



AUSTRALIAN CAPITAL TERRITORY

CONTRACT NUMBER: [INSERT]

CONTRACT NAME: [INSERT]

CONSULTANT: [INSERT]

DESIGN SERVICES CONTRACT

(DSC-ACT-2013)

VERSION: [DRAFT/FINAL - INSERT DATE]

[NOTE TO USERS: 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. Information to complete the Contract Particulars is contained in the successful Tenderer's Tenderer Declaration, and Attachment 7 of the relevant RFT issued for the project.

DELETE this note, all prompts and other notes before finalising the agreement.

[CLIENT VERSION UPDATED 26 JULY 2021 TO INCLUDE A NOTE TO S126 & S127 CORPORATIONS ACT (CTH) ON THE AGREEMENT PAGE]

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

Design Services Contract – (DSC-ACT-2013)

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FORMAL AGREEMENT

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

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

The consultant set out in Item 6 of the Contract Particulars (Consultant)

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

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

SIGNED as an agreement on _____ 20_____

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

Signature of Witness

Name of Witness in full

Signed for and on behalf of the **Consultant** by or in the presence of:

Signature of Director

Name of Director in full

Signature of Authorised Signatory

Name of Authorised Signatory in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

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

If the company is a proprietary company that has a sole director who is also the sole

company secretary then this form must be signed by that director and witnessed.

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

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

CONDITIONS OF CONTRACT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

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

Accredited Building Surveyor

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

Act of Prevention

Any one of:

- (a) a breach of the Contract by the Territory;
- (b) any other act or omission of the Territory, the Contract Administrator or an Other Contractor engaged by the Territory; or
- (c) a Variation the subject of a Direction by the Contract Administrator.

Agreed Subconsultant

A subconsultant specified in **Item 2 of the Contract Particulars**.

Agreed Subconsultant Agreement

The agreement referred to in **Item 2 of the Contract Particulars**.

Agreed Subconsultant Deed of Novation

An Agreed Subconsultant deed of novation in the form set out in the Schedule of Collateral Documents.

Agreed Subconsultant Services

A part of the Services specified in **Item 2 of the Contract Particulars**.

Approval

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

- (a) carry out the Services or Works; or
- (b) service, occupy, maintain, operate and use the completed Works, to the extent that the Services are relevant to such satisfaction.

Award Date

The date specified in specified in (or, if no date was specified, the date of) the letter of acceptance given by the Territory to the Consultant in accordance with the request for tender documentation (howsoever named) for these Services.

Brief

The documents referred to in **Item 3 of the Contract Particulars**.

Building Code 2016

The *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 4 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Change of Control

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

Claim

Includes any claim for an increase in the Fee, for payment of money (including damages) or for an extension of time:

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

Commissioning and Handover Plan

The plan (if required under this Contract) prepared by the Consultant and finalised under **clause 7.4**, which must set out in adequate detail the procedures the Consultant will implement to manage the Services from a commissioning and handover perspective to ensure:

- (a) ensure compliance with the Commissioning, Handover and Takeover Guidelines and Statutory Requirements;
- (b) maximise achievement of the ESD Principles and WOL Objectives;
- (c) ensure the timely, efficient, comprehensive and smooth:
 - (i) commissioning of the Works (including the inspection and testing process) by the Contractor;
 - (ii) handover of the Works by the Contractor to the Territory; and
 - (iii) occupation, use, operation and maintenance of the Works by the Territory and Other Contractors.

The Commissioning and Handover Plan must address, at a minimum:

- (a) all Commissioning, Handover and Takeover Guidelines;
- (b) all ESD Principles and WOL Objectives;
- (c) all Statutory Requirements;
- (d) the roles and responsibilities of all Consultant and subconsultant personnel (including the Consultant's key people under **clause 4.5(a)**) in commissioning and handover of the Works;

- (e) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Territory and Other Contractors regarding commissioning and handover during the Services;
- (f) the training and awareness programmes provided to Consultant and subconsultant personnel regarding commissioning and handover of the Works;
- (g) the procedure for preparing (including tailoring) and finalising the Commissioning and Handover Plan under **clause 7.4**;
- (h) the procedure for regularly reviewing, updating and amending the Commissioning and Handover Plan under **clause 7.4**;
- (i) the procedure for ensuring subconsultant compliance with the Commissioning and Handover Plan;
- (j) the procedure for regularly auditing or other monitoring of Consultant and subconsultant compliance with the Commissioning and Handover Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding commissioning and handover during the Services;
- (k) the additional matters specified in the Contract Particulars; and
- (l) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Commissioning, Handover and Takeover Guidelines

The guidelines set out in the Schedule of Collateral Documents, or if none are specified, the guidelines as advised by the Territory to the Consultant from time to time, if any.

Commonwealth

Commonwealth of Australia.

Completion

The point in time when, in respect of a Milestone:

- (a) the Design Documentation has been completed in accordance with the Contract;
- (b) the Services have been completed in accordance with the Contract;
- (c) all documents and other information required for the occupation, use, operation and maintenance of the Works requested by the Contract Administrator under **clause 22(b)**, or otherwise required under the Contract, have been submitted to the satisfaction of the Contract Administrator; and
- (d) without limiting paragraph (c), the Consultant has done everything which the Contract requires it to do as a condition precedent to Completion, including those things described in **Annexure 1** and in **Item 5 of the Contract Particulars**.

Confidential Text

Any text of this Contract that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified **Item 59 of the Contract Particulars**.

Construction Contract

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

Consultant

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

Consultant Deed of Covenant

A consultant deed of covenant in the form set out in the Schedule of Collateral Documents.

Consultant Deed of Novation

A consultant deed of novation in the form set out in the Schedule of Collateral Documents.

Consultant Design Certificate

The certificate set out in the Schedule of Collateral Documents.

Consultant's Representative

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

Contamination

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

Contract

The contractual relationship between the parties constituted by:

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

Contract Administrator

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

Contractor

Any contractor engaged or to be engaged by the Territory to construct or design and construct the Works including any subcontractor of such contractor.

Contract Particulars

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

Control

Includes:

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

Date for Completion

The date or period of time (if any) specified in **Item 10 of the Contract Particulars** for Completion of a Milestone, as adjusted under the Contract.

DCAP

The Detailed Consultant's Activities Proposal referred to in **Item 11 of the Contract Particulars**, as amended from time to time in accordance with **clause 6.10**.

Design Documentation

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

Design Management Plan

The design management plan prepared by the Consultant and finalised under **clause 7.4** which must set out in adequate detail the procedures the Consultant will implement to manage the design services and how the Consultant proposed to ensure the management of the design services will be performed so as to maximise the Consultant's design management commitments set out in the DCAP.

Direction

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

Environment

Includes:

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

Environmental Clearance Certificate

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

Environmental Harm

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

Environmental Incident

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

Environmental Management Plan

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

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

Environmental Objectives

The Environmental Objectives are to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise adverse impacts on the Environment;
- (c) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Works and the Services;
- (e) establish procedures to ensure that no hazardous substance is stored on Territory land without approval;

- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and subconsultants;
- (i) ensure subconsultants implement the Environmental Management Plan;
- (j) define how the management of the Environment during the Services is reported and performance evaluated;
- (k) describe all monitoring procedures required to identify impacts on the Environment as a result of the Works and the Services;
- (l) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
- (m) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

Environmental Requirements

Includes:

- (a) the Environmental Clearance Certificate;
- (b) the Territory Environmental Requirements; and
- (c) any other matter or requirement specified in **Item 13 of the Contract Particulars**.

ESD

Ecologically sustainable development.

ESD Principles

Means:

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

- (k) facility maintenance and operational practices that reduce or minimise harmful effects on people and the natural environment;
- (l) maintaining the cultural, economic, physical and social wellbeing of people and communities; and
- (m) the additional specific matters (if any) relating to ESD specified in **Item 14 of the Contract Particulars**.

Executive Negotiators

The representatives of the parties nominated in **Item 15 of the Contract Particulars** or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Fee

The Fee specified in **Item 16 of the Contract Particulars** and, if the Services are phased, means the sum of the fees payable in each phase.

Insolvency Event

Any one of the following:

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

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

Intellectual Property Rights

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

IT Equipment

Any software, hardware or telecommunications equipment:

- (a) produced; or
- (b) provided, or required to be provided, to the Territory or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Services or the Works by, for or on behalf of the Consultant.

Milestone

A milestone described in **Item 17 of the Contract Particulars**.

Moral Rights

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

Moral Rights Consent

A consent in the form set out in the Schedule of Collateral Documents.

National Construction Code

The code that applies in the Australian Capital Territory, as amended from time to time, produced and maintained by the Australian Building Codes Board on behalf of the Commonwealth Government and the Territory Government.

Other Contractor

Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person engaged to do work other than the Consultant and its subconsultants.

Procurement Act

The *Government Procurement Act 2001* (ACT).

Professional Indemnity Insurance

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

Project Documents

Includes:

- (a) Design Documentation;
- (b) programs;
- (c) DCAP;
- (d) Project Plans;
- (e) Approvals;
- (f) IT Equipment;
- (g) the documents which the Consultant is obliged to maintain under **clause 10.5**;
- (h) operation and maintenance manuals and warranties from subconsultants (if any);
- (i) without limiting **paragraphs (a) - (h)**, any other material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Territory or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Services or the Works by, for or on behalf of the Consultant (including by subconsultants), including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, software, databases or other information stored in any electronically-retrievable medium, technical information, plans, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Consultant), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents, any material relating to the Consultant's compliance with the WHS Legislation and any other material of a similar nature to those materials relating to or arising out of or in connection with the Contract, the Services or the Works; and

- (j) without limiting **paragraphs (a) - (i)**, all material at any time derived (under, for the purposes of or in connection with the Contract, the Services or the Works) from, or based on, the material described in **paragraphs (a) - (i)**.

Project Plans

The:

- (a) Environmental Management Plan (if required under **Item 12 of the Contract Particulars**);
- (b) Site Management Plan (if required under **Item 19 of the Contract Particulars**);
- (c) Commissioning and Handover Plan (if required under **Item 4 of the Contract Particulars**);
- (d) Work Health and Safety Plan (if required under **Item 24 of the Contract Particulars**);
- (e) Design Management Plan;
- (f) User Group Consultation and Endorsement Plan (if required under **Item 23 of the Contract Particulars**); and
- (g) the additional plans referred to in **Item 1 of the Contract Particulars** and prepared and finalised by the Consultant under **clause 7.4(a)(ii)**,

as amended (if at all) with the written consent of the Contract Administrator.

Public Liability Insurance

A policy of liability insurance covering the Territory, the Consultant, the Contract Administrator and all subconsultants for their respective liabilities:

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

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

Schedule of Collateral Documents

The schedule of proforma contracts and other documents applicable to the Design Services Contract:

- (a) posted on the Shared Services, Procurement website located at <http://www.procurement.act.gov.au/> (or any alternative location notified by the Territory), as amended from time to time by the Territory; and
- (b) which as at the Award Date include the contracts and other documents referred to in **Item 18 of the Contract Particulars**.

Security of Payment Legislation

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

Services

The professional services described in, or reasonably to be inferred from, the Brief, as adjusted under the Contract.

Site

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

Site Management Plan

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

- (a) the matters set out in **Item 19 of the Contract Particulars**; and
- (b) any other matters required by the Contract Administrator.

Special Conditions

The document referred to **Item 21 of the Contract Particulars**.

Statutory Requirements

Means:

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

Subconsultant Deed of Covenant

A subconsultant deed of covenant in the form set out in the Schedule of Collateral Documents.

Subconsultant Design Certificate

The certificate set out in the Schedule of Collateral Documents.

Table of Variation Rates and Prices

The table (if any) set out or referred to in **Item 22 of the Contract Particulars**, containing rates and prices to be used for the purposes of valuing a Variation.

Territory

Means when used:

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

Territory Environmental Management System

The environmental management system applicable to the Site (if any) available from the Contract Administrator.

Territory Environmental Plan

The environmental plan applicable to the Site (if any) available from the Contract Administrator.

Territory Environmental Requirements

The Territory Environmental Management System and Territory Environmental Plan which relate to the Site, the Works or the Services and includes any procedures, instructions, requirements and standing orders which

have been developed or issued under the Territory Environmental Management System or Territory Environmental Plan (as the case may be).

Territory Material

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

Territory's Program

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

Territory Requirements

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

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

User Group Consultation and Endorsement Plan

The user group consultation and endorsement plan (if required under this Contract) prepared by the Consultant and finalised under **clause 7.4** which must set out in adequate detail the procedures the Consultant will implement to manage user group consultation and design endorsement and how the Consultant proposes to ensure the management of the user group consultation and design endorsement will be performed so as to maximise the Consultant's consultation and endorsement management commitments set out in the DCAP.

Variation

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

WHS Legislation

The *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT) and any other legislation in the Territory, or another jurisdiction as relevant, addressing work health and safety.

WOL

Whole of life.

WOL Cost

The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to the Territory arising out of, or in any way in connection with, the Works over the whole life of the Works including the costs of designing and constructing the Works prior to Completion (as defined in the Construction Contract) and operating and maintaining the Works after Completion (as defined in the Construction Contract).

WOL Objectives

Means balancing:

- (a) WOL Cost;
- (b) the useful life of the Works;

- (c) the reliability and availability for use of the Works throughout their useful life;
- (d) the operability and maintainability of the Works throughout their useful life;
- (e) the value for money achieved by the Territory from the design, construction, operation and maintenance of the Works;
- (f) the achievement of the ESD Principles; and
- (g) the achievement of the specific additional matters (if any) relating to WOL specified in **Item 25 of the Contract Particulars**.

Work Health and Safety Plan

The work health and safety plan (if required under this Contract) prepared by the Consultant and finalised under **clause 7.4**, which can be either Contract specific or site specific, and must:

- (a) set out in adequate detail the procedures the Consultant will implement to manage the Services from a work health and safety perspective;
- (b) describe how the Consultant proposes to ensure the Services are performed consistently with Statutory Requirements in relation to work health and safety; and
- (c) address the matters specified in **Item 24 of the Contract Particulars**.

Workers Compensation Insurance

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

Works

The development described in **Item 26 of the Contract Particulars**.

1.2 Interpretation

In this Contract, unless the context otherwise indicates:

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

- (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
 - (i) a Direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under **clause 10.5**),
within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the Australian Capital Territory will not be counted in computing the number of days;
- (l) for the purposes of **clause 8.8, 8.9 and 8.10**:
 - (i) any extension of time stated in days; or
 - (ii) any reference to "day", will exclude public holidays and include only those days which are stated in the Consultant's approved program under **clause 8.2** as working days;
- (m) for the purposes of **clauses 10.4 and 10.5**, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT);
- (n) other than as set out in **paragraphs (k), (l) and (m)** references to "day" are references to calendar days;
- (o) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (p) the word "subconsultant" will include Agreed Subconsultants, subconsultants, subcontractors and suppliers, and the word "subcontract" will include a contract with a subconsultant;
- (q) derivatives of a word or expression which has been defined in **clause 1.1** will have a corresponding meaning to that assigned to it in **clause 1.1**; and
- (r) unless agreed or notified in writing by the Contract Administrator, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the preparation of the Design Documentation. If requested by the Contract Administrator, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Design Documentation available to the Contract Administrator.

1.3 Miscellaneous

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in **Item 27 of the Contract Particulars**.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:

- (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
 - (ii) otherwise, both parties agree in writing.
- (c) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (f) The Territory Material and the Project Documents are confidential. The Consultant must:
 - (i) not disclose any of the the Territory Material or the Project Documents without the prior written consent of the Territory except to the extent that the disclosure is required for the Consultant to carry out its obligations under the Contract; and
 - (ii) ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under this **clause 1.3(f)** as if the subconsultant were the Consultant.
- (g) The Consultant must indemnify the Territory against:
 - (i) any liability to or claim by a third party including a subconsultant or Other Contractor; and
 - (ii) all costs, losses and damages suffered or incurred by the Territory,to the extent arising out of or in connection with any breach by the Consultant of a term of this Contract.
- (h) All obligations to indemnify under this Contract survive termination of the Contract.
- (i) Unless expressly stated to the contrary in this Contract, the Consultant must perform the Services at its cost.

2. ROLE OF THE CONSULTANT

2.1 Engagement

The Consultant must carry out the Services in accordance with the Contract.

2.2 Standard of Care

The Consultant:

- (a) must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of a person who regularly acts in the capacity in which the Consultant is engaged;
- (b) warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of a person who regularly acts in the capacity in which the subconsultant is engaged;
- (c) must:
 - (i) ensure that the Design Documentation complies with the requirements of the Contract; and
 - (ii) use its best endeavours to ensure that the Design Documentation will be fit for its intended purpose;
- (d) must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Territory notified to the Consultant; and
- (e) must exercise the utmost good faith in the best interests of the Territory and keep the Territory fully and regularly informed as to all matters affecting or relating to the Services and the Works.

2.3 Authority to Act

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

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

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

2.4 Knowledge of the Territory's Requirements

The Consultant must:

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

2.5 Notice of Matters Impacting on the Services or the Works

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

- (a) is likely to change or which has changed the scope, timing or cost of the Services or the Works;

- (b) affects or may affect the Territory's Program or the Consultant's approved program under **clause 8.2**; or
- (c) involves any error, omission or defect in any continuing or completed aspect of the Works or the Services,

the Consultant must promptly give written notice of that matter to the Contract Administrator containing, as far as practicable in the circumstances:

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

2.6 Co-ordination with Other Contractors

Without limiting **clause 6.16(a)(iii)**, the Consultant must;

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

2.7 Access to Consultant's Premises

The Consultant must at all reasonable times:

- (a) give to the Contract Administrator, or to any persons authorised in writing by the Contract Administrator, access to premises occupied by the Consultant or its subconsultants where Services are being carried out; and
- (b) permit those persons referred to in **paragraph (a)** to inspect the carrying out of the Services and any Design Documentation or other Project Documents.

2.8 Conflict of Interest

The Consultant warrants that:

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

2.9 Subcontracting

- (a) The Consultant:
- (i) must not, without the prior written approval of the Contract Administrator, which will not be unreasonably withheld, subcontract any Services, except:
 - A. to a subconsultant named in **Item 2 or Item 28 of the Contract Particulars**; or
 - B. to an Agreed Subconsultant in accordance with **paragraph (b)**;
 - (ii) will:
 - A. not be relieved of any of its liabilities or obligations under the Contract, including those under **clauses 2.1 and 2.2**; and
 - B. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
 - (iii) will be vicariously liable to the Territory for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with, the Services;
 - (iv) must ensure that each subcontract contains provisions:
 - A. which bind the subconsultants to participate in any novation required by the Territory under **clause 11.5(a)**; and
 - B. as otherwise required by this Contract; and
 - (v) must, if requested by the Contract Administrator:
 - A. execute;
 - B. procure the relevant subconsultant to execute; and
 - C. deliver to the Contract Administrator,
 - a Subconsultant Deed of Covenant duly completed with all relevant particulars:
 - D. as a condition precedent to seeking the prior written approval of the Contract Administrator under this **paragraph (a)**; or
 - E. where such approval is not required, within the time required by the Contract Administrator and in any event before commencement of any work by the relevant subconsultant.

No Subconsultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Territory against the Consultant whether under the Contract or otherwise.

- (b) The Consultant:
- (i) must subcontract the Agreed Subconsultant Services to the Agreed Subconsultants on the terms of either:
 - A. the Agreed Subconsultant Agreement; or
 - B. a contract as novated in accordance with **paragraph (c)**; and

- (ii) acknowledges and agrees that:
 - A. **paragraphs (a)(ii) and (a)(iii)** apply to all Agreed Subconsultants;
 - B. neither the requirement to engage the Agreed Subconsultants nor any act, omission or default of the Agreed Subconsultants will:
 - 1) relieve the Consultant from, or alter or affect, the Consultant's liabilities or responsibilities; or
 - 2) prejudice the Territory's rights against the Consultant, whether under the Contract or otherwise according to law; and
 - C. it has made an adequate allowance in its Fee and in its program for the performance of the Services (including to complete each Milestone by its Date for Completion) for the performance of the Agreed Subconsultant Services by the Agreed Subconsultants and will not be entitled to bring any Claim against the Territory (to the maximum extent permitted by law) arising out of or in connection with the Agreed Subconsultants, the Agreed Subconsultant Services or any act, omission or default of the Agreed Subconsultants except for:
 - 1) claims for payment under **clause 10** of the original Fee specified in **Item 16 of the Contract Particulars**; or
 - 2) Variations instructed in accordance with **clause 9.2** or to which **clause 13.1** applies.
- (c) The Consultant:
 - (i) must, if **Item 29 of the Contract Particulars** indicate that the Territory has (prior to the Award Date) entered into a contract with any Agreed Subconsultant for any Agreed Subconsultant Services, accept a novation of that contract from the Territory by executing an Agreed Subconsultant Deed of Novation to give effect to the novation within 7 days of receipt of the Agreed Subconsultant Deed of Novation from the Territory;
 - (ii) acknowledges that it is aware that some Agreed Subconsultant Services have already been performed prior to any novation in accordance with **subparagraph (i)**;
 - (iii) warrants that it has checked and carefully considered the Agreed Subconsultant Services referred to in **subparagraph (ii)** and that they are proper, adequate and suitable for the purposes for which the Agreed Subconsultant Services are intended; and
 - (iv) agrees that:
 - A. the warranties given in this Contract will remain unaffected;
 - B. it will comply with its obligations to complete the Services as required by this Contract; and
 - C. it will bear and continue to bear full liability and responsibility for the Services in accordance with this Contract (including the risk of any errors and omissions which may arise (whether directly or indirectly) as a result of or in any way in connection with any Agreed Subconsultant Services described in **subparagraph (ii)**), and that this will not affect its obligations to complete the Services in accordance with this Contract,

notwithstanding **subparagraph (ii)** and that it is required to:

- D. adopt the Agreed Subconsultant Services described in **subparagraph (ii)**; and
- E. accept a novation of any such contracts in accordance with **subparagraph (i)**.

2.10 Statutory Requirements

In carrying out the Services, the Consultant must:

- (a) unless otherwise specified in **Item 30 of the Contract Particulars**, comply with all applicable Statutory Requirements;
- (b) without limiting **paragraph (a)**:
 - (i) apply for and obtain all Approvals referred to in **Item 31 of the Contract Particulars**; 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 its Contract obligations; and
- (c) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Works or the Services issues to the Consultant.

2.11 Change in Statutory Requirements or Variance with Contract

If:

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

then:

- (c) the party discovering this must promptly notify the other;
- (d) the Contract Administrator will instruct the Consultant as to the course it is to adopt insofar as the Services are affected by the change or variance (as the case may be); and
- (e) the Fee will be:
 - (i) increased by any extra costs reasonably incurred by the Consultant; or
 - (ii) decreased by any saving made by the Consultant,

in carrying out the Services after the giving of the notice under **paragraph (b)** and arising directly from the change or variance (as the case may be) or the Contract Administrator's instruction, in either case as determined by the Contract Administrator.

2.12 Novation

The Territory may at any time, without the consent of the Consultant, novate the Contract to a Contractor.

If the Territory elects to novate the Contract, the Consultant must:

- (a) execute a Consultant Deed of Novation to give effect to the novation within 7 days of receipt of the Consultant Deed of Novation from the Territory; and

- (b) if requested by the Contract Administrator, execute a Consultant Deed of Covenant, duly completed with all relevant particulars, within the period specified by the Contract Administrator in such request and deliver the executed Consultant Deed of Covenant to the Contract Administrator in accordance with **clause 10.3(a)(vi)A**.

No Consultant Deed of Covenant will be construed in any way to modify or limit any rights, powers or remedies of the Territory against the Consultant whether under the Contract or otherwise.

2.13 The Environment

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

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

3. ROLE OF THE TERRITORY

3.1 Information and Services

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

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

3.2 Additional Information

If:

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

then:

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

3.3 Access

Subject to:

- (a) the Construction Contract;
- (b) any other agreement or arrangement with any party other than the Consultant; and
- (c) the Site Management Plan and the Work Health and Safety Plan having been finalised under **clause 7.4,**

the Territory must:

- (d) as soon as practicable provide the Consultant with access to the Site upon which the Works are to be constructed; and
- (e) arrange access to any other property which may be necessary for the Consultant to carry out the Services.

3.4 Making of Decisions

If:

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

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

4. PERSONNEL

4.1 Contract Administrator

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

The Consultant must:

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

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

4.2 Replacement of Contract Administrator

The Territory may at any time replace the Contract Administrator, in which event the Territory will appoint another person as the Contract Administrator and notify the Consultant of that appointment.

Any substitute Contract Administrator appointed under this **clause 4.2** will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

4.3 Parties' Conduct

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

4.4 Contract Administrator's Representative

The Contract Administrator may:

- (a) by written notice to the Consultant appoint persons to exercise any of the Contract Administrator's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under **paragraph (a)** by notice in writing to the Consultant.

As at the Award Date, the Contract Administrator is deemed to have appointed the persons set out in **Item 32 of the Contract Particulars** to carry out the functions set out in **Item 32 of the Contract Particulars**.

All references in the Contract to Contract Administrator include a reference to a representative appointed under this **clause 4.4**.

4.5 Key People

The Consultant must:

- (a) employ those people specified in **Item 33 of the Contract Particulars**, including the Consultant's Representative, in the jobs specified in **Item 33 of the Contract Particulars**;
- (b) subject to **paragraph (c)**, not replace the people referred to in **paragraph (a)** without the Contract Administrator's prior written approval; and

- (c) if any of the people referred to in **paragraph (a)** die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

4.6 Removal of Persons

The Contract Administrator may by notice in writing instruct the Consultant to remove any person from the performance of the Services who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Consultant must ensure that this person is not again employed in the Services.

4.7 Project Review

This **clause 4.7** does apply unless **Item 34 of the Contract Particulars** state that it does not apply.

The Consultant must:

- (a) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
- (b) present a progress report at each meeting detailing:
 - (i) the activities of the Consultant;
 - (ii) the progress made in respect of the Services in the preceding month; and
 - (iii) such other matters as the Contract Administrator may require from time to time;
- (c) discuss the reports it has prepared under **clauses 6.16** and **14.4** and such other matters as Contract Administrator may from time to time require;
- (d) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
- (e) if it requires instructions from the Territory, make all necessary recommendations as to the action required.

The Contract Administrator must:

- (f) before each meeting - prepare an agenda for that meeting; and
- (g) after each meeting - prepare minutes of the meeting and distribute them to all attendees of the meeting.

5. INSURANCE

5.1 Consultant Insurance Obligations

The Consultant must:

- (a) from the Award Date effect and maintain the following insurance:
 - (i) Public Liability Insurance;
 - (ii) Workers Compensation Insurance in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside;
 - (iii) Professional Indemnity Insurance; and
 - (iv) such other insurances on such terms as are set out in **Item 35 of the Contract Particulars**,each of which is to be:
 - (v) for the respective amount referred to in **Item 35 of the Contract Particulars**;
 - (vi) with reputable insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (vii) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Workers Compensation Insurance:
 - (i) ensure that to the extent permitted by law, the insurance policy extends to provide indemnity to the Territory in respect of any statutory liability to the Consultant's employees; and
 - (ii) ensure that each of its subconsultants legally required to do so has Workers Compensation Insurance covering the subconsultant in respect of its statutory liability to employees in the same manner as the Consultant is required to do so under **paragraph (a)(ii)**;
- (c) provide the Contract Administrator with evidence satisfactory to the Contract Administrator that each policy is current as required by the Contract Administrator from time to time;
- (d) ensure that:
 - (i) if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant as soon as possible informs the Territory in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld; and
 - (ii) if the Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by this Contract and informs the Territory in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract;
- (e) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;

- (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (v) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies; and
- (f) ensure that any subconsultants that perform any design work forming part of the Services also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Consultant under **paragraph (a)(iii)**, for not less than the amount referred to in **Item 36 of the Contract Particulars**.

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

5.2 Failure to Insure

If the Consultant fails to:

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

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

5.3 Period of Insurance

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

- (a) in the case of Public Liability Insurance and Workers Compensation Insurance, until completion of the Services; and
- (b) in the case of Professional Indemnity Insurance, until the expiration of the period specified in **Item 37 of the Contract Particulars** following completion of the Services.

5.4 Notice of Potential Claim

The Consultant must:

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

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

- (d) subject to **paragraph (e)**, is not required to provide details of individual claims; and
- (e) must notify the Territory if the estimated total combined value of claims made against the Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

5.5 Cross Liability

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

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

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

6. DESIGN AND DOCUMENTATION

6.1 Territory's Documents

The Territory must provide to the Consultant the Territory Material and number of copies of the Territory Material specified in **Item 38 of the Contract Particulars**.

6.2 Consultant's Design

The Consultant must:

- (a) design the parts of the Works which the Contract requires it to design in accordance with the Brief and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Design Documentation;
- (b) as part of the program it is to prepare under **clause 8.2**, submit to the Contract Administrator for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Design Documentation within the period of time within which the Contract Administrator may review the Design Documentation under **clause 6.3**;
- (c) be responsible for co-ordinating the work of its subconsultants, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these subconsultants in a manner and at a rate of progress so that the Consultant complies with its obligations under **paragraph (e)**;
- (d) conduct design reviews at each of the design review milestones as identified in the DCAP; and
- (e) submit the Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under **paragraph (b)**.

6.3 Contract Administrator may Review Design Documentation

- (a) The Contract Administrator may:
 - (i) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Consultant; and
 - (ii) within the number of days set out in **Item 39 of the Contract Particulars** of the submission by the Consultant of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation.
- (b) If any Design Documentation is rejected, the Consultant must submit amended Design Documentation to the Contract Administrator.
- (c) The Consultant must participate in any peer review of any Design Documentation, or any resubmitted Design Documentation prepared by the Consultant at the Direction of the Contract Administrator.

6.4 No Obligation to Review

- (a) The Contract Administrator does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Design Documentation submitted by the Consultant for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Consultant or any other Direction by the Contract Administrator about, or any other act or omission by the Contract

Administrator or otherwise by or on behalf of the Territory in relation to, the Design Documentation will:

- (i) relieve the Consultant from, or alter or affect, the Consultant's liabilities or responsibilities whether under the Contract or otherwise according to law; or
- (ii) prejudice the Territory's rights against the Consultant whether under the Contract or otherwise according to law.

6.5 Copies of Design Documentation

For the purposes of **clauses 6.2(e)** and **6.3**, the Consultant must submit or resubmit to the Contract Administrator the number of copies specified in **Item 40 of the Contract Particulars** of any Design Documentation in:

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

in each case in accordance with the requirements set out in **Items 41 and 42 of the Contract Particulars**.

6.6 Licence over Design Documentation

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

This licence:

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

6.7 Intellectual Property Warranties

The Consultant warrants that:

- (a) the Consultant owns all Intellectual Property Rights in the Design Documentation or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by this Contract;
- (b) use by the Territory or any sublicensee or subsublicensee of the Design Documentation in accordance with this Contract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;

- (c) neither the Territory nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Design Documentation, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
- (d) the use by the Territory or by any sublicensee or subsublicensee of the Design Documentation in accordance with this Contract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).

6.8 Intellectual Property Rights

The Consultant must:

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

6.9 Territory Material

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

6.10 DCAP

The Consultant:

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

- (e) acknowledges that the Territory has not made and does not make any representation or give any warranty as to any of the matters referred to in **paragraphs (a)(i) and (a)(ii)**.

6.11 Resolution of Ambiguities

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

- (a) the order of precedence in **Item 43 of the Contract Particulars** will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation or any other Project Documents, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail;
- (c) if it is discovered by the Consultant or the Contract Administrator, then the party discovering it must promptly give notice to the other; and
- (d) the Contract Administrator must instruct the Consultant as to the course it must adopt within 14 days of the notice under **paragraph (c)**.

6.12 Access to Premises and Project Documents

Without limiting **clause 2.7**, the Consultant must:

- (a) at the request of the Contract Administrator at any time during the execution of the Services and the period of 10 years following completion of the Services:
- (i) provide access to its premises and make the Project Documents available for inspection and copying by the Contract Administrator or any other person nominated by the Contract Administrator;
 - (ii) provide to the Contract Administrator such copies of the Project Documents as the Contract Administrator or any nominated person may require;
 - (iii) provide all such facilities and assistance and answer all questions of the Contract Administrator or any nominated person; and
 - (iv) make available any officers, employees, agents or subconsultants for interviews with the Contract Administrator or any nominated person;
- (b) within the time required by the Contract Administrator prior to completion of the Services, deliver to the Contract Administrator a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Services, in a storage medium reasonably satisfactory to the Territory, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under this **clause 6.12** as if the subconsultant were the Consultant.

6.13 Measurements and Dimensions

Unless expressly stated to the contrary in the Contract or directed by the Contract Administrator:

- (a) the Consultant must obtain and check all relevant measurements and dimensions on the Site before proceeding with the Services; and
- (b) the layout of plant, equipment, duct work, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimensions information concerning the Site required to carry out the Services must be obtained and checked by the Consultant.

The Territory will not be liable upon any Claim by the Consultant resulting from the Consultant's failure to obtain and check measurements and dimensions information concerning the Site as required by this clause.

6.14 Design Certification

Without limiting the Consultant's obligations, the Consultant must, with each payment claim under **clause 10.2** and, if requested by the Contract Administrator, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Construction Contract), provide the Contract Administrator with:

- (a) a certificate in the form of the Consultant Design Certificate which certifies that (to the extent then applicable):
 - (i) the Design Documentation complies with:
 - A. subject to **clause 2.10(a)**, all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the Contract; and
 - (ii) the Works comply or the Stage or Section (as the case may be and both as defined in the Construction Contract) complies (as the case may be) with the Design Documentation which has not been rejected by the Contract Administrator under **clause 6.3**; and
- (b) a corresponding certificate from each subconsultant that performs design work forming part of the Services in the form of the Subconsultant Design Certificate which certifies that (to the extent then applicable):
 - (i) all design carried out by that subconsultant complies with:
 - A. subject to the subcontract, all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the subcontract; and
 - (ii) the Works comply or the Stage or Section (as the case may be and both as defined in the Construction Contract) complies (as the case may be) with the design carried out by that subconsultant,

except to the extent set out in such certificates.

6.15 Samples

- (a) The Consultant must obtain each sample or range of samples required by the Contract and provide the sample or range of samples it obtains to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under **clause 6.2(b)**, as updated with the approval of the Contract Administrator under **clause 8.2**.
- (b) The Contract Administrator must reject or give his or her permission to use the sample or range of samples provided by the Consultant or any resubmitted sample or range of samples within 14 days of submission by the Consultant.
- (c) Where any sample or range of samples is rejected, the Consultant must submit an amended or substituted sample or range of samples to the Contract Administrator and must not commence design of any part of the Works to which it applies, unless the Contract Administrator gives him or her permission to use the sample or range of samples.

- (d) The Contract Administrator owes no duty to the Consultant to review the sample or range of samples submitted by the Consultant for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the sample or range of samples submitted by the Consultant will relieve the Consultant from, or alter or affect, the Consultant's liabilities or responsibilities under the Contract or otherwise.

6.16 Work Health and Safety Management

The Consultant must:

- (a) ensure that in carrying out the Services:
- (i) it complies with all Statutory Requirements and other requirements of the Contract for work health and safety management;
 - (ii) all subconsultants comply with the requirements referred to in this **clause 6.16**; and
 - (iii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (b) carry out the Services to ensure the health and safety of persons is not put at risk;
- (c) regularly review its Work Health and Safety Plan, continue to update and amend its Work Health and Safety Plan and submit it (as necessary) in accordance with **clause 7.4** and the WHS Legislation;
- (d) ensure its subcontracts include provisions equivalent to the obligations of the Consultant in this **clause 6.16**.

7. QUALITY

7.1 Quality Assurance

The Consultant:

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

7.2 Non-Complying Services

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

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

7.3 Reperformance of the Non-complying Services

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

- (a) within the time specified in the Contract Administrator's instruction; and
- (b) if after the Date for Completion, so as to minimise the delay and disruption to the execution of the Works.

7.4 Project Plans

- (a) The Consultant:
- (i) must carry out the Services in accordance with, and otherwise implement, the Project Plans; and
 - (ii) for the purposes of **subparagraph (i)**, must:
 - A. prepare draft Project Plans based on the outline approach to preparing the Project Plans and performing the Services to be covered by the Project Plans, submitted by the Consultant in its tender for the Services, and otherwise in accordance with the requirements of the Contract and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Services and in any event no later than:
 - 1) for any of the Environmental Management Plan, the Site Management Plan the Work Health and Safety Plan the Design Management Plan and the User Group Consultation and Endorsement Plan, the number of days set out in **Item 44 of the Contract Particulars** after the Award Date for each Project Plan; and
 - 2) for the Commissioning and Handover Plan, at least 14 days prior to the issue of any Design Documentation for the purpose of engaging a Contractor;
 - B. not commence any of the Services to which any Project Plan applies, unless the Contract Administrator has had the number of days set out in **Item 45 of the Contract Particulars** to review the draft Project Plans and has not rejected them;
 - C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Contract Administrator;
 - D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Services and in any event in accordance with the requirements of the Contract;
 - E. after the Project Plans have been finalised, continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Consultant) and submit an amended draft of the Project Plan to the Contract Administrator, after which **subsubparagraphs A-D** will apply (to the extent applicable); and
 - F. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
- (b) The Consultant will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
- (i) the implementation of, and compliance with, the requirements of any Project Plan;
 - (ii) any Direction by the Contract Administrator concerning a Project Plan or the Consultant's compliance or non compliance with a Project Plan;
 - (iii) any audit or other monitoring by the Contract Administrator of the Consultant's compliance with a Project Plan; or

- (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Territory, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

8. TIME

8.1 Progress

The Consultant must:

- (a) regularly and diligently progress the Services; and
- (b) subject to **clause 8.11**, achieve Completion of each Milestone by its Date for Completion.

8.2 Programming

The Consultant must:

- (a) within 14 days of the Award Date, prepare a program of the Services which must:
 - (i) be based upon the Territory's Program; and
 - (ii) contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than that specified in **Item 46 of the Contract Particulars** to take account of:
 - (i) changes to the program;
 - (ii) changes to the Territory's Program; or
 - (iii) delays which may have occurred, including any for which the Consultant is granted an extension of time under **clause 8.8**;
- (c) give the Contract Administrator copies of all programs for approval;
- (d) ensure that the subconsultants adhere to the program; and
- (e) provide all programs in a format compatible with the software described in **Item 47 of the Contract Particulars**.

8.3 Consultant Not Relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Contract Administrator will not:

- (a) relieve the Consultant from or alter its liabilities or obligations under the Contract especially (without limitation) the obligation to achieve Completion of each Milestone by its Date for Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any, or all, of the Services; or
- (c) affect the time for the carrying out of the Territory's or Contract Administrator's Contract obligations.

8.4 Suspension

- (a) The Contract Administrator:
 - (i) may instruct the Consultant to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Services; and

- (ii) is not required to exercise the Contract Administrator's power under **subparagraph (i)** for the benefit of the Consultant.
- (b) If a suspension under this **clause 8.4** arises as a result of:
 - (i) the Consultant's failure to carry out its obligations in accordance with the Contract, the Consultant will not be entitled to make any Claim against the Territory arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Consultant's failure to carry out its obligations in accordance with the Contract:
 - A. an instruction to suspend under this **clause 8.4** will entitle the Consultant to:
 - 1) be paid by the Territory the extra costs reasonably incurred by it as a result of the suspension as determined by the Contract Administrator; and
 - 2) an extension of time to any relevant Date for Completion where it is otherwise so entitled under **clause 8.5**;
 - B. the Consultant must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - C. the Consultant will not be entitled to make any other Claim against the Territory arising out of, or in any way in connection with, the suspension other than under this **subparagraph (ii)**.
- (c) Except to the extent permitted by the Security of Payment Legislation, the Consultant may only suspend the Services when instructed to do so under this **clause 8.4**.

8.5 Delays Entitling Claim

If the Consultant is, or is likely to be, delayed:

- (a) prior to the Date for Completion of a Milestone, by an Act of Prevention in a manner which will prevent it from achieving Completion of the Milestone by the relevant Date for Completion; or
- (b) after the Date for Completion of a Milestone, by an Act of Prevention in a manner which will delay it in achieving Completion of the Milestone,

the Consultant may claim an extension of time.

8.6 Claim

To claim an extension of time, the Consultant must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Contract Administrator for an extension to the relevant Date for Completion, which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that it will be delayed in achieving Completion in the manner set out in **clause 8.7(c)**; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Consultant wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Contract Administrator:

- (i) every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
- (ii) containing the information required by **paragraph (a)**.

8.7 Conditions Precedent to Extension

It is a condition precedent to the Consultant's entitlement to an extension of time that:

- (a) the Consultant must give the written claim required by **clause 8.6** as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Consultant; and
- (c) the Consultant must have actually been, or be likely to be, delayed by:
 - (i) prior to the Date for Completion of a Milestone, an Act of Prevention in a manner which will prevent it from achieving Completion of the Milestone by the relevant Date for Completion unless that date is extended; or
 - (ii) after the Date for Completion of a Milestone, an Act of Prevention in a manner which will delay it in achieving Completion of the Milestone.

8.8 Extension of Time

Subject to **clause 8.9**, if the conditions precedent in **clause 8.7** have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Territory and the Consultant within 21 days of the Consultant's written claim under **clause 8.6**.

8.9 Reduction in Extension of Time

The Contract Administrator will reduce any extension to the relevant Date for Completion it would otherwise have notified to the Territory and the Consultant under **clause 8.8** to the extent that the Consultant:

- (a) contributed to the delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

8.10 Unilateral Extensions

Whether or not the Consultant has made, or is entitled to make, a claim for an extension of time under this **clause 8**, the Territory may, in the Territory's absolute discretion at any time and from time to time by written notice to the Consultant and the Contract Administrator, unilaterally extend any Date for Completion.

The parties acknowledge that:

- (a) the Territory is not required to exercise the Territory's discretion under this **clause 8.10** for the benefit of the Consultant;
- (b) this **clause 8.10** does not give the Consultant any rights; and
- (c) the exercise or failure to exercise the Territory's discretion under this **clause 8.10** is not capable of being the subject of a dispute or difference for the purposes of **clause 12.1** or otherwise subject to review.

8.11 Acceleration

- (a) The Contract Administrator may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a date earlier than the Date for Completion (**Accelerated Date for Completion**).

- (b) If a Direction is given by the Contract Administrator under **paragraph (a)**, the Consultant must:
- (i) use its best endeavours to:
 - A. accelerate the performance of the Services; and
 - B. otherwise do all things necessary, to achieve Completion of the Milestone by the Accelerated Date for Completion; and
 - (ii) keep the Contract Administrator fully and regularly informed of the progress of the Services against the Accelerated Date for Completion.
- (c) The Consultant will:
- (i) be entitled to its extra costs properly and reasonably incurred in complying with **paragraph (b)**; and
 - (ii) not be entitled to make any Claim, other than for payment of an amount in accordance with **subparagraph (i)**, arising out of or in connection with a Direction by the Contract Administrator under **paragraph (a)**.
- (d) If the Consultant does not achieve Completion of a Milestone by its Accelerated Date for Completion, the Consultant must nevertheless:
- (i) use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Date for Completion; and
 - (ii) in any event, achieve Completion of the Milestone no later than its Date for Completion.

9. VARIATION

9.1 Variation Price Request

The Contract Administrator may, at any time, issue a document titled "Variation Price Request" to the Consultant which will set out details of a proposed Variation which the Territory is considering with respect to the Services.

The Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant that would be involved in carrying out the proposed Variation.

Within 14 days of the receipt of a "Variation Price Request", the Consultant must provide the Contract Administrator with a written notice in which the Consultant sets out:

- (a) the adjustment (if any) to the Fee to carry out the proposed Variation; and
- (b) the effect (if any) which the proposed Variation will have on the then approved program, including each Date for Completion.

9.2 Variation Order

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

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

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

9.3 Cost of Variation

The Fee will be increased or decreased for all Variations which have been the subject of a Direction by the Contract Administrator:

- (a) as agreed under **clause 9.2(a)**;
- (b) if **paragraph (a)** does not apply, in accordance with the rates and prices in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates or prices are applicable to, or it is reasonable to use them for valuing, the Variation; or
- (c) to the extent **paragraphs (a)** and **(b)** do not apply, by a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Contract Administrator.

9.4 Rates and Prices

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

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

9.5 Omissions

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

10. PAYMENT

10.1 Payment Obligation

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

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

10.2 Payment Claims

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

- (a) at the times stated in **Item 48 of the Contract Particulars** until completion of the Services or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after completion of the Services, within the time required by **clause 10.7**;
- (c) in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
- (d) which are based on the Table of Variation Rates and Prices to the extent it is relevant;
- (e) which show separately the amounts (if any) claimed on account of:
 - (i) the Fee; and
 - (ii) all other amounts then payable by the Territory to the Consultant under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
 - (i) to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Territory to the Consultant under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time require the Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally; and
- (g) by submitting claims for payment to PMARS as specified in **Item 57 of the Contract Particulars**, marked to the attention of the Contract Administrator, including **the full name of the Directorate or Agency and their ABN as applicable**.

10.3 Conditions Precedent

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

- (iv) complied with **clause 10.16**;
 - (v) complied with **clause 10.17**;
 - (vi) provided the Contract Administrator with duly executed copies of:
 - A. any Subconsultant Deed of Covenant that the Consultant is required to obtain under the Contract;
 - B. the Consultant Deed of Covenant (if any) required under **clause 2.12**; and
 - C. the certificates required under **clause 6.14**; and
 - (vii) provided all relevant information as required under the WHS Legislation or under this Contract arising out of or in connection with work health and safety.
- (b) If the Consultant has not satisfied the conditions in **paragraph (a)** at the time of submitting a payment claim, then:
- (i) the payment claim is deemed to have been invalidly submitted under **clause 10.2**;
 - (ii) the Contract Administrator will not be obliged to include in any payment schedule under **clause 10.4** any amount included in the payment claim; and
 - (iii) the Territory will not be liable to pay any amount included in the payment claim.
- (c) If the Consultant:
- (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of **clause 10.2(f)** in relation to any amount (or portion of any amount) claimed in the payment claim,
- then:
- (iii) the Consultant will not be entitled to payment of;
 - (iv) the Contract Administrator will not be obliged to include in any payment schedule it may choose to issue under **clause 10.4**; and
 - (v) the Territory will not be liable to pay,
- the amount (or the portion of the amount) claimed in the payment claim in relation to which the Consultant has failed to comply with the requirements of **clause 10.2(f)**, unless:
- (vi) the Contract Administrator (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Consultant) issues a written notice to the Consultant identifying the documentation or information which the Consultant has failed to provide under **clause 10.2(f)**; and
 - (vii) the Consultant provides that documentation or information to the Contract Administrator within the time required in the Contract Administrator's notice.

10.4 Payment Schedules

The Contract Administrator:

- (a) may, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance **with clause 10.2**; or
- (b) may, if the Consultant fails to submit any such claim in accordance with **clause 10.2**, at any time,

give the Consultant (with a copy to the Territory), on behalf of the Territory, a payment schedule which states:

- (c) the payment claim to which it relates (if any);
- (d) the Consultant's total value of entitlement to payment under the Contract;
- (e) the amount already paid to the Consultant;
- (f) the amount (if any) which the Contract Administrator believes to be then payable by the Territory to the Consultant on account of the Fee and otherwise in accordance with the Contract and which the Territory proposes to pay to the Consultant; and
- (g) if the amount in **paragraph (f)** is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in **paragraph (f)** is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Territory has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment schedule, by the Contract Administrator will not:

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

10.5 Payment

Within the number of business days stated in **Item 49 of the Contract Particulars** of the Territory receiving a payment claim under **clause 10.4**, the Territory will pay the Consultant either:

- (a) the amount set out in the payment claim; or
 - (b) if a payment schedule is issued, the amount set out in the payment schedule,
- with the amount set out in the payment schedule to prevail in the event of inconsistency.

10.6 Payment on Account

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

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

but is only to be taken as payment on account.

10.7 Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Contract Administrator) after completion of the Services, the Consultant must give the Contract Administrator:

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

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

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

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

10.8 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under **clause 10.7** has passed, the Consultant releases the Territory from any Claim in respect of any fact, matter or thing arising out of or in any way in connection with the Services or the Contract which occurred prior to completion, except any Claim:

- (a) included in a payment claim or notice under **clause 10.7** which is given to the Contract Administrator within the time required by, and in accordance with the terms of, **clause 10.7**; or
- (b) directly arising as a result of a Claim made by a third party against the Consultant which could not have been reasonably foreseen by the Consultant at the time of submitting the payment claim and notice under **clause 10.7**.

10.9 Interest

The Territory will pay simple interest at the rate stated in **Item 50 of the Contract Particulars** on any:

- (a) amount in a payment claim (or if an alternative amount is proposed in a payment schedule under **clause 10.4**, the amount in that payment schedule) which is not paid by the Territory within the time required by the Contract; and
- (b) damages.

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

10.10 Correction of Payment Schedules

The Contract Administrator may, in any payment schedule:

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

issued by the Contract Administrator.

10.11 Right of Set-Off

The Territory may:

- (a) deduct from moneys otherwise due to the Consultant:
 - (i) any debt or other moneys due from the Consultant to the Territory; and

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

10.12 Payment of Workers and Subconsultants

The Consultant must, if requested by the Contract Administrator in relation to any payment claim under **clause 10.2**, with that payment claim provide the Contract Administrator with:

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

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

10.13 GST

- (a) Subject to **paragraph (b)**, where any supply occurs under or in connection with the Contract or the Services for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Services which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under **paragraph (a)**.
- (c) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.

- (e) In this clause:
- (i) **GST** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

10.14 Security of Payment Legislation

- (a) The Consultant agrees with the Territory that:
- (i) a payment claim submitted to the Contract Administrator under **clause 10.2** which also purports to be a payment claim under the Security of Payment Legislation is received by the Contract Administrator as agent for the Territory;
 - (ii) unless otherwise notified to the Consultant by the Territory in writing, the Contract Administrator will give payment schedules and carry out all other functions of the Territory under the Security of Payment Legislation as the agent of the Territory;
 - (iii) to the extent permitted by and for the purposes of the Security of Payment Legislation, the "reference dates" are those of the dates prescribed in **clauses 10.2(a)** and **(b)** on which the Consultant has satisfied the requirements of **clause 10.3(a)**.
- (b) Failure by the Contract Administrator to set out in a payment schedule issued under the Security of Payment Legislation or otherwise an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Territory will not prejudice:
- (i) the Contract Administrator's ability or power to set out in a subsequent payment schedule an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Territory; or
 - (ii) the Territory's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (c) The Consultant agrees that the amount set out in the payment schedule in accordance with **clause 10.4(f)** is, to the extent permitted by and for the purposes of the Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of this Contract, which the Consultant is entitled to in respect of the Contract.
- (d) The Consultant irrevocably chooses the person set out in **Item 51 of the Contract Particulars** as, to the extent permitted by and for the purposes of the Security of Payment Legislation, and to the extent that the relevant Services are to be carried out in the Territory, the authorised nominating authority.
- (e) The Consultant must not at any time, without the written consent of the Territory, divulge or suffer or permit its servants, subconsultants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Territory or any details thereof in respect of an adjudication application made under the Security of Payment Legislation (in this paragraph, the **Information**).

For the avoidance of doubt:

- (i) the Consultant's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the

Consultant is unable by requirement of law to comply with its obligation in respect of the Information;

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

10.15 Accounting Records

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

- (a) all Variations; and
- (b) all other amounts payable to the Consultant other than on account of the original Fee specified in **Item 16 of the Contract Particulars**.

10.16 Cost Allocation Advice

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

10.17 Facilities and Infrastructure Accounting

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

- (a) details of the Fee (or part) paid;
- (b) the matters specified in **Item 52 of the Contract Particulars**; and
- (c) any other matters required by the Contract Administrator.

10.18 NOT USED

11. TERMINATION

11.1 Preservation of Rights

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

11.2 Consultant Default

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

- (a) does not commence the Services in accordance with the requirements of the Contract;
- (b) suspends the Services in breach of **clause 8.4** or otherwise does not proceed with the Services regularly and diligently;
- (c) fails to comply with any of its obligations under **clause 5.1, 5.3** or **6.16**;
- (d) fails to exercise the standard of skill, care and diligence required by the Contract;
- (e) fails to comply with any of its obligations under **clause 16** or **clause 18**;
- (f) does not comply with any Direction of the Contract Administrator made in accordance with the Contract; or
- (g) is otherwise in substantial breach of the Contract.

11.3 Contents of Notice of Default

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

- (a) that it is a notice under **clause 11.3**;
- (b) the breach relied upon; and
- (c) that the Territory requires the Consultant to remedy the breach within the number of days set out in **Item 53 of the Contract Particulars** of receiving the notice.

11.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Consultant or, where the Consultant comprises 2 or more persons, to any one of those persons; or
- (b) the Consultant does not remedy a breach of Contract the subject of a notice under **clause 11.3** within the number of days set out in **Item 53 of the Contract Particulars** of receiving the notice under **clause 11.3**,

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

11.5 Territory's Entitlements after Termination

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

- (a) the Territory will:

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

11.6 Consultant's Entitlements after Termination

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

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

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

11.7 Termination for Convenience

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

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

11.8 Costs

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

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

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

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

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

11.9 Copies of Project Documents

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

- (a) providing prior written notice to the Contract Administrator of all Project Documents that it is required to keep a copy of and the basis for doing so;
- (b) maintaining confidentiality in the Project Documents in accordance with **clause 1.3(f)**; and
- (c) taking all steps which the Contract Administrator considers necessary to preserve and maintain confidentiality in the Project Documents.

12. DISPUTE RESOLUTION

12.1 Notice of Dispute

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

Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:

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

12.2 Expert Determination

If the dispute or difference is in relation to a Direction of the Contract Administrator under one of the clauses referred to in **Item 54 of the Contract Particulars** and is not resolved within 14 days after a notice is given under **clause 12.1**, the dispute or difference must be submitted to expert determination.

12.3 The Expert

- (a) The expert determination under **clause 12.2** is to be conducted by:
 - (i) the independent industry expert specified in **Item 55 of the Contract Particulars**; or
 - (ii) where no such independent industry expert is specified or **paragraph (b)** applies, an independent industry expert appointed by the person specified in **Item 56 of the Contract Particulars**.
- (b) If the expert appointed under this **clause 12.3**:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the agreement in accordance with **clause 12.9(b)** within 14 days of his or her appointment under this **clause 12**; or
 - (v) does not make a determination within the time required by **clause 12.8**,the jurisdiction of the expert shall lapse and a further expert must be appointed under **paragraph (a)**.
- (c) If there has been an appointment under **paragraph (a)** and one of the events in **paragraph (b)** has occurred, the further expert appointed under **paragraph (a)** shall not be an expert previously appointed under **paragraph (a)** in respect of the same dispute or difference.

12.4 Not Arbitration

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

12.5 Procedure for Determination

The expert will:

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

12.6 Disclosure of Interest

The expert must:

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

12.7 Costs

Each party will:

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

12.8 Conclusion of Expert Determination

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

12.9 Agreement with Expert

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

12.10 Determination of Expert

The determination of the expert:

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

12.11 Executive Negotiation

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

12.12 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under **clause 12.2**, the notice of dispute given under **clause 12.1**; or
 - (ii) otherwise, the notice of appeal given under **clause 12.10**; or
- (b) such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

- (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
- (d) cannot resolve the dispute or difference; or
- (e) have not reached agreement upon a procedure to resolve the dispute or difference,

the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

12.13 Arbitration

- (a) Arbitration pursuant to this clause will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in this clause.
- (b) The seat of the arbitration will be Canberra, Australia and hence the proper law of the arbitration shall be Australian Capital Territory.
- (c) Nothing in this clause is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 1986* (ACT). For the avoidance of doubt, the second sentence of Article 28(6) of the ICC Rules (in force from 1 January 1998) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under this **clause 12** for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
 - (ii) any arbitration conducted pursuant to this clause will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in **subparagraphs (i) and (ii)**.
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Canberra, Australia and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in **paragraph (d)** when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
 - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under **subparagraph (ii)**.
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

12.14 Proportional Liability

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

12.15 Continuation of Services

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

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

13. NOTICES

13.1 Notice of Variation

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

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

13.2 Notices of Other Claims

Except for claims for:

- (a) an extension of time under **clause 8.5**;
- (b) payment under **clause 10** of the original Fee specified in **Item 16 of the Contract Particulars**;
- (c) a Variation instructed in accordance with **clause 9.2** or to which **clause 13.1** applies; or
- (d) contribution or indemnity for loss or damage caused or contributed to by the negligence of the Territory where a third party (other than a subconsultant of the Consultant or other party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

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

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

13.3 Prescribed Notices

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

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

- (b) a written Claim within 21 days of giving the written notice under **paragraph (a)**, which must include:
- (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

13.4 Continuing Events

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

13.5 Time Bar

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

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

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

13.6 Other Provisions Unaffected

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

13.7 Address for Service

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

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post, sent by electronic mail or sent by fax, as the case may be, to the relevant address or fax number:
 - (i) stated in **Item 57 of the Contract Particulars**; or
 - (ii) last notified in writing to the party giving or serving the notice,for the party to whom or upon which the notice is to be given or served; and
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice.

13.8 Receipt of Notices

A notice given or served in accordance with **clause 13.7** is taken to be received by the party to whom or upon whom the notice is given or served in the case of:

- (a) delivery by hand, on delivery;
- (b) prepaid post sent to an address in the same country, on the third day after the date of posting;
- (c) prepaid post sent to an address in another country, on the fifth day after the date of posting;
- (d) electronic mail, on the other party's acknowledgement of receipt by any means; and
- (e) fax, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent.

14. WOL

14.1 General Obligations

Without limiting the Consultant's other obligations under the Contract, the Consultant must prepare the Design Documentation and carry out the Services in a manner which achieves the WOL Objectives.

14.2 Consultation

The Consultant must meet at such times and with such Other Contractors as the Contract Administrator may require from time to time to:

- (a) review the progress of the Design Documentation and the Services against the WOL Objectives; and
- (b) consult with the Contract Administrator and the Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the WOL Objectives.

14.3 WOL Proposals

Without limiting its other Contract obligations, the Consultant must at all times in preparing the Design Documentation and otherwise carrying out the Services:

- (a) use its best endeavours to identify, and recommend to the Contract Administrator, all reasonably available proposals for maximising the achievement of the WOL Objectives; and
- (b) consult with the Contract Administrator as to:
 - (i) proposals which it is considering making under **paragraph (a)**; and
 - (ii) possible proposals under **paragraph (a)** identified by the Territory.

14.4 Reporting

The Consultant must provide the Contract Administrator with a written performance report in such form and on such matters as the Contract Administrator may require from time to time, including a detailed explanation of the Consultant's compliance with this **clause 14**.

14.5 Commissioning and Handover

The Consultant must:

- (a) ensure that the Design Documentation:
 - (i) complies with:
 - A. the Commissioning, Handover and Takeover Guidelines; and
 - B. its Commissioning and Handover Plan; and
 - (ii) provides such information as may be necessary to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Territory;
- (b) in consultation with the Contract Administrator, provide the Territory with such other specific assistance as may be required by the Contract Administrator to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Territory; and

- (c) as and when reasonably required by the Contract Administrator, meet with the Contract Administrator and such Other Contractors or other persons as are nominated by the Contract Administrator with a view to ensuring that the Territory and the nominated Other Contractors or other persons have sufficient information to enable the nominated Other Contractors to:
- (i) operate the Works;
 - (ii) maintain the Works; or
 - (iii) perform such other activities as may be required by the Territory in respect of the Works.

14.6 Post Occupancy Evaluation

If required by the Contract Administrator, the Consultant must do all things necessary to assist (including by advising and consulting to) the Contract Administrator to:

- (a) at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and
- (b) without limiting **paragraph (a)**:
 - (i) inspect the Works to review the extent to which the achievement of the WOL Objectives has been maximised in the design and construction of the Works; and
 - (ii) issue a report to the Territory:
 - A. stating the extent to which the achievement of the WOL Objectives has been maximised in the design and construction of the Works; and
 - B. containing a list of any aspects of the Works which do not conform with the requirements of a Construction Contract.

The Consultant acknowledges that the results of the post occupancy evaluation may be used in the evaluation of future tenders submitted by the Consultant to the Territory.

14.7 Rights and Obligations Not Affected

Neither the Territory's rights, nor the Consultant's liability, whether under the Contract or otherwise according to law or in equity, will be affected or limited by:

- (a) the rights conferred upon the Territory or Contract Administrator by this **clause 14** or the failure by the Territory or the Contract Administrator to exercise any such rights;
- (b) the obligations imposed upon the Consultant by this **clause 14** or the Consultant's compliance with those obligations; or
- (c) any Direction of the Contract Administrator under or purported to be given under the Contract, including any comment or Direction upon or review, acceptance or rejection of:
 - (i) any advice, recommendation or other assistance provided by the Consultant under this **clause 14**; or
 - (ii) any post occupancy evaluation carried out (including any report prepared and finalised) under **clause 14.6**.

15. GENERAL

15.1 Workplace Gender Equality

The Consultant must:

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

15.2 NOT USED

15.3 NOT USED

15.4 IT Equipment

- (a) Without limiting any other clause of this Contract, the Consultant warrants that:
 - (i) each item of IT Equipment:
 - A. is free of defects in materials and workmanship;
 - B. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Equipment in the Contract or in any documentation accompanying that IT Equipment; and
 - C. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Equipment and other parts of the Works, will not be adversely affected by the date; and
 - (ii) no virus will be introduced into the Territory's systems as a result of the supply by the Consultant of any IT Equipment or as a result of any other act or omission of the Consultant in connection with carrying out the Services.
- (b) The Consultant must assign to the Territory the benefits of warranties given by any supplier from whom the Consultant sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Consultant becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to this clause does not in any way relieve the Consultant of the obligation to comply with warranties given by the Consultant under this Contract.

15.5 Protection of Personal Information

- (a) The Consultant agrees:
 - (i) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Contract, as if it were an agency as defined in the Privacy Act;
 - (ii) to use Personal Information received, created or held by the Consultant for the purposes of this Contract only for the purposes of fulfilling its obligations under this Contract;
 - (iii) not to disclose Personal Information received, created or held by the Consultant for the purposes of this Contract without the prior written approval of the Contract Administrator;

- (iv) not to transfer Personal Information received, created or held by the Consultant for the purposes of this Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;
 - (v) to co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with this Contract;
 - (vi) to ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of this Contract is made aware of, and undertakes in writing to observe, the Information Privacy Principles;
 - (vii) to comply with policy guidelines laid down by the Territory or issued by the Federal Privacy Commissioner from time to time relating to the handling of Personal Information;
 - (viii) to ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of this Contract are, at the expiration or earlier termination of this Contract, at the Contract Administrator's election, to be either returned to the Territory or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;
 - (ix) to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
 - (x) to ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of this **clause 15.5**, as if the subconsultant were the Consultant;
 - (xi) to enforce the obligations referred to in **subparagraph (x)** in accordance with such Directions as the Contract Administrator may give;
 - (xii) that Personal Information collected by the Consultant in connection with the Contract must not be used for, or in any way relating to, any direct marketing purpose; and
 - (xiii) to indemnify the Territory against any loss, liability or expense suffered or incurred by the Territory arising out of, or in connection with:
 - A. a breach of the obligations of the Consultant under this **clause 15.5**;
 - B. a breach of a subconsultant's obligations under a subcontract as contemplated by **subparagraph (x)**;
 - C. the misuse of Personal Information held in connection with this Contract by the Consultant or a subconsultant; or
 - D. the disclosure of Personal Information held in connection with this Contract by the Consultant or a subconsultant in breach of an obligation of confidence.
- (b) For the purposes of **paragraph (a)(xiii)**, **loss, liability or expense** includes any compensation paid to a person by or on behalf of the Territory to settle a complaint arising out of, or in any way in connection with, a breach of this **clause 15.5** by the Consultant.
- (c) The Consultant must immediately notify the Territory in writing if the Consultant:
- (i) becomes aware of a breach of the obligations under **paragraph (a)** by itself or by a subconsultant;

- (ii) becomes aware of a breach of a subconsultant's obligations under a subcontract as contemplated by **paragraph (a)(x)**;
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Consultant acknowledges that, in addition to the requirements of this **clause 15.5**, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, such as other provisions in the Privacy Act (including the National Privacy Principles) and State and Territory legislation.
- (e) Nothing in this **clause 15.5** limits any of the Consultant's other obligations or liabilities under the Contract.
- (f) In this **clause 15.5**:
- (i) **Information Privacy Principle** has the meaning given in the Privacy Act;
 - (ii) **Personal Information** has the meaning given in the Privacy Act;
 - (iii) **Privacy Act** means the *Privacy Act 1988* (Cth); and
 - (iv) **received** includes collected.

15.6 Moral Rights

- (a) To the extent permitted by law, the Consultant:
- (i) must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subconsultants do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of any Design Documentation or the Works by:
 - A. the Territory;
 - B. any third party to whom the Territory sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Design Documentation or any part of the Works (**Sub-Licensee**);
 - C. any third party to whom the Territory assigns any Intellectual Property Rights in the Design Documentation or any part of the Works (**Assignee**);
or
 - D. any Other Contractors;
 - (ii) without limiting **subparagraph (i)**, consents to any of the Territory, Other Contractors, Sub-Licensees and Assignees:
 - A. failing to acknowledge or attribute the Consultant's or any other person's authorship of any Design Documentation or any part of the Works;
 - B. falsely attributing authorship of any Design Documentation or any part of the Works; and

- C. making any modification, variation or amendment of any nature whatsoever to any Design Documentation or any part of the Works, whether or not:
 - 1) it results in a material distortion of or destruction or mutilation of the Design Documentation or any part of the Works; or
 - 2) it is prejudicial to the honour or reputation of the Consultant or any other author of any Design Documentation or any part of the Works; and
- (iii) without limiting **subparagraphs (i) and (ii)**, consents to any of the Territory, Other Contractors, Sub-Licensees and Assignees:
 - A. using any Design Documentation or any part of the Works other than for the purpose for which it was intended at the time the Design Documentation or any part of the Works (as the case may be) was created;
 - B. altering any Design Documentation or any part of the Works by adding to or removing elements from, or rearranging elements of, the Design Documentation or any part of the Works, including by combining elements of any of the Design Documentation or any part of the Works with any other material; or
 - C. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works) whether or not it incorporates, is based on, or is constructed in accordance with, any Design Documentation.
- (b) The Consultant must:
 - (i) in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of any Design Documentation or any part of the Works, obtain from that person, before he or she creates any Design Documentation or any part of the Works, a duly completed and executed Moral Rights Consent;
 - (ii) ensure that no person creates any Design Documentation or any part of the Works before that person has duly completed and executed a Moral Rights Consent;
 - (iii) not coerce any person to complete or execute a Moral Rights Consent;
 - (iv) pay to each person who executes a Moral Rights Consent in accordance with this **clause 15.6** the sum of \$1 on behalf of the Territory;
 - (v) within 7 days of a Moral Rights Consent having been executed in accordance with this **clause 15.6**, provide that Moral Rights Consent to the Contract Administrator; and
 - (vi) maintain an up-to-date record of the names and addresses of each person who is an author of any Design Documentation or any part of the Works, and the Design Documentation or any part of the Works of which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.

15.7 Freedom of Information

The *Freedom of Information Act 2016* (ACT) (**FOI Act**) gives members of the public rights of access to official documents of the Territory and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Territory, limited only by considerations for the

protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

The Consultant acknowledges that Territory is required to make certain details of the Contract available to the public in accordance with the Procurement Act.

15.8 Long Service Leave

Clause 15.8 only applies if any Long Service Leave Legislation applies to the Services.

- (a) Without limiting its other obligations or liabilities under this Contract or otherwise, the Consultant must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by any relevant Long Service Leave Legislation, the Consultant must pay any levy, charge, contribution or associated amount in respect of the Services.
- (c) Any amount paid by the Consultant under **paragraph (b)** is deemed to be included in the Fee and the Consultant will have no Claim against the Territory arising out of or in connection with its obligations under this **clause 15.8** or any other obligations under the Long Service Leave Legislation.
- (d) In this **clause 15.8, Long Service Leave Legislation** means:
 - (i) *Long Service Leave (Portable Schemes) Act 2009 (ACT)*;
 - (ii) the long service leave obligations in the National Employment Standards in the *Fair Work Act 2009 (Cth)*; and
 - (iii) any other Act in the Territory addressing long service leave in the building and construction industry.

15.9 Assignment

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

15.10 Publicity

Without limiting **clause 1.3(f)**, the Consultant must:

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

15.11 NOT USED

15.12 National Construction Code Certification

Without limiting **clauses 2.10, 2.11** and **6.14**, the Consultant must provide to the Contract Administrator written certification from an Accredited Building Surveyor:

- (a) at the time it submits any Design Documentation under **clause 6.2** - that the Design Documentation submitted at that time complies with the National Construction Code;

- (b) before issue of any Design Documentation for the purpose of engaging a Contractor - that the Design Documentation to be issued at that time complies with the National Construction Code; and
- (c) prior to Completion (as defined in the Construction Contract) of the Works or a Stage or a Section (as the case may be and as defined in the Construction Contract) - that the Works comply or the Stage or the Section (as the case may be and as defined in the Construction Contract) complies (as the case may be) with the National Construction Code.

16. NOT USED

17. BUILDING CODE 2016 - RESERVED

18. CONFIDENTIAL TEXT UNDER PROCUREMENT ACT

18.1 General

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

18.2 Confidential Text

If it is stated in **Item 59 of the Contract Particulars** that this Contract is a notifiable contract under the Procurement Act and Confidential Text is specified, the grounds on which the text is confidential are set out in **Item 60 of the Contract Particulars**, and clause 18.3 applies.

18.3 Territory must not disclose Confidential Text

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

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

19. DRAWINGS

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

- (a) the standard prescribed in **Item 61 of the Contract Particulars** (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Works);
- (b) all Statutory Requirements;
- (c) the Directions of the Contract Administrator; and
- (d) to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

20. SECURE LOCAL JOBS

20.1 Definitions for this clause

- (a) In this clause:
 - (i) **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 Consultant or one of its Associated Entities has contravened an Industrial Law;
 - (ii) **Approved Auditor** has the meaning as set out in the Procurement Act;
 - (iii) **Associated Entity** has the meaning given by section 50AAA of the Corporations Act 2001 (Cth);
 - (iv) **Code** means the Secure Local Jobs Code;
 - (v) **Full Details** means:
 - A. the nature of the Adverse Ruling;
 - B. any conviction recorded or adverse finding made in respect of the Adverse Ruling;
 - C. 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;
 - D. 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;
 - E. the name of the entity against which the Adverse Ruling was made; and
 - F. any other relevant information that the Consultant may rely on as grounds for not terminating this Contract as a result of the Adverse Ruling;

- (vi) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
 - (vii) **Labour Relations, Training and Workplace Equity Plan** has the meaning as set out in the Procurement Act;
 - (viii) **Registrar** has the meaning as set out in the Procurement Act;
 - (ix) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;
 - (x) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;
 - (xi) **Territory Entity** has the meaning as set out in the Procurement Act; and
 - (xii) **Territory-Funded Work** has the meaning as set out in the Procurement Act.
- (b) For the purposes of **clause 20.2(b)** and **clause 20.3(f)** the form set out in **Annexure 2** is approved unless otherwise advised by the Contract Administrator.

20.2 Subcontractors performing Territory-Funded Work

- (a) The Consultant must, in relation to any subcontractors engaged to perform Territory-Funded Work:
- (i) ensure terms are included in the agreement with the subcontractor:
 - A. requiring the subcontractor to comply with the Code; and
 - B. imposing obligations on the subcontractor in the same form as those set out in **clause 20** and imposed on the Consultant (subject to any necessary variation to reflect the different parties);
 - (ii) ensure:
 - A. the subcontractor holds a Secure Local Jobs Code Certificate; and
 - B. maintains a Secure Local Jobs Code Certificate during the term of their agreement; and
 - C. the obligations in **clause 20.2(a)(ii)A** and **clause 20.2(a)(ii)B** are included in the relevant agreement with the subcontractor.
- (b) The Principal may by written notice request the Consultant obtain a statutory declaration from a subcontractor engaged to perform Territory-Funded Work regarding its compliance with the Code and provide it to the Principal within 15 Business Days of the date of the written notice. The Consultant must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Consultant to comply with this **clause 20.2(b)**.
- (c) 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 and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

20.3 Consultant's Secure Local Jobs responsibilities

- (a) This **clause 20.3** applies to the extent that this Contract provides for the performance of Territory-Funded Work by the Consultant.
- (b) The Consultant must comply with all of its obligations under the Code.
- (c) The Consultant must maintain a valid Secure Local Jobs Code Certificate during the term of the Contract.
- (d) Failure of the Consultant to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Contract entitling the Principal to terminate the Contract on written notice to the Consultant.
- (e) If at any time during the term of the Contract an Adverse Ruling is made, the Consultant must, within 7 Business Days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Consultant 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.
- (f) The Consultant must provide the Contract Administrator with a statutory declaration in a form approved by the Contract Administrator regarding its compliance with the Code:
 - (i) within 5 working days of a written request from the Territory; and
 - (ii) if requested in writing by the Contract Administrator, at the time the Consultant provides a claim for payment.
- (g) Failure of the Consultant to provide a statutory declaration in accordance with **clause 20.3(f)** or the making of a false statement in a statutory declaration by the Consultant or its representative will constitute a breach of this Contract.
- (h) If the Consultant fails to provide a statutory declaration in accordance with **clause 20.3(f)(ii)** the Principal may withhold payment of monies otherwise due to the Consultant in respect of the relevant Invoice until the statutory declaration is received.
- (i) The Principal may require that Consultant 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.
- (j) The Principal may require a union workplace delegate or employee representative to attend staff induction sessions held by the Consultant except in circumstances where attendance would result in a conflict with Commonwealth laws.
- (k) The Consultant must, at all reasonable times, allow the Principal, Registrar or person nominated by the Principal or Registrar to enter the Consultant'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 20.3(k)** in circumstances where entry would result in a conflict with Commonwealth laws.
- (l) The Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by the Consultant and conduct audits and other reviews and checks, to monitor compliance with this clause and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.
- (m) If the Consultant was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the Services:

- (i) the Consultant must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
- (ii) the Consultant must report to the Principal on its compliance with **clause 20.3(m)(i)** quarterly during the term of this Contract;
- (iii) the Consultant must attend any meetings scheduled by the Principal to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
- (iv) 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.

CONTRACT PARTICULARS

[

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Item 1	Additional Project Plans: (Clause 1.1)		
Item 2	Agreed Subconsultants: (Clause 1.1 and 2.9)	Agreed Subconsultants: Agreed Subconsultant Agreement: Novation of Agreed Subconsultant Agreement from the Territory to the Consultant Agreed Subconsultant Services:	
Item 3	Brief: (Clause 1.1)		
Item 4	Commissioning and Handover Plan (Clause 1.1)		
Item 5	Completion - additional conditions precedent to Completion: (Clause 1.1)		
Item 6	Consultant: (Clause 1.1)		
Item 7	Consultant's Representative: (Clause 1.1)		
Item 8	Contract - other documents forming part of the Contract: (Clause 1.1)		
Item 9	Contract Administrator: (Clause 1.1)		
Item 10	Date for Completion of Milestones:	Milestone	Date for Completion

(Clause 1.1)	Initial Planning Phase Milestones:	
	Planning Phase Milestones:	
	Delivery Stage Milestones:	
Item 11 DCAP (Detailed Consultant's Activities Proposal): (Clause 1.1)		The DCAP provided by the Consultant in its Tender
Item 12 Environmental Management Plan (Clause 1.1)		
Item 13 Environmental Requirements (additional): (Clause 1.1)		
Item 14 ESD Principles (additional): (Clause 1.1)		
Item 15 Executive Negotiators: (Clause 1.1)	Territory:	Executive Director, Shared Services Procurement
	Consultant:	
Item 16 Fee: (Clauses 1.1, 2.9(b)(ii), C.1) 10.15(b) and 13.2(b) and special condition 6)		
Item 17 Milestones: (Clause 1.1)	Milestone	Description
	Initial Planning Phase	
	Planning Phase	
	Delivery Phase	
Item 18 Schedule of Collateral Documents: (Clause 1.1)	1.	Design Services Subcontract (DSSC- ACT–2013 - for use with DSC-ACT-2013)
	2.	Commissioning, Handover and Takeover Guidelines
	3.	Moral Rights Consent

4. Proforma Building Code 2016 Subcontract Provisions
5. Payment Claim
6. Expert Determination Agreement
7. Consultant Deed of Novation
8. Consultant Deed of Covenant
9. Subconsultant Deed of Covenant
10. Agreed Subconsultant Deed of Novation
11. Consultant Design Certificate
12. Subconsultant Design Certificate

**Item 19 Site Management Plan:
(Clause 1.1)**

**Item 20 Site:
(Clause 1.1)**

Item 21 Special Conditions: Yes
(Clause 1.1)

**Item 22 Table of Variation Rates
and Prices:
(Clause 1.1)**

**Item 23 User Group Consultation
and Endorsement Plan
(Clause 1.1)**

**Item 24 Work Health and Safety
Plan:
(Clause 1.1)** Matters be addressed in the Work Health and Safety Plan are
to include the following:

1. Proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting Statutory Requirements regarding design and the process for addressing design changes relevant to work health and safety considerations.
2. Management of work health and safety generally, Contract or site specific, including any work health and safety policy, details of any work health and safety management system (including certification,

inspection and audit programs), training and induction programs (including work health and safety generally and emergency procedures), the process of communication, information-sharing and provision of assurances to the Contract Administrator under **clause 6.16** of the Conditions of Contract, and dispute resolution on work health and safety matters.

3. Provision of assurances to the Contract Administrator regarding compliance with any relevant or applicable requirements or standards (or codes of practice) relating to the design and the provision of the Services.
4. Processes for management of sub consultants to ensure compliance with WHS Legislation and subcontract requirements.
5. Processes for carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation and the method of storing and communicating the results of such calculations, analysis, testing or examinations.
6. Management of project hazards and risks generally in respect of the design and the provision of the Services to ensure compliance with WHS Legislation.
7. Notification of any hazards that the Consultant is reasonably aware of which create a risk to health and safety of persons who are to carry out any construction work.

Item 25 WOL Objectives (specific additional):
(Clause 1.1)

Item 26 Works:
(Clause 1.1)

Item 27 Governing Law: Australian Capital Territory
(Clause 1.3(a))

CLAUSE 2 - ROLE OF THE CONSULTANT

Item 28	Services which may be let to one of the named subconsultants:	Services	Subconsultants
	(Clause 2.9(a)(i)(A))		

Item 29	Agreed Subconsultants engaged prior to Award Date: (Clause 2.9(c)(i))	Agreed Subconsultant Services	Agreed Subconsultants
Item 30	Statutory Requirements with which the Consultant does not need to comply: (Clause 2.10(a))	The Consultant is required to comply with all Statutory Requirements	
Item 31	Approvals which the Consultant is to obtain: (Clause 2.10(b)(i))		

CLAUSE 4 - PERSONNEL

Item 32	Contract Administrator's representatives and their functions: (Clause 4.4)	Representative	Function(s)
Item 33	Consultant's key people: (Clause 4.5(a))	Person	Position
Item 34	Project Review Meetings: (Clause 4.7)	Clause 4.7 applies.	

CLAUSE 5 - INSURANCE

Item 35	Insurance policies required to be obtained by the Consultant: (Clause 5.1(a))	<p>Public Liability Insurance</p> <p>Amount of Cover: [INSERT \$amount] in respect of any one occurrence.</p> <p>Workers Compensation Insurance</p> <p>Amount of Cover: The minimum amounts required by statute in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside</p> <p>Professional Indemnity Insurance</p> <p>Amount of Cover: [INSERT \$amount] per claim and [INSERT \$amount] in the annual aggregate.</p> <p>Other Insurances: (Clause 5.1(a)(iv))</p>
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[INSERT other insurances required or “nil”]

- | | | |
|----------------|--|---|
| Item 36 | Minimum amounts of subconsultants' Professional Indemnity Insurance:
(Clause 5.1(f)) | Professional Indemnity Insurance

Amount of Cover: at least [INSERT \$amount] per claim and [INSERT \$amount] in the annual aggregate. |
| Item 37 | Period for maintenance of Professional Indemnity Insurance:
(Clause 5.3(b)) | 11 years |

CLAUSE 6 - DESIGN AND DOCUMENTATION

- | Item | Territory Material and number of copies to be provided by the Territory to the Consultant: | Territory Material | Copies |
|----------------|--|--|-----------------------|
| Item 38 | Territory Material and number of copies to be provided by the Territory to the Consultant:
(Clause 6.1) | [INSERT Or write Nil] | [INSERT Or write Nil] |
| Item 39 | Number of days for review:
(Clause 6.3(a)(ii)) | 14 days | |
| Item 40 | Number of copies of Design Documentation to be submitted by the Consultant to the Contract Administrator:
(Clause 6.5) | [INSERT no. of hard copies] and [INSERT no. of electronic copies] | |
| Item 41 | Design Documentation hard copy requirements:
(Clause 6.5(a)) | Compatible with Autocad 14
To scale
Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator) | |
- [OR, if different specifications were set out in Item 41 Attachment 7 of the RFT, DELETE the above and include those specifications]

Item 42 Design Documentation electronic copy requirements: (Clause 6.5(b)) Compatible with Autocad 14 CD-ROM or as determined by the Contract Administrator

[OR, if different specifications were set out in Item 42 Attachment 7 of the RFT, DELETE the above and include those specifications]

- Item 43 Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency: (Clause 6.11(a))**
1. letter of acceptance (if issued)
 2. Formal Agreement (if signed)
 3. Special Conditions of Contract
 4. Conditions of Contract
 5. Contract Particulars
 6. Brief
 7. Any other documents forming part of the Contract (as set out in Item 8 in these Contract Particulars)
 8. Design Documentation (which has not been rejected under **clause 6.3**)
 9. DCAP
 10. Project Plans

CLAUSE 7 - QUALITY

Item 44 Number of days for submission of Project Plans: (Clause 7.4(a)(ii)A(1))

Site Management Plan: [INSERT days]

Environmental Management Plan: [INSERT days]

Work Health and Safety Plan: [INSERT days]

Design Management Plan: [INSERT days]

User Group Consultation and Endorsement Plan: [INSERT days]

Other: [INSERT days]

(Note: for days for submission of Commissioning and Handover Plan see **clause 7.4(a)(ii)A(2)**)

- Item 45** **Number of days for review of Project Plans:** 14 days
(Clause 7.4(a)(ii)B))

CLAUSE 8 - TIME

- Item 46** **Maximum intervals between program updates by Consultant:** 30 days
(Clause 8.2(b))
- Item 47** **Program format to be compatible with:** Primavera P6 or appropriate equivalent
(Clause 8.2(e))

CLAUSE 10 - PAYMENT

- Item 48** **Times for submission of payment claims by the Consultant to Contract Administrator:** The Fee is payable in instalments. Invoices may only be submitted on or after Completion of the following Milestones:
(Clause 10.2(a))
- Item 49** **Number of business days for payment:** 20
(Clause 10.5)
- Item 50** **Interest Rate:** The rate of interest applying from time to time under the *Court Procedure Rules 2006 (ACT), Schedule 2 Part 2.2* (Interest after judgement) as if unpaid amount of the judgement of the Supreme Court.
(Clause 10.9)
- Item 51** **Appointed /Authorised Nominating Authority:** The Chair of the Institute of Arbitrators and Mediators Australia of the Chapter in the Territory.
(Clause 10.14(d))
- Item 52** **Facilities and infrastructure accounting (additional):** Nil.
(Clause 10.17(b))

CLAUSE 11 - TERMINATION

- Item 53** **Number of days to remedy breach:** 14 days
(Clauses 11.3(c) and 11.4(b))

CLAUSE 12 - DISPUTE RESOLUTION

- Item 54** **Directions to be the subject of an expert determination:** Directions under clauses 2.11(d), 2.13 (b), 8.4(b)(ii)(A.1), 8.8, 8.9, 9.3(b), 9.3(c)(ii), 10.4, 11.8(a) and 15.3 (e).

(Clause 12.2)

Item 55	Industry expert who will conduct expert determinations: (Clause 12.3(a)(i))	None specified.
Item 56	Nominating authority for expert: (Clause 12.3(a)(ii))	The President for the time being of the Institute of Arbitrators and Mediators Australia

CLAUSE 13 - NOTICES

Item 57	Address, fax, email, for the giving or serving of notices, upon: (Clause 13.7(b)(i))	Territory:
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Contract Administrator:

For the purposes of **clause 10.2(g)**, payment claims are to be:

1. Submitted through PMARS.
2. Made in favour of the represented Directorate of the Principal being (insert the full name of the Directorate or Agency and their ABN as applicable) and is to be provided to the Contract Administrator. Payment Claims are to be addressed as follows:
Directorate
Directorate Representative
Directorate Address

[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 PAP.]

Consultant:

CLAUSE 17 – BUILDING CODE 2016

- | | | |
|----------------|---|--|
| Item 58 | Application of Clause 17
(Clause 17.1) | Clause 17 does not apply – the Works are not part of a Commonwealth Funded Project. |
|----------------|---|--|

CLAUSE 18- CONFIDENTIAL TEXT UNDER PROCUREMENT ACT

- | | | |
|----------------|--|---|
| Item 59 | Confidential Text
(Clause 18.2) | Clause 18.2 applies. This Contract is a “notifiable contract” under the Procurement Act. The following is Confidential Text: |
|----------------|--|---|

- | | | |
|----------------|--|---|
| Item 60 | Grounds for
Confidentiality of Text
(Clause 18.2) | The Procurement Act, part 3 (Notifiable Contracts) applies to this Contract. 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.

- | | | |
|----------------|---------------------------------|---|
| Item 61 | Drawings
(Clause 19) | Drawings must be prepared to the minimum standard set out in the Brief at section [INSERT REF]. |
|----------------|---------------------------------|---|

ANNEXURE 1 - COMPLETION

- | | | |
|----------------|--------------------|----------------------------|
| Item 62 | Annexure 1: | Annexure 1 applies. |
|----------------|--------------------|----------------------------|

- | | | |
|----------------|---|-----|
| Item 63 | Number of copies of Final
Operation and
Maintenance Manuals:
(Clause 3(b)(iv)) | nil |
|----------------|---|-----|

Item 64	Content of manuals (additional): (Clause 3(e)(xii))	nil
Item 65	Number of persons to be trained: (Clause 4(a))	No training services are required.
Item 66	Categories of persons to be trained: (Clause 4(a))	No training services are required.

ANNEXURE 1 – COMPLETION

Annexure 1 applies unless **Item 62 of the Contract Particulars** state that it does not apply.

1. "As-Constructed" Drawings and Documents

The Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Construction Contract), if requested by the Contract Administrator:

- (a) provide to the Contract Administrator the number of complete sets of the drawings and documents as follows:

Description	Hard copy format	No of hard copies	Electronic copy format	No of electronic copies
(i) Wiring diagrams				
(ii) Functional diagrams				
(iii) "As-Constructed" drawings				
(iv) "As-Constructed" lighting and power layout				
(v) "As-Constructed" main switchboard layout				
(vi) "As-Constructed" main switchboard schematic drawings				
(vii) "As-Constructed" main switchboard circuit index				
(viii) "As-Constructed" fire detector layout				
(ix) Wiring diagram for the fire alarm control panel				
(x) "As-Constructed" underground cabling layout				
(xi) "As-Constructed" distribution board layout				
(xii) "As-Constructed" distribution board circuit index				
(xiii) "As-Constructed" sub mains cabling layout				
(xiv) "As-Constructed" Site survey				
(xv) [Instructional note: INSERT OTHER "AS-CONSTRUCTED DOCUMENTS REQUIRED. THE				

ABOVE LIST IS BY WAY OF EXAMPLE ONLY, delete or amend as necessary.				
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- (b) without limiting **paragraph (a)**, ensure that the "As-Constructed" drawings and documents:
- (i) are prepared in accordance with the requirements of the Contract; and
 - (ii) have the words "As-Constructed" printed in the following locations:
 - A. if a document, immediately above the title and reference; and
 - B. if a drawing, immediately above the title and drawing number block at the bottom right hand corner of the drawing and immediately to the left of the drawing number block at the top left hand corner of the drawing, parallel to and outside the left hand border of the drawing; and
- (c) provide to the Contract Administrator a comprehensive document and drawing index setting out all documents and drawings prepared by the Consultant and by its subconsultants.

2. Warranties

If requested by the Contract Administrator, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Construction Contract), provide the Contract Administrator with the following minimum warranties, in the form of the Collateral Warranty (as defined in the Construction Contract), for the following warranty periods:

Description	Warranty Period
[INSERT]	[INSERT]
[INSERT]	[INSERT]
[INSERT]	[INSERT]
[INSERT]	[INSERT]

3. Operation and Maintenance Manuals

If requested by the Contract Administrator and to the extent that the Services are relevant, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Construction Contract):

- (a) assist in the compilation of specific operation and maintenance manuals for each aspect of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract), including obtaining and coordinating information provided by the Consultant and its subconsultants;
- (b) without limiting **paragraph (a)**:
 - (i) prior to the commencement of commissioning of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract), provide one copy of draft operation and maintenance manuals in respect of each aspect of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract) (**Draft Operation and Maintenance Manuals**) to the Contract Administrator for approval;
 - (ii) within 14 days of the completion of the commissioning of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract), provide one copy of all operation and maintenance manuals in respect of the Works or the Stage or

Section (as the case may be and both as defined in the Construction Contract) which have been amended during commissioning (**Draft Amended Operation and Maintenance Manuals**) (such amendments being clearly indicated in each Draft Amended Operation and Maintenance Manual) to the Contract Administrator for approval;

- (iii) resubmit the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals to the Contract Administrator as necessary; and
- (iv) once approved by the Contract Administrator, submit the number of copies of the final, approved versions of the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) set out in Item 63 of the Contract Particulars to the Contract Administrator.

For the purposes of this **clause 3**:

- (c) catalogues, sales brochures and other documents giving general information in respect of aspects of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract) will not be acceptable;
- (d) all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract); and
- (e) without limiting the generality of this **clause 3**, the manuals must be securely bound in 2 ring binders and include:
 - (i) a comprehensive list of contents including illustrations and drawings;
 - (ii) function, application, specification and comprehensive technical data of all equipment including sub-assemblies, proprietary items, and system circuit and schematic diagrams where applicable;
 - (iii) a description of the equipment and its principles of operation;
 - (iv) routine maintenance and lubrication schedules;
 - (v) dismantling and re-assembly procedures;
 - (vi) trouble-shooting suggestions;
 - (vii) a complete lists of parts;
 - (viii) a list of spare parts recommended to be held in stock;
 - (ix) the procedure for ordering spare parts;
 - (x) clear and comprehensive illustrations and/or drawings with parts readily identifiable;
 - (xi) text which is clearly printed on good quality A4 size matt paper, not less than 95 gsm; and
 - (xii) the matters specified in Item 64 of the Contract Particulars;
 - (xiii) any other matter required by the Contract Administrator.

4. Training

If requested by the Contract Administrator and to the extent that the Services are relevant, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (as the case may be and both as defined in the Construction Contract):

- (a) during commissioning of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract), assist in the planning, management and delivery of a comprehensive training program in respect of all operational and maintenance aspects of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract) for the number of and each category of persons set out in Items 65 and 66 of the Contract Particulars; and
- (b) assist in the carrying out of such training using:
 - (i) trained instructors, fully experienced in respect of all operational and maintenance aspects of the Works or the Stage or Section (as the case may be and both as defined in the Construction Contract); and
 - (ii) the Final Operation and Maintenance Manuals, with copies of such manuals to be made available during the training to all trainees.

ANNEXURE 2 – ETHICAL SUPPLIERS DECLARATION

ETHICAL SUPPLIERS DECLARATION

See clause 9(17)

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 design parts of the Works or to provide other 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