



ACT
Government

INFRASTRUCTURE MAINTENANCE SERVICES AGREEMENT

Date	_____
Parties	AUSTRALIAN CAPITAL TERRITORY [INSERT FULL NAME OF CONTRACTOR INCLUDING ACN IF COMPANY OR ABN] [INSERT BRIEF DESCRIPTION OF MAINTENANCE SERVICES]
Prepared by	[Insert Agency] [Insert Address 1] [Insert Address 2] [Insert Address 3] Ph: [Insert] Fax: [Insert] Ref: [INITIALS]:[FILE NO]
Version	[Draft/Final INSERT DATE] [Template: Infrastructure Maintenance Services Agreement (Contractor) – Client Version – Updated 26 July 2021 to reference s126 an s127 Corporations Law 2001 (Cth) on Agreement signing page]

Note to users: This Infrastructure Maintenance Services Agreement (Contractor) is specifically for use to document infrastructure maintenance services arrangements. It should not be used for any other type of services. Any text in red is for your attention. When using this template to prepare an agreement you will need to complete and/or follow any user prompts and also read the instructional notes.
DELETE this note, all prompts and other notes before finalising the agreement.

CONTENTS

1. Interpretation.....	4
2. Services.....	16
3. Term	24
4. Contract Price	24
5. Security.....	26
6. Statutory Requirements	26
7. Delay and Normal Hours.....	27
8. Substituted Performance	28
9. Additional Warranties.....	29
10. Ownership and risk	29
11. Contractor's personnel.....	32
12. Access to a Site	33
13. Work Health and Safety	34
14. Secure Local Jobs	39
15. Non-disclosure of Territory Information.....	43
16. Confidential Text under Procurement Act	45
17. Media and representations	45
18. Prequalification	46
19. Insurance and indemnity.....	46
20. Variations.....	47
21. Dispute resolution	49
22. Suspension	49
23. Termination.....	50
24. General.....	52
SCHEDULE 1 - CONTRACT DETAILS	56

SCHEDULE 2 - THE SERVICES	66
SCHEDULE 3 - SPECIAL CONDITIONS.....	67
SCHEDULE 4 - APPROVED SECURITY (UNCONDITIONAL UNDERTAKING).....	81
SCHEDULE 5 - ETHICAL SUPPLIERS DECLARATION.....	83
SCHEDULE 6 – SCHEDULE OF RATES	89
SCHEDULE 7 – PERFORMANCE MANAGEMENT SYSTEM	90

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the [INSERT name of Directorate / Agency].

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [INSERT address (of registered office if for a company)] (**Contractor**).

BACKGROUND

- A. The Territory has undertaken a procurement process and has selected the Contractor to provide the Services.
- B. The Territory has agreed to purchase and the Contractor has agreed to provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

Acceptance acceptance by the Territory of any Deliverable delivered in the course of providing the Services in accordance with **clause 2.7 (Acceptance)** signified by written notice. “Accept” has the corresponding meaning.

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 a Site, the Services or under any other applicable Statutory Requirement, which must be obtained or satisfied to:

- (1) carry out the Services; or
- (2) use the completed works provided as part of the Services.

Approved Security unconditional financial security from a bank or

financial institution acceptable to the Territory, in the amount specified in **Item 10 Schedule 1**.

Asset	the structure(s), facility(ies), asset(s), machinery, equipment or item(s) in relation to which the Services must be performed and including items specified or referred to in this Agreement or any other items used by the Territory that the Contractor knows, or ought to know, will be used with the Asset(s).
Business Day	any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory or the 27th, 28th, 29th, 30th or 31st December.
Confidential Text	any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in Item 18 Schedule 1 .
Construction Project	has the meaning as defined in the WHS Legislation.
Contamination	the presence in, on or under land, air or water of a substance (whether solid, liquid, odour, heat, sound, vibration or radiation) at a concentration at which the substance is normally present in the same locality, that presents a risk of 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.
Contractor Material	all material in existence at the date of this Agreement owned by the Contractor and used for the purpose of providing the Services, including documents, information, methods of working, and data stored by any means.
Contract Material	all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information, methods of working, data including maintenance logs and condition reports, and operating procedures stored by any means.
Contract Officers	in relation to each party, the representatives whose names and contact details are specified in Item 1 Schedule 1 , or as notified from time to time by one

party to the other.

Contract Price

where the Territory accepted:

- (1) a lump sum, the lump sum specified in **Item 3 Schedule 1**;
- (2) rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of the Services actually performed under the Agreement by the corresponding rate for the section or item in the Schedule of Rates;
- (3) a lump sum and rates, the aggregate of the sums referred to in paragraphs (1) and (2),

as adjusted under this Agreement.

Defects Warranty Period

the period or periods (as applicable) identified in **Item 7 Schedule 1**, or if none is specified, 12 months commencing:

- (1) in respect of Deliverables which are required under this Agreement to be Accepted, from Acceptance of the Deliverable; and
- (2) in all other cases, from satisfactory completion or performance of the relevant Services.

Deliverable

any service, work, information, document, hardware, software, spare, equipment, consumable, material, good or other thing which is, or is required to be done, delivered, incorporated into an Asset, or otherwise provided by the Contractor to the Territory in the course of the performance of Services.

Direction

includes agreement, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement, or approval of a particular proposal or course of action (but does not constitute Acceptance). "Direct" has the corresponding meaning.

Environmental Incident

any actual or threatened adverse impact on, or damage to, the environment or Contamination caused by or in relation to the Services.

Environmental Management Plan

a plan prepared by the Contractor under **clause 2.12** which must set out in adequate detail the procedures the Contractor will implement to manage the Services from an environmental perspective and describing how the Contractor proposes to ensure the Services will be performed consistently with:

- (1) the Environmental Objectives; and
- (2) any matter notified by the Territory to the Contractor or specified in this Agreement, relevant to the environment.

Environmental Objectives

to:

- (1) encourage best practice environmental management through planning, commitment and continuous improvement;
- (2) prevent and minimise adverse impacts on the environment;
- (3) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (4) identify and control possible environmental hazards associated with the Services;
- (5) establish procedures to ensure that no hazardous substance is stored on Territory land without approval;
- (6) recognise and protect any special environmental characteristics of a Site (including cultural heritage significance);
- (7) define roles and responsibilities for personnel;
- (8) ensure environmental training and awareness programmes are provided to employees and subcontractors;
- (9) ensure subcontractors implement the Environmental Management Plan (if required);

- (10) define how the management of the environment during the Services is reported and performance evaluated;
- (11) describe all monitoring procedures required to identify impacts on the environment as a result of the Services;
- (12) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
- (13) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

Excepted Risks

- (1) the negligent act or omission of the Territory;
- (2) war, invasion, act of foreign enemies, civil war, rebellion, revolution, insurrection or military or usurped power, martial law, confiscation by order of Government or public authority, and similar acts;
- (3) damage which is the unavoidable result of the performance of the Services directed by the Territory during an emergency;
- (4) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from a combustion of nuclear fuel not caused by the Contractor;
- (5) the correction of anything discovered during the performance of the Services, not being part of the Services but required to be corrected due to a legislative requirement;
- (6) defects in the design of an Asset (other than design provided by the Contractor); and
- (7) any other risk specifically excepted in the Agreement.

Executive Negotiators the representatives of the parties nominated in **Item 23 Schedule 1** or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

GST	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
improvement notice, infringement notice, non-disturbance notice, notice of entry, notifiable incident, prohibition notice, provisional improvement notice and regulator	all have the same meanings as in the <i>Work Health and Safety Act 2011</i> (ACT).
Information Privacy Act	the <i>Information Privacy Act 2014</i> (ACT).
Insolvency Event	<ul style="list-style-type: none"> (i) in respect of a natural person: <ul style="list-style-type: none"> (a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the <i>Bankruptcy Act 1966</i> (Cth); or (b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or (ii) in respect of all other entities: <ul style="list-style-type: none"> (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the <i>Corporations Act 2001</i> (Cth) occur in respect of the entity; or (b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the: <ul style="list-style-type: none"> (i) insolvency; (ii) winding up; or (iii) appointment of a controller (as that term is defined in the <i>Corporations Act 2001</i> (Cth)), administrator or liquidator in

respect of part or all of the property,

of the entity.

For the purposes of subparagraph 2(b), subsections 459C(2)(a) to (f) *Corporations Act 2001*(Cth) are to be read as if applying to all incorporated entities.

Invoice

an invoice that:

- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) references this Agreement;
- (4) is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in this Agreement and addressed to the Territory's Contract Officer.

Latent Conditions

physical conditions of an Asset and its near surrounds, including artificial things but excluding weather conditions, which could not have been anticipated by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing its tender including but not limited to having inspected:

- (1) all written information made available by the Territory for the purpose of tendering;
- (2) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and
- (3) the Asset and its near surrounds.

Maintenance	all actions (whether preventative or corrective) taken to maintain an Asset, or restore it to, a condition specified in, or otherwise implied by, this Agreement. It includes inspection, condition monitoring, servicing, repair, overhaul, testing, condition monitoring, calibration, rebuilding, reclamation, upgrades, modification, supply, installation, defect rectification, recovery, and the salvage of technical equipment.
Normal Hours	the normal days and hours of operation specified in Item 11 Schedule 1 .
OHS Management System	an occupational health and safety system listed on the Joint Accreditation System of Australia & New Zealand (JAS-ANZ) register as having current third party certification in accordance with the latest edition, as amended, of AS/NZS ISO 4801 (or such other occupational health and safety system as is found acceptable to the Territory).
Performance Management System	the system of monitoring and measuring the performance of the Contractor in delivering the Services set out in Schedule 7 (if any).
Personal Information	has the meaning given by the Information Privacy Act.
Prescribed Insurer	an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.
Procurement Act	the <i>Government Procurement Act 2001 (ACT)</i> .
Program	a program for the performance and completion of the Services which at a minimum sets out the times and/or frequency of all Services including Deliverables and any other matters set out in Item 4 Schedule 1 .
Project Management Plan	a plan prepared by the Contractor which must set out in adequate detail all procedures the Contractor will implement to manage the carrying out of the Services including the matters set out in Item 5 Schedule 1 and any other matters required by the Territory.
Schedule of Rates	the schedule set out in Schedule 6 which, in respect of any section or item of work to be performed,

shows the rate or respective rates of payment for the performance of that section or item of work and which may also include lump sums, provisional sums, other sums, quantities and prices.

Services the whole of the work (including provision of Deliverables and Maintenance) which the Contractor is required to perform and complete under this Agreement.

Service Defect means:

- (1) in respect of any tangible Deliverable, any fault, defect, damage, omission or deficiency in design, materials, workmanship or quality (other than fair wear and tear), which:
 - (a) results in the Deliverable not conforming to a requirement of this Agreement or applicable legislation or standards; or
 - (b) renders the Deliverable unfit for its intended use; and
- (2) in respect of all other Services, the provision of the Services otherwise in accordance with this Agreement.

Site a physical site on which an Asset is located and any other lands and places made available to the Contractor by the Territory for the purpose of the Agreement.

Special Condition any provision set out in **Schedule 3**.

Specified Personnel any person named in **Item 14 Schedule 1**, or any other employee or agent of the Contractor, who is approved by the Territory from time to time for the purpose of **clause 11**.

Statutory Requirement any law applicable to the carrying out of the Services, including Acts, ordinances, regulations, by-laws and other subordinate legislation.

Term the term specified in **Item 2 Schedule 1**, and if extended, the initial term and the extended term.

Territory when used:

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

Territory Information the kind of information that:

- (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;
- (2) is notified (whether in writing or not) by the Territory to the Contractor as being confidential;
- (3) is specified in **Item 17 Schedule 1**; or
- (4) is Personal Information,

but does not include information that:

- (5) is or becomes public knowledge other than by breach of this Agreement;
- (6) has been independently developed or acquired by the Contractor; or
- (7) has been notified by the Territory to the Contractor as not being confidential.

Territory Material any material provided by the Territory to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

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

- (1) those provisions will be incorporated by

reference into this Agreement; and

- (2) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the Territory.

Third Party IP

means intellectual property rights in materials which are:

- (1) owned by a party other than the Territory or the Contractor;
- (2) are embodied in, or attach to, any item, component or software that is available to the general public on standard commercial licence terms and which is to be used for its intended purpose in connection with the Assets or Services without modifications (except as necessary to configure or install the item, component or software, or which are of a type customarily able to be procured by the general public from more than one supplier on standard commercial licence terms) (“**Commercial Items**”), or is otherwise necessarily related to the functioning or operation of a Commercial Item; and
- (3) identified in **Item 13 Schedule 1**.

TPPs

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

TPP Code

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

Variation

any change to, including omission from, the Services.

WHS Legislation

- (1) the *Work Health and Safety Act 2011* (ACT);
- (2) the *Work Health and Safety Regulation 2011* (ACT);
- (3) all instruments issued under the *Work Health*

and Safety Act 2011 or the Work Health and Safety Regulation 2011;

- (4) all laws that replace the above laws; and
- (5) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

WHS Management Plan

a work health and safety management plan that addresses:

- (1) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under this Agreement;
- (2) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under this Agreement is being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;
- (3) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Territory with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
- (4) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (5) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace; and
- (6) ensuring that work health and safety is a

compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Territory.

1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” include any employees, agents or subcontractors of the Contractor;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

2. Services

2.1 Standard of care

The Contractor must perform the Services:

- (1) in accordance with the provisions of this Agreement;
- (2) so that they fit for the purpose(s) specified in or otherwise contemplated by this Agreement;
- (3) consistently with and so as to meet the quality and performance standards required by this Agreement;
- (4) consistently with all Approvals, Statutory Requirements and Territory Requirements;
- (5) to the extent the following are required under this Agreement, consistently with the:
 - (a) Program;
 - (b) the Project Management Plan;

- (c) the Performance Management System;
 - (d) the Environmental Management Plan; and/or
 - (e) the WHS Management Plan;
- that have not been rejected by the Territory; and
- (f) to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Contractor is engaged.

2.2 Knowledge requirements

The Contractor must use all reasonable efforts to inform itself of the requirements of the Territory and must regularly consult with the Territory during the performance of the Services.

2.3 Approvals

Unless otherwise provided in this Agreement the Contractor must obtain and maintain all Approvals required for the provision of the Services and provide copies of those Approvals to the Territory if requested.

2.4 Program and Project Management Plan

- (1) The Contractor must:
 - (a) if required under **Item 4 Schedule 1**, within the time specified in **Item 4 Schedule 1**, submit to the Territory for its Direction as to suitability (in electronic and/or hard copy form as requested by the Territory) a Program that at a minimum addresses the matters set out in **Item 4 Schedule 1** in a form approved by the Territory; and/or
 - (b) if required under **Item 5 Schedule 1**, within the time specified in **Item 5 Schedule 1**, submit to the Territory for its Direction as to suitability (in electronic and/or hard copy form as requested by the Territory) a Project Management Plan that at a minimum addresses the matters set out in **Item 5 Schedule 1** in a form approved by the Territory.
- (2) If the Program and/or Project Management Plan (as the case may be) is rejected by the Territory as not being suitable, the Contractor must submit an amended draft to the Territory, and in any event must finalise the Program and/or Project Management Plan so as to ensure there is no disruption to the Services.
- (3) After the Program and/or Project Management Plan (as the case may be) has been finalised, the Contractor must continue to correct any defects

or omissions in the Program and/or Project Management Plan and submit amended versions to the Territory.

- (4) The Contractor must document and maintain records of any inspections or audits undertaken as part of the Program and/or Project Management Plan.
- (5) The Contractor must not, without reasonable cause, depart from the Program and/or Project Management Plan accepted by the Territory as suitable (for time to time).
- (6) The Contractor must give the Territory reasonable advance notice of information, materials, documents, instructions or Directions (“**Information**”) required from the Territory and, subject to any other requirement in this Agreement, the Territory is not obliged to give any such Information earlier than the Territory should reasonably have anticipated at the date of acceptance of the Contractor’s tender.

2.5 Alterations to approved documents

- (1) The Contractor must not make any substantial alteration to, addition to, or omission from the Program, Project Management Plan or Environmental Management Plan (as the case may be), or to any plans, drawings, layouts, design, specifications or other material without the prior written consent of the Territory.
- (2) The Territory is not required to review Contract Material or Contractor Material to check for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with this Agreement.
- (3) Any acknowledgement, approval or non-rejection of Contract Material by the Territory shall not prejudice the Contractor’s obligations under this Agreement.
- (4) The Territory may:
 - (a) in its absolute discretion, review any documentation, or any resubmitted documentation, prepared and submitted by the Contractor; and
 - (b) if, in its absolute opinion the documentation does not conform with the requirements of the Agreement including required standards, reject the documentation, in which case the Contractor must at its own cost submit amended documentation to the Territory.

2.6 Testing

- (1) The Contractor must carry out all tests Directed by the Territory or which this Agreement requires it to carry out.

- (2) If the Territory directs the Contractor to carry out a test which is not otherwise required by this Agreement and the results of the test show that the item is in accordance with this Agreement, the reasonable costs of carrying out the test will, subject to the Contractor submitting a claim in accordance with **clause 20 (Variations)**, be assessed by the Territory and added to the Contract Price.

2.7 Acceptance

- (1) The Contractor must:
 - (a) offer for Acceptance any Deliverables specified in, or of the type indicated in, **Item 6 Schedule 1**; and
 - (b) when seeking Acceptance of those Deliverables:
 - (i) certify by written notice that the Deliverables conform with the requirements of this Agreement, except for minor omissions or defects, or non-conforming materials or work detailed in the notice; and
 - (ii) provide any other supporting evidence required by the Territory including confirmation of successful completion of any testing or other verification activities required by this Agreement.
- (2) The Territory may:
 - (a) Accept the Deliverables; or
 - (b) if in the opinion of the Territory any Deliverable is not in accordance with the Agreement (including any tests or other verification activities):
 - (i) reject the Deliverables; or
 - (ii) Accept the Deliverables despite the non-conformance.
- (3) If the Territory rejects the Deliverables under **clause 2.7(2)(b)(i)**, it will give the Contractor a notice specifying the non-conformance and requiring the Contractor to, within the time specified either correct the non-conformance or carry out a Variation, in which case the Contractor must correct the non-conformance, or carry out the Variation, within the time specified and re-offer the Deliverable for Acceptance under **clause 2.7(1)(a)**.
- (4) If the Territory Accepts the Deliverables under **clause 2.7(2)(b)(ii)** it will give the Contractor a notice advising the Contractor that the Territory will Accept the Deliverable despite the non-conformance, in which case

the Contract Price will be reduced by the amount determined by the Territory which represents the cost of correcting the non-conformance.

- (5) If the Territory does not notify the Contractor of Acceptance or rejection within 15 Business Days of receipt of the offer under **clause 2.7(1)(a)** the Territory will be taken to have Accepted the Deliverables on the expiry of the 15 Business Day period.

2.8 Defects Warranty Period

- (1) The Contractor warrants that the Services including any Deliverables, conform with this Agreement including in design, materials and workmanship.
- (2) With respect to any Service Defect the Territory may issue a written notice to the Contractor specifying the Service Defect and:
 - (a) requiring the Contractor to correct it by repair, replacement, modification or re-performance (at the Territory's election), and specifying the time within which it must be corrected;
 - (b) requiring the Contractor to carry out a Variation, and specifying the time within which it must do so; or
 - (c) advising the Contractor that the Territory will accept the work despite the Service Defect.
- (3) If the Territory gives a notice under **clause 2.8(2)(a)** or **clause 2.8(2)(b)**, the Contractor must correct the Service Defect or perform the Variation within the time specified in the notice.
- (4) If the Territory gives a notice under **clause 2.8(2)(c)**, the Contract Price will be reduced by the amount determined by the Territory which represents the cost of correcting the Service Defect.
- (5) If the Contractor fails within the period specified in the notice to rectify a Service Defect the Territory may, without limiting the Contractor's warranties and obligations under this Agreement, perform or have performed the necessary remedial work and the cost will be a debt due to the Territory.
- (6) The Territory may issues notices under this **clause 2.8** at any time during the relevant Defects Warranty Period.

2.9 Latent Conditions

- (1) The Contractor must notify the Territory promptly in writing if it considers it has encountered a Latent Condition at a Site.
- (2) If Directed by written notice by the Territory, the Contractor must as soon as practicable, give the Territory a written statement of:

- (a) the Latent Condition encountered and the respects in which it differs materially;
 - (b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition; and
 - (c) other details reasonably required by the Territory.
- (3) The Territory will determine whether a Latent Condition has been encountered and notify the Contractor of its determination.
- (4) If a Latent Condition has been encountered the Contractor will be entitled to:
- (a) claim an extension of time if it is delayed in the provision of Services; and
 - (b) be paid by the Territory any reasonable extra costs incurred by the Contractor after giving notice under this **clause 2.9** arising from the Latent Condition, valued by the Territory.
- (5) The Contractor's entitlement under **clause 2.9(4)(b)** will be its only right to payment of money arising from the Latent Condition and will be subject to the Contractor submitting a claim in accordance with **clause 20 (Variations)**.

2.10 Urgent protection

- (1) The Territory may take any action necessary to protect an Asset, other property, the environment or to prevent or minimise risks to the health and safety of persons if:
- (a) this is necessary and it is not practicable to have the Contractor take the action; or
 - (b) it was action which the Contractor should have taken but did not.
- (2) Where the Territory takes action under **clause 2.10(1)(b)**, all costs incurred by the Territory will be a debt due from the Contractor to the Territory.

2.11 Discrepancies in information

If the Contractor considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Contractor must give written notice as soon as practicable to the Territory detailing the errors or ambiguities.

2.12 Environmental management

- (1) The Contractor must:
 - (a) ensure that in carrying out the Services:
 - (i) other than to the extent identified in writing by the Territory, it complies with all Statutory Requirements, Territory Requirements and other requirements of this Agreement for the protection of the environment;
 - (ii) it does not cause any Environmental Incident;
 - (iii) without limiting **clause 2.12(1)(a)(ii)**, it does not cause or contribute to Contamination of a Site or other land, air or water, or cause or contribute to any Contamination emanating from a Site;
 - (iv) it immediately notifies the Territory of:
 - (A) any non-compliance with this clause;
 - (B) a breach of any Statutory Requirement for the protection of the environment;
 - (C) any Environmental Incident; or
 - (D) the receipt of any notice, order or communication received from an authority for the protection of the environment; and
 - (v) its subcontractors comply with the requirements referred to in this clause; and
 - (b) clean up and restore the environment, including any Contamination or the actual or threatened adverse impact on, or damage to, the environment, arising out of, or in any way in connection with, the Services, whether or not it has complied with all Statutory Requirements, Territory Requirements or other requirements of this Agreement for the protection of the environment.
- (2) If an Environmental Management Plan is required under **Item 8 Schedule 1** the Contractor must:
 - (a) prepare a draft Environmental Management Plan in a form approved by the Territory and submit it to the Territory for Direction as to suitability within the time required under **Item 8 Schedule 1**;

- (b) if the draft Environmental Management Plan is rejected, submit an amended Environmental Management Plan to the Territory and in any event, finalise the Environmental Management Plan so as to ensure there is no disruption to the Services;
- (c) continue to correct any defects or omissions in the Environmental Management Plan and submit amended versions to the Territory;
- (d) carry out the Services in accordance with, and otherwise implement the Environmental Management Plan that has not been rejected by the Territory; and
- (e) document and maintain records of any inspections or audits undertaken as part of an Environmental Management Plan.

2.13 Contractor not relieved

The Contractor will not be relieved from compliance with any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or otherwise according to law as a result of:

- (1) the implementation of, and compliance with, the requirements of an accepted Program, Project Management Plan or Environmental Management Plan;
- (2) any Direction by the Territory concerning the Program, Project Management Plan or Environmental Management Plan;
- (3) any audit or other monitoring by the Territory of the Contractor's compliance with a Program, Project Management Plan or Environmental Management Plan; or
- (4) any failure by the Territory, or anyone else acting on behalf of the Territory, to detect any defect in or omission from the Program, Project Management Plan or Environmental Management Plan.

2.14 Audits

Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT), the Territory (or its nominated representative, which may be an external consultant) may conduct audits and other checks to monitor the Services, the Contractor's delivery of the Services, the reporting of data by the Contractor in relation to financial matters and any other matter which the Territory thinks fit. The Contractor must cooperate with all persons conducting those audits or checks. The Territory is not liable for the cost (if any) incurred by the Contractor associated with audits and other checks.

3. Term

This Agreement is for the Term unless terminated under the provisions of this Agreement.

4. Contract Price

4.1 Invoice and payment

The Territory must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with this Agreement including **Item 3 Schedule 1**

4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the Contractor under this Agreement.

4.3 Right of set-off

If the Territory claims a sum under or arising out of this Agreement, or any other Agreement between the parties or between the Contractor and any other Territory entity as defined in section 3(1) of the *Government Procurement Act 2001* (ACT), the Territory may withhold, deduct or set-off the claimed sum against any sum to which the Contractor is otherwise entitled under or arising out of this Agreement.

4.4 Stop payment events

- (1) Notwithstanding any other remedy available to the Territory under this Agreement or at law, if any of the events listed below occurs, the Territory may at its discretion withhold all or any payments of an Invoice due to the Contractor during the period of the event or until the Territory is satisfied that the failure or circumstances giving rise to the event have been remedied:
 - (a) the Contractor fails to obtain or maintain any Approval required to enable it to comply with its obligations under this Agreement, except to the extent that the failure was outside of the Contractor's reasonable control;
 - (b) the Contractor fails to provide or maintain the Approved Security required under **clause 5 (Security)**;
 - (c) the contractor fails to effect and maintain the insurances as required under **clause 19 (Insurance and Indemnity)**;

- (d) the Contractor fails to comply with **clause 13 (Work Health and Safety)**;
 - (e) the Contractor fails to provide a declaration as required under **clause 14 (Secure Local Jobs)**; or
 - (f) the Contractor fails to remedy a default within the period specified in a notice under **clause 24 (Termination)**.
- (2) The Territory will pay any withheld amounts to the Contractor within 30 days after the cessation of all the events that entitle the Territory to withhold payment under this **clause 4.4**.

4.5 Payment for Deliverables

- (1) Subject to **clause 4.5(2)**, the Contractor must not include a sum in an Invoice in respect of any Deliverables intended to be incorporated or otherwise installed in an Asset unless the Deliverables are incorporated or otherwise installed in the Asset.
- (2) In respect of the Deliverables listed in **Item 9 Schedule 1** (if any), the Contractor must not include in an Invoice a sum in respect of those Deliverables unless:
 - (a) the Deliverables are installed and otherwise incorporated into an Asset; or
 - (b) if the Deliverables remain unfixed at the time the Invoice is rendered:
 - (i) the Deliverables have been delivered at the time, and to the location, required under this Agreement; and
 - (ii) the Contractor gives the Territory with its Invoice:
 - (A) an unconditional undertaking by a financial institution in an amount equal to the amount specified in the Invoice for the Deliverables, in the form of **Schedule 4** or as otherwise approved by the Territory; and
 - (B) evidence, including that the Deliverables are not the subject of a registered security interest, that title in the Deliverables will vest in the Territory upon delivery of, or payment for, the Deliverables whichever occurs sooner;
 - (iii) the Deliverables are clearly marked as the property of the Territory; and

- (iv) the Deliverables are properly stored in a place approved by the Territory.
- (3) For the avoidance of doubt, the vesting of title in the Deliverables, or signing for or otherwise acknowledging delivery of the Deliverables, does not in itself amount to Acceptance of the Goods by the Territory for the purposes of **clause 2.7**.

4.6 Effect of payment

Payment, in part or in total, of the Contract Price does not constitute an acceptance by the Territory of the Services or of a Deliverable and does not amount to a waiver of any right or action which the Territory may have at any time against the Contractor.

5. Security

5.1 Contractor to provide security

The Contractor must provide the Approved Security within 7 days of commencement of the Term.

5.2 Exercise of security

- (1) The Territory may have access to the Approved Security at any time.
- (2) The rights of the Territory to recover from the Contractor the balance, after draw down or exercise of the security provided under **clause 5.1**, of loss suffered by the Territory is not limited by the Territory's exercise of that security.

5.3 Release of security

The security provided under **clause 5.1** will be released by the Territory after:

- (1) the last Defects Warranty Period has expired; and
- (2) the Contractor has complied with all its obligations under this Agreement.

6. Statutory Requirements

6.1 Compliance with Statutory Requirements

- (1) The Contractor must comply with all Statutory Requirements except those which can only be satisfied by the Territory.
- (2) Without limiting **clause 6.1(1)** the Contractor must:
 - (i) apply for and obtain all Approvals ; and

- (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of the Services; and
- (iii) promptly give the Territory's Contract Officer copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the works associated with the Services or the carrying out of the Services issues to the Contractor.

6.2 Change in Statutory Requirements

If:

- (1) there is any change in a Statutory Requirement after the date of this Agreement; or
- (2) a Statutory Requirement is at variance with the Agreement,

then:

- (3) the party discovering this must promptly notify the other;
- (4) the Territory Contract Officer will instruct the Contractor as to the course it is to adopt insofar as the provision of the Services are affected by the change or variance (as the case may be); and
- (5) the Contract Price will be:
 - (a) increased by any additional costs reasonably incurred by the Contractor; or
 - (b) decreased by any saving made by the Contractor,

in carrying out the Services after the giving of the notice under **clause 6.2(3)** and arising directly from the change or variance in the Services, or the Territory's Direction, in either case as determined by the Territory.

7. Delay and Normal Hours

7.1 Delay

- (1) The Contractor must:
 - (a) take all reasonable steps to prevent and minimise any delay in the performance of the Agreement;
 - (b) mitigate the effects of any delay, including any losses of the parties arising as a result;
 - (c) as soon as practicably after becoming aware that the provision of the Services has or may be delayed, by any cause, notify the Territory in writing of the cause and nature of the delay;

- (d) within 5 Business Days after a notification under **clause 7.1(1)(c)** submit to the Territory in writing a plan setting out:
 - (i) the steps it will take to minimise the delay and the effects of the delay; and
 - (ii) the anticipated duration of the delay.
- (2) The Contractor must undertake the steps specified in a notification provided under **7.1(1)(d)** subject to any Direction by the Territory.

7.2 Normal Hours

- (1) The Contractor must not, unless otherwise provided in this Agreement, without the Territory's prior written approval, perform the Services outside of the Normal Hours.
- (2) If no Normal Hours are specified, the Territory may Direct the Contractor as to working days and hours.

8. Substituted Performance

8.1 Territory may perform

- (1) If:
 - (a) the Contractor fails to provide any of the Services in accordance with this Agreement;
 - (b) the Territory has issued the Contractor a notice requiring the Contractor to remedy the failure within a period specified in the notice; and
 - (c) the Contractor has not remedied the failure within the specified period,

the Territory may perform or procure the performance of the Services and any other work which in the Territory's opinion is necessary to remedy the failure at the expense of the Contractor, such expense to be a debt due from the Contractor to the Territory.

- (2) The Contractor must fully cooperate with the Territory, or any person nominated by the Territory, to ensure that the Territory is able to exercise its rights under this clause effectively and expeditiously.
- (3) The exercise by the Territory of its rights, or any action required by the Contractor, under this clause will not entitle the Contractor to claim any performance relief or relieve the Contractor from performing any of its obligations under this Agreement.

(4) The exercise of the Territory's rights under this clause does not affect any other rights of the Territory under this Agreement or otherwise, and does not constitute:

- (a) a waiver of any other rights;
- (b) an election to exercise the rights under this clause instead of other rights; or
- (c) a representation that the Territory will not exercise other rights,

and the Territory may exercise such other rights notwithstanding the operation of this clause.

9. Additional Warranties

(1) Without limiting any other provision in this Agreement, the Contractor must obtain for the benefit of the Territory, the warranties specified in **Item 12 Schedule 1** for the respective periods stated in **Item 12 Schedule 1** in relation to materials, parts and components used in the performance of the Services set out in **Item 12 Schedule 1**.

(2) Without limiting **clause 9(1)** the Contractor must ensure that, to the extent practicable and permitted by law, the Territory receives the benefit of any warranty given by a third party. This clause does not in any way relieve the Contractor of any obligation or warranty given by the Contractor under this Agreement.

(3) The Contractor is responsible for all costs incidental to the discharge of any warranties required under this Agreement, and any other warranty given in respect of the Services, including any packaging or freight costs.

10. Ownership and risk

10.1 Ownership

- (1) Ownership of:
- (a) all Contract Material the subject of copyright, vests on its creation in the Territory;
 - (b) all Territory Material, including any intellectual property rights, remains with the Territory; and
 - (c) all Contractor Material, including any intellectual property rights, remains with the Contractor;
 - (d) Deliverables to be installed on, or become part of, an Asset in connection with the performance of the Services, transfers to the Territory on the earlier of:

- (i) Acceptance of the Deliverable or work in respect of the Deliverable; or
 - (ii) Payment of an Invoice including an amount with respect to the Deliverable; and
- (e) Deliverables provided as part of the Services, other than those the subject of **clause 10.1(1)(a)** or **clause 10.1(1)(d)**, transfers to the Territory on payment of an Invoice including an amount with respect to the Deliverable.
- (2) The Contractor must ensure that at the time ownership of any item of Deliverables passes to the Territory, those items are free of all encumbrances including any registered security interest.
- (3) Risk of loss, or damage to, any Deliverables resides with the Contractor and passes to the Territory:
- (i) if the Deliverables are unfixed plant or materials, when the Deliverables are delivered to the Territory; or
 - (ii) if the Deliverables are to be installed on, or otherwise become part of, an Asset, when the Deliverables are installed on, or otherwise become part of, the Asset,
- in accordance with this Agreement.
- (4) If the Territory rejects Deliverables as not conforming with this Agreement, or the Contractor retakes possession of the Deliverables in accordance with this Agreement, risk of loss of, or damage to, those Deliverables reverts to the Contractor on repossession.
- (5) The Contractor must make good any loss or damage caused to any Deliverables while risk resides with the Contractor, or otherwise caused by an unlawful or negligent act or omission on the part of the Contractor, its employees or agents, except to the extent that the loss or damage was a direct consequence of an Excepted Risk.
- (6) For the avoidance of doubt, nothing in this clause affects the ownership of Territory Material, Contractor Material or Third Party IP.

10.2 Licence of material

- (1) The Territory grants to the Contractor a royalty-free, limited licence to use the Contract Material and Territory Material for the Term.
- (2) Under **clause 10.2(1)** “use” includes such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Territory.

- (3) The Contractor grants to the Territory a royalty-free, perpetual, limited licence to use the Contractor Material to do any of the following:
 - (a) properly use and support (including for training purposes), operate, maintain, repair, integrate with other equipment, and dispose of the Asset or the Services (as relevant);
 - (b) update, modify or develop the Asset or the Services, subject to any limitations specified in this Agreement;
 - (c) remedy any defects or omissions in the Asset or the Services; and
 - (d) complete the Services, including if this Agreement is terminated.
- (4) To avoid doubt, the licence granted under **clause 10.2(3)**:
 - (a) does not permit the Territory, or a third party engaged on behalf of the Territory, to commercialise the licensed Contractor Material; and
 - (b) does permit the Territory to sublicense the Contract Material to a third party for the purpose of providing goods and services to the Territory.
- (5) Without limiting **clause 10.3**, the Contractor must ensure that before a subcontractor commences work in relation to the Services, that the licence granted to the Territory by the Contractor under **clause 10.2(3)** extends to any material created, written or otherwise brought into existence by the subcontractor as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information, methods of working, and data stored by any means.

10.3 Third party rights

- (1) The Contractor must ensure:
 - (a) the use of any Contract Material will not infringe the intellectual property rights of any third party; and
 - (b) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Contract Material, except to the extent that those rights are identified Third Party IP under this Agreement.
- (2) The Contractor warrants that the only intellectual property embodied in the Deliverables that has not been vested in the Territory under this clause, or in respect of which the Territory has not been granted a licence under **clause 10.2(3)** is Third Party IP.

- (3) The Contractor must ensure the Territory is granted a licence to use all Third Party IP on the best available commercial terms.

10.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Territory to:
 - (a) attribute the authorship of the work to the Territory or a third party where that attribution was inadvertent,
 - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public), and
 - (c) materially alter the work in any way.

10.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Territory Material in its possession or control and deliver to the Territory:

- (1) on the expiration or termination of this Agreement, all Contract Material and Territory Material; and
- (2) in the event of a Variation that is a reduction in Services, on the date of effect of the reduction, all Territory Material and Contractor Material relating to the Services no longer forming part of this Agreement,

other than copies of material that the Territory has authorised the Contractor to retain.

11. Contractor's personnel

11.1 Suitability of personnel

- (1) The Contractor must:
 - (a) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;

- (b) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (c) ensure the Services are performed by Specified Personnel (if any) in the roles specified (if any);
- (d) if the Territory requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Territory (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Territory in accordance with any requirements that the Territory notifies.

11.2 Replacement personnel

- (1) The Contractor must:
 - (a) provide replacement personnel acceptable to the Territory at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services or if the Territory notifies the Contractor of any requirements under **clause 11.2(1)(b)**;
 - (b) if requested, provide to the Territory:
 - (i) supporting documentation that demonstrates how the replacement personnel satisfies the requirements for the relevant Specified Personnel, and if applicable how any capability shortfalls will be addressed; and
 - (ii) an update to the position/person specifications for affected Specified Personnel to reflect any changes in duties and responsibilities that result from the replacement of Specified Personnel.
- (2) If the Contractor is required to replace Specified Personnel under this clause and a replacement person satisfactory to the Territory is not provided within the time set out in **Item 15 Schedule 1** (or, if no time is set out, 30 Business Days) the Territory may exercise its right to terminate the Agreement under **clause 23.1**.

12. Access to a Site

12.1 Territory's obligations

The Territory must provide to the Contractor:

- (1) reasonable access to any Site or sufficient of any Site necessary to enable the Contractor to perform the Services; and

- (2) if applicable a notification as to any security measures to be observed in connection with the Site or access to it.

12.2 Contractor's obligations

The Contractor must ensure that to the extent relevant, in relation to the performance of the Services at a Site, the Contractor and any subcontractors and either's employees or agents:

- (1) use entrances and exits provided or specified by the Territory;
- (2) comply with access arrangements and the security measures directed by the Territory;
- (3) carry suitable identification;
- (4) not examine, copy, remove, or otherwise interfere with anything on the Site except of the purpose of the performance of the Services; and
- (5) regularly remove rubbish and surplus material which results from the performance of the Services.

13. Work Health and Safety

13.1 Work health and safety

- (1) The obligations set out in this Agreement do not detract from the Contractor's obligations under the WHS Legislation. If there is an inconsistency between this Agreement and the WHS Legislation, the Contractor must comply with the WHS Legislation and inform the Territory of the inconsistency.
- (2) The Contractor must comply with the WHS Legislation and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk.
- (3) The Contractor must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- (4) The Contractor must institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform work on a Site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.
- (5) The Contractor must provide the written assurances obtained under **clause 13.1(4)**, together with written assurances from the Contractor about the Contractor's ongoing compliance with WHS Legislation, to the Territory.

- (6) The Contractor must provide the Territory with a written report on all work health and safety matters referable to the conduct of the Services, or any other relevant matters required by the Territory including a summary of the Contractor's compliance with WHS Legislation, at least once per month, and at other times as requested.
- (7) The Contractor must exercise a duty of utmost good faith to the Territory in carrying out the work under this Agreement to enable the Territory to discharge the Territory's duties under the WHS Legislation.
- (8) The Contractor must ensure that if any law requires that a person:
 - (a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
 - (b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.
- (9) The Contractor must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.
- (10) The Contractor must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and **clause 13.1(8)** and **(9)** are met.
- (11) If requested by the Territory or required by WHS Legislation, the Contractor must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Territory before the Contractor or any subcontractor commences such work.
- (12) If the Territory reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Contractor (or any of its subcontractors) the Territory may Direct the Contractor (or the relevant subcontractor) to change its manner of working or cease working and the Contractor or subcontractor must comply.
- (13) The Territory may take any action necessary to protect an Asset and other property or to prevent or minimise risk to health and safety of persons, which the Contractor must take but does not and the Territory may recover any costs associated with such action from the Contractor.

- (14) The Contractor must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in this Agreement and the WHS Legislation.
- (15) The Contractor must demonstrate to the Territory, whenever requested, that the Contractor has met and is meeting at all times, its obligations under this clause but such demonstration does not relieve the Contractor of its primary obligation to perform work safely.
- (16) The Contractor must take all reasonable actions and comply with all reasonable requests of the Territory regarding any safety audits in respect of the Site.
- (17) Without limiting **clause 13.1(16)** the Contractor must, at all reasonable times, allow the Territory or any person authorised by the Territory:
 - (a) to enter upon a Site to conduct a safety audit;
 - (b) to enter upon a Site or any premises occupied by the Contractor to inspect and copy any records relevant to a safety audit; and
 - (c) to enter upon a Site or any premises occupied by the Contractor to interview any person as part of a safety audit.
- (18) The Contractor must immediately notify the Territory upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to a Site or Asset and provide the Territory with a copy of the relevant notice if the Contractor has the same.
- (19) The Contractor must promptly notify the Territory upon becoming aware of the issue of any provisional improvement notice referable to a Site or Asset and provide the Territory with a copy of the notice if the Contractor has the same.
- (20) The Contractor must provide reports on work health and safety matters to the Territory in such form and at such times as reasonably required by the Territory and advised to the Contractor.
- (21) In addition to any obligations under WHS Legislation, the Contractor must:
 - (a) notify the Territory of any notifiable incident occurring at a Site immediately after it notifies the regulator; and
 - (b) provide the Territory with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.
- (22) The Contractor must promptly notify the occurrence and furnish a written report to the Territory of:

- (a) incidents resulting in damage to property on a Site or an Asset;
- (b) incidents resulting in significant delays to the Services;
- (c) incidents resulting in injury or illness other than a notifiable incident as part of provision of the Services; and
- (d) incidents that may have resulted in or may result in any incident set out in **clause 13.1(22)(a), (b) or (c)** above or a notifiable incident.

13.2 OHS Management System requirements

- (1) The Contractor must implement and maintain an OHS Management System and provide the Territory with access at all times to the Contractor's and each of its subcontractor's OHS Management Systems to enable monitoring and quality auditing.
- (2) The implementation of the OHS Management System will not relieve the Contractor of the Contractor's obligations under this Agreement.

13.3 Engagement as principal contractor

- (1) This clause applies except to the extent set out in **Item 16 Schedule 1** or as otherwise Directed by the Territory.
- (2) The Territory:
 - (a) engages the Contractor as principal contractor in respect of the Site(s) which are the subject of a Construction Project;
 - (b) authorises the Contractor to have management or control of those Site(s); and
 - (c) engages the Contractor to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011* (ACT) in respect of those Sites.

13.4 WHS Management Plan

- (1) Where the Contractor has been engaged as principal contractor under **clause 13.3(2)** this **clause 13.4** will apply.
- (2) The Contractor must in respect of each Site which is the subject of a Construction Project:
 - (a) prepare and supply to the Territory a WHS Management Plan;
 - (b) provide the WHS Management Plan(s) before beginning work under this Agreement at those Sites; and

- (c) if required by the Territory, provide the WHS Management Plan(s) in accordance with Form USF960, Table 1 “Document Submission”.
- (3) The Territory will notify the Contractor as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Territory has not responded within 5 Business Day of receipt of the WHS Management Plan.
- (4) The acceptance by the Territory of the Contractor’s WHS Management Plan will not relieve the Contractor of its obligations to comply with and demonstrate compliance with this Agreement and the WHS Legislation.
- (5) The Contractor must regularly review its WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Agreement and WHS Legislation.

13.5 If not engaged as principal contractor

- (1) For any Site which is the subject of a Construction Project and which is:
 - (a) specified in **Item 16 Schedule 1** as one for which the Contractor is not appointed principal contractor; or
 - (b) otherwise notified by the Territory to the Contractor as one for which the Contractor is not appointed principal contractor,the Contractor is not appointed as the principal contractor but it must ensure that it and all its employees, subcontractors and suppliers, comply with:
 - (c) the work health and safety management plan of the appointed principal contractor; and
 - (d) directions, notices and any other notifications issued for or on behalf of the principal contractor referable to work health and safety matters.
- (2) Where the Contractor is not appointed as the principal contractor it must comply with the duty to consult, co-operate and coordinate activities with all other persons conducting a business or undertaking at the Site.

13.6 WHS Active Certification Policy

- (1) Unless otherwise stated, capitalised words and phrases used in this clause have the same meaning as in the Territory’s *WHS Active Certification Policy*.
- (2) Without limiting any other part of this Agreement where the Contractor:

- (a) is prequalified under a prequalification scheme at the date of this Agreement;
- (b) becomes prequalified under a prequalification scheme during the term of this Agreement; or
- (c) has its prequalification status under a prequalification scheme cancelled, suspended or downgraded during the Term of this Agreement,

the *WHS Active Certification Policy* will apply. To the extent necessary to give effect to the *WHS Active Certification Policy* its provisions are incorporated by reference into this Agreement.

- (3) The Contractor will pay to the Territory by way of reimbursement the Auditor's costs associated with the conduct of any Follow Up Audit (required as a result of the action or inaction of the Contractor) and any Close Out Audit conducted under the *WHS Active Certification Policy*.
- (4) Unless otherwise agreed by the parties, the costs of the Auditor referred to in **clause 13.6(3)** will be paid by the Contractor to the Territory by way of a deduction from an amount or amounts claimed by the Contractor in an Invoice or Invoices made under this Agreement, at the absolute discretion of the Territory.
- (5) Where all or part of the costs of the Auditor are not paid to the Territory in accordance with **clause 13.6(4)** any amount outstanding will be a debt due and payable by the Contractor to Territory.

14. Secure Local Jobs

14.1 Definitions for this clause

- (1) In this clause **14**:
 - (a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Contractor or one of its Associated Entities has contravened an Industrial Law;
 - (b) **Approved Auditor** has the meaning as set out in the Procurement Act;
 - (c) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
 - (d) **Code** means the Secure Local Jobs Code;
 - (e) **Full Details** means:

- (i) the nature of the Adverse Ruling;
 - (ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
 - (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
 - (iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
 - (v) the name of the entity against which the Adverse Ruling was made; and
 - (vi) any other relevant information that the Contractor may rely on as grounds for not terminating this Agreement as a result of the Adverse Ruling;
- (f) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
 - (g) **Labour Relations, Training and Workplace Equity Plan** has the meaning as set out in the Procurement Act;
 - (h) **Registrar** has the meaning as set out in the Procurement Act;
 - (i) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;
 - (j) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;
 - (k) **Territory Entity** has the meaning as set out in the Procurement Act; and
 - (l) **Territory-Funded Work** has the meaning as set out in the Procurement Act.
- (2) For the purposes of **clause 14.2(2)** and **clause 14.3(6)** the form set out in **Schedule 5** is approved unless otherwise advised by the Territory.

14.2 Subcontractors performing Territory-Funded Work

- (1) The Contractor must, in relation to any subcontractors engaged to perform Territory-Funded Work:
 - (a) ensure terms are included in the agreement with the subcontractor:
 - (i) requiring the subcontractor to comply with the Code; and
 - (ii) imposing obligations on the subcontractor in the same form as those set out in **clause 14** and imposed on the Contractor (subject to any necessary variation to reflect the different parties);
 - (b) ensure:
 - (i) the subcontractor holds a Secure Local Jobs Code Certificate; and
 - (ii) maintains a Secure Local Jobs Code Certificate during the term of their agreement; and
 - (iii) the obligations in **clause 14.2(1)(b)(i)** and **clause 14.2(1)(b)(ii)** are included in the relevant agreement with the subcontractor.
- (2) The Territory may by written notice request the Contractor obtain a statutory declaration from a subcontractor engaged to perform Territory-Funded Work regarding its compliance with the Code and provide it to the Territory within 15 Business Days of the date of the written notice. The Contractor must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Contractor to comply with this **clause 14.2(2)**.
- (3) Without limiting **clause 2.14**, the Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by subcontractors engaged to perform Territory-Funded Work and conduct audits and other reviews and checks, to monitor compliance with this **clause 14** and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

14.3 Contractor's Secure Local Jobs responsibilities

- (1) This **clause 14.3** applies to the extent that this Agreement provides for the performance of Territory-Funded Work by the Contractor.
- (2) The Contractor must comply with all of its obligations under the Code.
- (3) The Contractor must maintain a valid Secure Local Jobs Code Certificate during the term of the Agreement.

- (4) Failure of the Contractor to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Agreement entitling the Territory to terminate the Agreement on written notice to the Contractor.
- (5) If at any time during the term of the Agreement an Adverse Ruling is made, the Contractor must, within 7 Business Days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Contractor setting out the Full Details of the Adverse Ruling and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the Adverse Ruling is based from recurring.
- (6) The Contractor must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the Code:
 - (a) within 5 working days of a written request from the Territory; and
 - (b) if requested in writing by the Territory, at the time the Contractor provides an Invoice.
- (7) Failure of the Contractor to provide a statutory declaration in accordance with **clause 14.3(6)** or the making of a false statement in a statutory declaration by the Contractor or its representative will constitute a breach of this Agreement.
- (8) If the Contractor fails to provide a statutory declaration in accordance with **clause 14.3(6)(b)** the Territory may withhold payment of monies otherwise due to the Contractor in respect of the relevant Invoice until the statutory declaration is received.
- (9) The Territory may require that Contractor conduct face-to-face induction sessions with employees at the commencement of Territory-Funded Work or commencement of employment in relation to Territory-Funded Work.
- (10) The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the Contractor except in circumstances where attendance would result in a conflict with Commonwealth laws.
- (11) The Contractor must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the Contractor's worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the

Territory or Registrar under this **clause 14.3(11)** in circumstances where entry would result in a conflict with Commonwealth laws.

- (12) Without limiting **clause 2.14**, the Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by the Contractor and conduct audits and other reviews and checks, to monitor compliance with this **clause 14** and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.
- (13) If the Contractor was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the Services:
 - (a) the Contractor must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - (b) the Contractor must report to the Territory on its compliance with **clause 14.3(13)(a)** quarterly during the term of this Agreement;
 - (c) the Contractor must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - (d) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

15. Non-disclosure of Territory Information

15.1 Contractor's use of Territory Information

The Contractor must:

- (1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Territory Information held in connection with this Agreement outside the Territory, or allow any person (other than its authorised personnel) outside the Territory to have access to it, without the prior approval of the Territory;
- (3) notify the Territory immediately if the Contractor becomes aware that a disclosure of Territory Information is required by law, or an unauthorised disclosure of Territory Information has occurred; and

- (4) in respect of any Personal Information held in connection with this Agreement:
 - (a) comply with the TPPs and any applicable TPP Code as though it were a Territory agency, 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 Information Privacy Act.

15.2 Contractor to protect Territory Information

- (1) Except as provided in this Agreement, the Contractor must not disclose Territory Information to any person without the prior written consent of the Territory except to the extent that the Territory Information is:
 - (a) required or authorised to be disclosed by law,
 - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers,
 - (c) generally available to the public, or
 - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) The Contractor must take all reasonable measures to ensure that Territory Information accessed or held by it in connection with this Agreement 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 Territory Information.
- (3) The Contractor must do all things necessary to ensure that Territory Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Territory Information.

15.3 Acknowledgement of effect of Crimes Act

The Contractor 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 Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

16. Confidential Text under Procurement Act

16.1 Territory may make Agreement publicly available

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 Agreement may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

16.2 Confidential Text

If **Item 18 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 19 Schedule 1**, and **clause 16.3** applies.

16.3 Territory must not disclose Confidential Text

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

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Territory's solicitors, auditors, insurers or advisers;
- (4) is generally available to the public;
- (5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Contractor;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

17. Media and representations

17.1 Media

Without limiting **clause 15** with respect to confidentiality in Territory Information, the Contractor must:

- (1) not furnish any information or issue any document or other written or printed material concerning the Services for publication in the media without written approval of the Territory; and
- (2) refer any enquiries from the media concerning the Services to the Territory.

17.2 Representations

- (1) The Contractor must not, and must ensure its employees, agents and subcontractors do not, make any representations or furnish any information (verbally or in writing) to third parties (including members of the public) regarding the Services unless:
 - (a) the information or representation is within the scope of the communications for which the Contractor is permitted to address directly under this Agreement (if any) and is provided in accordance with a communications protocol approved by the Territory; or
 - (b) the Territory has provided its prior consent.
- (3) The Contractor must refer to the Territory all requests for information that are of a kind that is outside of the scope **clause 17.2(1)**.

18. Prequalification

If the Contractor was required to obtain or hold prequalification with the Territory to tender for these Services, the Contractor must, during the Term, hold and maintain prequalification with the Territory at an equivalent or higher level.

19. Insurance and indemnity

19.1 Contractor's insurance

The Contractor must effect and maintain for the Term:

- (1) all insurance coverage required to be effected by it by law;
- (2) public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 20 Schedule 1**; and
- (3) any other insurance specified in **Item 20 Schedule 1**,

with a Prescribed Insurer.

19.2 Indemnity

The Contractor indemnifies the Territory, its employees and agents against

liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Contractor, in connection with the provision of the Services, except to the extent that the Territory caused the relevant loss, damage or injury.

19.3 Claims to be made good

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 19.2** and the Territory may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

20. Variations

20.1 Change of scope or timing

- (1) The Territory is not liable to the Contractor for any additional work undertaken or expenditure incurred in relation to a change, or purported change, in the Services, unless a Variation is Directed in accordance with this **clause 20**.
- (2) As soon as practicable after becoming aware of any matter which is likely to change or has changed the scope and/or timing of the Services, including a delay in the Services, the Contractor must give written notice to the Territory detailing the circumstances and extent or likely extent of the change of scope and/or timing or delay and whether the Contractor will be proposing a Variation in accordance with **clause 20.2(9)**.

20.2 Proposed Variations

- (1) The Territory may Direct Variations in writing and the Contractor must comply with these instructions.
- (2) The Contractor must take all reasonable steps to minimise the effects of Variation work on the time to complete the Services.
- (3) Except in relation to Variations reasonably valued by the Contractor to be less than the amount specified in **Item 21 Schedule 1** (a “**Low Value Variation**”), the Contractor must not begin to carry out the Variation until the parties have resolved price and time implications (including delay costs, if any), unless the Territory instructs the Contractor to proceed.
- (4) When requested by the Territory, the Contractor must, within the time specified in the request, advise the Territory of its price (including reasonable delay costs, if any, but not including any amount on account of loss of profits) for a proposed Variation and its effect on the time to complete the Services, or on any other matter specified in the request.
- (5) Unless otherwise agreed, the price of a Variation will be determined:

- (a) using the hourly rates set out in **Item 22 Schedule 1** (if any); and
- (b) the rates set out in the Schedule of Rates (if any),

as adjusted in accordance with this Agreement. If referable hourly rates are not included in **Item 22 Schedule 1** or the Schedule of Rates, reasonable rates and prices apply.

- (6) If the parties are unable to reach agreement as to whether a Variation applies, **clause 21 (Dispute Resolution)** applies.
- (7) If the parties agree that a Variation applies they must endeavour to agree in writing on its price and effect on the time to complete the Services. Failing agreement on price or time **clause 21 (Dispute Resolution)** applies.
- (8) The Contract Price must be adjusted to account for the price of a Variation.
- (9) If:
 - (a) the Contractor considers that a Variation applies;
 - (b) but the Territory has not instructed a Variation,the Contractor must make its claim for a Variation in writing to the Territory within 5 Business Days from the start of the event giving rise to the Variation, or from the time when the event should have become known to the Contractor with reasonable diligence on its part (for the avoidance of doubt, a claim in respect of a Low Value Variation must be made in writing to the Territory within 5 Business Days of commencement of the work associated with that Variation).
- (10) Variations instructed by the Territory (which may without limitation include variations to existing services or additional services) must be generally consistent with or of a similar nature to the type of work included in the Services.
- (11) To the extent a Variation has reduced the scope of Services, the Territory may thereafter carry out that omitted or deleted work either itself or by engaging other contractors.
- (12) Any Variations agreed or determined under this clause including the resultant adjustment to the Contract Price should be documented by the parties in writing.
- (13) For the avoidance of doubt, where a Variation results in a reduction of Services the Contractor will have no claim for loss of profits.

21. Dispute resolution

- (1) In the event of any disagreement or dispute (“Dispute”) one party may notify the other of the existence of the Dispute and the parties must first endeavour to resolve that Dispute speedily by negotiation.
- (2) Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a Dispute.
- (3) If the Dispute is not resolved by negotiation under **clause 21(1)** within 15 Business Days the Dispute is to be submitted to the Executive Negotiators for consideration.
- (4) The Executive Negotiators must, within 15 Business Days of notice from either party of a referred Dispute (or such longer time as agreed in writing by the Executive Negotiators), meet and undertake genuine and good faith negotiations with a view to resolving the Dispute, before either party has recourse to litigation.

22. Suspension

22.1 Territory’s suspension

The Territory may Direct the Contractor to suspend the performance of the whole or part of the Services for the period notified if in the Territory’s reasonable opinion it is necessary:

- (1) because of an act, default or omission of:
 - (a) the Territory, its employees, consultants, agents or other contractors (not being engaged by the Contractor); or
 - (b) the Contractor, a subcontractor or either’s employees or agents;
- (2) for the protection of safety of any person or property;
- (3) to comply with a court order; or
- (4) the convenience of the Territory.

22.2 Recommencement

The Territory will Direct the Contractor to recommence suspended Services as soon as reasonably practicable after the reason for suspension, in the Territory’s opinion, no longer exists.

22.3 Cost

- (1) The Contractor bears the cost of suspension under:

- (a) **clause 22.1(1)(b)**; and
 - (b) **clauses 22.1(2) and 22.1(3)** only if the Contractor made the protection of safety or court order necessary.
- (2) Otherwise, if the Contractor incurs more or less cost than otherwise would have been incurred, the difference as assessed by the Territory is added to, or deducted from (as the case may be) the Contract Price.

23. Termination

23.1 Default

The Territory may terminate this Agreement, at any time by notice to the Contractor, if:

- (1) the Contractor is subject to an Insolvency Event;
- (2) the Contractor fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement;
- (3) the Contractor fails to provide the Approved Security within the time required;
- (4) an assignment occurs without the prior consent of the Territory under **clause 24.4**; or
- (5) the Contractor fails to provide a statutory declaration in accordance with the time frames in **clause 14** or the makes a false statutory declaration;
- (6) the Contractor is in breach of a provision of this Agreement, where that breach:
 - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Territory; or
 - (b) is not capable of being remedied.

23.2 Termination for any reason

The Territory may, at any time by notice to the Contractor, terminate this Agreement, and in that event:

- (1) the Territory will be liable only for:
 - (a) payments under this Agreement for Services rendered before the date of termination; and
 - (b) subject to **clause 23.2(2)** any reasonable costs incurred by the Contractor and directly attributable to the termination, but not in

respect of any other loss whether of prospective profits or otherwise;

- (2) on receipt of a notice of termination under this **clause 23.2**, the Contractor must:
 - (a) stop work as specified in the notice;
 - (b) comply with any Directions given to the Contractor by the Territory; and
 - (c) take all available steps to minimise loss resulting from that termination.

23.3 Provision of information

- (1) Without limiting **clause 10.5**:
 - (a) at the expiration of this Agreement; and/or
 - (b) within 20 Business Days of receipt of a notice of termination; and/or
 - (c) within 20 Business Days of receipt of a notice of a Variation that is a reduction of Services,

as the case may be, the Contractor must provide to the Territory information and documents relating to the Contractor's provision of Services (or, in the case of a reduction of Services, the Contractor's provision of the Services that no longer form part of this Agreement) including but not limited to (as relevant to the Asset in question):

- (d) except where the Agreement has been terminated under **clause 23.2**, answers to questions in relation to the methods and processes used for the provision of the Services;
 - (e) a full set of standard operating procedures in relation to the operation and maintenance of the Asset being maintained that are able to be accessed and used by the Territory or its nominee; and
 - (f) maintenance records or logs, any relevant Asset details (including condition reports, expected life spans and Asset databases), consumable usage rates, maintenance efforts and similar information for the period requested by the Territory.
- (2) The Territory may use the information referred to in **clause 23.3(1)** to prepare procurement documents associated with the Asset or the subject matter of the Services, and recipients of the documents may use the information to undertake due diligence activities and prepare tender or quotation documents.

- (3) The Contractor must fully co-operate with the Territory any incoming contractor and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the provision of the Services from the Contractor to the incoming contractor or to the Territory (as the case may be) in a manner which ensures no interruption of the Services.
- (4) The Contractor must comply with all reasonable Directions from the Territory, having regard to the requirements of the Territory for any incoming contractor.

23.4 No prejudice

Nothing in this **clause 23** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

24. General

24.1 General responsibilities of parties

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of the Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to the Agreement.

24.2 Conflict of interest

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Territory and comply with any requirement of the Territory to eliminate or deal with that conflict or risk.

24.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

24.4 No assignment or subcontracting

- (1) The Contractor must not:
 - (a) except in relation to a subcontractor engaged for a total value of services over the Term of, or less than, that set out in **Item 24**

Schedule 1, subcontract the performance of any of the Services without the prior consent of the Territory; or

- (b) assign the whole or part of this Agreement without the prior written consent of the Territory.
- (2) If the Territory gives its consent, the Territory may impose any conditions, including but not limited to the subcontract containing provisions:
- (a) that the subcontractor must not assign nor subcontract without the Contractor's written consent; and
 - (b) which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Territory.
- (3) With a request for consent to subcontract, the Contractor must give the Territory written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor must give the Territory other information which the Territory reasonably requests, including the proposed subcontract documents (without prices).
- (4) Except where the Agreement provides otherwise, the Contractor shall be liable to the Territory for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if they were those of the Contractor. Approval to subcontract does not relieve the Contractor from any liability or obligation under the Agreement.
- (5) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term "control" including the direct or indirect holding of more than 50% of the share capital of a corporation.
- (6) If the Contractor fails to comply with **clause 24.4(1)**, the Territory reserves its rights, including to require the Contractor to provide information regarding the proposed subcontractor's or assignee's capability to continue performing any part of this Agreement, or to provide security to ensure the proper performance of this Agreement.
- (7) For the avoidance of doubt, if at any time during the Term the total value of all services sought from a subcontractor (whether under a single or multiple contracts) reaches the threshold in **Item 24 Schedule 1**, the Contractor must not subcontract any further services to that subcontractor without the prior consent of the Territory.

24.5 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings,

memoranda and agreements.

24.6 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

24.7 Variation

Subject to **clause 20** with respect to Variations in the Services, this Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement.

24.8 No waiver

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.

24.9 Governing law and compliance with the law

- (1) This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.
- (2) The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

24.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of 5 business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
 - (a) the other party's acknowledgment of receipt by any means,

- (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address, or
- (c) expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of **clause 24.10(1) to (4)** occurring.

24.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

24.12 Survival of clauses

Clauses 4.2, 15, 17, 19.2, 19.3, and 23.3 will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1 - CONTRACT DETAILS

- Item 1. Contract Officers**
See clauses 1.1 and 24.10
- For the Territory:
[INSERT name of Contract Officer]
[INSERT contact details – address and email]
- For the Contractor:
[INSERT name of Contract Officer]
[INSERT contact details – address and email]
- Item 2. Term**
See clauses 1.1 and 3
- From [INSERT start date, eg. the date of this Agreement] until [INSERT end date].
- [If the Territory has an option to extend the Agreement for one or more further periods, also include the following: The Territory may, in its absolute discretion, extend the Agreement up to [INSERT number, eg 2] periods, each of [INSERT length, eg 1 year]
- Item 3. Contract Price**
See clauses 1.1 and 4
- [INSERT Contract Price and payment details. An example is provided below for information only, based on a combination of lump sum and schedule of rates. The payment arrangement under this Agreement may be more complex. Seek advice from the ACT Government Solicitor as required]
- (1) The Contract Price is the aggregate of:
- (a) the lump sum amount of [INSERT \$total] (including GST); and
 - (b) the sum of the products ascertained by multiplying the measured quantity of each section or item of the Services actually performed under the Agreement by the corresponding rate for the section or item in the Schedule of Rates,
- as adjusted under this Agreement.
- (2) The lump sum component of the Contract Price is payable by instalments. Invoices may only be rendered in accordance with the following (all prices include GST).

Instalment	When Invoice may be rendered
\$	[Insert milestones or date/time]
\$	
\$	

- (3) In respect of any Schedule of Rates Services, the Contractor may submit invoices monthly in arrears, for any Services provided in the previous month.
- (4) Except if otherwise stated in this Agreement, the Contract Price is:
- (a) payable within 30 days of receipt by the Territory of an Invoice;
 - (b) inclusive of GST and all other taxes, duties and charges; and
 - (c) inclusive of all disbursements, including packaging, freight and delivery costs and other out-of-pocket expenses incurred by the Contractor.
- (5) Except if otherwise stated in this Agreement, Payment Claims are to be:
- (a) submitted through PMARS; and
 - (b) to be 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 Officer. Payment Claims are to be addressed as follows:
Directorate
Directorate Representative
Directorate Address
[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.
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 Contract Officer.]

Item 4. Program

See clauses 1.1, 2.1, 2.4, 2.5 and 2.13

- (1) A Program is required.
- (2) The Program must be submitted within 10 Business Days of a request for a Program from the Territory.
- (3) The Program must at a minimum address the following: [insert list of matters that must at a minimum be included in the services Program]
 - (a) [insert];
 - (b) [insert];
 - (c) [insert];
 - (d) any other matters relevant to the programming of the Services; and
 - (e) any other matters notified by the Territory to the Contractor from time to time.

[Instructional note: The above is the default. A different number of days or timing for submission of the Program may be specified depending on the nature and complexity of the Services (for example, “5 Business Days after the commencement of this Agreement”). If a Program is not required, DELETE the above and write “A Program is not required”]

Item 5. Project Management Plan

See clauses 1.1, 2.1, 2.4, 2.5 and 2.13

- (1) A Project Management Plan is required.
- (2) The Project Management Plan must be submitted by the Contractor to the Territory within 10 Business Days of the commencement of this Agreement.

(3) The Project Management Plan must at a minimum address the following: [Insert list of matters for inclusion in the plan. Some examples only are provided below, delete or add items as necessary, retaining the last two “catch all” items. Consideration must be given to the particular project to determine what matters may be relevant in the circumstances].

- (a) communications plan/protocol;
- (b) work health and safety procedures;
- (c) environmental management (if a specified Environmental Management Plan is not required under this Agreement);
- (d) resourcing and personnel including qualifications;
- (e) licensing and compliance with Statutory Requirements;
- (f) plant and materials;
- (g) Security procedures;
- (h) Access to a Site by visitors and vehicles;
- (i) Site induction procedures;
- (j) Emergency procedures;
- (k) Approval procedures;
- (l) User group and stakeholder procedures;
- (m) any other matters relevant to the management of the Services; and
- (n) any other matters notified by the Territory to the Contractor from time to time.]

Item 6. Deliverables for which Acceptance under clause 2.7 applies
See clauses 1.1 and 2.7

All Deliverables must be offered for Acceptance.

[OR, insert any specific Deliverables, or types or categories of Deliverables, which are required to be submitted to the Territory for Acceptance. For example, Acceptance may be relevant for Maintenance activities and works, but not for the provision of written reports]

Item 7. Defects Warranty Period
See clauses 1.1 and 2.8

12 months

[OR, insert other period]

OR, if there is to be different defects warranty periods for differing items of works, services or

goods, specify those items of work and the relevant period in months. In that case, always include a catch-all, by using the words “and for any other Services not included in the above, [insert time eg “12 months”]”].

Item 8. Environmental Management Plan

See clauses 1.1, 2.1, 2.5, 2.12 and 2.13

- (1) An Environmental Management Plan is required.
- (2) The draft Environmental Management Plan must be submitted within 10 Business Days of the commencement of this Agreement.

[OR, if an Environmental Management Plan is not required for this Agreement, DELETE the above and write “An environmental Management Plan is NOT required”. If a longer or shorter period is required for the provision of the first draft of the plan, amend ‘10’ as necessary]

Item 9. Deliverables for which clause 4.5(2) applies

See clauses 1.1 and 4.5(2)

Nil – there are no deliverables for which **clause 4.5(2)** applies – see **clause 4.5(1)**.

[OR Insert any Deliverables, or types or categories of Deliverables, for which the additional obligations under clause 4.5(2) apply, for example higher value goods or items]

Item 10. Approved Security

See clause 1.1 and 5

[Insert \$amount for the Approved Security or write “Not used –Approved Security is not required”]

Item 11. Normal Hours

See clauses 1.1 and 7.2

[Insert required standard days and hours of operation, for example “9 to 5 Monday to Friday, excluding public holidays in the ACT”. Alternatively, if the Contractor can perform services at any time, write “24 hours a day, 7 days a week with no exclusions”]

Item 12. Additional Warranties

See clause 9

There are no additional warranties.

[OR insert additional warranties. A warranty is any voluntary promise offered by the Contractor about the products or services to be supplied by it. The Contractor may have offered such specific warranties in its tender, and those should be listed here, for example particular promises regarding the lifespan of an item of goods]

- Item 13. Third Party IP**
See clauses 1.1 and 10.3
- There is no Third Party IP.
- [OR, if there are identified items of Third Party IP, list those here and the Third Party IP owner details, including software used in the Services licensed from third parties]
- Item 14. Specified Personnel**
See clauses 1.1 and 11
- Not used.
- [OR, INSERT both the individual’s names and positions, eg “John Smith – Project Manager”]
- Item 15. Replacement of Specified Personnel**
See clauses 1.1 and 11.2(2)
- 30 Business Days
- [OR, INSERT other time by which the Contractor must have provided replacement Specified Personnel acceptable to the Territory]
- Item 16. Construction Project Sites for which Contractor is not appointed principal**
See clause 13.3
- Nil. The Contractor must act as principal contractor for all Sites the subject of a “Construction Project” as defined in the WHS legislation.
- [**Instructional note:** For any sites that are the subject of a “Construction Project” as defined in the WHS Legislation, the Territory is required to appoint a principal contractor, or, if one is not appointed, the Territory is the principal contractor.
- The default position in this Agreement is that the Contractor will be appointed as the principal contractor in relation to any Sites under this Agreement which fall within (or, at a later stage come to fall within) the definition of a “Construction Project”.
- However, any Sites are known at the date of this Agreement to fall within the definition of a “Construction Project”, but the Territory requires another entity to act as principal contractor, those Sites must be listed here with sufficient detail. Attach or include maps with cross-hatching if applicable, to indicate the boundaries of the relevant Site(s).
- This might apply, for example, if the Contractor is required to maintain a storm water drain that runs through a current construction site.
- If a Site is not known at the date of this AGREEMENT to meet the definition of a “Construction Project”, the Territory will need to Direct the Contractor if it

is *not* to be principal contract in relation to that Site, otherwise the default position will apply and it *will be* the principal contractor]

Item 17. Territory Information
See clauses 1.1 and 15

Not used.

[OR, INSERT details of any information (other than Confidential Text) that the Territory requires the Contractor to keep confidential in addition to what is already set out in the definition of Territory Information. If details in the definition of Territory Information are sufficient, and there is no other known specific items of Territory Information, RETAIN “Item 17 not used”.]

Item 18. Confidential Text
See clauses 1.1 and 16

(1) This Agreement is a “notifiable contract” under the Procurement Act.

(2) The following is Confidential Text: and then INSERT details of any **text in the Agreement** that either party requires the Territory to keep confidential, eg. name and other personal details of Contract Officers or Specified Personnel, hourly rates or other individual components of the Contract Price.

If the Agreement is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Agreement if the Territory is permitted to not disclose the text on the basis of one or more of the grounds set out in section 35(1) of the Procurement Act. The relevant grounds should be specified in Item 19 below.

If this is a notifiable contract, but there is no Confidential Text, DELETE paragraph (2), retaining paragraph (1).

If this is NOT a notifiable contract, DELETE the above and write “Not used”]

Item 19. Grounds for confidentiality of Confidential Text
See clause 1.1 and 16

[If this is a notifiable contract, and there is Confidential Text, MODIFY this Item as appropriate (see text below):

“The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Territory is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text would:

EXAMPLE ONLY

- (1) be an unreasonable disclosure of Personal Information about a person; or
- (2) be an unreasonable disclosure of information about the business affairs of a person.”]

[Instructional Note: if the Agreement is a “notifiable contract” under the Procurement Act, in order for the Confidential Text to be kept confidential, the Territory must be satisfied that at least one of the grounds for confidentiality set out in section 35(1) of the Act applies to the Confidential Text.

Also, note that if Item 18 is used, Item 19 must also be completed.

If this is not a notifiable contract, or there is no Confidential Text, DELETE the above and write “Not used”]

Item 20. Other amounts and insurance

See clause 19.1(2)

- (1) Public liability insurance: **[INSERT amount, eg. \$20 million]** (in respect of each claim).
- (2) Professional indemnity insurance: **[INSERT amount, eg. \$10 million]** (in respect of each claim) and **[INSERT amount, eg. \$10 million or a different amount]** (in the annual aggregate).
- (3) all risks property insurance covering:
 - (a) tangible Deliverables unless and to the extent that the Territory has expressly retained the risk of such property;
 - (b) all other property, plant and equipment in the care, custody or control of the Contractor material to the Contractor’s ability to perform its obligations under this Agreement;
- (4) **[INSERT other type of insurance]**.

[Instructional Note (Delete before finalising): the level of public liability insurance under this Agreement must be based on an assessment of risk of the activities arising from the provision of Services.

Advice from the ACTIA may be obtained regarding whether professional indemnity insurance is required for the purposes of the Agreement and the appropriate level.

If professional indemnity insurance is required, the Contractor may be subject to a professional standards scheme created under the *Civil Law (Wrongs) Act 2002* (ACT), which must be applied in determining the level of professional indemnity insurance for the Agreement. Seek ACTGS advice regarding how the Scheme affects the professional indemnity insurance requirements in the Agreement.

If professional indemnity insurance is required, consideration should be given to whether “run-off” cover is necessary. If so, the following words may be included in this Item 20: “The Contractor must maintain the professional indemnity insurance coverage required under this **Item 20** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.”]

Item 21. Limit of amount for approval to carry out Low Value Variation
See clause 20.2(3)

The Contractor may proceed to carry out a Variation without receipt of instruction to proceed or agreement on price if in its reasonable estimation the Variation is valued at [insert amount, for example \$1000] (including GST) or less.

[Instructional note: Or, insert other value.
If the Contractor is not permitted to proceed with any Variations prior to receiving an instruction to do so, DELETE the above and write “Not used”]

Item 22. Hourly rates for variations
See clause 20.2(5)

Not used.

[OR if the Contractor was required to submit in its tender response its hourly rates for the purpose of determining the price of a variation, include that information in the table below and DELETE the above. Alternatively, if Variations are to be determined on the basis of the Schedule of Rates only, delete the below and write “Not used – refer to the Schedule of Rates]

Role	Name	Hourly rate

Item 23. Executive Negotiators
See clauses 1.1 and 21

[Instructional note: INSERT names, or positions, of the nominated Executive Negotiators for each party.]

For the Territory:

[Name/Position - For example, “The ED – Shared Services Procurement]

[address]

[phone]

[email]

For the Contractor:

[Name/Position]

[address]

[phone]

[email]

Item 24. Low value subcontractors not requiring specific consent
See clause 24.4

The Contractor is not required to obtain consent for the purposes of **clause 24.4(1)** to engage a subcontractor for which the total value of the services to be provided by the subcontractor for the purposes of this Agreement during its Term is \$25,000 (including GST) or less.

[Instructional note: Or, insert other value.]

If the Contractor is required to obtain consent for all subcontractors, regardless of value, **DELETE the above and write “The Contractor must obtain consent for all subcontractors”]**

SCHEDULE 2 - THE SERVICES

The Contractor must provide the Services as follows within any specified timeframes.

In addition to the definitions in **clause 1.1**, the following definitions apply in this **Schedule 2**:

[INSERT any additional definitions]

[INSERT description of Services]

[Instructional Note: The description of Services would generally consist of an amalgam of the statement of work/brief and the preferred tenderer's tender. It may be set out in a separate Statement of Requirement or Brief, in which case the document should be included as an attachment and appropriately cross referenced here, eg "The Contractor must provide the Services as set out in the [Brief/SOR etc] at Attachment [X]"

SCHEDULE 3 - SPECIAL CONDITIONS

See clause 25.11

[If there are no Special Conditions, DELETE the following Items and INSERT “Not Used”.]

Item 1. Local Industry Participation

[**Instructional Note:** Only use this Special Condition in circumstances where the Consultant was required to submit a local industry participation plan as part of its tender for the Services].

- 1.1 The Contractor must implement its commitments set out in its local industry participation plan (“**LIP Plan**”) submitted as part of its tender for the Services.
- 1.2 The Contractor must provide a local industry participation report (“**LIP Report**”) on its compliance with this clause in a format and addressing matters reasonably required by the Territory within 6 months of the date of this Agreement and on or before the first, and each subsequent, anniversary of this Agreement.
- 1.3 Before or concurrently with the Contractor’s submission to the Territory of its final Invoice for payment under this Agreement, the Contractor must provide to the Territory a final LIP Report (“**Final LIP Report**”) that sets out its level of compliance with the commitments provided for in the LIP Plan throughout the Term and which is accompanied by a statutory declaration stating the information provided in the Final LIP Report is true and correct.
- 1.4 The Territory may withhold payment of the final Invoice until submission of a satisfactory Final LIP Report by the Contractor.
- 1.5 The Contractor must attend any meeting scheduled by the Territory to review how its LIP Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the Territory.
- 1.6 The Contractor’s failure to comply, in whole or in part, with the commitments contained within the LIP Plan may be a factor taken into account in the award of future contracts for the Territory.

Item 2. Complaints in relation to interference with privacy

[**Instructional Note:** it is recommended that this Special Condition be included in Schedule 3 until agencies that will be using this template have implemented TPP policies or codes of practice that make provision for the handling of complaints in relation to the handling of Personal Information by non-government agencies, such as the Supplier]

- 2.1 A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Supplier (**Complaint**) will be handled by the Territory in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a

Territory agency as relevant to this Agreement:

- (1) if the Territory receives a Complaint it will immediately notify the Supplier of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;
- (2) if the Supplier receives a Complaint it must immediately notify the Territory of the nature of the Complaint but will only release Personal Information to the Territory concerning the complainant with that person's consent; and
- (3) after the Territory has given or been given notice under (1) or (2), it will keep the Supplier informed of all progress with the Complaint concerning the actions of the Supplier.

2.2 This item survives the expiry or earlier termination of this Agreement.

Item 3. Changes in control of Contractor

[Instructional Note: This Special Condition should only be used if clause 24.4(5) is not sufficient and a wider set of circumstances in which a change in control of the Contractor is deemed to occur is required.]

In addition to the circumstances set out in **clause 24.4(5)**, for the purposes of **clause 24.4(5)**, "control" includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

Item 4. Transition out

[Instructional Note: This Special Condition should only be used if clause 23.3 is not sufficient and a broader obligations regarding transition-out arrangements, which may including phasing out of Services, is required]

4.1 Definitions

In this **Schedule 3** the following definitions apply:

"Phase Out" means the set of activities undertaken by the Contractor towards the end of this Agreement, which results in the progressive reduction of Services

and the progressive handover of responsibilities to an incoming maintenance contractor or the Territory (including for disposal), while ensuring that there is no interruption to the Asset or Services by the Contractor. Typical Phase Out activities include the coordinated transfer of equipment and materials, personnel, and items to an incoming maintenance contractor or the Territory, the removal of Contractor assets from Territory premises, and the disposal of any unwanted items.

“Transition-Out Date” means:

- (1) [insert period from the end of the Term eg “a date 6 months from the end of the Term”]; or
- (2) if this Agreement is earlier terminated and the Contractor is notified (in the notice of termination or otherwise) that this Item will apply, the date as specified in the notice of termination.

“Transition-Out Period” means the period commencing on the Transition-Out Date and ending at the end of the Term.

4.2 Requirement for Transition Out

- (1) The parties acknowledge that the objective of the Transition-Out Period is to prepare for and undertake the activities, including Phase Out activities, necessary to enable:
 - (a) the orderly transition of the Services to the Territory or another contractor appointed by the Territory; or
 - (b) the orderly cessation of the Services where the Assets are being withdrawn from service.
- (2) The Contractor acknowledges that, except where the Assets are being withdrawn from service:
 - (a) it is essential for the continuing operation of the Assets that there is no interruption to the provision of the Services as a result of the transition from the Contractor to the Territory or an incoming contractor;
 - (b) the Contractor will be required to provide the Services in full until the end of the Transition Out Period (unless the parties agree otherwise in a Variation); and
 - (c) the transfer of highly skilled and trained personnel from the Contractor to the Territory or the incoming contractor may be of paramount importance for the satisfactory performance of services the same as or similar to the Services after the end of the Transition Out Period.
- (3) The Contractor must develop a Phase-Out plan satisfactory to the Territory prior to the Transition-Out Date.

4.3 Transition Out arrangements

- (1) The Territory may, at any time during the Transition-Out Period, by notice in writing to the Contractor, require a Variation to reduce the

scope of Services being provided by the Contractor during the Transition-Out Period.

- (2) The Territory may require the reduction to occur on a gradual or stepped basis, or at a particular time during the Transition-Out Period.
- (3) Without limitation, the Territory may require the reduction specified in the Variation to apply in relation to:
 - (i) the types of Services being provided by the Contractor;
 - (ii) the number of Assets in respect of which the Contractor provides Services; or
 - (iii) the frequency, scheduling or sequencing of Services being provided by the Contractor.
- (4) The Territory may, at any time during the Transition-Out Period, by notice in writing to the Contractor, require a Variation to include additional services in the scope of Services required under this Agreement to facilitate the transition of the Services to the Territory or an incoming contractor, which may include:
 - (i) training to an incoming contractor; and
 - (ii) services in relation to disposal of items.
- (5) During the Transition-Out Period, the Territory is only liable for:
 - (a) payments under the existing payment terms of this Agreement (as may be amended in accordance with paragraphs (1) or (4)) for work conducted during the Transition-Out Period; and
 - (b) any reasonable costs incurred by the Contractor that are directly attributable to a reduction in the scope of Services contemplated by paragraph (1).
- (6) During the Transition-Out Period, the Contractor must:
 - (a) unless the Territory has determined that all of the Assets will be withdrawn from service, provide to the Territory, within five (5) Business Days of receipt of a request by the Territory, information and documents relating to the Contractor's provision of the Services which may be required by the Territory to undertake a procurement process related to the subject matter of the Services, which may include:
 - (i) answers to questions in relation to the methods and processes used for provision of the Services;
 - (ii) a full set of standard operating procedures in relation to the operation and maintenance of the Assets being supported that are able to be accessed and used by the Territory or its nominee; and
 - (iii) maintenance records or logs, any relevant asset details (including condition reports and expected life spans), arising rates and consumable usage rates, maintenance

efforts for corrective maintenance and preventive maintenance, historical measurements of KPIs and similar information for the period requested by the Territory;

- (b) fully co-operate with the Territory and any incoming contractor and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the provision of the Services from the Contractor to the incoming contractor or the Territory (as the case may be) in a manner which ensures no interruption of the Services;
- (c) use its best endeavours to resolve any issues arising with the transition from the Contractor to the incoming contractor or the Territory (as the case may be);
- (d) comply with all reasonable directions from the Territory, having regard to the requirements of the Territory of the incoming contractor;
- (e) upon request from the Territory or otherwise at the end of the Transition-Out Period:
 - (i) provide to the Territory all documents which contain or relate to any Territory Information;
 - (ii) deliver all existing data for Services provided prior to the end of the Transition-Out Period; and
 - (iii) return to the Territory (or such other person as directed by the Territory) all Contract Material and Territory Material, Territory Furnished Material (if any), data and other property or information provided by the Territory to the Contractor under or in connection with this Agreement in the condition required by this Agreement and to the satisfaction of the Territory;
 - (iv) engage in briefings as required by the Territory and the incoming contractor with a view to ensuring that the Territory or incoming contractor have sufficient information to provide the Services or goods or services of a similar nature to the Services;
 - (v) take all reasonable steps to facilitate the transfer of the Specified Personnel who wish to transfer to the incoming contractor or the Territory and who are accepted for engagement by the incoming contractor or the Territory. If such Specified Personnel do not wish to transfer, the Contractor shall make reasonable efforts to provide the services of such Personnel to the incoming contractor or the Territory, by way of subcontract, at reasonable rates for a reasonable period agreed with the incoming contractor or the Territory;.

Item 5. Transition-In

[**Instructional Note:** This Special Condition should only be used if the Territory requires a transition-in process. Complete any prompts in red text with the appropriate information]

5.1 Definitions

In this **Item 5 Schedule 3** “**Operative Date**” means the date as settled in accordance with **Item 5.4 Schedule 3**.

5.2 Operative Date

- (1) The Territory has no obligations under this Agreement before the Operative Date other than:
 - (a) to the extent provided in this **Item 5 Schedule 3**; and
 - (b) the obligations under **clause 16** in relation to Confidential Text.
- (2) However, this **Item 5 Schedule 3** does not limit or affect the Territory’s rights under this Agreement, including rights in relation to the Contractors obligations under this **Item 5 Schedule 3**.
- (3) Before [insert date] (the “**Planned OD**”):
 - (a) the Contractor must: [insert requirements eg]
 - (i) achieve [insert eg, certain accreditations etc];
 - (ii) have the necessary support resources for the Services available, including all required facilities and arrangements established for the sourcing of stock items, to be able to provide the Services;
 - (iii) provide the Approved Security;
 - (iv) obtain all necessary licences and other Approvals;
 - (v) obtain all personnel security clearances for contractor personnel required by the Territory or that are necessary for the performance of the Services;
 - (vi) provide copies of evidence of insurance required to be effected and maintained under this Agreement;
 - (vii) [insert requirements]; and
 - (viii) [insert requirements],

- (b) the Territory will **[insert any actions the Territory will take]**:
 - (i) ...
 - (ii) ...
- (4) Subject to **Item 5.3(5) Schedule 3**, if the Territory is satisfied that all the obligations under **Item 5.3(3) Schedule 3** have been fully performed in accordance with this Agreement, the Territory will issue a notice in writing to the Contractor specifying the date on which the last of those obligations was fully performed. The specified date is the **Operative Date** for the purposes of this Agreement.
- (5) If, for any reason, an obligation under **Item 5.3(3) Schedule 3** has not been fully performed in accordance with this Agreement by the Planned OD, the Territory may, by notice in writing to the Contractor, do any one or more of the following:
 - (a) waive the requirement to perform the obligations by the Planned OD (subject to any conditions specified in the notice, which may include conditions as to when the obligation is to be performed) and specify a date as the Operative Date, but the waiver does not affect any rights the Territory may have under this Agreement in respect of the failure by the Contractor to perform the obligation;
 - (b) **[insert if relevant: recover liquidated damages in the amount of [insert genuine pre-estimate of loss, or list of pre-estimates if differs due to different obligations, caused as a result of the operative date not being reached] due to a failure of the Contractor to fulfil an obligation under Item 5.3(3)(a) Schedule 3;**
 - (c) specify a date, no less than **[insert number]** Business Days from the date of the notice, on which this Agreement will terminate if the obligation has not been fully performed in accordance with this Agreement by that date;
 - (d) terminate this Agreement (irrespective of which party has failed to perform an obligation under or referred to in **Item 5.3(3) Schedule 3** from the date of the notice or later date specified in the notice.
- (6) The Contractor must comply with any condition of a waiver under **Item 5.3(5)(a) Schedule 3**.

Item 6. Transfer of equipment

[Instructional note: use this Special Condition if the Transition-Out provisions in Item 3 are to be included and transfers to the incoming contractor or the Territory from the Contractor are required]

During the Transition-Out Period, the Contractor must:

- (1) novate to the Territory, or to any person nominated by the Territory, any subcontract;
- (2) if any subcontract is not specific to the Agreement, use its best endeavours to procure the subcontractor to enter into a contract with the Territory, or any person nominated by the Territory, as required by the Territory on terms reasonably satisfactory to the Territory; and
- (3) if required by the Territory, arrange for the transfer to the Territory or a person nominated by the Territory, of any:
 - (a) leases or service agreements; and
 - (b) hardware, software, parts, components, consumables or equipment used by the Contractor to provide, or provided as part of, the Services at the Contractor's then depreciated book value of those items or a fair market value (whichever is the lesser amount),

in accordance with any approved Phase-Out plan (if any).

Item 7. Adjustment

[Instructional note: include methodology by which pricing may be adjusted, if it was agreed by the parties. For example, if adjustment is to be annually on the basis of WPI the following may be appropriate. Seek advice from the ACTGS as required]

The parties agree that the Contractor's rates set in out in the Schedule of Rates and **Item 10 Schedule 1** (as applicable) are fixed until for **[insert eg "30 June 2015" (if increase is to coincide with the financial year) OR eg "1 year from the start date of this Agreement" (if increase is to coincide with the anniversary of the Agreement)]** ("**Review Date**") and may then be adjusted annually on each anniversary of the Review Date in accordance with the following paragraphs.

$$NR = OR \times \frac{NWPI}{OWPI}$$

Where:

- "NR" is the new rate for the referable Services in the referable year.
- "OR" is the rate which applied immediately preceding the last Review Date.
- "NWPI" is the last published Wage Price Index prior to the Review Date.

“OWPI” is the Wage Price Index as published prior to the date upon which the referable rates were most recently reviewed, varied, or set pursuant to this Agreement (noting rates may be reviewed on each Review Date during the Term).

For the purpose of this Item “**Wage Price Index**” means the Wage Price Index for the ACT private sector cat. No. 6345.0 as published by the Australian Statistician (or such person or office which fulfils the relevant function fulfilled by the Australian Statistician at the commencement of the relevant contract). In the event that the Wage Price is adjusted (for example by changing the base index number or changing the year of the base index number), or there is any suspension or discontinuance of the Wage Price Index by the Australian Statistician, then the Wage Price Index will mean such index figure or statistic published at the relevant dates in the Australian Statistician’s summary of Australian statistics which reflects fluctuations of wages in Canberra and which the parties mutually agree upon, and if they are unable to agree then such index figure or statistic as may be determined by the President for the time being of the Australian Property Institute or some person nominated by the President whose decision will be conclusive and binding. This definition will apply notwithstanding that there may be significant changes over time in the composition and weighting of the items by reference to which the Wage Price Index is calculated.

Item 8. Recipient Created Tax Invoices

[Instructional note: If the Territory wishes to issue recipient create tax invoices, a special condition is required. The below text is provided as an example of a provision which might be relevant to include in the event of recipient created tax invoices. However, it is recommend that advice be obtained from the ACT Government Solicitor to ensure the provision is relevant and properly cross referenced in the context of the project in question]

- (1) Despite **clause 4.1**, Territory will issue recipient created tax invoices to the Recipient as soon as practicable after the relevant date(s) for issuance of invoices under this Agreement (where “recipient created tax invoice” has a meaning the same as it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“**GST Act**”) if each party:
 - (a) acknowledges that it has GST registration on the date of this Agreement;
 - (b) agree that:
 - (i) the Territory may issue recipient created tax invoices; and
 - (ii) the Recipient will not, if the Territory issues recipient created tax invoices, issue Invoices to the Territory for the purposes of the GST Act; and
 - (iii) notifies the other if:
 - (c) its registration in respect of the GST changes, or

- (d) it ceases to satisfy any of the requirements of rulings or determinations issued by the Australian Taxation Office, or the Commissioner for Taxation, in respect of recipient created tax invoices.

(2) Except if otherwise stated in this Agreement, the Contract Price is:

- (a) payable within 30 days of issuance of a recipient created Invoice by the Territory ; and
- (b) inclusive of GST and all other taxes, duties and charges.

Item 9. Code of conduct

[Instructional note: Consider the inclusion of a code of conduct for Contractor staff and subcontractors if it is relevant to the Services, for example, if the Services are to be provided at a tenanted facility or school. Such code of conduct will need to be drafted to suit the particular services, facility and Site in question]

[Insert requirements]

Item 10. Territory Furnished Material

[Instructional note: Use this Special Condition if the Territory is to provide for the Contractor’s use any equipment or materials owned by it]

10.1 Provision and use of TFM

- (1) The Territory will deliver or provide access to, and the Contractor must manage in accordance with this **Item 10 Schedule 3**, the following material (“**Territory Furnished Material**” or “**TFM**”):

Item description	Quantity	Delivery Date and Location	Return Date and Location	Comments/ Intended Purpose

- (2) The Contractor acknowledges and agrees that:
 - (a) the Territory’s obligations to provide the TFM on the dates or at the times and locations specified above are subject to the Contractor performing the Services in accordance with **clause 2.1**; and
 - (b) any delay of the Contractor in meeting its obligations under this Agreement may result in the Territory not being able to provide the TFM

at the time the Contractor requires delivery or access to that TFM.

- (2) If at any time the Contractor's requirement for the timing of delivery or access to the TFM changes because of a delay by the Contractor in meeting its obligations under this Agreement, the Territory will use reasonable endeavours to accommodate changes to the Contractor's requirements for delivery of the TFM and is only required to deliver or provide access to the TFM at the time it becomes available for use for the purposes of this Agreement.
- (3) TFM remains the property of the Territory.
- (4) The Territory retains the right to reasonably identify TFM as its property and the Contractor must preserve any means of identification.
- (5) The Contractor must not:
 - (a) without the prior written approval of the Territory, or express authorisation set out in this Agreement:
 - (i) use the TFM other than for the purposes of this Agreement;
 - (ii) modify TFM;
 - (iii) transfer possession or control of TFM to any other party;
 - (iv) move TFM from the location to which it was delivered; or
 - (b) create or allow to be created any security charge or other encumbrance over any TFM.
- (6) The Contractor must return all items of TFM that are required to be returned to the Territory:
 - (a) in accordance with this Item or as otherwise Directed;
 - (b) in the event of early termination of this Agreement, on the date of termination; or
 - (c) in the event of a Variation that is a reduction in Services, upon the date of effect of the reduction, only in relation to any TFM that is used only in relation to the Services that no longer form part of this Agreement.

10.2 Management of TFM

- (1) The Contractor must take all reasonable care of TFM and must (as relevant) provide facilities to store and handle TFM as they are received.
- (2) The Contractor must, within 7 days of becoming aware that any TFM is lost, destroyed, damaged, defective or deficient, notify the Territory of the event in writing.

- (3) The Contractor is liable for loss or destruction of, damage to or defects or deficiencies in, the TFM, except to the extent that the loss, destruction, damage, defects or deficiencies were a direct consequence of an Excepted Risk.
- (4) Subject to paragraph (5), the Contractor shall compensate the Territory for the loss or destruction of, damage to or defects or deficiencies in, the TFM and the Territory may recover an amount equivalent to the value of the compensation as a debt due and payable to the Territory.
- (5) If in the opinion of the Territory the Contractor has the necessary capacity, the Territory may require the Contractor, by notice in writing, to transport, dispose of or repair damaged, defective or deficient TFM. If the Contractor is liable under paragraph (3) for the damage, defect or deficiency, the work performed by the Contractor under this paragraph (5) shall discharge or partially discharge the Contractor's liability. If the Contractor is not liable under paragraph (3) for the damage, defect or deficiency, the Contractor shall, if the parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.
- (6) An obligation to remedy a Service Defect does not extend to defects in TFM.
- (7) Deliverables which become owned by the Territory under this Agreement are not included with the definition of TFM.
- (8) Ownership of any TFM or a component of any of them, is not transferred or affected in any way by this Agreement including:
 - (a) transfer of care, custody or control of the item or component to the Contractor or a subcontractor;
 - (b) the installation of the item or component on an Asset or other property;
 - (c) the removal of the item or component from a Asset; and
 - (d) the repair, replacement or refurbishment of any the item or component.

Item 11. Working With Vulnerable People

[Instructional note: Use this Special Condition if the Contractor or its personnel may be engaged in "Regulated Activities" for the purpose of the *Working with Vulnerable People (Background Checking) Act 2011* in the course of the Services. In the majority of cases, this will not be relevant to include as contact with vulnerable people (if it occurs at all) would generally be incidental to the provision of most maintenance services. Obtain advice from the ACT Government Solicitor if you are unsure]

If the performance of any of the Services involves the conduct of a 'regulated activity', as defined in the *Working with Vulnerable People (Background Checking) Act 2011* ("WWVP Act")

http://www.ors.act.gov.au/community/working_with_vulnerable_people/what_are_regulated_activities_and_services, the Contractor must:

- (1) before starting the regulated activity or, where engagement in a regulated activity has already started, before re-engaging in the regulated activity, provide evidence to the Territory that all individuals who are to perform the Services and are required to be registered under the WWVP Act are appropriately registered under the WWVP Act including employees, subcontractors and volunteers; and
- (2) immediately notify the Territory if, during the term of the Agreement, the registration of any of those individuals is:
 - (a) cancelled;
 - (b) suspended;
 - (c) has conditions imposed on it; or
 - (d) otherwise lapses.

Item 12. Development Application

[Instructional note: Include this special condition if the consultant is required to lodge a Development Application for the Works (i.e. Development Consent has not or will not be obtained by the Territory)]

- (1) The Consultant must prepare and lodge on behalf of the Principal a Development Application for the Works. The Consultant is responsible for all lodgement fees and costs associated with the Development Application resulting from the development consent.

OR

[Instructional note: Include this special condition if the Principal is required to lodge a Development Application to obtain Development consent for the Works (i.e. Industry is informed the Principal has obtained Development consent prior to release of the RFT)]

- (1) The Consultant is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. The Principal will prepare, lodge and obtain an approved Development Application for the Works and is responsible for all lodgement fees and costs resulting from the Development consent.

Development consent for the Works has been obtained by the Principal prior to release of the Request for Tender for the Works.

OR

[Instructional note: Include this special condition where the Principal has lodged a Development Application on a specific date to provide details of its current status]

- (1) Development consent for the Works has been submitted to the approval entity by the Principal on the (insert date). The current status of the application is (insert details so as to inform tenderers).

Item 13. Standards

[Instructional note: This Special Condition will generally be relevant to all projects, but particularly if reference to any standards or codes is made in the Brief or elsewhere]

- (c) Where the Contract requires compliance with a standard or Code, unless otherwise specified that Standard or Code shall be the one current at the closing date for tenders, except for the National Construction Code, which shall be the one current at the issuing of the Building Approval.
- (d) Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.
- (e) Aluminium cladding panels are not to be used for any cladding system. This requirement applies to all cladding locations, i.e. internal or external cladding and to non-combustible proprietary aluminium cladding systems.
- (f) Without limiting the above, the Principal requires the following materials, fixtures or fittings (as the case may be) to comply with the specified standard, rating or certification, and the Contractor must produce evidence satisfactory to the Principal of compliance with this Item upon request:

[Include a list of materials, fixtures of fittings AND relevant standard, rating or certification required to be met.]

- (g) For the purposes of paragraph (c), the Principal may, at its discretion and without limitation:
- (i) accept as evidence a sample test result or certificate of compliance or similar document provided with the relevant materials, fixtures or fittings; or
- (ii) require the Contractor to test the material, fixture or fitting at the Contractor's cost.

SCHEDULE 4 - APPROVED SECURITY (UNCONDITIONAL UNDERTAKING)

Deed Poll made at on, 20.....

By: **[INSERT NAME AND ABN OF BANK]** ("Bank")

In favour of: Australian Capital Territory ("Territory")

Recitals

- A. The Territory and **[INSERT NAME AND ABN OF CONTRACTOR]** ("**Contractor**") have entered into an agreement entitled "Infrastructure Maintenance Services Agreement" for **[INSERT BRIEF DESCRIPTION OF SERVICES]** dated **[INSERT DATE OF AGREEMENT IF AVAILABLE, IF NOT, DELETE "dated"]** ("**Agreement**").
- B. Under the Agreement, the Contractor is required to provide this deed to the Territory.

This deed poll provides

1. UNCONDITIONAL UNDERTAKING BY BANK

The Bank unconditionally undertakes and covenants to pay to the Territory any sum or sums which may from time to time be demanded in writing by the Territory to a maximum aggregate sum of **[\$INSERT]:**

- (a) on demand;
- (b) without reference to the Contractor; and
- (c) notwithstanding any notice given by the Contractor to the Bank not to pay that sum or sums.

2. CONTINUING LIABILITY OF BANK

The Bank's liability under this deed is a continuing liability and will continue until:

- (a) payment is made under this deed of the maximum aggregate sum; or
- (b) the Territory notifies the Bank that this deed is no longer required.

However, the Bank may at any time, without being required to do so, pay to the Territory the maximum aggregate sum less any amounts it may previously have paid under this deed. After such payment, the Bank's liability under this deed will immediately cease.

3. NO DISCHARGE OF LIABILITY BY VARIATION

The Bank's liability under this deed will not be discharged or impaired by reason of:

- (a) any variation (with or without the knowledge or consent of the Bank) in:
 - (i) any of the provisions of the Agreement;

- (ii) the Services(as defined in the Agreement); or
 - (iii) acts or things to be executed, performed and done under the Agreement; or
- (b) any breach of the Agreement by the Contractor or the Territory.

4. GOVERNING LAW

This deed is subject to and to be construed in accordance with the laws applicable to the Agreement.

Executed as a deed poll.

Signed sealed and delivered for and on behalf of **[INSERT NAME AND ABN OF BANK]** by:

[INSERT SIGNATORY NAME] its Attorney under a Power of Attorney dated and registered Book No. and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

 Signature

 Signature of Witness

 Name of Witness in full

[INSERT APPROPRIATE SIGNING BLOCK TO REFLECT MANNER IN WHICH BANK SIGNS DEEDS OF THIS TYPE]

SCHEDULE 5 - ETHICAL SUPPLIERS DECLARATION

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:

“Adverse Ruling” means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.

“Authorised Entity” means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Contractor has contravened the Prescribed Legislation.

“Consultant” means a consultant engaged by the Contractor to provide professional services. It includes a consultant whose contract with the Principal is novated to one with the Contractor.

“Contract” means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.

“Contractor” means [insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract];

“Employee” means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Contractor or a Subcontractor with his or her labour.

“Industrial Instruments” means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer’s employees.

“Prescribed Legislation” means all applicable Acts and subordinate instruments of the Commonwealth and the Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:

- (a) *Fair Work Act 2009* (Cth);
- (b) *Fair Work (Building Industry) Act 2012* (Cth);

- (c) *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (d) *Income Tax Assessment Act 1997* (Cth);
- (e) *Independent Contractors Act 2006* (Cth);
- (f) *Industry Research and Development Act 1986* (Cth);
- (g) *Long Service Leave Act 1976* (ACT);
- (h) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (i) *Migration Act 1958* (Cth);
- (j) *Paid Parental Leave Act 2010* (Cth);
- (k) *Payroll Tax Act 2011* (ACT);
- (l) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
- (m) *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (n) *Superannuation Guarantee Charge Act 1992* (Cth);
- (o) *Work Health and Safety Act 2011* (ACT);
- (p) *Workers' Compensation Act 1951* (ACT);
- (q) *Workplace Gender Equality Act 2012* (Cth).

“Project” means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project];

“Prescribed Works or Services” means works or services that require the exertion of labour by Employees;

“Secure Local Jobs Code Certificate” has the meaning given by the *Government Procurement Act 2001*;

“Subcontractor” includes a sub-subcontractor; and

“Supplier” means an entity engaged by the Contractor to supply part of the Project.

all other capitalised words or terms have the same meaning as defined in the Contract.

2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
4. The Contractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
5. All Subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement by each of them for the performance of work or the supply of materials for or in connection with the Contract.

6. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the work done in connection with the Contract have been paid.
7. All payroll tax payable by the Contractor in respect of wages paid or payable to the relevant Employees of the Contractor for work done in connection with the Contract to the date of this statutory declaration has been paid.
8. The Contractor holds a current Secure Local Jobs Code Certificate.
9. The Contractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.

True (delete 9A and initial) Not true (answer 9A)

- 9A. The Contractor has not complied with the following Industrial Instruments in the following respects.

[Insert full details of failure to comply with Industrial Instruments]

10. The Contractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

True (delete 10A and initial) Not true (answer 10A)

- 10A. The Contractor has not complied with the following Prescribed Legislation.

[Insert Full Details of the failure to comply with Prescribed Legislation]

11. The Contractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 11A and initial) Not true (answer 11A)

- 11A. The Contractor has not recognised the rights of Employees to union membership and representation in the following respects.

[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]

12. The Contractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 12A and initial) Not true (answer 12A)

- 12A. The Contractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]

13. In the preceding 24 months of the date of this declaration there have been no findings against the Contractor by any Authorised Entity, including a finding of a breach in a non-confidential consent order.

True (delete 13A and initial) Not true (answer 13A)

- 13A. There have been the following findings (Full Details of which are provided) against the Contractor by an Authorised Entity:

[Set out Full Details of findings]

14. In the preceding 24 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Contractor.

True (delete 14A and initial) Not true (answer 14A)

- 14A. There have been the following Adverse Rulings under the Prescribed Legislation against the Contractor:

[Set out Full Details of convictions]

15. There are currently no proceedings or prosecutions against the Contractor in respect of a breach of any Prescribed Legislation.

True (delete 15A and initial) Not true (answer 15A)

- 15A. There are currently the following proceedings or prosecutions against the Contractor in respect of a breach of Prescribed Legislation.

[Set out Full Details of proceedings or prosecutions]

16. The Contractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 16A and initial) Not true (answer 16A)

- 16A. The Contractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

[Set out Full Details of the remedial measures implemented]

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of

the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]]

[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

A statutory declaration under the Statutory Declarations Act 1959 may be made before–

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
 - Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
 - Bailiff
 - Bank officer with 5 or more continuous years of service
 - Building society officer with 5 or more years of continuous service
 - Chief executive officer of a Commonwealth court
 - Clerk of a court
 - Commissioner for Affidavits
 - Commissioner for Declarations
 - Credit union officer with 5 or more years of continuous service
 - Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and

- (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Employee of the Commonwealth who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

- (a) an officer; or
- (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
- (c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) a Territory legislature; or
- (d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority; or
- (c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

SCHEDULE 6 – SCHEDULE OF RATES

See clause 1.1

[Insert]

SCHEDULE 7 – PERFORMANCE MANAGEMENT SYSTEM

See clauses 1.1 and 2.1

Not used.

[OR, Insert the requirements for the Performance Management System, and KPIs, if relevant for this Agreement. Otherwise, if there is to be no performance management system, delete the below and retain “Not used”. Included below are some usual definitions and provisions which may be relevant to include. However, the performance management system and related KPIs will need to be drafted for the particular requirements of each project.]

Item 1. Definitions

In this Item the following definitions apply:

“**Abatement**” means the amount calculated according to the level of performance of the Services delivered against the minimum requirements set out of the Performance Management System, and in accordance with the Performance Management System.

“**Incentive**” means the [Insert, for example this may be a percentage referable to the portion of the Contract Price paid in the last financial year, when the Contractor has exceeded the minimum requirements of the Performance Management System calculated in accordance with the terms of the Performance Management System].

“**KPIs**” means key performance indicators, being the indicators applicable to the Performance Management System.

[insert other definitions if required]

Item 2. Performance Management System and KPIs

Neither the Performance Management System, KPIs, level of performance of the Contractor or any other act or omission of the Contractor in connection with the Performance Management System will limit the rights and obligations of the parties, whether under this Agreement or otherwise at law or in equity.

[Insert performance management system including KPIs or include an appropriate cross reference if included as an attachment to this Agreement due to size]

DATE OF THIS AGREEMENT

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:) Signature of Territory delegate

.....
Signature of witness Print name

.....
Print name

SIGNED by or for and on behalf of)
[NAME & ACN OF CONTRACTOR])
in the presence of:) Signature of director/ authorised
officer/ individual*
*DELETE whichever is not applicable (see note below)

.....
Signature of director/ secretary/ witness*
*DELETE whichever is not applicable (see note below) Print name

.....
Print name Signature of second authorised officer*
*only use if Incorporated Association (see note below)

.....
Print name



Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.

Company: 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. Common seal may be affixed if required under the Contractor’s constitution.

Individual: Must be signed by the individual Contractor and witnessed.

Incorporated Association: Must be signed in accordance with the Contractor’s constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.