Works**

The development described in **Item 24 of the Contract Particulars**.

## **1.2 Interpretation**

In this Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in **clause 1.1**, headings are for convenience only and do not affect the interpretation of this Contract;
- (d) references to any party to this Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to this Contract;
- (f) references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;

- (h) references to any legislation or to any section or provision of any legislation include any:
  - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
  - (i) a Direction is required to be given or must be complied with; or
  - (ii) payment of money must be made (other than under **clause 10.5**),  
within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the Australian Capital Territory will not be counted in computing the number of days;
- (l) for the purposes of **clauses 10.4** and **10.5**, references to "business days" are to days other than:
  - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
  - (ii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT);
- (m) other than as set out in paragraphs (k), and (a) references to "day" are references to calendar days;
- (n) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (o) the word "subconsultant" will include subconsultants, subcontractors and suppliers, and the word "subcontract" will include a contract with a subconsultant;
- (p) derivatives of a word or expression which has been defined in **clause 1.1** will have a corresponding meaning to that assigned to it in **clause 1.1**; and
- (q) unless agreed or notified in writing by the Territory's Representative, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the preparation of the Consultant Documentation. If requested by the Territory's Representative, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Consultant Documentation available to the Territory's Representative.

### **1.3 Miscellaneous**

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in **Item 25 of the Contract Particulars**.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
  - (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
  - (ii) otherwise, both parties agree in writing.

- (c) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
  - (i) any prior agreement in conflict or at variance with the Contract; or
  - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (f) Not used
- (g) The Consultant must indemnify the Territory against:
  - (i) any liability to or claim by a third party including a Project Contractor, subconsultant or Other Contractor; and
  - (ii) all costs, losses and damages suffered or incurred by the Territory,to the extent arising out of or in connection with any breach by the Consultant of a term of this Contract.
- (h) All obligations to indemnify under this Contract survive termination of the Contract.
- (i) Unless expressly stated to the contrary in this Contract, the Consultant must perform the Services at its cost.
- (j) Without limiting the Consultant's obligations or liabilities under this Contract, any obligation of the Consultant under this Contract is deemed to include an obligation on the Consultant to ensure that its subconsultants comply with a corresponding obligation.
- (k) Where under this Contract the Territory (or the Territory's Representative) has a right, power, discretion or other function (including to accept, agree, approve, comment to or reject any matter), the Territory (or other person on its behalf) will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

## **2. ROLE OF THE CONSULTANT**

### **2.1 Engagement**

The Consultant must carry out the Services in accordance with:

- (a) this Contract; and
- (b) the Project Contracts.

### **2.2 Standard of Care**

The Consultant:

- (a) must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
- (b) warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of the service being provided by the subconsultant;
- (c) must:
  - (i) ensure that the Consultant Documentation complies with the requirements of the Contract; and
  - (ii) use its best endeavours to ensure that the Consultant Documentation will be fit for its intended purpose;
- (d) must ensure that the Services are provided economically and in accordance with the budget for the Project notified to the Consultant; and
- (e) must exercise the utmost good faith in the best interests of the Territory and keep the Territory fully and regularly informed as to all matters affecting or relating to the scope or cost of the Services, the Project or otherwise.

### **2.3 Authority to Act**

Subject to this **clause 2.3** and **clause 2.4**, the Territory appoints the Consultant as the Territory's agent for the purpose of administering the Project Contracts.

Other than as expressly notified, the Consultant has no authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Territory; or
- (b) take any act or step to bind or commit the Territory in any manner, whether as a disclosed agent of the Territory or otherwise.

The Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Territory.

### **2.4 No authority to give directions or waive requirements**

Other than as expressly notified by the Territory in writing, the Consultant has no authority to and must not:

- (a) give directions to Project Contractors, other than expressly set out in this Contract or the Project Contracts;
- (b) give directions to Project Contractors which would result in the Territory paying any Project Contractor a sum in excess of the amount set out in **Item 29 of the Contract Particulars**;

- (c) waive or vary any requirements of a Project Contract;
- (d) terminate any Project Contract; or
- (e) discharge or release any Project Contractor from any of its obligations under a Project Contract.

## **2.5 Knowledge of the Territory's Requirements**

The Consultant must:

- (a) inform itself of the Territory's requirements for the Services and the Project;
- (b) (without limitation) refer to the Territory Material and the Territory's Program; and
- (c) consult the Territory throughout the carrying out of the Services.

## **2.6 Notice of Matters Impacting on the Services or the Project**

Without limiting **clauses 13.1- 13.5** (if applicable), if the Consultant becomes aware of any matter which:

- (a) is likely to change or which has changed the scope, timing or cost of the Services or the Project;
- (b) affects or may affect the Territory's Program or the Consultant's approved program under **clause 8.2**;  
or
- (c) involves any error, omission or defect in any continuing or completed aspect of the Project or the Services,

the Consultant must promptly give written notice of that matter to the Territory's Representative containing, as far as practicable in the circumstances:

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

## **2.7 Co-ordination**

The Consultant must:

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

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

The Consultant must at all reasonable times:

- (a) give to the Territory's Representative, or to any persons authorised in writing by the Territory's Representative, access to premises occupied by the Consultant or its subconsultants where Services are being carried out; and

- (b) permit those persons referred to in paragraph (a) to inspect the carrying out of the Services and any Consultant Documentation or other Project Documents.

## 2.9 Conflict of Interest

The Consultant warrants that:

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

## 2.10 Subcontracting

- (a) The Consultant:
- (i) must not, without the prior written approval of the Territory's Representative, which will not be unreasonably withheld, subcontract any Services, except to a subconsultant named in **Item 30 of the Contract Particulars** to perform the services specified in the Contract Particulars;
  - (ii) will:
    - A. not be relieved of any of its liabilities or obligations under the Contract, including those under **clauses 2.1 and 2.2**; and
    - B. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
  - (iii) will be vicariously liable to the Territory for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with, the Services;
  - (iv) must ensure that each subcontract contains provisions:
    - A. which bind the subconsultants to participate in any novation required by the Territory under **clause 11.5(a)**; and
    - B. as otherwise required by this Contract;
  - (v) must:
    - A. ensure that, if any Statutory Requirement in the State or Territory in which the Works are situated or the Services are carried out (as the case may be) requires that a person be registered or licensed to carry out any work, that person is so registered or licensed;



- B. not direct or allow a person to perform 'high risk work', as that term is defined in the *Work Health and Safety Regulation 2011* (ACT), unless that person holds a relevant licence or is undergoing training in accordance with that regulation;
  - C. provide licence holders performing such 'high risk work' with all necessary training, instruction and information on the equipment operation, hazards, risks and control measures relevant to the workplace; and
  - D. if requested by the Territory's Representative, produce evidence of such registration, licensing or training (as the case may be) to the satisfaction of the Territory's Representative before the subconsultant commences such work;
- (vi) must, if requested by the Territory's Representative:
- A. execute;
  - B. procure the relevant subconsultant to execute; and
  - C. deliver to the Territory's Representative,  
a Subconsultant Deed of Covenant duly completed with all relevant particulars:
  - D. as a condition precedent to seeking the prior written approval of the Territory's Representative under this paragraph (a); or
  - E. where such approval is not required, within the time required by the Territory's Representative and in any event before commencement of any work by the relevant subconsultant.
- (b) No Subconsultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Territory against the Consultant whether under the Contract or otherwise.

## 2.11 Statutory Requirements

In carrying out the Services, the Consultant must:

- (a) unless otherwise specified in **Item 31 of the Contract Particulars**, comply with all applicable Statutory Requirements;
- (b) without limiting paragraph (a), assist the Territory in applying for and obtaining the Approvals referred to in **Item 31 of the Contract Particulars**;
- (c) promptly give the Territory's Representative copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Works or the Project issues to the Consultant; and
- (d) monitor and report to the Territory on whether the Project Contractors comply with all Statutory Requirements relevant to the Project.

## 2.12 Change in Statutory Requirements or Variance with Contract

If:

- (a) there is any change in a Statutory Requirement after the Award Date; or
- (b) a Statutory Requirement is at variance with the Contract,

then:

- (c) the party discovering this must promptly notify the other;

- (d) the Territory's Representative will instruct the Consultant as to the course it is to adopt insofar as the Services are affected by the change or variance (as the case may be);
- (e) the Fee will be:
  - (i) increased by any extra costs reasonably incurred by the Consultant; or
  - (ii) decreased by any saving made by the Consultant,in carrying out the Services after the giving of the notice under paragraph (c) and arising directly from the change or variance (as the case may be) or the Territory's Representative's instruction, in either case as determined by the Territory's Representative; and
- (f) if the Fee is adjusted under paragraph (e) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Territory's Representative.

### **2.13 The Environment**

**Clause 2.13** does not apply unless the Contract Particulars states it applies.

Without limiting the Consultant's other obligations under the Contract, the Consultant must:

- (a) ensure that, in preparing the Consultant Documentation and in carrying out the Services:
  - (i) it complies with the Environmental Management Plan (if any);
  - (ii) other than to the extent identified in writing by the Territory's Representative, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
  - (iii) it does not cause any Environmental Incident;
  - (iv) without limiting subparagraph (iii), it does not cause or contribute to any Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site; and
  - (v) it immediately notifies the Territory's Representative of any non-compliance with the requirements of this **clause 2.13**, a breach of any Statutory Requirement for the protection of the Environment, any Environmental Incident or the receipt of any notice, order or communication received from an authority for the protection of the Environment (as the case may be); and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in any way in connection with the Services, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment. To the extent that the requirement to clean up and restore the Environment arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with the requirements of the Contract, the Consultant will be entitled to the direct, reasonable and substantiated costs it incurs in cleaning up and restoring the Environment under this clause as determined by the Territory's Representative.

### **2.14 Cost Control**

- (a) Without limiting **clause 2.2(d)**, the Consultant must:
  - (i) use its best endeavours to ensure that the Project is completed in accordance with the Territory's requirements for the lowest possible cost;

- (ii) review the cost plan(s) for the Project with the Territory's Representative on a regular basis (including at all times required by the Territory's Representative) to:
  - A. ensure that the cost of the Project is in accordance with any cost plans for the Project approved by the Territory; and
  - B. advise the Territory's Representative how the design or any other aspect of the Project could be modified to ensure that the cost of the Project is in accordance with approved cost plans; and
- (iii) initiate a system of cost control (to the satisfaction of the Territory's Representative) throughout design and construction of the Project for the purposes of subparagraph (i) and (without limitation) advise the Territory's Representative as to all alternative steps available where:
  - A. the tenders for any package of work forming part of the Project exceed the amount included for that work in the relevant approved cost plan; or
  - B. the out-turn cost incurred under any Project Contract exceeds (or appears likely to exceed) the amount included for that contract in the relevant approved cost plan.
- (b) Without limiting paragraph (a), in performing the Services during the Planning Phase (if any), the Consultant must identify all project structuring, packaging, scoping, choice of delivery method, risk allocation, procurement, programming, costing and other issues which could have an effect on the out-turn cost of the Project.

## **2.15 Pandemic Relief Event**

- (a) If the Consultant considers that there has been a Pandemic Relief Event, it must promptly give the Territory's Representative notice in writing, together with detailed particulars of the following:
  - (i) the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic and full details of the adverse effect;
  - (ii) the likely duration of the Pandemic Relief Event;
  - (iii) the Consultant's plan to deal with the consequences of the Pandemic Relief Event which must as a minimum include details of the steps that the Consultant will take to:
    - A. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Relief Event; and
    - B. minimise any additional cost to the Territory in respect of the Pandemic Relief Event,

**(Consultant's Pandemic Relief Plan); and**
  - (iv) such other details or information as the Territory's Representative may require.
- (b) The Territory's Representative must, within 14 days of receipt of the Consultant's notice under paragraph (a) notify the Consultant of its determination whether a Pandemic Relief Event has occurred.
- (c) Where the Territory's Representative has determined a Pandemic Relief Event has occurred, the Territory's Representative may, without being under any obligation to do so, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the Pandemic Relief Event.
- (d) If a Pandemic Relief Event occurs:

- (i) subject to paragraph (f), the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant:
  - A. after the giving of the notice under paragraph (a) which arise directly from the Pandemic Relief Event and any instruction of the Territory's Representative under paragraph (c); and
  - B. to the extent such costs were exclusively incurred for the purposes of performing the Services,as determined by the Territory's Representative; and
- (ii) the Consultant must:
  - A. comply with any direction of the Territory's Representative in relation to the Pandemic Relief Event; and
  - B. subject to any amendments required by the Territory's Representative, implement the Consultant's Pandemic Relief Plan.
- (e) To the extent permitted by law, the Consultant will not be entitled to make (nor will the Territory be liable upon) any Claim arising out of or in connection with a Pandemic Relief Event, any instruction of the Territory's Representative under paragraph (c) or any amendment required by the Territory's Representative under subparagraph (d)(ii)B, other than under subparagraph (d)(i).
- (f) The Territory's Representative:
  - (i) will reduce any entitlement the Consultant would have otherwise had under subparagraph (d)(i) to the extent that the Consultant has failed to take all reasonable steps to minimise any additional cost to the Territory in respect of the Pandemic Relief Event; and
  - (ii) may, for the purposes of assessing the Consultant's entitlement under subparagraph (d)(i), take into account any breakdown of the Fee submitted by the Consultant in its proposal for the Services.
- (g) If the Fee is adjusted under subparagraph (d)(i) and a Milestone Fee Payment Schedule applies, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Territory's Representative.

## **2.16 Interpretation of the Brief**

- (a) Requirements contained in the Brief, whether or not they include the expression "the Consultant must" or "the Consultant shall" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise.
- (b) The Brief sets out the Territory's minimum requirements, which must be met or exceeded by the Consultant in performing the Services. Nothing contained in the Brief will operate to limit or exclude the Consultant's obligations under the Contract.
- (c) To the extent of any ambiguity, discrepancy or inconsistency between the Brief and any other requirement of the Contract (including any other requirement of the Brief), subject to **clause 6.11**, whichever requirement provides the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail.

## **2.17 Co-ordination with other Projects/Programs**

The Consultant:

- (a) acknowledges that the Project is part of the project or program set out in the Contract Particulars;
- (b) must perform the Services in a manner which ensures that the way in which the Project is delivered maximizes the Territory's objectives for the delivery of the Project and the project or program set out in the Contract Particulars, including the delivery of the maximum scope of work within budget and on time; and
- (c) without limiting paragraph (b), must attend such meetings, provide such documents and information, consider and respond to such proposals and do all such other things as the Territory's Representative may require for the purposes of paragraph (b).

### **3. ROLE OF THE TERRITORY**

#### **3.1 Information and Services**

The Territory must as soon as practicable after the Award Date make available to the Consultant:

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

#### **3.2 Additional Information**

If:

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

then:

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

#### **3.3 Access**

Subject to:

- (a) the Project Contracts; and
- (b) any other agreement or arrangement with any party other than the Consultant,

the Territory must:

- (c) as soon as practicable arrange access to the Site for the Consultant; and
- (d) arrange access to any other property which may be necessary for the Consultant to carry out the Services.

The Consultant must, in exercising its rights of access, comply with all requirements notified by the Territory.

#### **3.4 Request for Territory decision by Consultant**

If:

- (a) the Consultant requests the Territory to consider the selection of alternative courses of action; and
- (b) all information required to enable a decision to be made is provided by the Consultant or is otherwise available,

the Territory must, in such reasonable time as not to delay or disrupt the carrying out of the Services, give a decision on the required course of action.

## **4. PERSONNEL**

### **4.1 Territory's Representative**

The Territory's Representative will give Directions and carry out all of the other functions of the Territory's Representative under the Contract as the agent of the Territory (and not as an independent certifier, assessor or valuer).

The Consultant must:

- (a) comply with any Direction by the Territory's Representative given or purported to be given under a provision of this Contract; and
- (b) not comply with any Direction of the Territory given or purported to be given on behalf of the Territory other than as expressly stated to the contrary in the Contract.

Except where the Contract otherwise provides, the Territory's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

### **4.2 Replacement of Territory's Representative**

- (a) The Territory may at any time replace the Territory's Representative, in which event the Territory will appoint another person as the Territory's Representative and notify the Consultant of that appointment.
- (b) Any substitute Territory's Representative appointed under this **clause 4.2** will be bound by anything done by the former Territory's Representative to the same extent as the former Territory's Representative would have been bound.

### **4.3 Parties' Conduct**

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

### **4.4 Territory's Representative's Representative**

- (a) The Territory's Representative may:
  - (i) by written notice to the Consultant appoint persons to exercise any of the Territory's Representative's functions under the Contract;
  - (ii) not appoint more than one person to exercise a specific function under the Contract; and
  - (iii) revoke any appointment under paragraph (a) by notice in writing to the Consultant.
- (b) As at the Award Date, the Territory's Representative has appointed the persons set out in **Item 34 of the Contract Particulars** to carry out the functions set out in the Contract Particulars.
- (c) All references in the Contract to Territory's Representative include a reference to a representative appointed under this **clause 4.4**.

### **4.5 Key People**

The Consultant must:

- (a) employ those people specified in **Item 35 of the Contract Particulars**, including the Consultant's Representative, in the jobs specified in **Item 35 of the Contract Particulars**;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Territory's Representative's prior written approval;

- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Territory's Representative of at least equivalent experience, ability and expertise; and
- (d) put in place sufficient succession planning and training, to the satisfaction of the Territory, to ensure that the Consultant is able to replace key people under paragraph (c) without any disruption to the Services or the Project.

#### **4.6 Removal of Persons**

- (a) The Territory's Representative may by notice in writing instruct the Consultant to remove any person from the performance of the Services who in the reasonable opinion of the Territory's Representative is guilty of misconduct or is incompetent or negligent.
- (b) The Consultant must ensure that this person is not again employed in the Services.



## 5. INSURANCE

### 5.1 Consultant Insurance Obligations

The Consultant must:

- (a) from the Award Date effect and maintain the following insurance:
  - (i) Public Liability Insurance;
  - (ii) Workers Compensation Insurance in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside;
  - (iii) Professional Indemnity Insurance; and
  - (iv) such other insurances on such terms as are set out in **Item 36 of the Contract Particulars**, each of which is to be:
    - (v) for the respective amount referred to in **Item 36 of the Contract Particulars**;
    - (vi) with reputable insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
    - (vii) on terms which are satisfactory to the Territory's Representative (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Workers Compensation Insurance:
  - (i) ensure that to the extent permitted by law, the insurance policy extends to provide indemnity to the Territory in respect of any statutory liability to the Consultant's employees; and
  - (ii) ensure that each of its subconsultants legally required to do so has Workers Compensation Insurance covering the subconsultant in respect of its statutory liability to employees in the same manner as the Consultant is required to do so under paragraph(a)(ii);
- (c) provide the Territory's Representative with evidence satisfactory to the Territory's Representative that each policy is current as required by the Territory's Representative from time to time;
- (d) ensure that:
  - (i) if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant as soon as possible informs the Territory in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Territory's Representative, whose acceptance will not be unreasonably withheld; and
  - (ii) if the Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by this Contract and informs the Territory in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Territory's Representative reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract;
- (e) ensure that it:
  - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
  - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;

- (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
  - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Territory's Representative;
  - (v) immediately notifies the Territory's Representative (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
  - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies; and
- (f) ensure that any subconsultants that perform any contract administration work forming part of the Services also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Consultant under paragraph (a)(iii), for not less than the amount referred to in **Item 37 of the Contract Particulars**.

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

## **5.2 Failure to Insure**

If the Consultant fails to:

- (a) provide evidence satisfactory to the Territory's Representative that a policy is current; or
- (b) obtain insurance in accordance with **clause 5.1**,

the Territory may, without prejudice to any other rights it may have, take out the relevant insurance and the cost will be a debt due from the Consultant to the Territory.

## **5.3 Period of Insurance**

The insurance which the Consultant is required to obtain under this **clause 5** must be maintained:

- (a) in the case of Public Liability Insurance and Workers Compensation Insurance, until completion of the Services; and
- (b) in the case of Professional Indemnity Insurance, until the expiration of the period specified in **Item 38 of the Contract Particulars** following completion of the Services.

## **5.4 Notice of Potential Claim**

The Consultant must:

- (a) as soon as possible inform the Territory in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract;
- (b) keep the Territory informed of all significant developments concerning the claim, except in circumstances where the Territory is making a claim against the Consultant; and
- (c) ensure that its subconsultants similarly inform the Consultant and the Territory in respect of occurrences which may give rise to claims by them,

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

- (d) subject to paragraph (e), is not required to provide details of individual claims; and

- (e) must notify the Territory if the estimated total combined value of claims made against the Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

## **5.5 Cross Liability**

This **clause 5.5** does not apply to Professional Indemnity Insurance and Workers Compensation Insurance.

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

- (a) the insurance (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom coverage extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured; and
- (c) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds.

## **6. DOCUMENTATION**

### **6.1 Territory's Documents**

The Territory must provide to the Consultant the Territory Material and number of copies of the Territory Material specified in **Item 39 of the Contract Particulars**.

### **6.2 Consultant's Documentation**

- (a) The Consultant must, within the time set out in the approved program under **clause 8.2**, submit to the Territory's Representative for approval the Consultant Documentation.
- (b) The Territory's Representative may review any Consultant Documentation, or any resubmitted Consultant Documentation, prepared and submitted by the Consultant and reject any Consultant Documentation.
- (c) If any Consultant Documentation is rejected, the Consultant must re-submit amended Consultant Documentation to the Territory's Representative within the time frame specified by the Territory's Representative.
- (d) The Consultant must keep the Consultant Documentation free from any corporate brand, trademark, logo, trade name, stamp, symbol or similar identifying material other than that of the Territory or the relevant responsible Directorate.

### **6.3 Territory's Representative may Review Consultant Documentation**

- (a) The Territory's Representative may:
  - (i) review any Consultant Documentation, or any resubmitted Consultant Documentation, prepared and submitted by the Consultant; and
  - (ii) within the number of days set out in **Item 40 of the Contract Particulars** of the submission by the Consultant of such Consultant Documentation or resubmitted Consultant Documentation, reject the Consultant Documentation.
- (b) If any Consultant Documentation is rejected, the Consultant must submit amended Consultant Documentation to the Territory's Representative within the time frame specified by the Territory's Representative.

### **6.4 No Obligation to Review**

- (a) The Territory's Representative does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Consultant Documentation submitted by the Consultant for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Consultant Documentation prepared by the Consultant or any other Direction by the Territory's Representative about, or any other act or omission by the Territory's Representative or otherwise by or on behalf of the Territory in relation to, the Consultant Documentation will:
  - (i) relieve the Consultant from, or alter or affect, the Consultant's liabilities or responsibilities whether under the Contract or otherwise according to law; or
  - (ii) prejudice the Territory's rights against the Consultant whether under the Contract or otherwise according to law.

## **6.5 Copies of Consultant Documentation**

For the purposes of **clauses 6.2(b) and 6.3**, the Consultant must submit or resubmit to the Territory's Representative the number of copies specified in **Item 41 of the Contract Particulars** of any Consultant Documentation in:

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

in each case in accordance with the requirements set out in **Items 42 and 43 of the Contract Particulars**.

## **6.6 Licence over Consultant Documentation**

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

This licence:

- (a) arises, for any Consultant Documentation, immediately the Consultant Documentation is:
  - (i) produced; or
  - (ii) provided, or required to be provided, to the Territory or the Territory's Representative, under, for the purposes of or in connection with the Contract, the Services or the Project by, for or on behalf of the Consultant;
- (b) includes an unlimited right to sub-licence;
- (c) without limitation, extends to:
  - (i) any subsequent operation, maintenance or servicing of, or additions, alterations or repairs to the Project; and
  - (ii) use in any way for any other Territory project; and
- (d) survives the termination of this Contract on any basis.

## **6.7 Intellectual Property Warranties**

The Consultant warrants that:

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

## **6.8 Intellectual Property Rights**

The Consultant must:

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

## **6.9 Territory Material**

- (a) The Territory Material will remain the property of the Territory.
- (b) The Territory must inform the Consultant of any Territory Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
- (c) The Consultant will be responsible for the protection, maintenance and return of the Territory Material in its possession.

## **6.10 DCAP**

The Consultant:

- (a) warrants that:
  - (i) the DCAP complies with the requirements of this Contract; and
  - (ii) preparation of the Consultant Documentation in accordance with the DCAP will ensure that the Consultant Documentation complies with the requirements of this Contract and that the Consultant otherwise discharges its obligations under the Contract;
- (b) acknowledges that the DCAP:
  - (i) does not limit the Consultant's obligations under this Contract; and
  - (ii) may require updating and refining throughout the execution of the Services:
    - A. to the extent that it does not reflect the tasks or other things to be done or provided to perform the Services in accordance with the Contract; and
    - B. without limiting subparagraph A, on account of Variations;
- (c) must update and refine the DCAP as required by paragraph (b)(ii) with the written approval of the Territory's Representative;
- (d) will not be entitled to bring any Claim against the Territory arising out of or in connection with any work which the Consultant is required to carry out arising out of or in connection with paragraph (b) or (c); and
- (e) acknowledges that the Territory has not made and does not make any representation or give any warranty as to any of the matters referred to in paragraphs (a)(i) and (a)(ii).

## **6.11 Resolution of Ambiguities**

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Consultant Documentation or any other Project Documents:

- (a) the order of precedence in **Item 44 of the Contract Particulars** will apply;

- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Consultant Documentation or any other Project Documents, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail;
- (c) if it is discovered by the Consultant or the Territory's Representative, then the party discovering it must promptly give notice to the other; and
- (d) the Territory's Representative must instruct the Consultant as to the course it must adopt within 14 days of the notice under paragraph (c).

### **6.12 Access to Premises and Project Documents**

The Consultant must:

- (a) at the request of the Territory's Representative at any time during the execution of the Services and the period of 10 years following completion of the Services:
  - (i) provide access to its premises and make the Project Documents available for inspection and copying by the Territory's Representative or any other person nominated by the Territory's Representative;
  - (ii) provide to the Territory's Representative such copies of the Project Documents as the Territory's Representative or any nominated person may require;
  - (iii) provide all such facilities and assistance and answer all questions of the Territory's Representative or any nominated person; and
  - (iv) make available any officers, employees, agents or subconsultants for interviews with the Territory's Representative or any nominated person;
- (b) not used; and
- (c) ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under this **clause 6.12** as if the subconsultant were the Consultant.

### **6.13 Work Health and Safety Management**

The Consultant must:

- (a) ensure that in carrying out the Services:
  - (i) it complies with all Statutory Requirements and other requirements of the Contract for work health and safety management; and
  - (ii) all subconsultants comply with the requirements referred to in this **clause 6.13**;
- (b) notify the Territory's Representative of all work health and safety matters arising out of, or in any way in connection with, the Services and the Project.

### **6.14 Proactive Review Of All Project Contractor Documentation**

The Consultant must:

- (a) promptly and fully review all Project Contractor Documentation for compliance with the relevant Project Contract before submitting that Project Contractor Documentation to the Territory;
- (b) not submit Project Contractor Documentation to the Territory unless it has been fully reviewed and complies with the relevant Project Contract;

- (c) if any Project Contractor Documentation does not fully comply with the relevant Project Contract, provide the Project Contractor with all comments and other assistance necessary and appropriate to enable the Project Contractor to amend and finalise the Project Contractor Documentation so that it complies with the relevant Project Contract;
- (d) in any event, provide the review of the Project Contractor Documentation to the Territory advising of the actions required to finalise the documentation;
- (e) for the purposes of this clause, be responsible for coordinating the finalisation of all Project Contractor Documentation, including by providing and directing all necessary personnel to administer, supervise, review, coordinate and control finalisation of all Project Contractor Documentation at a rate of progress so that the relevant Project Contractor complies with his obligations under the relevant Project Contract;
- (f) if the Consultant requires any information, guidance, or other direction from the Territory for the purpose of finalising its review of, or enabling the Project Contractor to finalise any Project Contractor Documentation - promptly request the information, guidance or direction from the Territory;
- (g) proactively program and manage the development, review and finalisation of all Project Contractor Documentation with the relevant Project Contractor so as to ensure that there are no delays to the completion of the project and that value for money for the Territory is otherwise maximised;
- (h) when Project Contractor Documentation is submitted to the Territory, provide recommendations and advice in respect of such Project Contractor Documentation to the Territory; and
- (i) otherwise do all things necessary to ensure that the Territory is able to efficiently and effectively review all Project Contractor Documentation.

#### **6.15 Drawings**

Without limiting its other obligations under the Contract, all drawings which the Consultant is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- (a) the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Services);
- (b) all Statutory Requirements;
- (c) the directions of the Territory's Representative; and
- (d) to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

#### **6.16 Certification**

This **clause 6.16** applies if the Services include any design services by the Consultant.

Without limiting the Consultant's other obligations, the Consultant must, with each payment claim and, if requested by the Territory's Representative, prior to Completion (as defined in the Project Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Project Contract), provide the Territory's Representative:

- (a) a certificate in the form of the consultant design certificate requested by the Territory's Representative (**Consultant Design Certificate**) which certifies that (to the extent then applicable):
  - (i) the Consultant Documentation complies with:
    - A. all Statutory Requirements; and
    - B. the requirements of the Contract; and



- (ii) the Works comply or the Stage or Section (as the case may be and both as defined in the Project Contract) complies (as the case may be) with the Consultant Material which has not been rejected by the Territory's Representative under **clause 6.2**; and
  - (b) a corresponding certificate from each subconsultant that performs design work forming part of the Services in the form of the subconsultant design certificate required by the Territory's Representative (**Subconsultant Design Certification**) which certifies that (to the extent then applicable):
    - (i) all design carried out by that subconsultant complies with:
      - A. subject to the subcontract, all Statutory Requirements; and
      - B. the requirements of the subcontract; and
    - (ii) the Works comply or the Stage or Section (as the case may be and both as defined in the Project Contract) complies (as the case may be) with the design carried out by that subconsultant,
- except to the extent set out in such certificates.

### **6.17 National Construction Code Certification**

**Clause 6.17** does not apply unless **Item 44A of the Contract Particulars** state it applies.

The Consultant must provide to the Territory's Representative written certification from an Accredited Building Surveyor:

- (a) at the time it submits any Consultant Documentation under **clause 6.2** - that the Consultant Material submitted at that time complies with the National Construction Code;
- (b) before issue of any Consultant Documentation for the purpose of engaging a Project Contractor - that the Consultant Documentation to be issued at that time complies with the National Construction Code; and
- (c) prior to Completion (as defined in the Project Contract) of the Project or a Stage or a Section (as the case may be and as defined in the Project Contract) - that the Project complies or the Stage or the Section (as the case may be and as defined in the Project Contract) comply (as the case may be) with the National Construction Code,

except to the extent of any dispensation granted by the Territory and identified in the certification.

### **6.18 Requests For Information**

Without limiting the Contract, the Services may include responding to Requests for Information (**Request for Information Services**). All documentation provided as part of the Request for Information Services will be deemed to form part of the Consultant Documentation.

Without limiting the Contract or any Project Contract, the Consultant must:

- (a) perform the Request for Information Services so as to ensure that the Request for Information Services fully address each Request for Information, reduce the need for further Requests for Information and minimise the Territory's exposure to delay and extra costs under Project Contracts to the maximum extent possible;
- (b) submit (or resubmit) the Consultant Documentation prepared as Request for Information Services to the Commonwealth's Representative in accordance with clause **Error! Reference source not found.**;
- (c) perform the Request for Information Services within the time required by the Project Contract, or if no time is specified in the Project Contract, by the time required by the Commonwealth's Representative including so as to minimise the Commonwealth's exposure to delay and extra costs under Project Contracts to the maximum extent possible; and

- (d) for the purposes of performing the Request for Information Services, ensure that its personnel, subconsultants and other resources have appropriate availability, qualifications, experience, ability and expertise.

## **7. QUALITY**

### **7.1 Quality Assurance**

The Consultant:

- (a) must implement the quality assurance system specified in the DCAP;
- (b) must allow the Territory's Representative access to the quality assurance system of the Consultant and its subconsultants so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
  - (i) the implementation of, and compliance with, the quality assurance system requirements of the Contract;
  - (ii) any Direction by the Territory's Representative concerning the Consultant's quality assurance system or its compliance or non-compliance with that system;
  - (iii) any audit or other monitoring by the Territory's Representative of the Consultant's compliance with the quality assurance system; or
  - (iv) any failure by the Territory's Representative, or anyone else acting on behalf of the Territory, to detect any Services which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Territory's Representative or other person.

### **7.2 Non-Complying Services**

If the Territory's Representative discovers or believes that any Services have not been performed in accordance with the Contract, the Territory's Representative may give the Consultant an instruction specifying the non-complying Services and doing one or more of the following:

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

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

If a Direction is given under **clause 7.2**, the Consultant must reperform the non-complying Services:

- (a) within the time specified in the Territory's Representative's instruction;
- (b) so as to minimise any delay and disruption to the Services; and
- (c) so as to minimise the delay and disruption to the Project.

## 7.4 Project Plans

(a) The Consultant:

- (i) must carry out the Services in accordance with, and otherwise implement, the Project Plans; and
- (ii) for the purposes of subparagraph (i), must:
  - A. prepare draft Project Plans based on the outline approach to preparing the Project Plans and performing the Services to be covered by the Project Plans, submitted by the Consultant in its tender for the Services, and otherwise in accordance with the requirements of the Contract and submit them to the Territory's Representative so as to ensure that there is no delay or disruption to the Services and in any event no later than:
    - 1) for the Environmental Management Plan, the Site Management Plan and the Work Health and Safety Plan, the number of days set out in **Item 45 of the Contract Particulars** after the Award Date for each Project Plan; and
    - 2) not used;
  - B. not commence any of the Services to which any Project Plan applies, unless the Territory's Representative has had the number of days set out in **Item 46 of the Contract Particulars** to review the draft Project Plans and has not rejected them;
  - C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Territory's Representative;
  - D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Services and in any event in accordance with the requirements of the Contract, to the satisfaction of the Territory's Representative;
  - E. after the Project Plans have been finalised, continue to correct any defects in or omissions from a Project Plan (whether identified by the Territory's Representative or the Consultant) and submit an amended draft of the Project Plan to the Territory's Representative, after which subparagraphs A-D will apply (to the extent applicable); and
  - F. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.

(b) The Consultant will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:

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

## **8. TIME**

### **8.1 Progress**

The Consultant must:

- (a) regularly and diligently progress the Services;
- (b) perform the Services in a timely manner;
- (c) use its best endeavours to achieve Completion of each Milestone within the times and dates set out in the approved program under **clause 8.2**; and
- (d) without being limited by paragraph (c), perform the Services within any time limits specified in the Project Contracts.

### **8.2 Programming**

The Consultant must:

- (a) within 14 days of the Award Date, prepare a program of the Services which must:
  - (i) be based upon the Territory's Program; and
  - (ii) contain the details required by the Contract (including the Milestones) or which the Territory's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than that specified in **Item 47 of the Contract Particulars** to take account of:
  - (i) changes to the program;
  - (ii) changes to the Territory's Program; or
  - (iii) delays which may have occurred;
- (c) give the Territory's Representative copies of all programs for approval;
- (d) ensure that the subconsultants adhere to the program; and
- (e) provide all programs in a format compatible with the software described in **Item 48 of the Contract Particulars**.

### **8.3 Consultant Not Relieved**

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Territory's Representative will not:

- (a) relieve the Consultant from or alter its liabilities or obligations under the Contract especially (without limitation) the obligation to achieve Completion of each Milestone by the times and dates set out in the approved program under **clause 8.2**;
- (b) evidence or constitute an instruction by the Territory's Representative to accelerate, disrupt, prolong or vary any, or all, of the Services; or
- (c) affect the time for the carrying out of the Territory's or Territory's Representative's Contract obligations.

### **8.4 Suspension**

- (a) The Territory's Representative:

- (i) may instruct the Consultant to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Services; and
  - (ii) is not required to exercise the Territory's Representative's power under subparagraph (i) for the benefit of the Consultant.
- (b) If a suspension under this **clause 8.4** arises as a result of:
- (i) the Consultant's failure to carry out its obligations in accordance with the Contract, the Consultant will not be entitled to make any Claim against the Territory arising out of, or in any way in connection with, the suspension; or
  - (ii) a cause other than the Consultant's failure to carry out its obligations in accordance with the Contract:
    - an instruction to suspend under this **clause 8.4** will entitle the Consultant to be paid by the Territory the extra costs reasonably incurred by it as a result of the suspension as determined by the Territory's Representative;
    - the Consultant must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
    - the Consultant will not be entitled to make any other Claim against the Territory arising out of, or in any way in connection with, the suspension other than under this subparagraph (ii).
- (c) Except to the extent permitted by the relevant Security of Payment Legislation, the Consultant may only suspend the Services when instructed to do so under this **clause 8.4**.

## **8.5 Acceleration**

- (a) The Territory's Representative may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a time and date earlier than the time and date set out in the approved program under **clause 8.2 ("Accelerated Milestone Date")**.
- (b) If a Direction is given by the Territory's Representative under paragraph (a), the Consultant must:
- (i) use its best endeavours to:
    - accelerate the performance of the Services; and
    - otherwise do all things necessary,
    - to achieve Completion of the Milestone by the Accelerated Milestone Date; and
  - (ii) keep the Territory's Representative fully and regularly informed of the progress of the Services against the Accelerated Milestone Date.
- (c) The Consultant will:
- (i) be entitled to its extra costs properly and reasonably incurred in complying with paragraph (b); and
  - (ii) not be entitled to make any Claim, other than for payment of an amount in accordance with subparagraph (i), arising out of or in connection with a Direction by the Territory's Representative under paragraph (a).
- (d) If the Consultant does not achieve Completion of a Milestone by the Accelerated Milestone Date, the Consultant must nevertheless:

- (i) use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Milestone Date; and
- (ii) in any event, achieve Completion of the Milestone no later than the time and date set out in the approved program under **clause 8.2**.

## **9. VARIATION**

### **9.1 Variation Price Request**

- (a) The Territory's Representative may, at any time, issue a document titled "Variation Price Request" to the Consultant which will set out details of a proposed Variation which the Territory is considering with respect to the Services.
- (b) The Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant that would be involved in carrying out the proposed Variation.
- (c) Within 14 days of the receipt of a "Variation Price Request", the Consultant must provide the Territory's Representative with a written notice in which the Consultant sets out:
  - (i) the adjustment (if any) to the Fee to carry out the proposed Variation; and
  - (ii) the effect (if any) which the proposed Variation will have on the then approved program.

### **9.2 Variation Order**

Whether or not the Territory's Representative has issued a "Variation Price Request" under **clause 9.1**, the Territory's Representative may at any time instruct the Consultant to carry out a Variation by a written document titled "Variation Order", in which the Territory's Representative will state one of the following:

- (a) the proposed adjustment to the Fee as set out in the Consultant's notice under **clause 9.1** (if any) is agreed and the Fee will be adjusted accordingly; or
- (b) any adjustment to the Fee will be determined under **clauses 9.3(b)** and **9.3(c)**.

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

### **9.3 Cost of Variation**

The Fee will be increased or decreased for all Variations which have been the subject of a Direction by the Territory's Representative:

- (a) as agreed under **clause 9.2(a)**;
- (b) if paragraph (a) does not apply, in accordance with the rates and prices in the Schedule of Rates, if and insofar as the Territory's Representative determines that those rates or prices are applicable to, or it is reasonable to use them for valuing, the Variation; or
- (c) to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Territory's Representative; and
- (d) If the Fee is adjusted under this **clause 9.3**, then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Territory's Representative.

### **9.4 Rates and Prices**

Where any rates and prices in the Schedule of Rates are used under **clause 9.3(b)**, the rates and prices will be deemed to cover:



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

### **9.5 Omissions**

If a Variation the subject of a Direction by the Territory's Representative omits any part of the Services, the Territory may thereafter carry out this omitted work either itself or by engaging Other Contractors.

### **9.6 All Work Included**

The Consultant has allowed for the provision of all work necessary for the Services, whether or not expressly mentioned in the Brief.

Any such work:

- (a) must be undertaken and provided by the Consultant; and
- (b) forms part of the Services and will not entitle the Consultant to make a Claim except as otherwise provided for in the Contract.

## **10. PAYMENT**

### **10.1 Payment Obligation**

Subject to **clause 10.11** and to any other right to set-off which the Territory may have, the Territory will pay the Consultant:

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

### **10.2 Payment Claims**

Subject to **clause 10.3** the Consultant must give the Territory's Representative claims for payment on account of the Fee and all other amounts then payable by the Territory to the Consultant under the Contract:

- (a) at the times stated in **Item 49 of the Contract Particulars** until completion of the Services or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after completion of the Services, within the time required by **clause 10.7**;
- (c) in the format which the Territory's Representative reasonably requires;
- (d) which show separately the amounts (if any) claimed on account of:
  - (i) the Fee; and
  - (ii) all other amounts then payable by the Territory to the Consultant under the Contract; and
- (e) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
  - (i) to enable the Territory's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Territory to the Consultant under the Contract; and
  - (ii) including any such documentation or information which the Territory's Representative may by written notice from time to time require the Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally; and
- (f) preferably by way of email to the email address specified in the Contract Particulars marked to the attention of the Territory's Representative.

### **10.3 Conditions Precedent**

- (a) The Consultant's entitlement to submit a payment claim under **clause 10.2** is conditional upon the Consultant having:
  - (i) obtained the insurance required by **clause 5.1** and (if requested) provided evidence of this to the Territory's Representative;
  - (ii) complied with its programming obligations under **clause 8.2**;
  - (iii) complied with **clause 10.12**;
  - (iv) complied with **clause 10.16**;
  - (v) complied with **clause 10.17**; and

- (vi) provided the Territory's Representative with duly executed copies of any Subconsultant Deed of Covenant that the Consultant is required to obtain under the Contract.
- (b) If the Consultant has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
- (i) the payment claim is deemed to have been invalidly submitted under **clause 10.2**;
  - (ii) the Territory's Representative will not be obliged to include in any payment schedule under **clause 10.4** any amount included in the payment claim; and
  - (iii) the Territory will not be liable to pay any amount included in the payment claim.
- (c) If the Consultant:
- (i) submits a payment claim; and
  - (ii) has failed to comply with the requirements of **clause 10.2(f)** in relation to any amount (or portion of any amount) claimed in the payment claim,
- then:
- (iii) the Consultant will not be entitled to payment of;
  - (iv) the Territory's Representative will not be obliged to include in any payment schedule it may choose to issue under **clause 10.4**; and
  - (v) the Territory will not be liable to pay,
- the amount (or the portion of the amount) claimed in the payment claim in relation to which the Consultant has failed to comply with the requirements of **clause 10.2(f)**, unless:
- (vi) the Territory's Representative (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Consultant) issues a written notice to the Consultant identifying the documentation or information which the Consultant has failed to provide under **clause 10.2(f)**; and
  - (vii) the Consultant provides that documentation or information to the Territory's Representative within the time required in the Territory's Representative's notice.

#### **10.4 Payment Schedules**

The Territory's Representative:

- (a) may, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with **clause 10.2**; or
- (b) may, if the Consultant fails to submit any such claim in accordance with **clause 10.2**, at any time, give the Consultant (with a copy to the Territory), on behalf of the Territory, a payment schedule which states:
  - (c) the payment claim to which it relates (if any);
  - (d) the Consultant's total value of entitlement to payment under the Contract;
  - (e) the amount already paid to the Consultant;
  - (f) the amount (if any) which the Territory's Representative believes to be then payable by the Territory to the Consultant on account of the Fee and otherwise in accordance with the Contract and which the Territory proposes to pay to the Consultant; and

- (g) if the amount in paragraph (f) is less than the amount claimed in the payment claim:
  - (i) the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and
  - (ii) if the reason for the difference is that the Territory has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment schedule, by the Territory's Representative will not:

- (h) constitute approval of any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment schedule has been satisfactorily carried out in accordance with the Contract; or
- (i) constitute a waiver of the requirements of **clauses 10.2 and 10.3** in relation to any payment claim other than to the extent (if any) to which the Territory expressly waives such requirements in respect of the payment claim the subject of the payment schedule.

### **10.5 Payment**

Within the number of business days stated in **Item 50 of the Contract Particulars** of the Territory receiving a payment claim under **clause 10.4**, the Territory will pay the Consultant either the amounts set out in the payment claim, or, if a payment schedule is issued, the amount set out as then payable in the payment schedule (with the amount set out in the payment schedule as then payable to prevail in the event of inconsistency).

### **10.6 Payment on Account**

Any payment of moneys under **clause 10.5** is not:

- (a) evidence of the value of Services or that Services have been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Territory or the Territory's Representative of the Consultant's performance or compliance with the Contract,

but is only to be taken as payment on account.

### **10.7 Completion Payment Claim and Notice**

Within 28 days (or such longer period agreed in writing by the Territory's Representative) after completion of the Services, the Consultant must give the Territory's Representative:

- (a) a payment claim which complies with **clause 10.2** and which must include all amounts which the Consultant claims from the Territory on account of all amounts payable under the Contract; and
- (b) notice of any other amounts which the Consultant claims from the Territory,

in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion.

The payment claim and notice required under this **clause 10.7** are in addition to the other notices which the Consultant must give to the Territory's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by **clause 13.5**.

## **10.8 Release after Completion Payment Claim and Notice**

After the date for submitting the payment claim and notice under **clause 10.7** has passed, the Consultant releases the Territory from any Claim in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion, except any Claim included in a payment claim or notice under **clause 10.7** which is given to the Territory's Representative within the time required by, and in accordance with the terms of, **clause 10.7**.

## **10.9 Interest**

The Territory will pay simple interest at the rate stated in **Item 51 of the Contract Particulars** on any:

- (a) amount in a payment claim (or, if an alternative amount has been set out as payable by the Territory's Representative in a payment schedule under **clause 10.4**), but which is not paid by the Territory within the time required by the Contract; and
- (b) damages.

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

## **10.10 Correction of Payment Schedules**

The Territory's Representative may, in any payment schedule:

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

issued by the Territory's Representative.

## **10.11 Right of Set-Off**

The Territory may:

- (a) deduct from moneys otherwise due to the Consultant:
  - (i) any debt or other moneys due from the Consultant to the Territory; and
  - (ii) any claim to money which the Territory may have against the Consultant whether for damages or otherwise, whether under the Contract or otherwise at law, relating to the Project or the Services; and
- (b) without limiting paragraph (a), deduct any debt or claim referred to in paragraph (a)(i) or (a)(ii) from any moneys which may be or thereafter become payable to the Consultant by the Territory in respect of any Variation the subject of a "Variation Order" under **clause 9.2**.

## **10.12 Payment of Workers and Subconsultants**

The Consultant must, if requested by the Territory's Representative in relation to any payment claim under **clause 10.2**, with that payment claim provide the Territory's Representative with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by the Territory's Representative, duly signed by the Consultant or, where the Consultant is a corporation, by a representative of the Consultant who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subconsultants):
  - (i) all workers who have at any time been employed by the Consultant in connection with the Services have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Services; and

- (ii) all subconsultants have been paid all moneys due and payable to them in respect of the Services; and
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subconsultant have been paid all moneys due and payable to them in respect of their employment in connection with the Services.

The Territory is entitled to withhold from any payment which would otherwise be due to the Consultant under the Contract the amount disclosed as unpaid under this **clause 10.12**.

### **10.13 GST**

- (a) Subject to **clause 10.13(b)**, where any supply occurs under or in connection with the Contract or the Services for which GST is not otherwise provided, the party making the supply ("**Supplier**") will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Services which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
- (c) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
  - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
  - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In this clause:
  - (i) "**GST**" means the tax payable on taxable supplies under the GST Legislation;
  - (ii) "**GST Legislation**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
  - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

### **10.14 Security of Payment Legislation**

- (a) The Consultant agrees with the Territory that:
  - (i) a payment claim submitted to the Territory's Representative under **clause 10.2** which also purports to be a payment claim under the relevant Security of Payment Legislation is received by the Territory's Representative as agent for the Territory;
  - (ii) unless otherwise notified to the Consultant by the Territory in writing, the Territory's Representative will give payment schedule and carry out all other functions of the Territory under the relevant Security of Payment Legislation as the agent of the Territory; and
  - (iii) to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in **clauses 10.2(a) and (b)** on which the Consultant has satisfied the requirements of **clause 10.3(a)**.

- (b) Failure by the Territory's Representative to set out in a payment schedule issued under the relevant Security of Payment Legislation or otherwise an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Territory will not prejudice:
- (i) the Territory's Representative's ability or power to set out in a subsequent payment schedule an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Territory; or
  - (ii) the Territory's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (c) The Consultant agrees that the amount set out in the payment schedule in accordance with **clause 10.4(f)** is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of this Contract, which the Consultant is entitled to in respect of the Contract.
- (d) The Consultant irrevocably chooses the person set out in **Item 52 of the Contract Particulars** as, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, and to the extent that the relevant Services are to be carried out in the Territory, the authorised nominating authority.
- (e) The Consultant must not at any time, without the written consent of the Territory, divulge or suffer or permit its servants, subconsultants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Territory or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation (in this paragraph, the "**Information**").

For the avoidance of doubt:

- (i) the Consultant's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Consultant is unable by requirement of law to comply with its obligation in respect of the Information;
- (ii) notwithstanding the Consultant's obligation in respect of the Information, the Territory has sole and unfettered discretion to divulge or suffer or permit its servants, subconsultants or agents to divulge to any person the Information;
- (iii) the Territory may divulge or suffer or permit its servants, subconsultants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Consultant or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and
- (iv) any Information which the Territory provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to the Territory's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

### **10.15 Accounting Records**

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

- (a) all Variations; and
- (b) all other amounts payable to the Consultant other than on account of the original Fee specified in **Item 13 of the Contract Particulars**.

### **10.16 Cost Allocation Advice**

Without limiting **clause 10.2**, for the purposes of assisting the Territory to report on an accrual basis, the Consultant must, to the extent that the Services are relevant, with each payment claim under **clause 10.2**, provide the Territory's Representative with accurate information which apportions monthly costs against buildings, infrastructure and expenses for all Services completed in the previous payment period, in a format approved by the Territory's Representative.

### **10.17 Facilities and Infrastructure Accounting**

Without limiting **clause 10.2**, for the purposes of assisting the Territory to bring all completed facilities and infrastructure to account, prior to completion of the Services, the Consultant must provide a cost report to the Territory's Representative which sets out:

- (a) details of the Fee (or part) paid;
- (b) the matters specified in **Item 53 of the Contract Particulars**; and
- (c) any other matters required by the Territory's Representative.

### **10.18 Role of Schedule of Rates**

The Schedule of Rates has the following roles:

- (a) where the Consultant is engaged on a staged or phased basis, the Schedule of Rates will apply to any adjustment of the relevant lump sum fee on a phase-by-phase basis; and
- (b) the Schedule of Rates will be used for the valuation of any "Variation" under **clause 9**.



## **11. TERMINATION**

### **11.1 Preservation of Rights**

Subject to **clause 11.6**, nothing in this **clause 11** or that the Territory does or fails to do pursuant to this **clause 11** will prejudice the right of the Territory to exercise any right or remedy (including recovering damages) which it may have where the Consultant breaches (including repudiates) the Contract.

### **11.2 Consultant Default**

The Territory may give a written notice under **clause 11.3** to the Consultant if the Consultant:

- (a) does not commence the Services in accordance with the requirements of the Contract;
- (b) suspends the Services in breach of **clause 8.4** or otherwise does not proceed with the Services regularly and diligently;
- (c) fails to comply with any of its obligations under **clause 5.1 or 5.3**;
- (d) fails to exercise the standard of skill, care and diligence required by the Contract;
- (e) fails to comply with any of its obligations under **clause 16**;
- (f) does not comply with any direction of the Territory's Representative made in accordance with the Contract; or
- (g) is otherwise in substantial breach of the Contract.

### **11.3 Contents of Notice of Default**

A notice under this **clause 11.3** must state:

- (a) that it is a notice under **clause 11.3**;
- (b) the breach relied upon; and
- (c) that the Territory requires the Consultant to remedy the breach within the number of days set out in **Item 54 of the Contract Particulars** of receiving the notice.

### **11.4 Termination for Insolvency or Breach**

If:

- (a) an Insolvency Event occurs to the Consultant or, where the Consultant comprises 2 or more persons, to any one of those persons; or
- (b) the Consultant does not remedy a breach of Contract the subject of a notice under **clause 11.3** within the number of days set out in **Item 54 of the Contract Particulars** of receiving the notice under **clause 11.3**,

then the Territory may by written notice to the Consultant terminate the Contract.

### **11.5 Territory's Entitlements after Termination**

Subject to **clause 11.1**, if the Territory terminates the Contract under **clause 11.4** or if the Consultant repudiates the Contract and the Territory otherwise terminates the Contract:

- (a) the Territory will:

- (i) be entitled to require the Consultant to novate to the Territory, or the Territory's nominee, any or all subcontracts between the Consultant and its subconsultants as required by the Territory;
  - (ii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Consultant, including any money the subject of a payment claim under **clause 10.2** or a payment schedule under **clause 10.4**; and
  - (iii) be entitled to recover from the Consultant any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Consultant must immediately hand over to the Territory all copies of:
- (i) documents provided by the Territory in connection with the Services (including the Territory Material); and
  - (ii) subject to **clause 11.9**, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

### **11.6 Consultant's Entitlements after Termination**

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

- (a) be entitled to claim an amount determined in accordance with **clause 11.8** as if the Territory had terminated the Contract under **clause 11.7**; and
- (b) not be entitled to a quantum meruit.

This **clause 11.6** will survive the termination of the Contract.

### **11.7 Termination for Convenience**

Without prejudice to any of the Territory's other rights under this Contract, the Territory may:

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

### **11.8 Costs**

If the Territory terminates the Contract under **clause 11.7**, the Consultant:

- (a) will be entitled to payment of the following amounts as determined by the Territory's Representative:
  - (i) for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
  - (ii) the cost of goods or materials (if any) reasonably ordered by the Consultant for the Services for which the Consultant is legally bound to pay provided that:
    - A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
    - B. title in the goods and materials will vest in the Territory upon payment; and
- (b) must:

- (i) take all steps possible to mitigate the costs referred to in paragraph (a)(ii); and
- (ii) immediately hand over to the Territory all copies of:
  - A. documents provided by the Territory in connection with the Services (including the Territory Material); and
  - B. subject to **clause 11.9**, Project Documents prepared by the Consultant to the date of termination (whether complete or not).

The amount to which the Consultant is entitled under this **clause 11.8** will be a limitation upon the Territory's liability to the Consultant arising out of, or in any way in connection with, the termination of the Contract (whether under **clause 11.7** or deemed to be under **clause 11.7** through the operation of **clause 11.6(a)**) and the Consultant will not be entitled to make any Claim against the Territory arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this **clause 11.8**.

This **clause 11.8** will survive the termination of the Contract by the Territory under **clause 11.7** or by the Consultant following repudiation by the Territory.

### **11.9 Copies of Project Documents**

Following Completion or termination of this Contract, the Consultant is entitled to retain one copy of any Project Documents to the extent that it is required to do so by any Statutory Requirements or to maintain its compliance with any recognised quality assurance system, subject to the Consultant:

- (a) providing prior written notice to the Territory's Representative of all Project Documents that it is required to keep a copy of and the basis for doing so;
- (b) maintaining confidentiality in the Project Documents in accordance with **clause 16**; and
- (c) taking all steps which the Territory's Representative considers necessary to preserve and maintain confidentiality in the Project Documents.

## **12. DISPUTE RESOLUTION**

### **12.1 Notice of Dispute**

If a dispute or difference arises between the Consultant and the Territory or between the Consultant and the Territory's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this **clause 12**.

Where such a dispute or difference arises, either party may give a notice in writing to the Territory's Representative and 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.

### **12.2 Expert Determination**

If the dispute or difference is in relation to a Direction of the Territory's Representative under one of the clauses referred to in **Item 55 of the Contract Particulars** and is not resolved within 14 days after a notice is given under **clause 12.1**, the dispute or difference must be submitted to expert determination.

### **12.3 The Expert**

- (a) The expert determination under **clause 12.2** is to be conducted by:
  - (i) the independent industry expert specified in **Item 56 of the Contract Particulars**; or
  - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in **Item 57 of the Contract Particulars**.
- (b) If the expert appointed under this **clause 12.3**:
  - (i) is unavailable;
  - (ii) declines to act;
  - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
  - (iv) does not enter into the agreement in accordance with **clause 12.9(b)** within 14 days of his or her appointment under this **clause 12**; or
  - (v) does not make a determination within the time required by **clause 12.8**,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

### **12.4 Not Arbitration**

An expert determination conducted under this **clause 12** is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

## **12.5 Procedure for Determination**

The expert will:

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

## **12.6 Disclosure of Interest**

The expert must:

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

## **12.7 Costs**

Each party will:

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

## **12.8 Conclusion of Expert Determination**

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this **clause 12** within 28 days from the acceptance by the expert of his or her appointment.

## **12.9 Agreement with Expert**

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

## **12.10 Determination of Expert**

The determination of the expert:

- (a) must be in writing;

- (b) will be substituted for the relevant Direction of the Territory's Representative unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to **clauses 12.11 and 12.12**, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

### **12.11 Executive Negotiation**

- (a) If:
  - (i) **clause 12.2** applies, and a notice of appeal is given under **clause 12.10**; or
  - (ii) **clause 12.2** does not apply,the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
  - (i) 21 days of:
    - if the dispute or difference is not one which is to be referred to expert determination under **clause 12.2**, the notice of dispute given under **clause 12.1**; or
    - otherwise, the notice of appeal given under **clause 12.10**; or
  - (ii) such longer period of time as the Executive Negotiators may agree in writing, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

### **12.12 Arbitration Agreement**

If, within:

- (a) 21 days of:
    - (i) if the dispute or difference is not one which is to be referred to expert determination under **clause 12.2**, the notice of dispute given under **clause 12.1**; or
    - (ii) otherwise, the notice of appeal given under **clause 12.10**; or
  - (b) such longer period of time as the Executive Negotiators may agree in writing,
- the Executive Negotiators:
- (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
  - (d) cannot resolve the dispute or difference; or
  - (e) have not reached agreement upon a procedure to resolve the dispute or difference,
- the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

### **12.13 Arbitration**

- (a) Arbitration pursuant to this clause will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**") current at the time of the reference to arbitration and as otherwise set out in this clause.

- (b) The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
- (c) Nothing in this clause is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 1984* (Vic). For the avoidance of doubt, the second sentence of Article 28(6) of the ICC Rules (in force from 1 January 1998) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
  - (i) they have entered into the arbitration agreement under this **clause 12** for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
  - (ii) any arbitration conducted pursuant to this clause will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
  - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
  - (i) the oral hearing will take place in Melbourne, Australia and all outstanding issues must be addressed at the oral hearing;
  - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
  - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
  - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

#### **12.14 Proportional Liability**

Notwithstanding anything else, to the extent permissible by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to this clause.

**12.15 Continuation of Services**

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

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



## **13. NOTICES**

### **13.1 Notice of Variation**

If a Direction by the Territory's Representative, other than a "Variation Order" under **clause 9.2**, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Territory arising out of, or in any way in connection with, the Direction:

- (a) within 7 days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Territory's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Territory's Representative which includes the details required by **clause 13.3(b)**; and
- (c) continue to carry out the Services in accordance with the Contract and all Directions of the Territory's Representative, including any Direction in respect of which notice has been given under this **clause 13.1**.

### **13.2 Notices of Other Claims**

Except for claims for:

- (a) payment under **clause 10** of the unadjusted Fee specified in **Item 13 of the Contract Particulars**;
- (b) a Variation instructed in accordance with **clause 9.2** or to which **clause 13.1** applies; or
- (c) contribution or indemnity for loss or damage caused or contributed to by the negligence of the Territory where a third party (other than a subconsultant of the Consultant or other party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

the Consultant must give the Territory's Representative the notices required by **clause 13.3** if it wishes to make a Claim against the Territory in respect of any Direction by the Territory's Representative or any other fact, matter or thing (including a breach of the Contract by the Territory) under, arising out of, or in any way in connection with, the Services or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
  - (i) specified costs are to be added to the Fee; or
  - (ii) the Fee will be otherwise increased or adjusted,as determined by the Territory's Representative.

### **13.3 Prescribed Notices**

The notices referred to in **clause 13.2** are:

- (a) a written notice within 21 days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
  - (i) that the Consultant proposes to make a Claim; and
  - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under paragraph (a), which must include:

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

#### **13.4 Continuing Events**

If the Direction or fact, matter or thing upon which the Claim under **clause 13.1(b)** or **clause 13.2** is based or the consequences of the Direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by **clause 13.3(b)** every 28 days after the written claim under **clause 13.1(b)** or **13.3(b)** (as the case may be) was submitted or given to the Territory's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

#### **13.5 Time Bar**

If the Consultant fails to comply with **clause 13.1, 13.2, 13.3 or 13.4**:

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

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which **clause 13.1 or 13.2** applies.

#### **13.6 Other Provisions Unaffected**

Nothing in **clauses 13.1 – 13.5** will limit the operation or effect of any other provision of the Contract which requires the Consultant to give notice to the Territory's Representative in order to preserve an entitlement to make a Claim against the Territory.

#### **13.7 Address for Service**

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

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post, or sent by email (except for notices under **clauses 11 and 12**, which, if sent by email must additionally be delivered by hand or sent by prepaid express post), as the case may be, to the relevant address:
  - (i) stated in **Item 58 of the Contract Particulars**; or
  - (ii) last notified in writing to the party giving or serving the notice,for the party to whom or upon which the notice is to be given or served; and
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
- (d) in the case of notices sent by email:
  - (i) be in Portable Document Format (pdf) and appended as an attachment to the email; and
  - (ii) include the words "This is a notice under clause 13.7 of the Contract" in the subject field of the email.

### **13.8 Receipt of Notices**

- (a) A notice given or served in accordance with **clause 13.7** is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
- (i) delivery by hand, on delivery;
  - (ii) prepaid post sent to an address in the same country, on the fifth day after the date of posting;
  - (iii) prepaid post sent to an address in another country, on the seventh day after the date of posting;
  - (iv) email, on the earlier of:
    - A. delivery to the email address to which it was sent; or
    - B. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the “sent” email.
- (b) In the case of notices under **clauses 11 and 12**, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance **with clause 13.7(b)**, the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
- (i) the date the notice sent by email is taken to be received; or
  - (ii) the date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with paragraph **Error! Reference source not found.**

[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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**14. NOT USED**

## **15. GENERAL**

### **15.1 Workplace Gender Equality**

The Consultant must:

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

### **15.2 Protection of Personal Information**

(a) The Consultant agrees:

- (i) to comply with the TPPs when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Contract, as if it were an agency as defined in the Privacy Act;
- (ii) to use Personal Information received, created or held by the Consultant for the purposes of this Contract only for the purposes of fulfilling its obligations under this Contract;
- (iii) not to disclose Personal Information received, created or held by the Consultant for the purposes of this Contract without the prior written approval of the Territory's Representative;
- (iv) not to transfer Personal Information received, created or held by the Consultant for the purposes of this Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Territory's Representative;
- (v) to co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Territory's Representative in relation to the management of Personal Information in connection with this Contract;
- (vi) to ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of this Contract is made aware of, and undertakes in writing to observe, the TPPs;
- (vii) to comply with policy guidelines laid down by the Territory or issued by the Federal Privacy Commissioner from time to time relating to the handling of Personal Information;
- (viii) to ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of this Contract are, at the expiration or earlier termination of this Contract, at the Territory's Representative's election, to be either returned to the Territory or deleted or destroyed in the presence of a person duly authorised by the Territory's Representative to oversee such deletion or destruction;
- (ix) to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
- (x) to ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of this **clause 15.2**, as if the subconsultant were the Consultant;
- (xi) to enforce the obligations referred to in subparagraph (x) in accordance with such Directions as the Territory's Representative may give;

- (xii) that Personal Information collected by the Consultant in connection with the Contract must not be used for, or in any way relating to, any direct marketing purpose; and
- (xiii) to indemnify the Territory against any loss, liability or expense suffered or incurred by the Territory arising out of or in connection with:
  - A. a breach of the obligations of the Consultant under this **clause 15.2**;
  - B. a breach of a subconsultant's obligations under a subcontract as contemplated by subparagraph (x);
  - C. the misuse of Personal Information held in connection with this Contract by the Consultant or a subconsultant; or
  - D. the disclosure of Personal Information held in connection with this Contract by the Consultant or a subconsultant in breach of an obligation of confidence;
- (xiv) in respect of any Personal Information held in connection with this Contract:
  - A. comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Consultant under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - B. co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Privacy Act.
- (b) For the purposes of paragraph (a)(xiii), "loss, liability or expense" includes any compensation paid to a person by or on behalf of the Territory to settle a complaint arising out of, or in any way in connection with, a breach of this **clause 15.2** by the Consultant.
- (c) The Consultant must immediately notify the Territory in writing if the Consultant:
  - (i) becomes aware of a breach of the obligations under paragraph (a) by itself or by a subconsultant;
  - (ii) becomes aware of a breach of a subconsultant's obligations under a subcontract as contemplated by paragraph (a)(x);
  - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
  - (iv) is approached or contacted by, or becomes aware that a subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a personal claiming that their privacy has been interfered with.
- (d) The Consultant acknowledges that, in addition to the requirements of this **clause 15.2**, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, such as under provisions in the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles) and State and Territory legislation.
- (e) Nothing in this **clause 15.2** limits any of the Consultant's other obligations or liabilities under the Contract.
- (f) In this **clause 15.2**:
  - (i) "**Australian Privacy Principle**" has the meaning given in the *Privacy Act 1988* (Cth);
  - (ii) "**received**" includes collected.

### **15.3 Freedom of Information**

The *Freedom of Information Act 1989* (ACT) ("**FOI Act**") gives members of the public rights of access to official documents of the Territory and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Territory, 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 Consultant acknowledges that Territory requirements and policies will require certain identifying details of the Contract in accordance with the Procurement Act.

### **15.4 Long Service Leave**

**Clause 15.4** only applies if any relevant Long Service Leave Legislation applies to the Services.

- (a) Without limiting its other obligations or liabilities under this Contract or otherwise, the Consultant must comply with its obligations under any relevant Long Service Leave Legislation.
- (b) If required by any relevant Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
- (c) Any amount paid by the Consultant under paragraph (b) is deemed to be included in the Fee and the Consultant will have no Claim against the Territory arising out of or in connection with its obligations under this **clause 15.4** or any other obligations under the relevant Long Service Leave Legislation.
- (d) In this **clause 15.4**, "**Long Service Leave Legislation**" means:
  - (i) *Long Service Leave (Building and Construction Industry) Act 1981* (ACT); and
  - (ii) any Act in a State or Territory of Australia addressing long service leave in the building and construction industry.

### **15.5 Assignment**

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

### **15.6 Publicity**

Without limiting **clause 16**, the Consultant must:

- (a) not furnish any information or issue any document or other written or printed material concerning the Services or the Project for publication in the media without the prior written approval of the Territory's Representative; and
- (b) refer any enquiries from the media concerning the Services or the Project to the Territory's Representative.

**16. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

(a) The Consultant must:

- (i) use Confidential Information held in connection with this Contract only for the purposes of fulfilling its obligations under this Agreement;
- (ii) not transfer Confidential Information held in connection with this Contract outside Australia, or allow any person (other than its authorised personnel) outside Australia to have access to it, without the prior approval of the Territory's Representative; and
- (iii) notify the Territory Representative immediately if the Consultant becomes aware that a disclosure of Confidential Information is required by law, or an unauthorised disclosure of Confidential Information has occurred.

(b) Except as provided in this Contract, the Consultant must not disclose Confidential Information to any person without the prior written consent of the Territory except to the extent that the Confidential Information is:

- (i) required or authorised to be disclosed by law,
- (ii) disclosed to the Consultant's solicitors, auditors, insurers or advisers,
- (iii) generally available to the public, or
- (iv) in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from the Territory.

(c) The Consultant must take all reasonable measures to ensure that Confidential Information accessed or held by it in connection with this Contract is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Confidential Information.

(d) The Consultant must do all things necessary to ensure that Confidential Information accessible to the Consultant and the Consultant's personnel by virtue of the performance of this Contract is not accessed, published or communicated in any way, including imposing upon the Consultant's personnel obligations of confidentiality with respect to Confidential Information.

(e) Within 7 days of receipt of:

- (i) a request from the Territory's Representative, at any time;
- (ii) the termination of the Contract; or
- (iii) the expiry of the last Defects Liability Period under the Project Contract,

the Consultant must promptly (subject to **clause 11.9**) as directed by the Territory's Representative:

- (iv) securely and appropriately return all copies of the Confidential Information (in a tangible form) to the Territory's Representative;
- (v) securely and appropriately return, destroy and erase all copies of the Confidential Information (whether in tangible or intangible form);
- (vi) ensure all recipients of Confidential Information (or any part of it) securely and appropriately return, destroy and erase all copies of the Confidential Information; and
- (vii) if requested, provide the Territory's Representative with a statutory declaration in a form approved by the Territory from an authorised officer confirming that the Confidential Information has been securely and appropriately returned, destroyed or erased by the Consultant and all other recipients;



- (viii) notify the Territory's Representative of all Confidential Information (or any part of it) which the Consultant knows or reasonably suspects:
  - A. has not been securely and appropriately returned, destroyed or erased by the Consultant and all recipients;
  - B. is beyond the Consultant's or its authorised recipient's possession, power, custody or control.
  
- (f) The Consultant acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Consultant is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900*.

## **17. CONFIDENTIAL TEXT UNDER THE PROCUREMENT ACT**

### **17.1 General**

In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Contract may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Contract available to the public, including by publication on a public contracts register.

### **17.2 Confidential Text**

If it is stated in **Item 60 of the Contract Particulars** that this Contract is a notifiable contract under the Procurement Act and Confidential Text is specified, the grounds on which the text is confidential are set out in **Item 61 of the Contract Particulars**, and **clause 17.3** applies.

### **17.3 Territory must not disclose Confidential Text**

Except as provided in this Contract, the Territory must not disclose Confidential Text to any person without the prior written consent of the Consultant (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (a) is required or authorised to be disclose under law;
- (b) is reasonably necessary for the enforcement of the criminal law;
- (c) is disclosed to the Territory's solicitors, auditors, insurers or advisers;
- (d) is generally available to the public;
- (e) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Consultant;
- (f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

**18. NOT USED**

**19. REVIEWING CLAIMANT'S PAYMENT CLAIMS**

(a) For the purposes of this **clause 19** the following definitions apply.

**"Claimant"**: a Project Contractor who claims to be entitled to payment for carrying out work or supplying goods and services under a Project Agreement.

**"Claimant's Payment Claim"**: a Claimant's payment claim for carrying out work or supplying goods and services.

**"Payment Schedule Recommendation"**: a completed version of a form that is acceptable to the Territory and which:

- (i) identifies the Claimant's Payment Claim to which it relates;
  - (ii) states the amount of the payment, if any, which is recommended to be made in response to the Claimant's Payment Claim; and
  - (iii) if that amount is less than the amount indicated in the Claimant's Payment Claim, the reasons why that amount is less, and if the Territory is withholding payment for any reason, the reasons for withholding payment.
- (b) If the Territory receives a Claimant's Payment Claim directly from a Claimant, the Territory will:
- (i) provide the Claimant's Payment Claim to the Consultant; and
  - (ii) inform the Consultant of the date on which the Territory received the Claimant's Payment Claim.
- (c) If the Consultant receives a Claimant's Payment Claim directly from a Claimant, the Consultant must, within 2 Business Days of receiving the Claimant's Payment Claim:
- (i) provide the Claimant's Payment Claim to the Territory by email to ACTProcurementPaymentClaims@act.gov.au marked to the attention of the Territory's Representative; and
  - (ii) inform the Territory of the date on which the Consultant received the Claimant's Payment Claim.
- (d) If the Consultant receives a Claimant's Payment Claim (whether from the Territory or directly from the Claimant), the Consultant must, within 5 Business Days of receipt:
- (i) review the Claimant's Payment Claim;
  - (ii) prepare a Payment Schedule Recommendation; and
  - (iii) provide the Payment Schedule Recommendation to the Territory by email to ACTProcurementPaymentClaims@act.gov.au marked to the attention of the Territory's Representative.
- (e) After receiving the Payment Schedule Recommendation, the Territory may require the Consultant to immediately review the Payment Schedule Recommendation, and, if necessary, meet with the Territory to discuss further.

**20. SECURE LOCAL JOBS CODE**

(a) This clause applies if **Item 62 of the Contract Particulars** states that it applies.

- (b) This Contract incorporates by reference the model terms determined under section 22G of the Procurement Act, as at the Award Date, subject to
  - (i) any references to “[insert the name of the party]” in the 2018 Model Terms are taken to be references to the Consultant; and
  - (ii) any references to “[insert Works/Services etc]” in the 2018 Model Terms are taken to be references to the Services.

## CONTRACT PARTICULARS

Item No.	CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS		
Item 1	<b>Additional Project Plans</b> (Clause 1.1)		
Item 2	<b>Subconsultants:</b> (Clause 2.10)	<b>Subconsultant</b>	<b>Services</b>
Item 3	<b>Brief:</b> (Clause 1.1)		
Item 4	<b>Not used</b>		
Item 5	<b>Completion - additional conditions precedent to Completion:</b> (Clause 1.1)		
Item 6	<b>Consultant:</b> (Clause 1.1)		
Item 7	<b>Consultant's Representative:</b> (Clause 1.1)		
Item 8	<b>Contract - other documents forming part of the Contract:</b> (Clause 1.1)		
Item 9	<b>Territory's Representative:</b> (Clause 1.1)		
Item 10	<b>DCAP (Detailed Consultant's Activities Proposal):</b> (Clause 1.1)		
Item 11	<b>Date for Completion of Milestones:</b> (Clause 1.1)	<b>Milestone</b>	<b>Date for Completion</b> .....
Item 12	<b>Executive Negotiators:</b> (Clause 1.1)	<b>Territory:</b>  <b>Consultant:</b>	

<b>Item 13</b>	<b>Fee:</b> (Clauses 1.1, 2.10(b)(ii), 2.10(b)(ii)C.1, 10.15(b) and 13.2(a))		
<b>Item 14</b>	<b>Milestone Fee Payment Schedule:</b> (Clause 1.1)	.....	
<b>Item 15</b>	<b>Milestones:</b> (Clause 1.1)	<b>Milestone</b>	<b>Description</b>
<b>Item 16</b>	<b>Work Health and Safety Plan:</b> (Clause 1.1)		
<b>Item 16B</b>	<b>Environmental Management Plan</b> (Clause 2.3)		
<b>Item 17</b>	<b>Project:</b> (Clause 1.1)		
<b>Item 18</b>	<b>Project Contract Administrator:</b> (Clause 1.1)		
<b>Item 19</b>	<b>Not used</b>		
<b>Item 20</b>	<b>Site:</b> (Clause 1.1)		
<b>Item 21</b>	<b>Site Management Plan:</b> (Clause 1.1)		
<b>Item 21A</b>	<b>Environmental Management Plan</b> (Clause 1.1)		
<b>Item 22</b>	<b>Special Conditions:</b> (Clause 1.1)		
<b>Item 23</b>	<b>Not used</b>		
<b>Item 24</b>	<b>Works:</b> (Clause 1.1)		

<b>Item 25</b>	<b>Governing Law:</b> (Clause 1.3(a))	Australian Capital Territory	
<b>Item 26</b>	<b>Environmental Requirements (Additional)</b> (Clause 1.1)		
<b>Item 27</b>	<b>ESD Principles (additional)</b> (Clause 1.1)		
<b>Item 28</b>	<b>Not used</b>		
<b>CLAUSE 2 - ROLE OF THE CONSULTANT</b>			
<b>Item 29</b>	<b>Limit on amount for directions to Project Contractor:</b> (Clause 2.4(b))	\$.....	
<b>Item 30</b>	<b>Services which may be let to one of the named subconsultants:</b> (Clause 2.10(a)(i)A)	<b>Services</b>	<b>Subconsultants</b>
<b>Item 31</b>	<b>Not used</b>		
<b>Item 32</b>	<b>Statutory Requirements with which the Consultant does not need to comply:</b> (Clause 2.11(a))		
<b>Item 33</b>	<b>Approvals which the Consultant is to obtain:</b> (Clause 2.11(b))		
<b>Item 33A</b>	<b>Environment:</b> (Clause 2.13)	Clause 2.13 applies / does not apply.	
<b>CLAUSE 4 - PERSONNEL</b>			
<b>Item 34</b>	<b>Territory's Representative's representatives and their functions:</b> (Clause 4.4)	<b>Representative</b> .....	<b>Function(s)</b>
<b>Item 35</b>	<b>Consultant's key people:</b> (Clause 4.5(a))	<b>Person</b>	<b>Position</b>

<b>CLAUSE 5 - INSURANCE</b>			
<b>Item 36</b>	<b>Insurance policies required to be obtained by the Consultant:</b> (Clause 5.1(a))	<p><b>Public Liability Insurance</b></p> <p>Amount of Cover: \$..... in respect of any one occurrence and \$..... in the aggregate, all occurrences during the period of insurance.</p> <p><b>Workers Compensation Insurance</b></p> <p>Amount of Cover: The minimum amounts required by statute in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside.</p> <p><b>Professional Indemnity Insurance</b></p> <p>Amount of Cover: \$..... per claim and \$..... in the aggregate, all claims during the period of insurance.</p> <p><b>Other Insurances:</b> (Clause 5.1(a)(iv))</p> <p>.....</p>	
<b>Item 37</b>	<b>Minimum amounts of subconsultants' Professional Indemnity Insurance:</b> (Clause 5.1(f))	<p><b>Professional Indemnity Insurance</b></p> <p>Amount of Cover: \$..... per claim and \$..... in the aggregate, all claims during the period of insurance.</p>	
<b>Item 38</b>	<b>Period for maintenance of Professional Indemnity Insurance:</b> (clause 5.3(b))	11 years	
<b>CLAUSE 6 - DOCUMENTATION</b>			
<b>Item 39</b>	<b>Territory Material and number of copies to be provided by the Territory to the Consultant:</b> (Clause 6.1)	<b>Territory Material</b> .....	<b>Copies</b> .....
<b>Item 40</b>	<b>Number of days for review:</b> (Clause 6.3(a)(ii))	14 days	
<b>Item 41</b>	<b>Number of copies of Consultant Documentation to be submitted by the</b>	<p>.....hard [copy / copies]</p> <p>.....electronic [copy/copies]</p>	



	<b>Consultant to the Territory's Representative:</b> (Clause 6.5)		
<b>Item 42</b>	<b>Consultant Documentation hard copy requirements:</b> (Clause 6.5(a))		
<b>Item 43</b>	<b>Consultant Documentation electronic copy requirements:</b> (Clause 6.5(b))		
<b>Item 44</b>	<b>Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:</b> (Clause (a))	<ol style="list-style-type: none"> <li>1. letter of acceptance</li> <li>2. Formal Agreement (if executed)</li> <li>3. Special Conditions</li> <li>4. Conditions of Contract</li> <li>5. Contract Particulars</li> <li>6. Brief</li> <li>7. Any other documents forming part of the Contract (as set out in the relevant item under clause 1.1 in these Contract Particulars)</li> <li>8. Consultant Documentation (which has not been rejected under clause 6.3)</li> <li>9. DCAP</li> <li>10. Project Plans</li> </ol>	
<b>Item 44A</b>	<b>National Construction Code</b>  (Clause 6.17)	Clause 6.17 applies / does not apply.	
<b>CLAUSE 7 - QUALITY</b>			
<b>Item 45</b>	<b>Number of days for submission of Project Plans:</b> (Clause 7.4(a)(ii)A)	Site Management Plan: .....	
		Environmental Management Plan: .....	

	Work Health and Safety Plan:	.....
	Other <i>[SPECIFY]</i> :	.....

<b>Item 46</b>	<b>Number of days for review of Project Plans:</b> (Clause 7.4(a)(ii)B)	
<b>CLAUSE 8- TIME</b>		
<b>Item 47</b>	<b>Maximum intervals between program updates by Consultant:</b> (Clause 8.2(b))	
<b>Item 48</b>	<b>Program format to be compatible with:</b> (Clause 8.2(e))	
<b>CLAUSE 10 - PAYMENT</b>		
<b>Item 49</b>	<b>Times for submission of payment claims by the Consultant to Territory's Representative:</b> (Clause 10.2(a))	<p>Monthly on the 1st day of each month</p> <p>For the purposes of <b>clause 10.2</b>, payment claims are to be:</p> <ol style="list-style-type: none"> <li>1. Submitted through PMARS.</li> <li>2. Made in favour of the represented Directorate of the Principal being (insert the full name of the Directorate or Agency and their ABN as applicable) and is to be provided to the Contract Administrator. Payment Claims are to be addressed as follows: Directorate Directorate Representative Directorate Address</li> </ol> <p>[1. If a different electronic system or email address for Payment Claims is required from this default, delete the above and write the appropriate system or email. Seek advice from an appropriate senior manager prior to amending this email address.</p> <p>2. Insert the name of the Directorate, their representative and all other information that the Directorate requires to be provided in the Payment Claim so that they are able to process the Payment Claim after assessment by the PAP.]</p>
<b>Item 50</b>	<b>Number of business days for payment:</b> (Clause 10.5)	
<b>Item 51</b>	<b>Interest Rate:</b>	

	(Clause 10.9)	
<b>Item 52</b>	<b>Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:</b> (Clause 10.14(d))	
<b>Item 53</b>	<b>Facilities and infrastructure accounting (additional):</b> (Clause 10.17(b))	
<b>CLAUSE 11 - TERMINATION</b>		
<b>Item 54</b>	<b>Number of days to remedy breach:</b> (Clauses 11.3(c) and 11.4(b))	
<b>CLAUSE 12 - DISPUTE RESOLUTION</b>		
<b>Item 55</b>	<b>Directions to be the subject of an expert determination:</b> (Clause 12.2)	Directions under clauses 2.12(e), 8.4(b)(ii)A, 9.3(b), 9.3(c)(ii), 10.4, and 11.8(a).
<b>Item 56</b>	<b>Industry expert who will conduct expert determinations:</b> (Clause 12.3(a)(i))	
<b>Item 57</b>	<b>Nominating authority for expert:</b> (Clause 12.3(a)(ii))	
<b>CLAUSE 13 - NOTICES</b>		
<b>Item 58</b>	<b>Address and fax number, for the giving or serving of notices, upon:</b> (Clause 13.7(b)(i))	<b>Territory:</b>
		<b>Consultant:</b>
<b>Item 59</b>	<b>Not used.</b>	
<b>CLAUSE 17 – CONFIDENTIAL TEXT UNDER PROCUREMENT ACT</b>		

<b>Item 60</b>	<b>Confidential Text</b> (Clause 17.2)	
<b>Item 61</b>	<b>Grounds for Confidentiality of Text</b> (Clause 17.2)	
<b>CLAUSE 20 – SECURE LOCAL JOBS CODE</b>		
<b>Item 62</b>	<b>Does secure local jobs apply?</b>  (Clause 20)	Clause 20 <b>applies/does not apply</b>

[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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# **ANNEXURE 1 – BRIEF**

[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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**ANNEXURE 2 – DCAP**

[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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## **ANNEXURE 3 – FEE SCHEDULE**

## **ANNEXURE 4 – SCHEDULE OF RATES**



[INSERT Contract name with reference to Project] Contract No [INSERT]

Contract Administrator Services Contract – (CAS-ACT-2013)

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## **ANNEXURE 5 – SPECIAL CONDITIONS**

*[THE TERRITORY IS TO DETERMINE WHETHER SPECIAL CONDITIONS ARE REQUIRED FOR THE CONTRACT]*