

NOTE TO TENDERERS/PANEL MEMBERS: PREFERRED TENDERERS FOR THE TERRITORY'S PROJECT MANAGER PANEL WILL BE APPOINTED TO THE PANEL BY WAY OF A PANEL DEED.

WORK WILL BE ALLOCATED TO PANEL MEMBERS IN ACCORDANCE WITH SCHEDULE 4 OF THE PANEL DEED, BY WAY OF A WORK ORDER.

IF YOU ARE SELECTED FROM THE PANEL TO PROVIDE SPECIFIC SERVICES THE TERMS OF YOUR ENGAGEMENT WILL BE AS SET OUT IN THIS PROJECT MANAGEMENT AGREEMENT, THE EXECUTED WORK ORDER, AND THE PANEL DEED.

PROJECT MANAGEMENT AGREEMENT

[TEMPLATE VERSION – JULY 2021 – FOR USE IN RELATION TO THE TERRITORY'S PM PANEL ONLY]

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PROJECT MANAGEMENT AGREEMENT

IN RELATION TO [REFER TO WORK ORDER]

PARTIES

Upon execution of the Work Order, this Agreement is made between and binds **the Territory** and the **Project Manager** (as defined in the Panel Deed).

RECITALS

This Agreement is made in the following context:

- A. The Principal intends to undertake the Project and requires the services of a project manager to provide the Services and deliver the Works.
- B. The Project Manager is a member of the Panel.
- C. The Principal has issued a draft Work Order to the Project Manager in accordance with the Panel Deed.
- D. The Project Manager has submitted a response to the draft Work Order and has represented to the Principal that it is capable of undertaking the Services and delivering the Works in accordance with this Agreement, the draft Work Order and the Panel Deed.
- E. On the basis of the representations made in the Project Manager's response to the draft Work Order, the Principal wishes to appoint the Project Manager to undertake the Services and deliver the Works in accordance with this Agreement, the Panel Deed and the finalised and executed Work Order, and the Project Manager wishes to accept that appointment.
- F. The Principal and the Project Manager seek to work in a collaborative and supportive manner as detailed in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

1. Interpretation

1.1. Definitions

- 1.1.1. In this Agreement unless inconsistent with the context or subject matter or unless a contrary intention appears:

Actual Cost of Construction

means:

the aggregate of all amounts properly and actually incurred and payable to the Project Manager, Trade Contractors, Subcontractors, suppliers and Consultants for the performance of the Works and Services but excludes:

- (1) amounts incurred by Trade Contractors or Subcontractors for correcting Defects; and
- (2) other amounts not properly incurred or payable under this Agreement in respect of the execution of the Services or Works; or
- (3) other amounts which the Agreement provides are to be borne by the Project Manager or to be a debt due from the Project Manager to the Principal.

Agreement

means the documents that comprise this Agreement as set out in **Item 2 - Contract Information**.

Approval	means any licence, permit, certificate, notice, approval, authority or consent required from any Authority necessary to carry out the Services or the Project or to enable the construction and subsequent use of the Works in the manner intended by the Principal.
Asset	means any plant, equipment, machinery or other item which has been purchased by or for the Principal for exclusive use in the Project.
Australian Standard (AS)	means a standard published by Standards Australia Limited.
Authority	means any governmental, statutory or public authority or body having jurisdiction over the Site, the Services or the Works or from whom Approvals must be obtained rights provided to or work to be performed to its satisfaction.
Building Services	means mechanical, electrical, security, hydraulic, fire and communications plant and equipment, and any other items or components specified in the Project Brief or the Endorsed Design Documents to be part of the Works.
Business Day	means a day which is not: (1) a Saturday or a Sunday; (2) a public holiday in the Territory under the <i>Holidays Act 1958</i> (ACT); or (3) 27, 28, 29 ,30 or 31 December.
Certificate of Completion of the Services	means a certificate issued by the Principal's Representative under clause 15.3 .
Certificate of Useability	means a certificate endorsed by the Principal's Representative following issue by the Project Manager to the Principal under clause 9.4.1 certifying that the Works and Services have reached the stage described in that clause and must be in a form as set out in the Schedule of Collateral Documents – Project Management Agreement , or such other form as advised by the Principal.
Claim	includes any claim for an increase in the Contract Sum (or part of the Contract Sum) or payment of money (including damages): (1) under, arising out of or in connection with this Agreement including any Direction of the Principal's Representative; (2) arising out of or in any way in connection with the Services or Works; or (3) arising otherwise at law or in equity including: (a) by statute; (b) in tort for negligence including negligent misrepresentation; or (c) for restitution.
Commencement Date	means the date specified in Item 3 - Contract Information on which this Agreement commences.
Conditions Precedent	means in respect of: (1) the Project Manager, all conditions set out in clause 6.2 ; and (2) Trade Contractors and Subcontractors, all conditions set out in clause 6.3 and any other conditions precedent in the relevant Trade Contract or Subcontract.
Confidential Text	means any text of this Agreement specified in Item 14 - Contract Information .
Consultant	means:

	<p>(1) a consultant nominated by the Project Manager in its Tender to perform any part of the Services who is listed in Section D of Schedule 6 or subsequently agreed by the Principal; or</p> <p>(2) a person or entity who is engaged by the Project Manager as a Nominated Consultant for the performance of any part of the Services.</p>
Contract Information	the information regarding the contract set out in Schedule 1 .
Contract Material	<p>means any material:</p> <p>(1) created for the purposes of this Agreement;</p> <p>(2) provided or required to be provided to the Principal as part of the Services (including any prepared in the performance of design obligations) or Works; or</p> <p>(3) derived at any time from the material referred to in paragraphs (1) or (2); and includes</p> <p>(4) the Design Documents developed by the Project Manager and/or its Consultants.</p>
Contractor Certificate of Practical Completion	means a certificate issued to a Trade Contractor or Subcontractor as evidence of Contractor Practical Completion having been reached in accordance with the relevant Trade Contract or Subcontractor.
Contractor Practical Completion	means, in respect of a Trade Contract or Subcontract, the date on which practical completion of the works to be performed under that relevant contract will occur.
Contract Sum	<p>means the total of:</p> <p>(1) Reimbursable Costs;</p> <p>(2) the Support Management Fee; and</p> <p>(3) Profit.</p>
Copy	means any document, device, article or medium in which Principal Material, Contract Material, Contract Documents or Confidential Information is embodied.
Cost Plan	means the plan prepared by the Project Manager or Principal in accordance with Item 1.2 of Schedule 2 , as amended from time to time with the approval of the Principal's Representative and will be in the form set out in the Schedule of Collateral Documents – Project Management Agreement .
Date for Completion of the Services	means the date (or last day of the period) on, or by which, the Project Manager must ensure completion of the Services is achieved. Unless otherwise specified in this Agreement, the Date for Completion of the Services is the last day of the Defects Liability Period, the initially estimated date of which is specified in Item 5 – Contract Information .
Date for Practical Completion of the Works	means the date specified in the relevant Work Order on or before which the Project Manager is to bring the whole of the Works or a Stage of the Works (as applicable) to Practical Completion.
Date of Practical Completion	means in respect of a Stage of the Works or the Works (as applicable) the date of the endorsement by the Principal of the Certificate of Useability for that Stage or the Works.

Day Labour	means ad hoc physical labour supplied by the Project Manager for work carried out on Site, which is authorised by the Principal's Representative under clause 11.9 prior to the work being carried out.
Deed of Novation	means a deed in the form of that set out at in the Schedule of Collateral Documents – Project Management Agreement .
Defect	means: <ul style="list-style-type: none"> (1) any defect, fault, shrinkage, error, omission or non-compliance of the Works, Building Services or a part thereof with any aspect of the Endorsed Design Documents or this Agreement; and (2) anything else defined as a 'defect' or which a Trade Contractor or Subcontractor is otherwise required to remedy under the terms of any Trade Contract or Subcontract.
Defects Liability Period	unless specified otherwise in the Project Brief or this Agreement, means 12 months () from the date of endorsement of the Certificate of Useability by the Principal.
Design Documents	means any plans, drawings, specifications and other Material relating to the design of the Works which is: <ul style="list-style-type: none"> (1) developed by the Project Manager and/or its Consultants in performance of the Project Manager's design obligations; (2) provided as Principal Material; and/or (3) derived from material referred to in paragraphs (1) or (2).
Direction	includes any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, order, notice, permission, rejection, request or requirement which the Principal's Representative may make, give or issue under this Agreement.
Endorsed Design Documents	means all Design Documents relating to the design of the Works which have not been rejected by the Principal's Representative.
Final Certificate	means a document issued by the Project Manager to a Trade Contractor or Subcontractor certifying that all the Works to be performed by the relevant Trade Contractor or Subcontractor have been completed in accordance with the relevant Trade Contract or Subcontract.
Form TQF	see definition of TQF.
Handover Date	means the date on which the Principal endorses the Certificate of Useability.
Hazardous Substance	includes anything which is defined as a 'dangerous substance' in the <i>Dangerous Substances Act 2004</i> (ACT) (as amended from time to time) or which may otherwise create a risk to the health or safety of persons or property (including the Works).
Information Privacy Act	the <i>Information Privacy Act 2014</i> (ACT).
Insolvency Event	means any one or more of the following: <ul style="list-style-type: none"> (1) the Project Manager is insolvent;

- (2) the Project Manager is unable to proceed with this Agreement or pay any debt as and when it falls due for financial reasons;
- (3) execution is levied against the Project Manager by a creditor;
- (4) where the Project Manager is a corporation and any one of the following events occurs:
 - (a) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (b) the corporation entering a deed of company arrangement with creditors;
 - (c) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (d) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (e) a winding up order is made in respect of the corporation;
 - (f) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding up); or
 - (g) a mortgagee of any property of the corporation takes possession of that property.

Intellectual Property

includes:

- (1) all rights in relation to inventions, plant varieties, trademarks (including service marks), copyright, patents, designs and circuit layouts; and
- (2) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- (3) Moral Rights;
- (4) the non proprietary rights of performers; or
- (5) rights in relation to confidential information.

Key Personnel

means the Project Manager's Specified Personnel in the Panel Deed, subject to any Work Order.

Master Program

means the program for the Services and the Works endorsed by the Principal's Representative under **clause 8.1** including any changes to the Master Program which are endorsed by the Principal's Representative from time to time, and must, without limitation, include programming for each Trade Contractor, Subcontractor and Consultant.

Material

means the subject matter of any category of Intellectual Property.

Moral Rights

means the following non-proprietary rights of authors of copyright Material:

- (1) the right of attribution of authorship;
- (2) the right of integrity of authorship; and
- (3) the right not to have authorship falsely attributed.

Nominated Subcontractor	means a subcontractor listed in Item 11 - Contract Information who the Principal requires the Project Manager to engage (either directly or through novation of a contract entered into by the Principal) to perform any part of the Works.
Nominated Consultant	means a subconsultant listed in Item 12 - Contract Information who the Principal requires the Project Manager to engage (either directly or through novation of a contract entered into by the Principal) to perform any part of the Services.
Panel	means the panel established and managed by the Principal for the provision of project management services in the construction field.
Panel Deed	means the deed (howsoever named) between the Principal and the Project Manager appointing the Project Manager to the Panel.
Permitted Acts	means any of the following classes or types of acts or omissions: <ul style="list-style-type: none"> (1) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship; (2) supplementing the Contract Material with any other Material; and (3) using the Contract Material in a different context to that originally envisaged; but does not include false attribution or authorship.
Personal Information	has the same meaning as the term 'personal information' in the Information Privacy Act namely, information or an opinion about an identified individual or an individual who is reasonably identifiable: <ul style="list-style-type: none"> (1) whether the information is true or not; and (2) whether the information or opinion is recorded in a material form or not, but does not include personal health information (as defined in the <i>Health Records (Privacy and Access) Act 1997 (ACT)</i>) about the individual.
Personnel	means the Project Manager's Subcontractors (including suppliers), Consultants, officers, employees and agents and the officers, agents and employees of its Subcontractors and Consultants.
Policy	means the Principal controlled annual construction works insurance policy which has application to the Works, the details of which are as set out in Item 24 - Contract Information .
Practical Completion	means completion of the Works or a Stage of the Works (as applicable) to the point where the Principal is able to endorse the Certificate of Useability in respect of the Works or the referable Stage of the Works.
Prequalification	means accreditation as a project manager in the field of construction activity for and on behalf of the Territory.
Principal Material	means any material provided by the Principal to the Project Manager for the purposes of this Agreement including but not limited to the Project Brief, the documents set out in Schedule 10 , and any Design Documents provided by the Principal.
Principal's Representative	means the person referred to in Item 15 - Contract Information and any successor notified by the Principal.
Principal Supplied Items	means any materials, products or other items to be supplied directly by the Principal for the purposes of the Project as set out in Item 19 - Contract Information .

Procurement	means any tender or other procurement process which the Project Manager is responsible for conducting and all materials or other items which the Project Manager is responsible for procuring in connection with the Works or Services.
Procurement Act	means the <i>Government Procurement Act 2001</i> (ACT) and any regulations made under that Act.
Procurement Protocols	means all Statutory Requirements relating to procurement by the Principal, and all policies, procedures, protocols and guidelines as advised by the Principal to the Project Manager from time to time, relevant to the conduct of Procurements and includes those matters set out in Schedule 4 .
Profit	means the lump sum component of the Contract Sum which represents the Project Manager's profit as specified in the Table at Section A of Schedule 6 (or such revised sum as determined in accordance with this Agreement).
Profit Adjustment Event	<p>means an increase or decrease to the Project Budget of at least 10% (or such other percentage as specified in Item 25 - Contract Information), which increase or decrease may be cumulative.</p> <p><i>[Example assuming percentage of 10% - at the date of this Agreement the Project Budget is \$1 million. On day X the initial Project Budget is increased to add an additional \$50,000 being a 5% increase, which would not, of itself, constitute a Profit Adjustment Event. On day Y an additional \$50,000 is added to the Project Budget resulting in a revised Project Budget of \$1.1 million. The cumulative increases on Day X and Day Y are combined to result in an increase to the initial Project Budget of at least 10% resulting in a Profit Adjustment Event.</i></p> <p><i>Example assuming percentage of 10% - at the date of this Agreement the Project Budget is \$1million. On day X the initial Project Budget is decreased by 5% , being \$50,000. On day Y a further decrease of \$50,000 occurs. The cumulative decrease on days X and Y are combined to result in a decrease to the initial Project Budget of at least 10% resulting in a Profit Adjustment Event.]</i></p>
Profit and Support Management Fee	means the amount so described in Section A, Schedule 6 (or such revised sum as determined in accordance with this Agreement).
Profit Percentage	<p>means the percentage calculated as follows (based on amounts as initially set out in this Agreement):</p> <p><u>Profit</u> Project Budget</p>
Project	means the project referred to in Item 1 - Contract Information which is described in more detail in the Project Brief.
Project Brief	means the brief provided by the Principal in respect of the Project as set out in Schedule 8 .
Project Budget	means the amount specified as the 'maximum project budget' in Section E of Schedule 6 being the Principal's budget for the delivery of the whole of the Works and the Services (including contingency amounts), or such amount as varied by the Principal from time to time.
Project Manager's Documents	<p>means both:</p> <ol style="list-style-type: none"> (1) drawings, specifications, calculations and other documents and information, meeting the requirements of clause 2.3, which the Project Manager must produce to design and facilitate construction of the works in accordance with the Agreement; and (2) documents which become Project Manager's Documents under the Agreement, including Principal's Material checked, accepted and adopted under 2.3.

Project Manager's Representative	means the person referred to in Item 16 - Contract Information and any successor notified by the Project Manager.
Project Quality Plan (PQP)	means the plan which sets out how the Project Manager will implement a comprehensive QMS and which is second party certified as a minimum, to the latest version of Australian Standard ISO9001 and meets the Principal's standards for Prequalification.
Quality Management System (QMS)	<p>means the systems, processes and procedures required to be put in place by the Project Manager to monitor and ensure the quality of the Services and the Works, which must include as a minimum the following:</p> <ol style="list-style-type: none"> (1) Project Quality Plan; (2) WHS system; and (3) environmental management system (EMS), <p>which meets the requirements set out in Schedule 3 and the Project Brief.</p>
Quality Records	means all plans, WAE Drawings, specifications and all final maintenance manuals, operating instructions, training, warranties, and other similar Material relating to the Works, Building Services and the Services which is required to be provided by the Project Manager in connection with the QMS, including as set out Project Brief.
Reimbursement Certificate	means a statutory declaration in the form set out in the Schedule of Collateral Documents - Project Management Agreement .
Reimbursable Costs	means costs which are payable by the Principal to the Project Manager under clause 11.8 on a reimbursable basis for actual costs incurred and substantiated by the Project Manager.
Reimbursable Costs Cap	<p>means the maximum amount of Reimbursable Costs allowed for each category of Reimbursable Costs, being:</p> <ol style="list-style-type: none"> (1) in respect of costs incurred by the Project Manager, the maximum amounts set out in the table in Section A of Schedule 6; (2) in respect of administration costs and on-site personnel, the maximum amount set out in the table in Section B of Schedule 6; (3) in respect of Subcontractors and materials, Day Labour and hire of plant and equipment, the maximum amounts set out in Section C of Schedule 6; and (4) in respect of Consultants, the maximum amounts set out in Section D of Schedule 6.
Schedule of Collateral Documents – Project Management Agreement	the schedule of proforma documents applicable to the Project Management Agreement posted on tenders.act.gov.au (or any alternative location notified by the Principal), as amended from time to time by the Principal.
Schedule of Forecast Claims	means the schedule endorsed by the Principal in accordance with clause 11 .
Security	means in respect of:

	<ul style="list-style-type: none"> (1) the Project Manager, any form of security referred to in Item 17 - Contract Information; and (2) a Trade Contractor or Subcontractor, such form of security specified in the relevant Trade Contract or Subcontract.
Services	means project management, managing contractor, superintendency, supervision of the Works, design and related services required expressly or by implication by this Agreement.
Site	means the site of the Works as stated in Item 6 - Contract Information .
SOP Act	means the <i>Building and Construction Industry (Security of Payment) Act 2009</i> (ACT) and any regulations made under that Act.
Stage	means the separable portions in which the Works will be performed as set out in the Master Program, or as determined under clause 9.1 of this Agreement.
Statutory Requirements	<p>means all:</p> <ul style="list-style-type: none"> (1) laws including Acts, ordinances, regulations, by-laws, orders, awards and proclamations of Authorities; (2) Approvals; and (3) costs, fees, charges and expenses relating to paragraphs (1) and (2) above.
Subcontract	means any contract between the Project Manager and a Subcontractor in respect of the Works.
Subcontractor	<p>means:</p> <ul style="list-style-type: none"> (1) a subcontractor, including a supplier, nominated by the Project Manager in its Tender to perform any part of the Works who is listed in Section C of Schedule 6; (2) a subcontractor, including a supplier, subsequently agreed by the Principal's Representative; or (3) a person or entity including a supplier who is engaged by the Project Manager as a Nominated Subcontractor for the performance of any part of the Works, <p>and who is not a Trade Contractor.</p>
Support Management Fee	means the lump sum fee specified in Section A of Schedule 6 (or such revised fee as determined in accordance with this Agreement) which is payable to the Project Manager for overheads, off-Site and on-Site Personnel who will perform the Services and all other items which are not Reimbursable Costs.
Support Management Fee Adjustment Event	means an extension of time (or a series of extensions of time), arising through no fault of the Project Manager, a Subcontractor, a Trade Contractor and/or a Consultant, which result in the period between the date of this Agreement and the Date for Practical Completion of the Works being increased by an amount of 20% or greater.
Tender Documents	means all requests for quotes or tender (including addenda), drawings, specifications, evaluation plans, tender evaluation reports and other information or Material that is reasonably necessary for the purpose of conducting Procurements for which the Project Manager is responsible.
Territory	when used in a geographical context, references to the 'Territory' are references to the Australian Capital Territory and when used in any other context, means the body

	<p>politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1998</i> (Cth).</p>
Territory Information	<p>the kind of information that:</p> <ol style="list-style-type: none"> (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Principal which are by their nature confidential; (2) is notified (whether in writing or not) by the Principal to the Project Manager as being confidential; (3) is Personal Information; <p>but does not include information which:</p> <ol style="list-style-type: none"> (4) is or becomes public knowledge other than by breach of this Agreement; (5) has been independently developed or acquired by the Project Manager; or (6) has been notified in writing by the Principal to the Project Manager as not being confidential.
TPPs	the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
TPP Code	a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Project Manager in the provision of the Services and Works.
TQF or Form TQF	means the relevant referable form setting out the quality assurance requirement of the Territory as detailed in the Project Brief or as otherwise notified to the Project Manager.
Trade Contract	means a contract specified in Item 28 – Contract Information between the Principal and a Trade Contractor for the performance of any part of the Works.
Trade Contractor	means a person or entity (including a supplier) who has entered into a Trade Contract (if any) with the Principal.
Variation Order	means a written order for a Works Variation issued under clause 7.6 .
Variation Request	means a written request for a Works Variation substantially in the form of the document of that name set out in the Schedule of Collateral Documents (if any).
WAE Drawings	means works as executed drawings.
WHS	means all matters relating to work health and safety matters in respect of the specific occupations or industries, the Site, the Works or the Services, whether contained in Statutory Requirements, policies, procedures and guidelines, industry practice, this Agreement, a Subcontract, Trade Contract or otherwise.
WHS Legislation	<p>means:</p> <ol style="list-style-type: none"> (1) the <i>Work Health and Safety Act 2011</i> (ACT); (2) the <i>Work Health and Safety Regulation 2011</i> (ACT); (3) all instruments issued under the <i>Work Health and Safety Act 2011</i> or the <i>Work Health and Safety Regulation 2011</i>; (4) all laws that replace the above laws; and (5) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

**WHS
Management
Plan**

means a work health and safety management plan that addresses:

- (1) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under the Agreement (which for the purpose of this definition includes work under any Trade Contract or Subcontract);
- (2) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under the Agreement is being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;
- (3) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Project Manager with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
- (4) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (5) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (6) ensuring that work health and safety is a compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Project Manager;
- (7) management of work health and safety generally, 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, emergency procedures and use of emergency equipment), the process of communication and dispute resolution on work health and safety matters;
- (8) management of Trade Contractors and Subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication and the process for ensuring the Trade Contractors and Subcontractor compliance with the WHS Management Plan;
- (9) management of project hazards and risks generally, including but not limited to work involving:
 - (a) fall hazards;
 - (b) telecommunications towers;
 - (c) demolition;
 - (d) disturbance or removal of asbestos;
 - (e) structural alterations requiring temporary supports;
 - (f) confined spaces;
 - (g) excavation deeper than 1.5 metres;

- (h) tunnels;
- (i) use of explosives;
- (j) pressurised gas distribution mains and consumer piping;
- (k) chemical, fuel and refrigerant lines;
- (l) electrical work, including involving energised electrical installations and services;
- (m) hazardous atmospheres;
- (n) tilt-up and precast concrete;
- (o) roadways or railways used by road or rail traffic;
- (p) movement of powered mobile plant;
- (q) extremes of temperature;
- (r) water or other liquids where there is a risk of drowning;
- (s) diving;
- (t) remote or isolated work;
- (u) above-standard exposure to noise;
- (v) other hazardous manual tasks;
- (w) exposure to falling objects;
- (x) abrasive blasting;
- (y) hazardous chemicals and substances; and
- (z) working in the vicinity of electrical wires; and

(10) if design forms part of the work under the Agreement, 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.

Work Order	means a work order issued by the Principal to the Project Manager for the Project pursuant to the Panel Deed.
Works	means the whole of the work required to bring the works to completion in accordance with the Endorsed Design Documents and includes all Works Variations and remedial work, and where the context requires, includes any part or Stage of the work.
Works Commencement Date	means the date specified in Item 4 - Contract Information on which the Works are scheduled to commence unless specified otherwise in the endorsed Master Program, and if so specified, will be the date for which the Works are scheduled to commence as set out in the endorsed Master Program.
Working Days	means the days specified in Item 8 - Contract Information or such other days as agreed by the Principal's Representative.
Works Documents	means all Material required to be provided by Trade Contractors and Subcontractors in respect of the Works, including but not limited to Quality Records, shop drawings, programs and reports.

Working Hours	means the hours specified in Item 7 - Contract Information or such other hours as agreed by the Principal's Representative.
Works Program	means a program prepared by the Project Manager, a Trade Contractor or a Subcontractor for the performance of physical Works as amended from time to time.
Works Variation	means a variation to the scope of the Works.

1.2. Interpretation

In this Agreement unless inconsistent with the context or subject matter or unless a contrary intention appears:

- (1) all Schedules and Attachments form part of this Agreement and the Project Manager must comply with all obligations set out in Schedules and Attachments;
- (2) words importing the singular include the plural and words importing the plural include the singular;
- (3) words of inclusion are not words of limitation;
- (4) words importing persons include a partnership and a body corporate;
- (5) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (6) this Agreement will be interpreted in accordance with the laws of the Australian Capital Territory and each party submits to the exclusive jurisdiction of the courts of the Australian Capital Territory;
- (7) a reference to any Statutory Requirement includes any statutory modification, substitution or re-enactment of that Statutory Requirement;
- (8) unless stated otherwise, all amounts are amounts in Australian dollars;
- (9) all Contract Material and communications in connection with this Agreement will be in English;
- (10) a reference to "approval", "endorsement" or "agreement" of the Principal does not constitute an approval and does not relieve the Project Manager from responsibility in relation to the relevant matter; and

- (11) in respect of quality forms a reference to "TQF" includes references to forms identified with the letters "USF".

2. Responsibilities of the Project Manager

2.1. Summary of responsibilities

The Project Manager agrees to on and from the Commencement Date:

- (1) regularly and diligently perform the Services and bring the Works to the stage where the Certificate of Useability can be endorsed by the Principal in accordance with this Agreement;
- (2) supervise, and where applicable, superintend all Works performed by Personnel and Trade Contractors and control progress to ensure the Works achieve Practical Completion by the Date for Practical Completion of the Works;
- (3) manage Defects rectification work in accordance with this Agreement and co-ordinate any access required by Personnel and Trade Contractors as necessary to complete Defects rectification work until the date of issue of the Certificate of Completion of the Services;
- (4) provide professional advice, support and co-operation to the Principal as necessary or desirable to co-ordinate and integrate the Services with the Works, including all Services and Works performed by Personnel and Trade Contractors and the Principal's other consultants;
- (5) certify that all Contract Material and the Works have been prepared and performed (as applicable) in accordance with and comply with all Statutory Requirements, Authority Approvals, the Endorsed Design Documents and the QMS;

- (6) conduct, document and manage Procurements in accordance with the Procurement Protocols;
- (7) provide reports in accordance with **Schedule 2**;
- (8) prepare all plans required to implement the QMS, manage and monitor quality assurance of the Works and the Services in accordance with **Schedule 3**;
- (9) control Site access and security by all Personnel and Trade Contractors in accordance with **clause 6** until the Handover Date;
- (10) provide management, superintendence (as applicable) and supervision of all Personnel and Trade Contractors;
- (11) deliver the Works in accordance with the Project Manager's building licences and maintain all builders licences and meet all other requirements necessary to carry out the Works in accordance with all Statutory Requirements and Authority Approvals;
- (12) deliver the Services required by the express and implied provisions of this Agreement and the Project Brief and comply with all lawful Directions given by the Principal's Representative;
- (13) engage the Key Personnel, Subcontractors and Consultants to perform the Works or Services for which they are nominated;
- (14) comply with the Industrial Relations Obligations; and
- (15) act as the principal contractor in accordance with Chapter 6 of the *Work Health and Safety Regulation 2011* (ACT) and discharge the duties of a principal contractor in relation to the Project for the purposes of that chapter.

2.2. Standard of Care

The Project Manager:

- (1) acknowledges that the Principal has entered into this Agreement relying on the skill, care, expertise, experience and judgment of the Project Manager to perform the Services and deliver the Works in accordance with this Agreement;
- (2) must in respect of each and every service involved in the Services itself exercise high

standards of skill, care and diligence in the performance of those Services;

- (3) must at all times perform its obligations under this Agreement in a co-operative and reasonable manner and keep the Principal fully and regularly informed as to all matters affecting or relating to the Services and the Works; and
- (4) must use its best endeavours to ensure that all Trade Contractors and Personnel comply with the obligations of, and prohibitions and restrictions on, the Project Manager under this Agreement.

2.3. Design Obligations

2.3.1 If there is any ambiguity, discrepancy or inconsistency ("**Fault**") in the documents which make up the Agreement or between any part of the Endorsed Design Documents or any other Contract Material or Principal's Material:

- (1) the order of precedence set out in **Contract Information – Item 2** will apply;
- (2) where the Fault is between the Agreement and any part of the Endorsed Design Documents, or any other Principal Material or Project Manager's Document, the higher standard, quality or quantum will prevail;
- (3) the party discovering it must promptly give notice to the other; and
- (4) the Principal will instruct the Project Manager as to the course it must adopt.

2.3.2 The Project Manager must complete the design (if any) provided by the Principal and otherwise carry out all design necessary to complete the design of the Works in full including design, design development, documentation, workshop detailing and coordination of design and the interaction of the various disciplines so that the Works are fit for the purpose required by this Agreement and comply with the other requirements of this Agreement.

2.3.3 Design or design development does not cause a variation or reduce the Project Manager's design responsibilities under **clause 2.3.2**.

2.3.4 The Project Manager must, before submitting the Project Manager's Documents under **clause 2.4**, check and

	<p>notify the Principal of any Fault, error or omission in the Principal's Material.</p>
<p>2.3.5 The Principal must direct the Project Manager regarding how to resolve any Fault, error or omission which is notified by the Project Manager to the Principal for resolution, which may be by directing a Variation.</p>	
<p>2.3.6 The Principal retains responsibility for the design carried out by the Principal prior to the Commencement Date.</p>	
<p>2.4. Review and endorsement of Contract Material</p>	
<p>2.4.1 The Project Manager must submit Project Manager's Documents to the Principal's Representative at least 21 days before the Project Manager proposes to use them for procurement, manufacture, fabrication or construction. The Project Manager must submit 3 hard copies and 1 electronic copy in manipulable format unless otherwise agreed. The Project Manager's Documents must be submitted progressively with sufficient detail to demonstrate what is proposed.</p>	<p>(1) involvement by the Principal or the Principal's Representative in exercising the Principal's rights under this Agreement;</p>
<p>2.4.2 The Principal need not respond to the Project Manager about the Project Manager's Documents.</p>	<p>(2) payment made by the Principal to the Project Manager on account of the Services or Works;</p> <p>(3) subcontracting of the Services or Works;</p> <p>(4) removal of any Personnel under clause 3.2 or acceptance by the Principal's Representative of replacement Personnel; or</p>
<p>2.4.3 If the Principal objects to the Project Manager's Documents, the Project Manager must take the objections into account and discuss them with the Principal. The Project Manager must correct any Fault, error or omission in the Project Manager's Documents.</p>	<p>(5) comment, approval or review of any aspect of the QMS or Contract Material.</p>
<p>2.4.4 Nothing the Principal does or omits to do in connection with the Project Manager's Documents makes the Principal responsible for the Project Manager's Documents, or prevents the Principal from relying on or enforcing any right under the Agreement or otherwise, and the Project Manager remains fully responsible for the Project Manager'</p>	
<p>2.5. Responsibility of Project Manager</p>	<p>2.6. Authority Approvals</p>
<p>The Project Manager has overall responsibility for the performance of the Services and delivery of the Works and will not be relieved of that responsibility because of any:</p>	<p>Unless specified otherwise in the Project Brief, the Project Manager will obtain all Authority Approvals as are required to meet Statutory Requirements.</p> <p>2.7. Hazardous Substances</p> <p>2.7.1. The Project Manager must ensure that no materials containing Hazardous Substances are used in the execution of the Works or in any materials to be installed as part of them.</p> <p>2.7.2. If at any time the Project Manager discovers the presence on the Site of any material suspected of containing or likely to contain a Hazardous Substance it must:</p> <p>(1) not disturb the material under any circumstances;</p> <p>(2) inform the Principal's Representative of the existence of the material on Site;</p> <p>(3) ensure that all persons are protected from exposure to the material until the nature of the material has been completely determined; and</p> <p>(4) comply with WHS Legislation.</p> <p>2.7.3. The Principal's Representative may inspect the Site and issue directions to the Project Manager in respect of further action to be taken in respect of any material.</p> <p>2.7.4. If so directed by the Principal's Representative, the Project Manager must ensure the treatment or removal of any such material in accordance with the requirements for the safe removal of such materials and any other statutory requirements in the Australian Capital</p>

Territory relating to the removal of such materials.	(1) where required to properly perform the Services, establish an office at the Site of the Works;
3. Project Manager Personnel	
3.1. Use of Key Personnel	(2) provide managerial and office Personnel as required to properly perform the Services; and
3.1.1. At all times the Project Manager must use dedicated Key Personnel who are competent and qualified to:	(3) provide such other temporary facilities which are necessary or desirable for the use of Project Manager Personnel on Site or which are required by the Project Brief.
(1) perform the Services and Works for which they are nominated;	
(2) plan, co-ordinate, implement, manage and audit the QMS and ensure compliance by all Personnel and Trade Contractors with the QMS; and	3.4. Negation of Employment and Agency
(3) discharge all other responsibilities of the Project Manager under this Agreement.	3.4.1. The Project Manager (and its Personnel, where applicable) is not by virtue of this Agreement, unless otherwise stated in this Agreement:
3.1.2. If Key Personnel are unable to perform the work as required under clause 3.1 the Project Manager agrees to notify the Principal as soon as practicable.	(1) an officer, employee, partner or agent of the Principal; or
3.1.3. The Project Manager must not change the level of full time on Site Personnel unless it is agreed in writing by the Principal.	(2) given any power or authority to bind or represent the Principal.
3.2. Removal of Personnel	3.4.2. The Project Manager agrees to ensure that its Personnel do not:
3.2.1. The Principal may, at its discretion, upon the provision of one or more reasons to the Project Manager:	(1) misrepresent its relationship with the Principal; and
(1) withhold or withdraw approval for the engagement of any Personnel (including Key Personnel); and/or	(2) engage in any misleading or deceptive conduct in relation to the Works, Services or any Procurement.
(2) Direct the Project Manager to remove Personnel (including Key Personnel) from work in relation to the Services and/or the Works,	3.5. Novation
and will not be liable for any cost, loss, damage or expense incurred by the Project Manager or any other person or entity arising directly or indirectly from the Principal exercising its rights under clause 3.2 .	3.5.1. The Project Manager agrees to accept novation of all Nominated Subcontractors and Nominated Consultants as and when required by the Principal and to enter into all other contracts as principal (ie: not as agent for the Principal).
3.2.2. If clause 3.1.2 or clause 3.2.1 applies, the Project Manager must provide replacement Personnel acceptable to the Principal at no additional cost and at the earliest opportunity.	3.5.2. A Deed of Novation will be used to effect the novation.
3.3. Facilities for Project Manager's Personnel The Project Manager must at its cost:	3.5.3. Alternatively to clause 3.5.3 the Project Manager agrees, if requested by the Principal, to engage directly a Nominated Subcontractor or Nominated Consultant, on terms acceptable to the Principal.
	3.5.4. The Project Manager must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works and Services, as required by the Principal and must procure at the time of entering into each Subcontract and other contracts, the

consent in writing of all its Subcontractors and Consultants to the novation. The Project Manager must do everything and sign all documents necessary to give effect to this clause, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.

4. Delivery of the Works, Management and Supervision

4.1. Management and Supervision

4.1.1. The Project Manager accepts responsibility for delivering the Works and for providing the Services, including superintending the performance and administration of all Works performed under this Agreement including any performed by Trade Contractors and Subcontractors.

4.1.2. The Project Manager is primarily responsible for supervising and advising the Principal on Trade Contractor, Consultant and Subcontractor compliance with their contractual obligations and for enforcing its rights under its contracts with Subcontractors and Consultants for the benefit of the Principal.

4.1.3. In respect of all Trade Contractors and Subcontractors, the Project Manager must:

- (1) ensure that each Trade Contractor and Subcontractor submits their Works Program to the Project Manager, and each Works Program is consistent with the Master Program, and in relation to Trade Contractors only that Works Program is provided to the Principal's Representative for review prior to acceptance by the Project Manager;
- (2) ensure that each Trade Contractor and Subcontractor carries out work to the required standard and in accordance with the QMS, the Endorsed Design Documents and requirements of the relevant Trade Contract or Subcontract;
- (3) ensure that each Trade Contractor and Subcontractor carries out work in accordance with the endorsed Works Program and for the cost specified in the relevant Trade Contract or Subcontract (subject to any Works Variations agreed by the Principal);

(4) monitor and fully and regularly report to the Principal on the progress of the Works against the endorsed Master Program and Works Program so as to keep the Principal informed of all matters affecting or relating to the Services and the Works, conduct regular Site inspections and regularly and diligently supervise the Works on Site during construction;

(5) ensure each Trade Contractor and Subcontractor has satisfied the requirements of **clause 6.3** prior to permitting them Site access;

(6) assess and advise the Principal in relation to Trade Contractor and Subcontractor:

- (a) payment claims;
- (b) extensions of time;
- (c) Works Variations (including potential variations);
- (d) certificates;
- (e) quality assurance and compliance with the QMS;
- (f) achievement of Contractor Practical Completion;
- (g) rectification of Defects; and
- (h) contractual disputes; and

(7) ensure that all Quality Records and other Contract Material required to be provided by the Handover Date is provided and is satisfactory to the Principal.

4.1.4. The Principal's Representative may review and, within 5 Business Days, reject, any Works Program submitted to it under **clause 4.1.3(1)**. The Principal does not assume or owe any duty of care to the Project Manager to review, or in reviewing, identify any errors, omissions or non-compliance with the Agreement and no review of, comments upon, consent to or rejection of (or failure to review, comment, consent to or reject) will relieve the Project Manager from, or alter or affect, the Project Manager's liabilities or responsibilities under the Agreement. If the Principal's Representative does not notify the Project Manager that it rejects a Works Program within the required time, the Works Program is deemed to not be rejected.

4.2. Trade Contractor and Subcontractor payment claims

- 4.2.1. The Project Manager will measure the progress of the Works performed under each Trade Contract and Subcontract at monthly intervals. Subject to **clause 4.2.2**, Subcontractor costs are to be included as part of the Project Manager's monthly payment claims for Reimbursable Costs as set out in **clause 11.5**.
- 4.2.2. The Project Manager will be responsible for assessing any payment claims made by Subcontractors and responding to those claims in accordance with the relevant Subcontract and, if applicable, the SOP Act (where a payment claim constitutes a 'payment claim' for the purpose of the SOP Act).
- 4.2.3. The Project Manager must ensure that payment claims under Trade Contracts are provided by the Trade Contractor to the Principal and copied to the Project Manager.
- 4.2.4. The Project Manager, shall within 5 Business Days of receipt of the payment claim, review the same and provide a draft payment schedule (using as a base a form as advised by the Principal, from time to time). The Project Manager must provide the draft payment schedule to the Principal by way of email (to the Principals' designated email address for that purpose) within 5 Business Days of receipt of the claim by the Project Manager.
- 4.2.5. The Project Manager must comply with all reasonable requests and supply all necessary information to the Principal to enable it to respond to Trade Contractors in respect of any payment claims in accordance with timeframes set out in the SOP Act.
- 4.2.6. The Project Manager must ensure that each time a Trade Contractor submits a payment claim, the Trade Contractor also provides a statutory declaration to the Project Manager in a form agreed by the Principal which will include a declaration that all subcontractors and suppliers of the Trade Contractor have been paid since the date of the last payment claim.

- 4.2.7. The Project Manager must, within 1 Business Day of receiving of any notice from a Subcontractor or Trade Contractor given under section 17, section 18 or section 26 of the SOP Act, notify the Principal that it has received the notice. The Project Manager must act in accordance with any reasonable direction given by the Principal regarding or associated with a notification.

4.3. Trade and Subcontractor Warranties

- 4.3.1. For each trade or area of work listed in **Item 31 – Contract Information**, the Project Manager must obtain from each relevant Trade Contractor and Subcontractor, before that Trade Contractor or Subcontractor completes its work, a warranty to the Principal in the form of **Schedule 10** (Subcontractor's Warranty) to remedy any Defects and to remedy or replace design, materials or workmanship which does not comply with the Agreement.
- 4.3.2. **Clause 4.3.1** does not affect any of the Project Manager's other obligations under the Agreement.

5. Principal Responsibilities

5.1. Materials and Items Supplied by Principal

- 5.1.1. Where materials or other items are specified as Principal Supplied Items, to be supplied free of charge for use in the execution of the Works, the Project Manager shall take delivery of the Principal Supplied Items at the time required by the Principal's Representative.
- 5.1.2. The Project Manager is responsible for ensuring that all Principal Supplied Items are secured safely and is responsible for loss or damage to Principal Supplied Items.
- 5.1.3. The Project Manager shall comply with any special handling and/or storage requirements to be applied to the Principal Supplied Items, as indicated on Form TQF960, Table 9 "Principal Supplied Items" or as directed by the Principal's Representative.

5.2. Principal Material and information

The Principal must, to the extent it requires and at its own cost, provide such Principal Material and other information in its possession relating to the Services and Works and its requirements for them to the Project Manager as soon as practicable after the Commencement Date.

6. Site Access and Security

6.1. Site Access and Control

6.1.1. The Principal will grant the Project Manager Site access as soon as practicable after the Project Manager has complied with all Conditions Precedent to Site access.

6.1.2. Unless specified otherwise in the Project Brief, the Project Manager will have full responsibility from the date Site access is granted until the Handover Date for:

- (1) controlling Site access by all Personnel, Trade Contractors, and other persons requiring access to the Site from time to time; and
- (2) implementing security and safety measures on Site in respect of persons and property and ensuring compliance by all persons on Site with all plans provided under **Schedule 3** in respect of Site management (including but not limited to the WHS Management Plan).

6.1.3. When the Project Manager takes possession of the Site, the Project Manager must, in sufficient time to enable the Works to commence in accordance with the Master Program:

- (1) provide all necessary equipment and facilities for its Personnel and Trade Contractors (except to the extent that Trade Contractors or Personnel are to provide their own equipment or facilities under the terms of the Trade Contract or subcontract); and
- (2) issue all relevant notifications to, and obtain all necessary Statutory Approvals from relevant Authorities.

6.1.4. The Project Manager must, and must ensure that all Personnel and Trade Contractors:

- (1) do all things necessary to satisfy all WHS obligations at all times during the construction of the Works;
- (2) if necessary, protect existing fixed and/or moveable structures or objects on the Site by constructing temporary protective coverings or barriers, or make arrangements for appropriate storage of items on the Site with the Principal's Representative;
- (3) remove, replace, repair, reconstruct and make good any damage to the Works, installations, structures or other objects on the Site, including existing fixed and/or moveable objects and structures caused by barriers, hoardings, protective coverings and similar items; and
- (4) comply with all Directions given by the Principal's Representative in relation to the protection of the Site and installations, structures and objects on the Site, including existing fixed and/or moveable objects and structures.

6.2. Conditions Precedent to Project Manager commencing Works on Site

Unless otherwise agreed by the Principal's Representative, the Project Manager must not commence Works on Site until the Project Manager has:

- (1) completed the Site inspection and report in accordance with **clause 6.5**;
- (2) complied with all security requirements of the Principal (including in relation to Personnel as described in **clause 6.7**);
- (3) provided evidence satisfactory to the Principal's Representative that it has in place all insurances required under this Agreement;
- (4) provided Security in the form and for the amount required by this Agreement;
- (5) met all requirements and prepared all WHS, Site management (incorporating a traffic and environmental management plan) plans, the WHS Management Plan

<p>and other plans required by this Agreement or the Project Brief to be provided (and if required, endorsed) before commencement of Works on Site p;</p> <p>(6) satisfied any other requirements set out in the Project Brief or this Agreement which are required to be satisfied before commencement of Works on Site;</p> <p>(7) submitted a Master Program to the Principal; and</p> <p>(8) submitted a Cost Plan to the Principal; and</p> <p>(9) ensured all relevant Subcontractors and Trade Contractors that will be commencing Applicable Subcontractor Work (as defined in Schedule 5) on Site hold a Secure Local Jobs Code Certificate (as defined in Schedule 5).</p>	<p>Jobs Code Certificate (as defined in Schedule 5),</p> <p>before being granted Site access.</p>
<p>6.3. Conditions precedent to Trade Contractor and Subcontractor Site access</p>	<p>6.4. Conditions precedent not satisfied during course of contract</p>
<p>6.3.1. Except for Site visits conducted with the approval of the Principal as part of a Procurement process, the Project Manager must not permit any Trade Contractor or Subcontractor access to the Site until such time as the Trade Contractor or Subcontractor has complied with clause 6.3.2.</p>	<p>The Project Manager must promptly notify the Principal's Representative if a Subcontractor or Trade Contractor does not meet the requirements of clause 6.3.2 and/or comply with the directions of Principal's Representative in respect of any corrective action.</p>
<p>6.3.2. Each Trade Contractor and Subcontractor must:</p>	<p>6.5. Site inspection</p>
<p>(1) provide evidence satisfactory to the Project Manager (and if requested, the Principal's Representative) that it has in place all insurances required under the relevant Subcontract or Trade Contract;</p> <p>(2) comply with all security requirements of the Principal (including those described in clause 6.7);</p> <p>(3) have in place all WHS and other plans required to be provided under the Subcontract or Trade Contract before being granted Site access;</p> <p>(4) satisfy any other requirements set out in the Project Brief and the relevant Trade Contract or Subcontract; and</p> <p>(5) if they will be performing Applicable Subcontractor Work (as defined in Schedule 5), have a current Secure Local</p>	<p>Unless specified otherwise in the Project Brief, the Project Manager must prior to the Commencement Date for the Works:</p> <p>(1) inspect the Site with the Principal's Representative and make a record and dilapidation report of the existing Site conditions; and</p> <p>(2) submit a copy of the Project Manager's record and dilapidation report of the existing Site conditions (endorsed by the Project Manager) to the Principal's Representative and keep another copy on Site.</p> <p>6.6. Working Hours and Working Days</p> <p>The Project Manager must:</p> <p>(1) ensure that Trade Contractors and Subcontractors only perform the Works during Working Hours and on Working Days unless other times or days are agreed by the Principal's Representative in writing; and</p> <p>(2) supervise the Works during Working Hours and on Working Days (including any other times agreed under paragraph (1)).</p> <p>6.7. Personnel Security</p> <p>6.7.1. The Project Manager may, acting reasonably, direct any person who presents a risk to other persons or property on Site or who fails to comply with the Project Manager's reasonable directions in relation to Site safety and security to leave the Site.</p> <p>6.7.2. If the Project Manager directs a person to leave the Site under clause 6.7.1, it must</p>

<p>promptly notify the Principal's Representative of the circumstances of the removal and comply with and ensure all its Personnel comply with all Directions given by the Principal's Representative in respect of on-going Site security and safety.</p>	<p>(3) the requirement to produce photo identification, by nominated persons (including Personnel) who have access to the Site.</p>
<p>6.7.3. The Principal's Representative may Direct that any person involved (or proposed to be involved) in the performance of any part of the Services or the Works (including Personnel) provide to the Principal's Representative or Project Manager as nominated all necessary information (including Personal Information), declarations and consents to enable the conduct of a national criminal history check (or such other check or search required by the Principal), to enable the Principal to assess the suitability and fitness of that person to perform any part of the Services or Works.</p> <p>6.7.4. If the Principal's Representative gives a Direction under clause 6.7.3 the Project Manager must do all things required by the Principal to comply with that Direction (including ensuring, as far as possible, that the person who is the subject of the Direction complies with the Direction).</p> <p>6.7.5. The Project Manager must not let a person who is the subject of a Direction under clause 6.7.3 perform any part of the Services or Works without the prior written approval of the Principal's Representative (which may be provided subject to conditions).</p> <p>6.7.6. The Principal may, in its absolute discretion, withhold or withdraw approval for any person to perform any part of the Services or Works. In that event the Principal will not be liable for any Claim made by the Project Manager, the person or any Trade Contractor or Subcontractor.</p> <p>6.7.7. The Project Manager must implement reasonable measures including those proposed by the Principal to ensure the security of the Site. Those measures may include, but are not limited to:</p> <p>(1) the wearing of name tags;</p> <p>(2) the wearing or carrying of photo identification; and</p>	<p>7. Adjustments and Variations</p> <p>7.1. Adjustments to Profit</p> <p>7.1.1. An adjustment to the Profit component of the Contract Sum will occur only:</p> <p>(1) where there has been a Profit Adjustment Event; and</p> <p>(2) in accordance with this clause.</p> <p>7.1.2. Within 20 Business Days of becoming aware of a possible Profit Adjustment Event the Project Manager may apply in writing to the Principal (Profit Adjustment Application) seeking consideration of an increase or decrease in the Profit component of the Contract Sum. In the Profit Adjustment Application the Project Manager must supply details satisfactory to the Principal to enable it to determine if there has been a Profit Adjustment Event and, if so, whether an adjustment to the Profit component will be considered.</p> <p>7.1.3. The Principal will notify the Project Manager in the event it becomes aware of a possible Profit Adjustment Event which may give rise to an increase or decrease to the Profit component.</p> <p>7.1.4. Within 20 Business Days of receipt of the Profit Adjustment Application, or of notification to the Project Manager under clause 7.1.3, the Principal must:</p> <p>(1) determine whether a Profit Adjustment Event has occurred; and</p> <p>(2) if it determines a Profit Adjustment Event has occurred:</p> <p>(a) determine the revised Profit component by using the formula:</p> <p style="padding-left: 40px;">Revised Profit component = Profit + (Profit Percentage x relevant increase or decrease (as the case may be) in Project Budget); and</p> <p><i>[For example: Before the Profit Adjustment Event, the lump sum Profit amount is \$50 and the Profit Percentage is 5% with a total Project Budget of \$1,000. Assume a Profit Adjustment Event occurs that increases the Project Budget from \$1,000 to \$1,200 (ie: 20% increase). The Project Manager submits a Profit Adjustment Application as</i></p>

provided for in **clause 7.1.2** and a Profit Adjustment Event is established. The Profit Percentage (5%) is applied to \$200 (which is the difference between original and new Project Budget) to give \$10. Therefore, the revised lump sum for Profit due to the Profit Adjustment Event is \$60.]

- (b) advise the Project Manager in writing of the revised Profit component of the Contract Sum; or
- (3) if it determines a Profit Adjustment Event has not occurred, advise the Project Manager in writing and provide reasons for its determination.
- 7.1.5. If a revised Profit component is determined by the Principal in accordance with **clause 7.1.4** it will be added to, or subtracted from (as the case may be) the Profit and Support Management Fee to become the revised lump sum Profit and Support Management Fee.
- 7.1.6. Except as permitted by this clause, the Project Manager will not be entitled to any other increase to the Profit component of the Contract Sum.
- 7.1.7. Where a Profit Adjustment Event has been determined in accordance with **clause 7.1.4** and there is a subsequent increase or decrease (or cumulative series of increases or decreases) in the Project Budget such that a further Profit Adjustment Event occurs, the Project Manager may provide the Principal with a further Profit Adjustment Application, or the Principal may notify of a further decrease under **clause 7.1.3**, which will, in either case, be dealt with by the Principal in accordance with **clauses 7.1.4** and **7.1.5** (if applicable).

*[For example: Assume the example at **clause 7.1.4(2)(a)** has occurred and it is determined there has been a Profit Adjustment Event. Subsequently there is a further increase in the Project Budget from \$1,200 to \$1,320 (i.e. a 10% increase). The Project Manager submits a further Profit Adjustment Application and a further Profit Adjustment Event is established. The additional increase in Project Budget is \$120. The Profit Percentage of 5% is applied to the \$120 (which is the difference between previous and new Project Budget) to give \$6. Therefore, the revised lump sum for Profit due to the Profit Adjustment Event is \$66 (taking into consideration the earlier adjustment to the Profit component).*

7.1.8. Where:

(1) the Principal fails to notify the Project Manager in accordance with any part of **clause 7.1.4**; or

(2) the Project Manager disagrees with a decision of the Principal under **clause 7.1.3**, **7.1.4(2)(b)** or **7.1.4(3)**,

the Project Manager may rely on **clause 17**.

7.2. Adjustments (Increases) to Support Management Fee

7.2.1. Any increase to the Support Management Fee component of the Contract Sum will only be considered:

- (1) where there has been a Support Management Fee Adjustment Event; and
- (2) in accordance with this clause.

7.2.2. Within 20 Business Days of becoming aware of a possible Support Management Fee Adjustment Event the Project Manager may apply in writing to the Principal (Support Management Fee Adjustment Application) seeking consideration of an increase in the Support Management Fee component of the Contract Sum. In the Support Management Fee Adjustment Application the Project Manager must supply details satisfactory to the Principal to enable it to determine if there has been a Support Management Fee Adjustment Event and, if so, whether an increase to the Support Management Fee component will be considered, which will include details of any additional support management fees claimed and the basis for their calculation.

7.2.3. Within 20 Business Days of receipt of the Support Management Fee Adjustment Application the Principal must:

(1) determine whether there has been a Support Management Fee Adjustment Event;

(2) if it determines there has been a Support Management Fee Adjustment Event:

- (a) determine the revised Support Management Fee (if any) by considering the additional level of support management resources required by the Project Manager necessary to complete the Works and perform the Services, having

regard to the level of work remaining and the additional period required as a result of the delay; and

[For example: Before the Support Management Fee Adjustment Event the Project Manager had allowed \$20,000 to cover Head office accounts staff for the initial term being 40 weeks. Through no fault of the Project Manager, Subcontractor, Trade Contractor and/or Consultant there is delay resulting in an additional 8 weeks extension of time being added to the Project representing an increase of 20% of the original term. The Project Manager submits a Support Management Fee Application seeking an increase in the allowance of Head office accounts staff of \$4,000. The Principal considers the additional resources claimed to be required by the Project Manager as a result of the delay and determines an additional amount of \$2,000 will be added to the Support Management Fee noting that a significant percentage of the accounts for the Project had already been processed prior to the delay having regard to programming of works for the Project]

- (b) advise the Project Manager in writing of the revised Support Management Fee component of the Contract Sum; or
 - (3) if it determines there has been not been a Support Management Fee Adjustment Event, advise the Project Manager in writing and provide reasons for its determination.
- 7.2.4. If a revised Support Management Fee component is determined by the Principal in accordance with **clause 7.2.3** it will be added to the Profit and Support Management Fee to become the revised lump sum Profit and Support Management Fee.
- 7.2.5. Except as permitted by this clause, the Project Manager will not be entitled to any other increase to the Support Management Fee component of the Contract Sum.
- 7.2.6. Where a Support Management Fee Adjustment Event has been determined in accordance with **clause 7.2.3** and there is a subsequent extension of time (or series of extensions of time) arising through no fault of the Project Manager, a Subcontractor, a Trade Contractor or a Consultant, the Project Manager may, within 20 Business Days of becoming aware of the further possible Support Management Fee

Adjustment Event provide the Principal with a further Support Management Fee Application which will be dealt with by the Principal in accordance with **clause 7.2.3** and **7.2.4** (if applicable).

*[For example: Assume the example at **clause 7.2.3(2)(a)** has occurred. Following that Support Management Fee Adjustment Event there are further delays which are not the fault of the Project Manager, a Subcontractor, a Trade Contractor and/or a Consultant and as a result an additional 10 weeks is added to the Date for Practical Completion of the Works – the original period was 40 weeks, it was then revised to 48 weeks, and is now 58 weeks (representing an increase of 20.8% of the revised term). As a result of the initial Support Management Fee Adjustment Event the Support Management Fee was adjusted to \$22,000. The Project Manager submits an additional Support Management Fee Application as a result of the additional delay. The Territory considers the information supplied with that application and determines an additional amount of \$200 will be allowed given the limited necessity for the engagement of head office account staff at this time in the Project, the majority of the accounts having been processed].*

7.2.7. Where:

- (1) the Principal fails to notify the Project Manager in accordance with any part of **clause 7.2.3**; or
- (2) the Project Manager disagrees with a decision of the Principal under **clause 7.2.3(2)(b)** or **clause 7.2.3(3)**,

the Project Manager may rely on **clause 17**.

7.3. Increases to both Profit and Support Management Fee

The parties acknowledge that where there has been both a Profit Adjustment Event and a Support Management Fee Adjustment Event the processes outlined in **clauses 7.1** and **7.2** may be conducted simultaneously.

7.4. Reimbursable Costs Caps and Project Budget

7.4.1. In delivering the Services and the Works the Project Manager must ensure both:

- (1) the respective Reimbursable Costs Caps; and
 - (2) the Project Budget,
- are not exceeded.

7.4.2. The Project Manager must advise the Principal as soon as it becomes aware that

	a Reimbursable Costs Cap or the Project Budget may be exceeded.
7.4.3.	The Project Manager must as soon as it becomes aware that a Reimbursable Costs Cap or the Project Budget may be exceeded meet with the Principal's Representative and identify whether any compensating savings can be identified or other mitigation strategies adopted so as to avoid any increase to the Project Budget or relevant Reimbursable Costs Cap (as applicable).
7.4.4.	Where the Principal determines there are compensating savings or mitigation strategies that can be adopted the Project Manager must adopt the same.
7.4.5.	Where the Principal:
(1)	determines there are no compensating savings or other mitigation strategies which can be adopted to avoid an increase to a Reimbursable Costs Cap or the Project Budget;
(2)	determines there are compensating savings or other mitigation strategies which can be adopted to avoid an increase to a Reimbursable Costs Cap or the Project Budget but the Project Manager believes it is not of sufficient magnitude to avoid a Reimbursable Costs Cap or the Project Budget being exceeded; or
(3)	fails to notify the Project Manager of its position within 20 Business Days of the meeting held in accordance with clause 7.4.3 , the Project Manager may apply in writing to the Principal for a reallocation of monies between schedules (Reallocation Application) seeking an increase in the relevant Reimbursable Costs Cap (and Project Budget, if applicable). If the Project Manager wishes to make a Reallocation Application it must do so as soon as reasonably practicable.
7.4.6.	In the Reallocation Application the Project Manager must include the following:
(1)	detailed reasons as to why the Reimbursable Costs Cap should be increased;
(2)	the amount of the proposed increase in the Reimbursable Costs Cap;
(3)	the proposed schedule(s) from which monies should be reallocated to enable the
	proposed increase in the Reimbursable Costs Cap at the same time as ensuring the Project Budget is not exceeded; and
(4)	such other information as the Principal would require, acting reasonably, to properly consider the merits or otherwise of the Reallocation Application.
7.4.7.	The Principal may refuse to consider a purported Reallocation Application, which does not include all of the matters set out in clause 7.4.6 .
7.4.8.	Subject to clause 7.4.7 , within 20 Business Days of the receipt of the Reallocation Application the Principal must assess the Reallocation Application and either:
(1)	endorse the application in writing notifying the Project Manager of the new increased Reimbursable Costs Cap and the relevant Reimbursable Cost Cap or Caps, which have reduced as part of the reallocation of monies; or
(2)	refuse the application in writing setting out the reasons for the refusal (which may include the failure to provide information as required by clause 7.4.6).
7.4.9.	Upon the granting of the approval referred to in clause 7.4.8(1) the relevant Reimbursable Costs Caps will be adjusted and become the new Reimbursable Costs Caps for the purpose of this Agreement.
7.4.10.	The Project Manager acknowledges and agrees that:
(1)	it cannot commit to any expenditure in excess of a Reimbursable Costs Cap or the Project Budget; and
(2)	the Principal will reject that part of a payment claim by the Project Manager which exceeds a Reimbursable Costs Cap or the Project Budget.
7.4.11.	If the Project Manager:
(1)	undertakes work under this Agreement; or
(2)	directs or permits Personnel or a Trade Contractor to undertake work,
	the claim for which will result in a Reimbursable Costs Cap and/or the Project Budget being exceeded, the Project Manager is solely liable for all costs, expenses and damages arising from the works performed the claim for which will be in

excess of the Reimbursable Costs Cap and/or Project Budget. Subject to **clause 7.4.12** the Project Manager is not entitled to claim any additional amount from the Principal for the works conducted in excess of the Reimbursable Costs Cap or Project Budget.

7.4.12. Where:

- (1) the Project Manager undertakes work under this Agreement; or
- (2) the Project Manager directs or permits Personnel or a Trade Contractor to undertake work,

the claim for which will result in a Reimbursable Costs Cap being exceeded and a Reallocation Application in respect of that Reimbursable Costs Cap is subsequently endorsed and includes monies referable to and covering in full the works undertaken, directed or permitted by the Project Manager the Principal will consider a claim for payment for the referable works from the revised Reimbursable Costs Cap.

7.4.13. Where:

- (1) the Principal refuses to consider a purported Reallocation Application in accordance with **clause 7.4.7**;
- (2) the Project Manager disagrees with the decision of the Principal made under **clause 7.4.8(2)**; or
- (3) the Principal fails to comply with a timeframe set out in **clause 7.4**,

the Project Manager may rely on **clause 17**.

7.5. Management of Works Variations

7.5.1. The Project Manager must:

- (1) notify the Principal's Representative of all proposed Works Variations;
- (2) assess all proposed Works Variations in accordance with the terms of the relevant Trade Contract or Subcontract;
- (3) advise the Principal on all aspects of the proposed Works Variation including but not limited to:
 - (a) the details and justification for the proposed Works Variation;
 - (b) the impact on the Master Program and Works Programs of any

extensions of time associated with the proposed Works Variation;

- (c) cost adjustments (up or down) associated with the proposed Works Variation; and

- (d) identifying whether:

- (i) any compensating savings can be identified so as to avoid any increase to the relevant Reimbursable Costs Cap and Project Budget (as applicable); and
- (ii) any contingency funds are available in the Project Budget to meet any cost increases under Trade Contracts or Subcontracts arising due to the proposed Works Variation; and

- (4) obtain from Personnel and Trade Contractors such other information as the Principal requires to properly assess the Works Variation claim,

as necessary to enable the Principal to determine whether the proposed Works Variation claim ought to be endorsed and in sufficient time to enable the Principal to consider the Works Variation and make a decision about the Works Variation within the time allowed in the relevant Trade Contract or Subcontract.

7.5.2. The Principal may require the Project Manager's advice provided under **clause 7.5.1(3)** to be provided in the form of a Variation Request, or in any other form notified to the Project Manager.

7.6. Variation Orders

7.6.1. The Principal's Representative will notify the Project Manager if it endorses the proposed Works Variation by issuing a Variation Order. If the Principal issues a Variation Order, the Project Manager must take all necessary action to ensure that the Works Variation is completed in accordance with the Variation Order.

<p>7.6.2. The Project Manager acknowledges and agrees that:</p> <ol style="list-style-type: none"> (1) it cannot commit to any expenditure or extension of time on the Principal's behalf arising out of a proposed Works Variation unless and until the Principal issues a written Variation Order to this effect; and (2) no payment in respect of a proposed Works Variation will be authorised by the Principal until such time as the Variation Order is issued. <p>7.6.3. Subject to clause 7.6.4, if the Project Manager directs or permits Personnel or a Trade Contractor to proceed with a proposed Works Variation or undertakes work using its own resources, prior to receiving the Principal's Variation Order, the Project Manager it does so at its own risk and acknowledges it will have no entitlements to costs and expenses in relation to the proposed Works Variation unless included in a Principal's Variation Order .</p> <p>7.6.4. Where a Variation Order is subsequently issued in respect to the proposed Works Variation and the works or services are performed in accordance with that Variation Order the Principal will consider a claim by the Project Manager for the additional amount referable to those works or services.</p> <p>7.7. Avoidance of variations</p> <p>The Project Manager must take all possible steps to avoid and minimise the occurrence of possible Works Variations and take this into account when performing its design obligations and supervising the work of Personnel and Trade Contractors.</p>	<p>8.1.2. The proposed Master Program is to be comprehensive and based on the summary program provided by the Principal at the time of issue of the Work Order (as applicable) and is required to:</p> <ol style="list-style-type: none"> (1) set out all relevant on and off Site construction activities, including time contingency (float) for the provision of all the Services and Works; (2) set out key review dates for Design Documents; (3) allow sufficient time to undertake all tasks and activities required to deliver the Project including but not limited to: <ol style="list-style-type: none"> (a) obtaining all Authority Approvals and satisfying all Statutory Requirements required to carry out the Works; (b) undertaking all other administrative tasks; and (c) undertaking all Procurements for which the Project Manager is responsible; (4) nominate all points of involvement of the Principal and other persons in the QMS; (5) set out all: <ol style="list-style-type: none"> (a) Stages and Dates for Practical Completion of the Works; and (b) key milestones and critical dates in respect of the Services and the Works; and (6) comply with all other requirements relating to the timing of the Works, Services and the Master Program which are set out in the Project Brief.
<p>8. Program</p> <p>8.1. Master Program</p> <p>8.1.1. Within 20 Business Days after the Commencement Date (or such other timeframe agreed by the Principal's Representative) the Project Manager must prepare and submit a proposed Master Program and Cost Plan to the Principal's Representative for review and written endorsement.</p>	<p>8.1.3. The Project Manager must:</p> <ol style="list-style-type: none"> (1) comply with the Master Program following its endorsement by the Principal's Representative; (2) keep the Principal informed of level of time contingency in the Master Program and Works Programs and how any time contingency is utilised; (3) modify the Master Program as and when required by the Principal's Representative and resubmit it for review until it is endorsed by the Principal's Representative in writing; and

- (4) report on, and if necessary update and submit to the Principal for review and written endorsement, the Master Program as and when required to ensure that it is kept up to date (at monthly intervals as a minimum) and at any other time when directed to do so by the Principal's Representative.

8.2. Management of Master Program and Works Programs

- 8.2.1. Unless specified otherwise in the Project Brief, the Works will be carried out in Stages. Stages will be as set out in the Project Brief, or as determined by the Principal's Representative, and the Master Program must reflect such Stages.
- 8.2.2. The Project Manager must ensure Trade Contractor and Subcontractor Works Programs are consistent with the Master Program critical dates and must:
- (1) monitor the work of Trade Contractors, and Subcontractors and manage them so that they carry out the Works in accordance with its Works Program; and
 - (2) ensure the various Works Programs are kept up to date; and
 - (3) ensure that Practical Completion of the Works is achieved by the Date for Practical Completion of the Works.

8.3. Avoidance of Delay

- 8.3.1. The Project Manager must pro-actively and effectively manage the sequencing and co-ordination of the Services, Works and the activities of all Trade Contractors and Personnel so that:
- (1) as much as possible, Stages can be undertaken concurrently; and
 - (2) if one Stage of the Works is delayed it does not cause delay to subsequent Stages or the Date for Practical Completion of the Works.
- 8.3.2. If any event will or may result in a delay to the Date for Practical Completion of the Works or any other critical date in the Master Program, the Project Manager must promptly notify the Principal's Representative and take all possible steps and give directions to Trade Contractors

and Personnel to avoid and minimise delays to the Services or Works.

8.4. Trade Contractor and Subcontractor claims for extension of time

- 8.4.1. The Project Manager must assess all claims for extensions of time submitted by Trade Contractors and Subcontractors in accordance with the Trade Contract or Subcontract.
- 8.4.2. Prior to approving a claim for extension of time, which may impact the Master Program, the Project Manager must first make a recommendation to the Principal's Representative and obtain the Principal's written endorsement as to whether the Trade Contractor or Subcontractor is entitled to an extension of time.
- 8.4.3. For the purpose of **clause 8.4.2**, the Project Manager must provide all relevant information necessary for the Principal's Representative to assess the extent to which any extension of time should be granted and whether the request for an extension of time is in accordance with the relevant Trade Contract or Subcontract.
- 8.4.4. Following receipt of the Project Manager's recommendation under **clause 8.4.2**, the Principal will direct the Project Manager whether the extension of time should be granted or rejected and, if the extension of time is granted, the Project Manager must update the Master Program to reflect the extension of time and resubmit it to the Principal.

8.5. Suspension of Works or Services

The Principal's Representative:

- (1) may instruct the Project Manager to suspend the Works and/or Services (or a part thereof) and, after a suspension has been instructed, to re-commence the carrying out of all or a part of the Services and/or Works; and
- (2) is not required to exercise its power under paragraph (1) for the benefit of the Project Manager or any other person.

9. Completion of the Works

9.1. Principal's Representative may determine Stages

9.1.1. Each Stage may be treated as a separable portion. The Principal's Representative may, following consultation with the Project Manager, create and Direct further Stages by clearly identifying for each:

- (1) the portion of the work that will be carried out as a separate Stage; and
- (2) the Date for Practical Completion of the Works for that Stage.

9.1.2. If specified in **Item 30 – Contract Information**, the Project Manager must carry out the Works in the order specified in that item.

9.2. Practical Completion and Contractor Practical Completion

9.2.1. The Project Manager must notify the Principal's Representative at least three weeks before the date when it expects that the Works or a Stage of the Works will reach Practical Completion.

9.2.2. When a Trade Contractor or Subcontractor notifies the Project Manager that it considers it has reached Contractor Practical Completion the Project Manager must:

- (1) inspect the works performed by the Trade Contractor or Subcontractor and carry out all relevant tests, inspections and quality assurance procedures required under the QMS and as detailed in the relevant subcontract;
- (2) based on the record and dilapidation report of the existing Site conditions referred to in **clause 6.5**, inspect the Site and ensure the Trade Contractor or Subcontractor (as applicable) rectifies any damaged or non-compliant items prior to:
 - (a) issuing a Contractor Certificate of Practical Completion to the Trade Contractor or Subcontractor for the referable works and providing a copy of the Contractor Certificate of Practical Completion to the Principal; or

(b) advising the Trade Contractor or Subcontractor and the Principal's Representative that the relevant works have not reached Contractor Practical Completion and detailing all other defects and remedial action to be taken in order for the Works to achieve Contractor Practical Completion.

9.2.3. If **clause 9.2.2(2)(b)** applies, the Project Manager must arrange for reinspection of the referable works until the Trade Contractor or Subcontractor has completed the Works to the stage where it is entitled to the issue of the Contractor Certificate of Practical Completion.

9.2.4. The Project Manager must ensure all Quality Records required to be provided before and after Contractor Practical Completion are provided by the Trade Contractor or Subcontractor as required by the QMS.

9.2.5. The Project Manager must maintain and regularly review a central register of Practical Completion and Contractor Practical Completion which ensures that all requirements on Practical Completion and Contractor Practical Completion (as applicable) have been met including but not limited to:

- (1) the provision of all Quality Records;
- (2) a full record of all Defects to be remedied after Practical Completion or Contractor Practical Completion; and
- (3) the status of Security remaining in respect of Trade Contractors or Subcontractors.

9.3. Reduction of Security on Practical Completion

Within 30 days after the issue of the Contractor Certificate of Practical Completion under a Trade Contract the Project Manager must advise the Principal's Representative of the extent to which the Trade Contractor is entitled to have their Security reduced in accordance with the Trade Contract.

9.4. Certificate of Useability

9.4.1. The Project Manager must issue the Certificate of Useability to the Principal's

<p>Representative when the Works or a Stage of the Works (as applicable) have reached the stage where:</p> <p>(1) they are completed in accordance with this Agreement and are ready to be handed over to the Principal for its intended use except for minor defects:</p> <p>(a) which do not cause any legal or practical impediment to the use and occupation of the Site or the Works by the Principal, or other contractors or persons who will use and occupy the Site; and</p> <p>(b) the rectification of which, individually or collectively, will not cause disruption to the activities of, or use by the Principal, or other contractors or persons who will use and occupy the Site;</p> <p>(2) all Building Services have been commissioned and are operating according to the required manufacturer's and all other applicable standards;</p> <p>(3) all other tests and quality assurance procedures and Quality Records required by this Agreement or the Principal's Representative have been satisfactorily completed;</p> <p>(4) all Contractor Certificates of Practical Completion have been issued by the Project Manager for the Works in accordance with all relevant Trade Contracts and Subcontracts;</p> <p>(5) the Project Manager has obtained the necessary Authority Approvals including a certificate of occupancy and use for the Works or a Stage, if required; and</p> <p>(6) the Project Manager has delivered copies of all Quality Records which are required to be provided (in the form required by this Agreement) before the issue of the Certificate of Useability.</p> <p>9.4.2. When the Project Manager has met the requirements of clause 9.4.1 to the satisfaction of the Principal's Representative, the Principal's Representative will endorse the Certificate of Useability.</p>	<p>9.4.3. Within 10 Business Days of the endorsement of the Certificate of Useability by the Principal's Representative the Project Manager must:</p> <p>(1) provide the Principal with all Contract Material not already provided; and</p> <p>(2) supply the Principal with evidence (satisfactory to the Principal) that the Project Manager has complied with all the other requirements and obligations set out in the Project Brief.</p> <p>10. Defects Liability Period</p> <p>10.1. Length of Defects Liability Period</p> <p>10.1.1. The Defects Liability Period under this Agreement commences on the Handover Date.</p> <p>10.1.2. If rectification work is performed during the Defects Liability Period in respect of "Major Work" (see clause 10.1.3), the Principal may notify the Project Manager that the defects liability period recommences for that Major Work for a further 52 weeks on the day on which the rectification work is completed or as otherwise agreed by the Principal's Representative. If notification is provided by the Principal to the Project Manager in accordance with this clause the newly notified period will become the Defects Liability Period.</p> <p>10.1.3. For the purpose of clause 10.1.2 "Major Work" means any one or more of the following:</p> <p>(1) works which impact/effect the structural sufficiency or integrity of any part of the Works;</p> <p>(2) works in respect of any lifts or escalators comprising part of the Works;</p> <p>(3) works in respect of any system, plant or equipment for the purpose of ventilation, heating or cooling comprising part of the Works;</p> <p>(4) works in respect of the fire safety or security systems comprising part of the Works; and</p> <p>(5) works referable to any service provided as part of the Works including but not limited</p>
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<p>to power, water, sewerage, stormwater and drainage, electricity, sanitary, fire, communications and telecommunications systems.</p>	
<p>10.1.4 The Project Manager must ensure that each Trade Contract and Subcontract contains provisions which will enable extension of the defects liability periods in those contracts to ensure this clause can be complied with.</p>	<p>(a) the issue of a Contractor Certificate of Practical Completion to a Trade Contractor or Subcontractor; or</p> <p>(b) the endorsement of the Certificate of Useability by the Principal under this Agreement;</p>
<p>10.2. Rectification of Defects during Defects Liability Period</p>	<p>(3) show all details relating to financial completion; and</p> <p>(4) identify any user acceptance, or other Defects or problems associated with the Works which had not been identified prior to the issue of the relevant Contractor Certificate of Practical Completion and/or endorsement of Certificate of Useability (as applicable).</p>
<p>10.2.1. Following the issue of a Contractor Certificate of Practical Completion, the Project Manager must ensure that all Defects are rectified by the relevant Trade Contractor or Subcontractor as soon as practicable after the issue of the Contractor Certificate of Practical Completion under the relevant Trade Contract and Subcontract. The Project Manager must not permit rectification of Defects which are the responsibility of a Trade Contractor or Subcontractor using Day Labour without the written consent of the Principal's Representative.</p>	<p>10.3. Trade Contractor and Subcontractor Final Certificates</p>
<p>10.2.2. All Defects rectification work must be completed to the satisfaction of the Principal's Representative and the Project Manager.</p>	<p>10.3.1. The Project Manager must ensure that each Subcontractor and Trade Contractor:</p>
<p>10.2.3. Until the expiry of the Defects Liability Period under this Agreement, the Project Manager is to provide reports on a monthly basis (or at such other times as required by the Principal and notified to the Project Manager) which:</p>	<p>(1) has fully performed their obligations under their Trade Contract or Subcontract; and</p> <p>(2) submits a final claim for payment and an unconditional release in favour of the Principal from further Claims,</p>
<p>(1) confirm that all Defects rectification work, scheduled and reactive maintenance is being properly carried out and in a timely manner;</p>	<p>within 13 weeks from the date of Practical Completion of the Works the subject of its subcontract.</p>
<p>(2) shows the status of the tasks remaining to be performed under each Trade Contract and Subcontract from the relevant Contractor Date of Practical Completion until the issue of the Final Certificate, including but not limited to the provision of all required Quality Records which are provided after:</p>	<p>10.3.2. The Project Manager must notify the Principal's Representative in writing once it believes a relevant Subcontractor or Trade Contractor has complied with clause 10.3.1 and provide the Principal's Representative with evidence sufficient to enable the Principal's Representative to satisfy itself that clause 10.3.1 has been complied with. Where the Principal's Representative believes, acting reasonably, that the evidence supplied is not sufficient to establish compliance with clause 10.3.1 it may request additional evidence from the Project Manager.</p>
	<p>10.3.3. Where the Principal's Representative is satisfied that the relevant Subcontractor or Trade Contractor has complied with clause 10.3.1 it shall, within 5 Business Days of receipt of all relevant evidence sufficient to establish compliance supplied in accordance with clause 10.3.2, provide a</p>

<p>written authorisation to the Project Manager to issue a Final Certificate to the relevant Trade Contractor or Subcontractor.</p> <p>10.3.4. The Project Manager shall issue a Final Certificate to the relevant Trade Contractor or Subcontract within 10 Business Days of receipt of the Principal Representative's authorisation provided in accordance with clause 10.3.3.</p> <p>10.3.5. If a final claim for payment is not lodged by the relevant Subcontractor or Trade Contractor in accordance with clause 10.3.1, the Project Manager shall issue a Final Certificate endorsed with any amounts that, in the Project Manager's reasonable opinion, are owing by, or to, the relevant Subcontractor or Trade Contractor.</p> <p>10.3.6. If any amount is owed by a Subcontractor or Trade Contractor to the Principal, the Project Manager must not release, or recommend the release of any Security until the Principal has notified the Project Manager that the debt has been discharged.</p>	<p>(2) for the purposes of section 10(3) of the SOP Act, the 'reference date' is the date on which the Project Manager is to issue payment claims in accordance with the Schedule of Forecast Claims;</p> <p>(3) for the purposes of section 16(2)(b) of the SOP Act, the 'scheduled amount' is the amount advised by the Principal's Representative under clause 11.6 as being payable to the Project Manager.</p>
<p>10.4. Maintenance during Defects Liability Period</p> <p>The Project Manager must ensure that during the Defects Liability Period such scheduled and reactive maintenance is carried out as is necessary to ensure the Works are, or each Stage is, throughout and at the end of the Defects Liability Period in a condition fit for its intended use including that all Building Services have been commissioned and are operating according to the required manufacturer and other applicable standards.</p>	<p>11.2. Application of SOP Act to Subcontractors and Consultants</p> <p>The Project Manager acknowledges that it must comply with the SOP Act in respect of any Works or Services performed by its Subcontractors or Consultants which constitute 'construction work' or 'related goods and services' for the purposes of sections 7 and 9 of the SOP Act.</p>
<p>11. Payment of the Contract Sum</p> <p>11.1. Application of SOP Act</p> <p>The parties acknowledge that:</p> <p>(1) the SOP Act applies to all Works and Services performed under this Agreement which constitute 'construction work' or 'related goods and services' for the purposes of sections 7 and 9 of the SOP Act;</p>	<p>11.3. Schedule of Forecast Claims</p> <p>11.3.1. Not later than 14 days after the Commencement Date, the Project Manager must provide a schedule of the anticipated monthly payment claims (the Schedule of Forecast Claims) for the Principal's Representative's review. The Schedule of Forecast Claims must show:</p> <p>(1) the amount of each anticipated monthly payment claim up to the Date for Practical Completion of the Works; and</p> <p>(2) that the Profit and Support Management Fee components of the Contract Sum will be paid in approximately equal monthly instalments commencing one month after the Commencement Date and ending one month after the Date for Practical Completion of the Works.</p> <p>11.3.2. At the time each monthly payment claim is submitted, the Project Manager must provide the Principal's Representative with a revised Schedule of Forecast Claims for review and approval with that claim or confirm the existing Schedule of Forecast Claims is still current.</p> <p>11.3.3. The Project Manager must revise and resubmit the Schedule of Forecast Claims when it is directed to do so by the Principal's Representative until it satisfies the requirements of this clause and is</p>

satisfactory to the Principal's Representative.	(d) amounts payable for Day Labour authorised under clause 11.9 ; and
11.3.4. The Project Manager must comply with the Schedule of Forecast Claims following its written approval by the Principal's Representative.	(e) GST;
11.4. Dedicated bank account	(3) contains a summary of all payment claims made by the Project Manager to date and the amount endorsed by the Principal's Representative for payment in respect of each payment claim;
11.4.1. The Project Manager must open a trading bank account titled "Project Manager in trust for the Australian Capital Territory" at a bank agreed by the Principal. This account must:	(4) is accompanied by a completed the relevant TQF if the payment claim identifies an amount under clause 11.5.2(2)(c), (d) and/or (e) of this Agreement; and
(1) offer the maximum interest rate available without prejudice to the operational requirements necessary and all interest must be used to offset any bank charges, and any balance of the interest shall be paid to the Principal;	(5) is accompanied by a completed Reimbursement Certificate.
(2) not be overdrawn; and	11.6. Payment advice to be given by the Principal's Representative
(3) not be closed or transferred without the prior written consent of the Principal.	11.6.1. When given a monthly payment claim, the Principal must within 10 Business Days:
11.4.2. Any debits to the account (including overdrawn account fees etc.) other than account keeping and statutory charges are the responsibility of the Project Manager.	(1) if it agrees with the monthly payment claim, adopt it as its assessment, and, may choose to give the Project Manager a payment schedule; or
11.5. Monthly payment claims by Project Manager	(2) if it disagrees with the monthly payment claim, give to Project Manager a payment schedule.
11.5.1. The Contract Sum is payable to the Project Manager monthly in arrears via the dedicated bank account.	11.6.2. In the payment schedule the Principal must:
11.5.2. Each month at the time required by the Schedule of Forecast Claims and before withdrawing any monies referred to in clause 11.7.2 , the Project Manager must submit a monthly payment claim to the Principal's Representative which:	(1) identify the monthly payment claim to which it relates:
(1) is in the format the Principal's Representative requires and is calculated in accordance with the Schedule of Forecast Claims and this clause;	(2) indicate the amount of the payment (if any) that the Principal proposes to make; and payment .
(2) shows separately the amounts claimed on account of:	(3) if the amount is less than the payment claimed by the Project Manager, the Principal's Representative will advise:
(a) Profit;	(a) why the amount is less than the amount claimed by the Project Manager; and
(b) the Support Management Fee;	(b) if the amount is less because the Principal is withholding payment (in whole or part) for any reason, the Principal's reasons for withholding payment, which reasons may include but are not limited to:
(c) each type of Reimbursable Cost endorsed in accordance with clause 11.8 ;	

- (i) fraud, error or failure to properly calculate the payment claim in the manner required by this Agreement;
 - (ii) claims for proposed Works Variations which have not been endorsed by the Principal;
 - (iii) failure by the Project Manager to provide any Security required by this Agreement;
 - (iv) claims for Reimbursable Costs or other amounts which are not payable under or which have not been incurred in accordance with this Agreement;
 - (v) to satisfy a debt owed by the Project Manager to the Principal;
 - (vi) circumstances where the Project Manager has not completed the Services or Works to which the payment relates in accordance with this Agreement; and
 - (vii) the Principal exercising its right to suspend payment under **clause 16.3.1**.
- (2) If the Project Manager fails to make a monthly payment claim under **clause 11.5**, the Principal may nevertheless issue a payment certificate, identifying the value of work the Principal believes has been carried out by the Project Manager since the date of the last claim, or the commencement of the Agreement, whichever is the latter.
- 11.7. Deposit and withdrawal of payments from dedicated bank account**
- 11.7.1. Within 10 Business Days of the Principal's Representatives providing a payment schedule under **clause 11.6.1** the Principal must deposit in the amount set out in the payment schedule by the Principal's Representative under **clause 11.6.1** the following components of the Contract Sum which are due by the Principal to the Project Manager into the bank account:
- (1) Profit;
 - (2) the Support Management Fee;
 - (3) Reimbursable Costs endorsed in accordance with **clause 11.8**;
 - (4) amounts payable for Day Labour authorised under **clause 11.9**; and
 - (5) GST.
- 11.7.2. The Project Manager is authorised to withdraw the monies referred to in **clause 11.7.1** from the account up to the maximum amount set out in the payment schedule by the Principal's Representative under **clause 11.6**.
- 11.7.3. It is acknowledged by the parties that the payment of any amount by the Principal into the bank account established in accordance with this clause is not:
- (1) evidence of the value of work or that works has been satisfactorily carried out in accordance with the Agreement;
 - (2) an admission of liability; or
 - (3) approval by the Principal or the Principals' Representative of the Project Manager's performance or compliance with the Agreement,
- but is only to be taken as payment on account.
- 11.8. Reimbursable Costs**
- 11.8.1. The parties acknowledge that:
- (1) **Section B of Schedule 6** contains items relating to administration and on-Site Personnel;
 - (2) **Section C of Schedule 6** contains items relating to work to be performed by Subcontractors and the cost of materials to be purchased by the Project Manager, Day

<p>Labour and hire of plant and equipment; and</p>	
<p>(3) Section D of Schedule 6 contains items relating to work to be performed by Consultants,</p>	
<p>which have been endorsed by the Principal as reimbursable costs 'in principle' but not in detail or quantity.</p>	
<p>11.8.2. The Principal's Representative will only approve payment for Reimbursable Costs, and Reimbursable Costs are only payable by the Principal to the Project Manager:</p>	<p>11.8.3. Before deciding whether monies claimed by the Project Manager as Reimbursable Costs have been properly incurred by the Project Manager and whether such moneys are relevant to the Works and form part of the Reimbursable Costs, the Principal will have regard to the Schedule to this Agreement which relates to the type of Reimbursable Cost claimed.</p>
<p>(1) if the Project Manager has sought and received prior written approval from the Principal's Representative before incurring the expenditure (including for Day Labour);</p>	<p>11.8.4. Notwithstanding any other provision of this Agreement, the Principal will not pay to the Project Manager any moneys:</p> <p>(1) expended by the Project Manager in respect of wages and allowances that are not in accordance with the requirements of the <i>Fair Work Act 2009</i> (Cth);</p>
<p>(2) if the amount to be incurred by the Project Manager for Reimbursable Costs does not exceed the Reimbursable Costs Cap applicable to the type of Reimbursable Cost which is claimed for payment;</p>	<p>(2) which exceed the net amount of supplier claims (that is, the Project Manager must pass on to the Principal any trade or cash discounts offered by suppliers); or</p>
<p>(3) on account of Reimbursable Costs referred to in Section C and Section D of Schedule 6 the Project Manager clearly demonstrates the cost proposed to be incurred is:</p>	<p>(3) deducted from payments to Subcontractors as retention money and held by the Project Manager unless the retention money is due and payable to the relevant Subcontractor.</p>
<p>(a) relevant to the Works and Services;</p> <p>(b) calculated in accordance with the relevant Subcontract or consultancy agreement (if applicable); and</p> <p>(c) where applicable, covered by invoices in respect of disbursements incurred and fees paid by it to those Subcontractors and Consultants (based on payment schedules issued by the Project Manager) whose engagement has been agreed in writing by the Principal.</p>	<p>11.8.5. Except to the extent that anything is approved as a Reimbursable Cost by the Principal's Representative, the Contract Sum is deemed, subject to clause 13.1, to be inclusive of all tools of the trade, administrative items, support and overhead costs and all other items or material required by the Project Manager to perform the Services and deliver the Works in accordance with this Agreement.</p> <p>11.8.6. For clarity, Trade Contractors are paid in accordance with the appropriate Trade Contract.</p>
<p>(4) on account of Reimbursable Costs referred to in Section B of Schedule 6 (and those referable to Day Labour in Section C of Schedule 6 which are covered by invoices in respect of costs and disbursements incurred or represent sums, salaries, wages and fees paid by it to its employees; and</p>	<p>11.9. Day Labour</p> <p>11.9.1. The Project Manager must not carry out any Works as Day Labour unless it is authorised in writing by Principal's Representative. Before authorising the Day Labour the Project Manager must, if requested to do so by the Principal's Representative, provide a business case which demonstrates that the Day Labour is necessary in the circumstances and will provide value for money to the Principal.</p>
<p>(5) provided any claim incorporating amounts for Reimbursable Costs is accompanied by a completed Reimbursement Certificate.</p>	

11.9.2. If the Principal's Representative authorises the carrying out of Day Labour:

- (1) the Project Manager must for each day on which Day Labour is performed, record particulars of all resources used by the Project Manager for the execution of the Day Labour and each month furnish the Principal's Representative with the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Day Labour;
- (2) unless agreed otherwise by the Principal's Representative, the rates for calculating the cost of Day Labour will be:
 - (a) in respect of the amount of wages and allowances paid to the Project Manager's Personnel performing Day Labour on Site, those rates as agreed between the Principal and the Project Manager;
 - (b) the actual cost to the Project Manager at the Site of all materials supplied and required for the work;
 - (c) the amount of hire charges in respect of constructional plant endorsed by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be agreed between the Principal's Representative and the Project Manager or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Principal's Representative;
 - (d) if applicable, the actual amounts paid to Subcontractors and Consultants; and
 - (e) such other rates (if any) which are agreed in writing by the Principal's Representative.

11.9.3. The Principal's Representative may direct the manner in which matters relating to Day Labour are to be recorded.

11.10. Principal's Right to Convert

- 11.10.1. Notwithstanding anything else in this Agreement, the Principal shall have the right and power to furnish to the Project Manager a written direction either general or detailed to convert into money property that has been purchased or acquired for the Works for which the Principal had paid the Project Manager as a Reimbursable Cost.
- 11.10.2. Upon receipt of such a written direction the Project Manager shall make immediate arrangements for the proper conversion into money at the best market price for the relevant property and shall pay the money realised to the Principal.

11.11. Payment of Trade Contractors

For the avoidance of doubt, the Principal (rather than the Project Manager) will make payments to Trade Contractors in accordance with the terms and conditions of the relevant Trade Contracts.

12. Payment records, taxes and Principal rights

12.1. Payments to Personnel

- 12.1.1. When making a payment claim under **clause 11.5** the Project Manager (or a duly authorised representative of the Project Manager who is in a position to know the facts attested to) must provide a completed Reimbursement Certificate.
- 12.1.2. At the request of the Project Manager and out of moneys payable to the Project Manager the Principal may on behalf of the Project Manager make payments directly to any Personnel of the Project Manager.
- 12.1.3. The Project Manager must ensure that all Subcontractors and Trade Contractors provide a statutory declaration to the Project Manager at the time of submitting payment claims under the relevant Trade Contract or Subcontract stating that:
 - (1) all their employees, subcontractors and suppliers have been paid all monies due and payable to them in connection with the Works and in respect of employees; and
 - (2) in respect of their employees engaged for the Project, that they have paid all monies

due and payable to a third party for the benefit of those employees (including but not limited to superannuation entitlements).

12.2. Records to be kept on Site

The Project Manager shall keep or cause to be kept at its Site office, or other location agreed by the Principal's Representative, all accounts and other original records as are usual and proper to be kept by builders and project managers of all moneys paid by the Project Manager in the performance of its obligations under this Agreement (including amounts paid to Subcontractors and Consultants and any other amounts claimed as Reimbursable Costs) and such accounts shall be made available at reasonable times for inspection and audit by the Principal Representative or by its agent or nominee.

12.3. Right to draw on Security

12.3.1. The Principal may (in addition and without prejudice to any other right it may have) draw on any Security provided by the Project Manager in the following circumstances:

- (1) to pay or reimburse such costs as it may incur or reasonably anticipate incurring as a result of the failure of the Project Manager to comply with any of its obligations under this Agreement;
- (2) to satisfy a debt owed by the Project Manager to the Principal if the debt has not been paid within 30 days after the due date for payment;
- (3) as set out in **clause 14.3.2** (failure to renew Security); or
- (4) as set out in **clauses 16.2.1** or **16.3.1** (termination for default).

12.3.2. Nothing in this clause affects the Principal's rights (whether under this Agreement or at law) to recover the whole of the debt or claim, or any balance still owing after deduction from any Security, from the Project Manager.

12.4. GST

12.4.1. The following terms have the meanings respectively given to them in the *A New Tax*

System (Goods and Services Tax) Act 1999 (Cth):

consideration;

GST;

input tax credit;

supply;

taxable supply; and

tax invoice.

12.4.2. Unless otherwise indicated, all consideration for any supply made under this Agreement is inclusive of any GST imposed on the supply.

12.4.3. If one party (the "supplier") makes a taxable supply to the other party (the "recipient") under this Agreement, on receipt of a tax invoice from the supplier, the recipient must pay, without setoff, an additional amount to the supplier equal to the GST imposed on the supply in question.

12.4.4. Neither party may claim any amount from the other for which it may claim an input tax credit.

13. Plant and equipment

13.1. Project Manager to supply plant and equipment

Unless endorsed by the Principal's Representative as a Reimbursable Cost or endorsed under **clause 13.2** the Project Manager is responsible for supplying all plant, equipment, tools and machinery at their cost.

13.2. Purchase, hire or lease of equipment

13.2.1. If the Project Manager identifies a need for the long term use of plant, equipment, machinery or other items on Site which is not identified in a Schedule to this Agreement as a Reimbursable Cost and which the Project Manager (acting reasonably) considers is not practicable or cost effective to provide for the benefit of the Principal under **clause 13.1**, the Project Manager is to include this in the Cost Plan and Project Budget.

13.2.2. If an unexpected requirement for such an item occurs after finalisation of the Project Budget and Cost Plan, the Project Manager

<p>must notify the Principal's Representative and recommend whether the relevant item should be obtained through purchase, hire or lease in order to obtain the best value for money for the Principal.</p>	<p>(h) any other considerations of a more technical nature, for example: type of plant, availability of spares, maintenance agreements, guarantees.</p>
<p>13.2.3. In making its recommendation under clause 13.2.2, the Project Manager must take into account the following considerations:</p>	<p>13.3. Assets</p>
<p>(1) in respect of a proposed purchase:</p> <ul style="list-style-type: none"> (a) capital outlay; (b) finance charges on capital outlay; (c) repairs, maintenance, insurance and other running costs; (d) estimated residual value when no longer required; and (e) cost of disposal; 	<p>13.3.1. Assets purchased on behalf of the Project must be recorded by the Project Manager in the Project Assets register. This register will be subject to audit verification.</p> <p>13.3.2. On completion of the Project or when the Assets are no longer needed the Project Manager will recommend to the Principal methods of disposing of Assets on hand and will carry out the arrangements endorsed by the Principal.</p> <p>13.3.3. Under certain circumstances it may be necessary to transfer Assets from one project to another. In the event of any transfer the following procedure is to be followed:</p>
<p>(2) in respect of a proposed hire:</p> <ul style="list-style-type: none"> (a) total hire cost including allowance for return of item when not required and rehire at later date; (b) running costs for hire item; and (c) any advantages of hire other than cost, for example: changeover of item when superseded by later model or exchange for different machine. 	<ul style="list-style-type: none"> (1) the Principal's written approval or direction to the transfer is to be obtained; (2) agreement on the value of the Asset is to be reached; (3) an adjusting journal entry is to be arranged by the Principal; and (4) an adjusting entry in the Asset registers of both projects is to be made to record the transfer of the Asset.
<p>(3) in respect of a proposed lease:</p> <ul style="list-style-type: none"> (a) total leasing cost; (b) difficulties in estimating term required; (c) possible costs in renegotiating lease; (d) cost of possible lease cancellation; (e) residual value exercisable by the Principal; (f) cost of disposal; (g) any sales tax benefits and reduced hiring rates that are available for Government organisations; and 	<p>14. Project Manager Security</p> <hr/> <p>14.1. Form of Project Manager Security</p> <p>14.1.1. The Project Manager must provide the Security to the Principal within 14 days of the date of this Agreement.</p> <p>14.1.2. The Project Manager must, if directed by the Principal's Representative to do so due to a Works Variation or a variation to the Project Budget, increase the amount of any Security to an amount considered by the Principal to be sufficient Security having regard to the revised Project Budget and Contract Sum.</p> <p>14.1.3. Security provided by the Project Manager will be retained by the Principal until either returned in accordance with clause 14.2 or</p>

presented by the Principal for payment under clause or 12.3 .	(1) submit a final payment claim and release in favour of the Principal from further Claims; and
14.2. Release of Security	(2) provide a financial closure report which:
14.2.1. Subject to any other right it has under this Agreement, the Principal may reduce the amount of any Security provided in the form of money or which can be converted into money (for example a bank undertaking or surety bond):	(a) certifies that there are no outstanding disputes or claims under any Subcontract or Trade Contract; and
(1) by 50% within 30 days of the issue of the Certificate of Useability for the Works; and (2) the remaining Security within 30 days following the issue of the Certificate of Completion of the Services.	(b) provides a final reconciliation of all Project costs inclusive of Consultant fees and ancillary costs, the Actual Cost of Construction, including a break down of all Subcontractor and Trade Contractor costs and Project Manager costs against the Project Budget and Cost Plan.
14.2.2. The Principal may retain Security provided in the form of money or which can be converted into money if the Project Manager has not provided the Quality Records required to be provided under the Agreement until such time as they are provided.	
14.2.3. Any other Security (such as a parent company guarantee) will be released within 30 days of the issue of the Certificate of Completion of the Services.	
15. Completion of the Services	15.3. Certificate of Completion of the Services
15.1. Notice of completion of the Services	Provided the Project Manager has complied with clause 15.2 , the Principal's Representative will issue a Certificate of Completion of the Services and, subject to clause 12.3 , release the Project Manager's remaining Security.
15.1.1. The Project Manager must give notice in writing to the Principal's Representative of the likely completion of the Services and Works at least 10 Business Days prior the date it considers that all the Services and Works will be properly completed in accordance with this Agreement	16. Termination
15.1.2. The Project Manager must give notice in writing to the Principal's Representative when it considers that all the Services and Works have been properly completed in accordance with this Agreement.	16.1. Termination for Default
15.2. Final Payment Claim and Release	16.1.1. If the Project Manager fails to:
In accordance with the timeframe required by the Schedule of Forecast Claims agreed under clause 11.3 , after the Project Manager provides notice under clause 15.1.2 the Project Manager must:	(1) perform the Services or Works regularly and diligently;
	(2) properly supervise the work of Trade Contractors and Personnel and other persons for whom it is responsible;
	(3) use the materials or standards of workmanship required by this Agreement;
	(4) comply with one or more Directions given by the Principal's Representative;
	(5) comply with clause 3.2.2 in respect of replacement Personnel;
	(6) comply with clause 12.1 ;
	(7) comply with the QMS; or
	(8) perform any other obligation under this Agreement,
	the Principal may call on the Project Manager, by written notice, to show cause why the Principal should not exercise the powers conferred by this clause.

16.1.2. The written notice must state why it has been given and the period (of not less than five Business Days after the giving of the notice) within which the Project Manager must show cause.

16.1.3. In the Project Manager's response to the show cause notice the Project Manager must detail the steps it has taken or will take to remedy the default and prevent its reoccurrence.

16.2. Principal's Rights

16.2.1. If the Project Manager fails to show cause to the satisfaction of the Principal within the period stated in any notice issued in accordance with **clause 16.1**, the Principal may, without prejudice to any other rights it may have under this Agreement:

- (1) take over all or any part of the unfinished work ;
- (2) call upon any Security;
- (3) terminate this Agreement; and/or
- (4) exclude the Project Manager and any Personnel from the Site.

16.2.2. If:

- (1) the Principal (acting reasonably) considers that a default of the Project Manager under this Agreement is not capable of remedy;
- (2) the Project Manager is subject to an Insolvency Event; or
- (3) a declaration made in a Reimbursement Certificate is untrue in any respect,

the Principal may terminate this Agreement immediately by written notice.

16.3. Election of Principal

16.3.1. If the Principal elects to exercise any power conferred on it by **clause 16.2** it may:

- (1) complete all or any part of the unfinished Services and/or Works in whatever manner it sees fit, whether or not in accordance with this Agreement;
- (2) let any number of contracts for the remaining work or employ any person other than the Project Manager to carry out that work;
- (3) take possession of, and permit other persons to use, any material, plant,

equipment and/or any other thing on or about the Site which is owned by the Project Manager and is reasonably required for the completion of the Services or Works;

(4) require the Project Manager to novate or assign, without payment within the timeframe directed by the Principal, the benefit of any:

- (a) contract it has with a Subcontractor or Consultant in respect of the Services or Works; or
- (b) agreement for the supply of materials, hire plant, equipment or other things for the execution of the Services and the Works,

(5) suspend payments to the Project Manager; and/or

(6) draw on any Security held by the Principal, to meet all costs and expenses of completing the Services and Works as and when they are incurred.

16.3.2. The Project Manager cannot demand any compensation or allowance for any action taken by the Principal under this clause other than the right to require the Principal to ensure that its plant and equipment is maintained in good working order (provided that plant and equipment was in good working order at the time the Principal took possession of it and subject always to fair wear and tear) while being used for the benefit of the Principal.

16.3.3. Subject to **clause 16.4.5** on completion of the Services and Works, all plant and equipment and any surplus materials and other things taken over by the Principal must be handed back to the Project Manager, without payment or allowance for fair wear and tear sustained during that time.

16.4. Effect of Principal Exercising Rights

16.4.1. On completion of the Works, if the Principal has exercised its rights under **clause 16.3**, the Principal's Representative must determine:

- (1) the amount of the Contract Sum paid to the Project Manager up to the date on which

- the Principal exercised its rights under **clause 16.3**;
- (2) the Actual Cost of Construction;
 - (3) the amount of costs, expenses, losses, damages and charges necessarily incurred by the Principal in, and as a result of, exercising its rights under **clause 16.3**; and
 - (4) any other Claim, liability or debt due or payable by the Project Manager to the Principal under this Agreement.
- 16.4.2. The Principal's Representative must provide a detailed payment schedule certifying the aggregate amount of all such amounts determined under **clause 16.4.1** and serve a copy of the payment schedule on the Project Manager. If the Project Manager disagrees with the amount certified by the Principal's Representative, the Project Manager must provide a written notice of dispute in accordance with **clause 17.1** within 10 Business Days of receipt of the certified payment schedule. The Project Manager will be deemed to have accepted the payment schedule as final and conclusive unless it provides notice within this timeframe.
- 16.4.3. Should the aggregate amount certified under **clause 16.4.2** be greater than the amount which would have been payable to the Project Manager (excluding amounts payable to Trade Contractors) if it had carried out the whole of the Services and supervised the Works in accordance with this Agreement, the difference between the amounts constitutes a debt due from the Project Manager to the Principal.
- 16.4.4. For the purposes of **clause 16.4.3**, the "amount that would have been payable to the Project Manager (excluding amounts payable to Trade Contractors) if it had carried out the whole of the Services and supervised the Works in accordance with this Agreement" is the amount that would have been payable to it if it had completed the Services and supervised the Works in accordance with this Agreement with no Services Variations or Works Variations agreed to or extensions of time to the Date for Practical Completion of the Works for any Stage allowed after the date on which
- the Services and Works were taken out of the hands of the Project Manager.
- 16.4.5. If a debt is due to the Principal by the Project Manager under **clause 16.4.3**, the Principal may retain any plant and equipment of the Project Manager until the debt has been discharged in full. If the Project Manager does not satisfy the debt by the date notified by the Principal, the Principal may sell the Project Manager's plant and equipment to satisfy the debt (but must return the proceeds of any sale to the extent they exceed the amount of the debt owed by the Project Manager).
- 16.4.6. For the avoidance of doubt, nothing in **clause 16** prevents the Principal from taking any other action permitted under this Agreement or at law to recover the whole of any debt owed by the Project Manager.
- 16.5. Termination for Convenience**
- 6.5.1 The Principal may, at any time by notice, terminate this Agreement or reduce the scope of the Services or Works immediately. Upon the issue of such a notice the Principal may:
- (1) complete all or any part of the unfinished Services and/or Works in whatever manner it sees fit, whether or not in accordance with this Agreement; and/or
 - (2) let any number of contracts or employ any person other than the Project Manager to carry out the unfinished Services and/or Works.
- 16.5.2. The Project Manager agrees, on receipt of a notice of termination or reduction:
- (1) to stop or reduce work as specified in the notice;
 - (2) to take all steps to minimise loss resulting from that termination or reduction (including exercising any rights of termination in Subcontracts and agreements with Consultants); and
 - (3) to continue work on any part of the Services or Works not affected by the notice.
- 16.5.3. In the event of termination under **clause 16.5.1**, the Principal is liable only:

- (1) to payment in respect of Works and Services completed before the effective date of termination, calculated in accordance with this Agreement; and
 - (2) to reimburse any expenses the Project Manager unavoidably incurs relating entirely to the Works or Services not covered under **clause 16.5.3(1)**.
- 16.5.4. The Principal will not be liable to pay compensation under **clause 16.5.3(1)** and **16.5.3(2)** in an amount which would, added to any amounts already paid to the Project Manager under this Agreement, together exceed the Contract Sum.
- 16.5.5. In the event of a reduction in the scope of the Services or Works under **clause 16.5.1**, the Principal's liability to pay the Contract Sum will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services or Works.
- 16.5.6. The Project Manager will not be entitled to compensation for loss of prospective profits.
- 16.5.7. The Project Manager must include a right of termination for convenience in each Subcontract or agreement with a Consultant that it enters into in connection with the Services or Works that is valued at \$5000 or more.

17. Dispute Resolution

17.1. Procedure for dispute resolution

The parties agree that a dispute arising under this Agreement will be dealt with as follows:

- (1) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute within 28 days after becoming aware of the issue;
- (2) within ten Business Days of service of the notice referred to in paragraph (1) each party will nominate a representative not having any prior involvement in the dispute;
- (3) the representatives will try to settle the dispute by direct negotiation between them;

- (4) failing settlement within ten Business Days, the parties may agree to refer the dispute to an expert or other independent third person with power to intervene and direct some form of resolution, in which case, subject to **clause 17.5**, the parties will be bound by that resolution;
- (5) if the parties are unable to agree on a third party under paragraph (4) within five Business Days, either party may apply to the President or the senior official for the time being of the Institute of Arbitrators and Mediators Australia, who may appoint such a third party;
- (6) the parties will cooperate fully with any process instigated under paragraph (4) or (5) in order to achieve a speedy resolution; and
- (7) if a resolution is not reached under (5) or (6) (as the case may be), within a further five Business Days, either party may commence legal proceedings (unless both parties agree to a longer period).

17.2. Role of Expert

Where an expert is appointed under this clause, the expert must be instructed to:

- (1) act as an expert and not as an arbitrator;
- (2) proceed in any manner he or she thinks fit;
- (3) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (4) consider any submission made to it by a party, provided the other party is given a copy and an opportunity to respond;
- (5) examine such documents, and interview such persons, as he or she may require;
- (6) give directions for the conduct of the determination as he or she considers necessary;
- (7) disclose to the parties any interest he or she has in the outcome of the determination at the outset;
- (8) not communicate with one party to the determination without the knowledge of the other; and
- (9) where the expert is engaged to determine a dispute in respect of a determination of costs certified by the Principal's

Representative under **clause 16.4.2**, have regard to whether the costs so certified have been calculated in accordance with **clause 16.4**.

17.3. Costs

Each party will bear its own costs of complying with this **clause 17**, and the parties must bear equally the cost of any third person engaged under **clause 17.1(4)**.

17.4. Continued Performance

Despite the existence of a dispute, the Project Manager must (unless requested in writing by the Principal not to do so) continue to perform the Services and supervise the Works.

17.5. Exemption

This clause does not apply to:

- (1) an individual claim by one party having a financial value of AUD\$500,000 or more;
- (2) action by the Principal under **clauses 16.2, 16.3 or 16.5**; or
- (3) legal proceedings by either party seeking urgent interlocutory relief.

18. Territory Information, Confidential Text, Privacy, Audit and Access

18.1. Non disclosure of Territory Information and Personal Information

18.1.1. The Project Manager must:

- (1) subject to **clause 18.1.2**, not, without prior written authorisation of the Principal, disclose any Territory Information or Personal Information to any person;
- (2) take all reasonable measures to ensure that Territory Information and Personal Information accessed or held by the Project Manager in connection with this Agreement is protected against loss and against unauthorised access, use, modification, disclosure or other misuse in accordance with procedures for that purpose notified by the Principal to the Project Manager in writing from time to time; and
- (3) not transfer Territory Information or Personal Information outside the Territory, or allow any person (other than an

authorised person agreed by the Principal) outside the Territory to have access to it, without the prior written approval of the Principal.

18.1.2. The Project Manager is authorised to disclose and use Territory Information and Personal Information:

- (1) to the extent required to perform its obligations under this Agreement;
- (2) to those Personnel and Trade Contractors who require access to Territory Information or Personal Information for the purposes of performing the Services or the Works provided the Project Manager:
 - (a) provided it takes all reasonable measures to ensure that only Personnel and Trade Contractors agreed by the Principal have access to the Territory Information and Personal Information; and
 - (b) if required by the Principal, the Project Manager ensures that any Personnel and Trade Contractors requiring access to any Territory Information or Personal Information makes an undertaking in writing in a form prescribed by the Principal to not access, use, disclose or retain any Territory Information or Personal Information except in performing their duties of employment or obligation under the contract with the Project Manager and is informed that failure to comply with the undertaking may be a criminal offence and may lead the Project Manager to take action against the relevant person, Subcontractor, Consultant or Trade Contractors;
- (3) where disclosure is required by law, provided the Project Manager immediately notifies the Principal where the disclosure of Territory Information or Personal Information is required by law.

18.1.3. In respect of Personal Information held in connection with this Agreement, the Project Manager must:

- (1) comply with the TPPs and any applicable TPP Code and must not (and procure that any Subcontractor or Consultant must not) act or engage in a practice that breaches a TPP or a TPP Code; and
 - (2) co-operate with any reasonable request or direction of the Principal arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.
- 18.1.4. The Project Manager acknowledges that the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Project Manager is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1900* (Cth).

18.2. Complaints relating to privacy

A complaint alleging an interference with the privacy of an individual in respect of the Services and Works will be handled in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:

- (1) if the complaint is received by the Principal the Principal will notify the Project Manager of only those details of the complaint necessary to minimise any breach or prevent further breaches;
- (2) if the complaint is received by the Project Manager, the Project Manager must immediately notify the Principal of the nature of the complaint but must only release to the Principal Personal Information concerning the complainant with the complainant's consent; and
- (3) after the Principal has given or received notice in accordance with paragraph (1) or (2), the Principal will keep the Project Manager informed of the payment with the complaint as relates to the actions of the Project Manager.

18.3. Non disclosure of Confidential Text

- 18.3.1. The Project Manager acknowledges and agrees that in giving effect to the principles of open and accountable government, the Principal may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Principal will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.
- 18.3.2. If the Contract is a notifiable contract under the Procurement Act and there is Confidential Text:
- (1) the grounds on which the text is confidential are set out in **Item 14 - Contract Information**; and
 - (2) **clause 18.3.3** will apply.
- 18.3.3. Except as provided in this Agreement, the Principal must not disclose Confidential Text to any person without the prior written consent of the Project Manager (which consent will not be unreasonably withheld) except to the extent that Confidential Text:
- (1) is required or authorised to be disclosed under law;
 - (2) is reasonably necessary for the enforcement of the criminal law;
 - (3) is disclosed to the Principal's solicitors, auditors, insurers or advisers;
 - (4) is generally available to the public;
 - (5) is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from the Project Manager;
 - (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
 - (7) is disclosed to the ombudsman or for any other purpose in relation to the protection of the public revenue.

18.4. Notification of any breach

The Project Manager must immediately notify the Principal in writing if the Project Manager becomes aware of a breach of this clause.

19. Principal's and Project Manager's Representatives

19.1. Principal's Representative

19.1.1. The Principal appoints the Principal's Representative to act fairly and reasonably as its' representative for the purposes of this Agreement.

19.1.2. The Principal must promptly notify the Project Manager in writing of any change from time to time in the person holding appointment as the Principal's Representative.

19.1.3. The Principal agrees that the Principal's Representative has full authority to act for and on behalf of the Principal for all purposes in connection with this Agreement. Any Direction that the Principal's Representative may make, give or issue pursuant to the provisions of this Agreement will be deemed to have been made, given or issued by the Principal. All notices, requests for Directions or approval to be given to the Principal under this Agreement must be given to the Principal's Representative.

19.1.4. Except as provided by law or by an Authority, no person other than the Principal's Representative or a person authorised in writing by the Principal's Representative has authority to make, give or issue Directions pursuant to this Agreement. If the Principal's Representative authorises a person to make, give or issue Directions pursuant to this Agreement it will notify the Project Manager in writing of the authorisation and if applicable, any limitations on the authorisation, with such authorisation effective on and from the date specified in the notice.

19.1.5. Subject to **clauses 19.1.6 and 19.1.7**, if the Project Manager executes, or permits to be executed, any services or works upon the direction of any person other than the

Principal, the Principal's Representative or a person authorised by the Principal's Representative who has been notified to the Project Manager in accordance with **clause 19.1.4**, those services or works are to be performed at the Project Manager's own cost and risk and will not be reimbursed under this Agreement.

19.1.6. Where the Project Manager executes, or permits to be executed any services or works upon the direction of a person not identified in **clause 19.1.5** (which includes an Authority) in response to or in order to limit or prevent an emergency the Principal may consider reimbursement under the Agreement.

19.1.7. **Clause 19.1.5** will not apply to services or works required as a consequence of complying with the lawful Direction of an Authority unless that Direction has been required as a result of the failure of the Project Manager to comply with this Agreement.

19.2. Project Manager's Representative

19.2.1. The Project Manager must appoint a person acceptable to the Principal to act as its representative for the purposes of this Agreement.

19.2.2. The Project Manager must promptly notify the Principal in writing of any change from time to time in the person holding appointment as the Project Manager's Representative.

19.2.3. The Project Manager agrees that the Project Manager's Representative has full authority to act for and on behalf of the Project Manager for all purposes in connection with this Agreement. Any Direction made or given by, or given or issued to the Project Manager's Representative is deemed to have been made or given by, or given or issued to the Project Manager.

20. Insurance

20.1. Principal Insurance

20.1.1. The Principal has taken out the Policy for the material damage to the Works and liabilities to third parties arising from the

Works with coverage as set out in the terms of the Policy.	responsibilities of the Trade Contractor, Subcontractor or Consultant (as applicable), take in relation to the Principal similar action to that which the Project Manager is required to take under this clause 20.2 .
20.1.2. The Project Manager represents and warrants that it has read the terms of the Policy prior to the Commencement Date.	
20.1.3. The Project Manager acknowledges that:	20.2.3. If there is a claim for significant damage or destruction of the Works (as determined by the Principal, acting reasonably):
(1) the Policy has been obtained at the Principal's cost;	(1) all settlement amounts must be paid by the insurer directly to the Principal;
(2) the Project Manager is not to be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance (unless such an allowance has been endorsed as a Reimbursable Cost);	(2) the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default or repudiation by the Principal under the Agreement; and
(3) the Project Manager is responsible for paying or bearing all excesses in relation to insured matters under the Policy, and the Project Manager may effect its own insurance to cover the amount of any excess;	(3) the Project Manager must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Agreement may only make a claim for payment for reinstatement of the Works up to the amount of any insurance settlement.
(4) the obtaining of the Policy by the Principal does not:	20.2.4. The Project Manager must give all such information and assistance to the Principal as may be reasonably practicable to assist the Principal or the insurer in respect of any claim or potential claim on the Policy.
(a) limit the obligation of the Project Manager to obtain other insurance policies required by law or clause 20.3 ; or	
(b) prevent the Project Manager from effecting any additional insurances if the Project Manager deems it necessary or prudent to obtain them at its own cost.	
20.2. Claims under insurance policies	20.3. Additional insurance policies
20.2.1. The Project Manager must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under any policy of insurance (including the Policy) effected as required by the Agreement and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.	20.3.1. The Project Manager must:
20.2.2. The Project Manager must take such steps as are necessary or appropriate to ensure that a Trade Contractor, Subcontractor or Consultant (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or	(1) take out and maintain insurances specified in Items 20 to 24 - Contract Information :
	(a) for the minimum time, and for not less than the amounts, specified in Items 20-24 - Contract Information (if any); and
	(b) in accordance with the conditions specified in Item 2 of Schedule 7 (as applicable);
	(2) before the Works Commencement Date, provide evidence acceptable to the Principal's Representative that it has obtained the insurance coverage specified to be taken out by the Project Manager in Items 20-24 - Contract Information ; and
	(3) at any other time, provide evidence of insurance coverage required to be maintained under this Agreement

<p>acceptable to the Principal if requested to do so.</p>	
<p>20.3.2. The Project Manager must obtain the written approval of the Principal for all of its insurers and for the terms and conditions of the policies and provide copies of the certificates of currency to the Principal.</p>	<p>cost of the premiums and the Principal's costs of effecting and maintaining the insurance, as a debt due by the Project Manager.</p>
<p>20.4. Subcontractor and Trade Contractor Insurance</p>	<p>20.5. No limitation of Project Manager's Liability</p>
<p>20.4.1. The Project Manager must:</p> <ol style="list-style-type: none"> (1) obtain a certificate of currency from each Trade Contractor, Subcontractor and Consultant demonstrating that they have the insurance policies required under the relevant Trade Contract, Subcontract or consultancy agreement before granting the Trade Contractor, Subcontractor or Consultant access to the Site; (2) put procedures in place to check that Trade Contractors, Subcontractors and Consultants maintain their insurance policies and renew them before they expire and obtain (and provide to the Principal's Representative on request) a certificate of currency to demonstrate renewal of the policy; (3) ensure that the insurance policies of each Trade Contractor, Subcontractor and Consultant comply with the conditions in Schedule 7 (as applicable); and (4) ensure that each Trade Contractor, Subcontractor and Consultant is insured at all times for workers compensation and related liability in accordance with the requirements of the <i>Workers Compensation Act 1951</i> (ACT). 	<p>The requirements for insurance to be effected and maintained do not in any way affect or limit the Project Manager's liabilities to the Principal or any other person (including, without limitation, indemnities given under clause 21) or any other obligations under the Agreement or in relation to the Works.</p> <p>21. Risk</p> <hr/> <p>21.1. Indemnity by Project Manager for Damage to Property and Persons</p> <p>21.1.1. The Project Manager indemnifies the Principal from and against any:</p> <ol style="list-style-type: none"> (1) cost or liability incurred by the Principal; (2) loss of or damage to property of the Principal including, but not limited to the Works or any Assets; or (3) loss or expense incurred by the Principal in dealing with any claim against it including legal costs and expenses on a solicitor/own Principal basis and the cost of time spent, resources used or disbursements paid by the Principal, <p>arising from:</p> <ol style="list-style-type: none"> (4) a breach by the Project Manager of this Agreement; or (5) an act or omission on the part of the Project Manager or its Personnel in connection with this Agreement. <p>21.1.2. The Project Manager's liability to indemnify the Principal under clause 21.1 is reduced to the extent that any act or omission involving fault on the part of the Principal or its officers, agents or employees (excluding the Project Manager or any person for whom the Project Manager is responsible) contributed to the relevant cost, liability, loss, damage or expense.</p>
<p>20.4.2. The Principal need not make any payment under the Agreement to the Project Manager unless the Project Manager has complied with and continues to comply with this clause.</p>	<p>21.1.3. The right of the Principal to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or</p>
<p>20.4.3. If the Project Manager fails to comply with this clause, the Principal may effect and maintain the relevant insurance and pay the necessary premiums. The Principal may recover from the Project Manager the</p>	

remedy provided by law, but the Principal is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

22. Intellectual Property

22.1. Use of Principal Material

22.1.1. The Principal grants (or will procure) a royalty-free, non-exclusive licence for the Project Manager to use, reproduce and adapt Principal Material for the purposes of this Agreement.

22.1.2. The Project Manager agrees to ensure that Principal Material is used strictly in accordance with any conditions or restrictions set out in this Agreement and any Direction from the Principal's Representative.

22.2. Rights in Contract Material

22.2.1. Intellectual Property in all Contract Material vests or will vest in the Principal. The Project Manager must include provisions in its contracts with Consultants and Subcontractors that ensures any material created by Consultants and Subcontractors for the purposes of the Services or Works vests in the Principal.

22.2.2. **Clause 22.2.1** does not affect the ownership of Intellectual Property in:

- (1) any Principal Material incorporated into Contract Material; or
- (2) any Material in existence at the Works Commencement Date and which is specified in **Item 18 - Contract Information ("Existing Material")**.

22.2.3. The Project Manager grants to (or will procure for) the Principal a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any Existing Material in conjunction with the Contract Material. The Project Manager must include the same licence in favour of the Principal in respect of Existing Material in the Project Manager's contracts with Subcontractors and Consultants.

22.2.4. The Project Manager agrees, on request by the Principal, to create, sign, execute or

otherwise deal with any document necessary or desirable to give effect to this **clause 22.2**.

22.2.5. The Project Manager represents and warrants that:

- (1) it is entitled; or
- (2) it will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this **clause 22.2**.

22.3. Moral Rights

22.3.1. Where the Project Manager is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Principal or any person claiming under or through the Principal.

22.3.2. If **clause 22.3.1** does not apply, the Project Manager agrees:

- (1) to obtain from each author of the Contract Material a written Moral Rights Consent in the form set out in **Schedule of Collateral Documents – Project Management Agreement**, which extends directly or indirectly to the performance of the Permitted Acts by the Principal or any person claiming under or through the Principal (whether occurring before or after the consent is given); and
- (2) on request – to provide the executed original of any such consent to the Principal.

22.3.3. This **clause 22.3** does not apply to any Principal Material incorporated in the Contract Material.

22.4. Dealing with materials and Copies

22.4.1. Property in each Copy vests or will vest in the Principal.

22.4.2. The Project Manager must ensure the safe-keeping and proper preservation of Principal Material, Contract Material and Copies in its possession or control and agrees to establish and maintain procedures to secure all Principal Materials, Contract Materials and Copies against loss and unauthorised access, use, modification or disclosure.

- 22.4.3. The Project Manager must, on expiration or termination of this Agreement, deliver to the Principal all Principal Material, Contract Material and Copies or otherwise ensure that they are dealt with as directed by the Principal, subject to any requirement of law binding on the Project Manager relating to such material or Copies.
- 22.4.4. Without limiting the Territory's rights under this Agreement or otherwise at law, the Project Manager must comply with any direction of the Territory to deliver to it any Territory Material, Contractor Material or Copy to the extent that material has not already been delivered as required by **clause 22.4.3**. This **clause 22.4.4** survives expiration and termination of this Agreement.

23. Audit and Access

23.1. Access to Project Manager's premises

23.1.1. The Project Manager agrees:

- (1) to give the Principal's Representative, or any person authorised in writing by the Principal's Representative, access to:
 - (a) premises occupied by the Project Manager where the Services or Works are being performed or where any Material relevant to Services or Works being performed is held; and
 - (b) the Project Manager's QMS; and
- (2) to permit those persons to inspect and take copies of any Material relevant to the Services and Works.

23.1.2. The rights referred to in **clause 23.1.1 are subject to:**

- (1) the Principal providing reasonable prior notice; and
- (2) the Project Manager's reasonable security procedures.

23.1.3. Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1996* (ACT), and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this **clause 23.**

- 23.1.4. The Project Manager is deemed to have allowed for its attendance, supervision and related costs associated with the conduct of any audits under this Agreement and is not entitled to be paid any additional amount on account of those activities.

23.2. Subcontractor access

Without limiting **clause 23.1.1**, the Project Manager must include in its contracts a right of access to Subcontractor and Consultant premises, Materials and quality management systems to the same extent to which the Project Manager is required to provide access under this **clause 23**.

24. National Code of Practice for the Construction Industry

- 24.1.1. The Project Manager must comply with the Code.
- 24.1.2. Compliance with the Code shall not relieve the Project Manager from responsibility to perform the Agreement, or from liability for any defect in the works arising from compliance with the Code.
- 24.1.3. Where a change in the Agreement is proposed and that change would affect compliance with the Code, the Project Manager must submit a report to the Principal's Representative specifying the extent to which the Project Manager's compliance with the Code will be affected.
- 24.1.4. The Project Manager must maintain adequate records of the compliance with the Code by the Project Manager, its Subcontractors and Consultants.
- 24.1.5. If the Project Manager does not comply with the requirements of the Code in the performance of this Agreement such that a sanction is applied by the Principal, without prejudice to any rights that would otherwise accrue, the Principal shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Project Manager or a Related Entity in respect of work funded by the Principal or any of its agencies.
- 24.1.6. The Principal is authorised to disclose any sanctions imposed by it or any of its

- agencies to the Australian Government or any other State or territory government or an agency of the Australian Government or an agency of a State or territory government.
- 24.1.7. The Project Manager must not appoint a subcontractor or consultant in relation to the Works where:
- (1) the appointment would breach a sanction imposed by the Commonwealth Minister for Employment and Workplace Relations;
 - (2) the appointment would breach a sanction imposed by the Principal; or
 - (3) the subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.
- 24.1.8. The Project Manager agrees to require that it and its Subcontractors or Consultants and its Related Entities provide the Principal or any person authorised by the Principal, with access to:
- (1) inspect any work, material, machinery, appliance, article or facility;
 - (2) inspect and copy any record relevant to the Works the subject of this Agreement; and
 - (3) interview any person,
- as is necessary to demonstrate its compliance with the Code.
- 24.1.9. Additionally, the Project Manager agrees that the Project Manager and its Related Entities will agree to a request from the Principal, or any person authorised by the Principal, to produce a specified document within a specified period, in person, by fax or by post.
- 24.1.10. The Project Manager must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this **clause 24** and the Code.
- 24.1.11. Within 5 Business Days of the date of a written request from a Principal's Representative the Project Manager must provide the Principal's Representative with a completed Declaration of Compliance at set out in the **Schedule of Collateral**

Documents – Project Management Agreement.

25. Notices

25.1. Service of Notices

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

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two Business Days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
 - (a) the other party's acknowledgement of receipt by any means;
 - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
 - (c) the expiration of two Business Days after the date on which it was sent without receipt of a notification that the delivery failed,

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

25.2. Address of parties

For the purpose of **clause 25.1** the following applies:

- (1) the address of the Principal will be as set out in the "Parties" details, or such alternative address as notified by the Principal to the Project Manager in writing;
- (2) the address of the Project Manager will be the registered office of the Project Manager or such alternative address as notified by the Project Manager to the Principal in writing, including as set out in the "Parties' details (provided that at all times service by the Principal of a notice on the registered office of the Project

- Manager will be acceptable service for the purpose of this Agreement);
- (3) the facsimile numbers of the parties will be as set out **Item 27 Items 20-24 - Contract Information**, or such alternative facsimile number as notified by a party to the other party in writing; and
 - (4) the email address of a party will be as set out **Item 27 Items 20-24 - Contract Information**, or such alternative email address as notified by a party to the other party in writing.

26. Duty to co-operate act reasonably

26.1.1. Each party will:

- (1) fully cooperate with the other party to ensure timely provision of the Services and the Works;
- (2) do all it reasonably can to promptly inform the other party of anything that may affect the time for completion, cost or quality of the Works; and
- (3) do all that is reasonably can to avoid hindering the performance of the other under the Agreement.

26.1.2. Clause 26.1.1 does not change the rights and responsibilities of either party under the Agreement, unless they agree in writing to change them.

26.1.3. Neither party may disclose in any dispute resolution proceedings, anything discussed or provided under **clause 26.1.1**.

27. Local Industry Participation

27.1.1. This clause applies unless **Item 29 – Contract Information** states that it does not apply.

27.1.2. The Project Manager must implement its commitments set out in its local industry participation plan ("**IP Plan**") submitted as part of its tender for the Works (subject to any amendments agreed in writing by the Principal).

27.1.3. The Project Manager must provide a local industry participation report ("**IP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Principal within 6 months

of the date of this Agreement and on or before the first, and each subsequent, anniversary of this Agreement.

27.1.4. Before or concurrently with the Project Manager's submission to the Principal of its final payment claim under this Agreement, the Project Manager must provide to the Principal a final IP Report ("**Final IP Report**") that sets out its level of compliance with the commitments provided for in the IP Plan throughout the term and which is accompanied by a statutory declaration stating the information provided in the Final IP Report is true and correct.

27.1.5. The Principal may withhold payment of the final payment claim until submission of a satisfactory Final IP Report by the Project Manager.

27.1.6. The Project Manager must attend any meeting scheduled by the Principal to review how its IP Plan is being implemented and advanced, and for this purpose, the Project Manager must provide all information reasonably requested by the Principal.

27.1.7. The Project Manager's failure to comply, in whole or in part, with the commitments contained within the IP Plan may be a factor taken into account in the award of future contracts for the Principal.

SCHEDULE 1 CONTRACT INFORMATION

1.	Description of the Project <i>(See clause 1.1.1)</i>	[Note to drafter: insert description of the Project the subject of this Agreement]
2.	Order of precedence Agreement documents <i>(See clause 1.1.1)</i>	<p>The documents listed below comprise the Agreement and are to be interpreted in decreasing order of priority:</p> <ol style="list-style-type: none"> (1) the Special Conditions of Contract (if any); (2) Contract Information; (3) post draft Work Order correspondence that is agreed by the Principal as follows: [Note to drafter: insert details of any post tender correspondence that has resulted in a change or clarification to the original tender submitted by the Project Manager]; (4) Endorsed Design Documents; (5) the General terms of Contract; (6) Project Brief; (7) Principal Material; (8) any other Project Manager's Document; and (9) Project Manager's response to the draft Work Order dated [insert].
3.	Commencement Date of Agreement <i>(See clause 1.1.1)</i>	This Agreement commences on [insert date] , or if no date is specified, the date that the last party executes this Agreement.
4.	Works Commencement Date <i>(See clause 1.1.1)</i>	The Works Commencement Date is [insert date] .
5.	Date for Completion of the Services <i>(See clause 1.1.1)</i>	The estimated Date for Completion of the Services is [Note to drafter: insert estimated date – note the Date for Completion of Services is defined as the date of expiry of the last Defects Liability Period for the Works and any estimate will need to reflect this definition].
6.	Location of Site <i>(See clause 1.1.1)</i>	The Site is located at [Note to drafter: insert full description of the Site of the Works by reference to the street address (if applicable) and Block/Section and Division – if site is only part of a block preferable to annex a plan e.g. The Site is located at 25 Smith Street Wanniasa and is that part of Block 7 Section 25 Wanniasa identified by cross hatching in the plan annexed to this Agreement at Schedule 9 (write “NOT USED” in Schedule 9 if a site plan is not required) – modify description of Site if it is over multiple blocks or not part of a block, for example where it entails road works. It is recommended you avoid identifying and area by colour as it becomes difficult to identify in non-colour versions of the agreement]
7.	Working Hours <i>(See clauses 1.1.1 and 6.6)</i>	<p>Unless otherwise agreed by the Principal's Representative Working Hours are :</p> <ol style="list-style-type: none"> (1) the hours between and including 7 a.m. and 6 p.m; or

		<div>(2) if there is a relevant award, enterprise agreement or industrial agreement applicable to Personnel the hours specified in that award, enterprise agreement or industrial agreement, in respect of those Personnel,</div> <div>(3) with the hours in paragraph (2) to prevail in the event of any inconsistency.</div>								
8.	<div>Working Days</div> <div>(See clauses 1.1.1 and 6.6)</div>	Unless otherwise agreed by the Principal's Representative Working Days are Monday to Saturday (excluding public holidays in the Territory).								
9.	<div>Copies and Format of Contract Material</div> <div>(See clause 1.1.1)</div>	<div>Unless specified otherwise in the Project Brief, the Project Manager will provide Contract Material in the following number of copies and format:</div> <div>(1) three copies in a hard copy format; and</div> <div>(2) one copy in an electronic format acceptable to the Principal.</div>								
10.	<div>Moral Rights</div> <div>(See clause 1.1.1 and 22.3)</div>	<div>Additional Permitted Acts:</div> <div>(1) Nil [or list Additional Permitted Acts if appropriate]</div>								
11.	<div>Nominated Subcontractors</div> <div>(See clauses 1.1.1 and 3.5)</div>	Nil [Note to drafter: or insert details of all Nominated Subcontractors being those the Principal requires the Project Manager to engage either directly or through novation of a contract]								
12.	<div>Nominated Consultants</div> <div>(See clauses 1.1.1 and 3.5)</div>	Nil [Note to drafter: or insert details of all Nominated Consultants being those the Principal requires the Project Manager to engage either directly or through novation of a contract]								
13.	<div>Time for submission</div> <div>(See Item 1.1.1 Schedule 2)</div>	[Note to drafter: insert timeframe for submission of monthly reports. See Item 1.1.1 of Schedule 2- for example- By the 5 th Business Day of the month following the month which is the subject of the report]								
14.	<div>Confidential Text</div> <div>(See clauses 1.1.1 and 18)</div>	<table><tr><th>Item or identified text</th><th>Reason for confidentiality (which must satisfy one or more of the grounds set out in section 35 of the Procurement Act).</th></tr><tr><td>[insert relevant items or text]</td><td>[insert details of relevant ground for confidentiality]</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>	Item or identified text	Reason for confidentiality (which must satisfy one or more of the grounds set out in section 35 of the Procurement Act).	[insert relevant items or text]	[insert details of relevant ground for confidentiality]				
Item or identified text	Reason for confidentiality (which must satisfy one or more of the grounds set out in section 35 of the Procurement Act).									
[insert relevant items or text]	[insert details of relevant ground for confidentiality]									
15.	<div>Principal's Representative</div> <div>(See clauses 1.1.1 and 19.1)</div>	<div>[Note to drafter: insert name and contact details of Principal's Representative, including address, telephone, facsimile nos, email address.]</div> <div>Name:</div> <div>Telephone:</div> <div>Facsimile:</div> <div>Email address:</div>								

16.	Project Manager’s Representative <i>(See clause 1.1.1 and 19.2)</i>	Name: [INSERT] Telephone: [INSERT] Facsimile: [INSERT] Email address: [INSERT]				
17.	Security <i>(See clauses 1.1.1, 12.3 and 14)</i>	[Note to drafter: Insert details of the security to be provided by the Project Manager – insert \$ figure amount and method of providing same, examples: “cash or bank cheque in the amount of \$xxxx; or Unconditional bank undertaking in the amount of \$xxxx in a form acceptable to the Principal” Note, generally the \$ amount of the security should be equal to 4% of the Contract Sum].				
18.	Details of Existing Material <i>(See clauses 1.1.1 and 22.2)</i>	Any Material of the Project Manager in existence as at the Works Commencement Date which the Principal may need to use to the extent necessary for the Principal to obtain the full benefit of the Works including the use of the Contract Material [Note to drafter: insert details of any specific item of Material which was in existence as at the Works Commencement Date and which is not to be Contract Material but for which the Principal may require a licence under clause 22.2.3 – if inserting any specific items also insert default wording as a catch all].				
19.	Principal Supplied Items <i>(See clauses 1.1.1 and 5.1)</i>	[Note to drafter: insert details as relevant of all materials, products or other items to be supplied directly by the Principal for the purpose of the Project - if there are none insert “Nil”].				
20.	Insurance to be maintained by Project Manager <i>(See clauses 1.1.1, 6.2(3), and 20 and Schedule 7)</i>	Public Liability Insurance <table border="1"><tr><td>Minimum cover:</td><td>\$ [INSERT] in respect of each claim</td></tr><tr><td>Period of cover:</td><td>[INSERT] <i>(Until the end of the last Defects Liability Period)</i></td></tr></table> [Note to drafter: See Item 2 of Schedule 7 - the Contractor should be required to maintain public liability insurance coverage. The agency should conduct a risk assessment to determine the appropriate minimum level of coverage to be sought. In light of the size/value and complexity of works either \$10million or \$20million will often be appropriate. This insurance should be maintained through the post-completion period of defect correction, and for any period where maintenance services are provided. After these periods, should the Contractor be required to come back onto site (such as to correct a latent defect), officers should always ask the Contractor for evidence of insurance at that time] .	Minimum cover:	\$ [INSERT] in respect of each claim	Period of cover:	[INSERT] <i>(Until the end of the last Defects Liability Period)</i>
Minimum cover:	\$ [INSERT] in respect of each claim					
Period of cover:	[INSERT] <i>(Until the end of the last Defects Liability Period)</i>					
21.	Vehicle and mobile plant equipment insurance	All registered vehicles and machinery must have compulsory third party insurance together with third party property damage insurance for not less than \$20 million per occurrence. Any unregistered vehicles, machinery or mobile plant equipment must be covered by a public liability policy with coverage of not less than \$20 million per occurrence. [Note to drafter: The default wording should be used unless it is established the stated				

	(See clauses 1.1.1, 6, and 20 and Schedule 7)	insurances are not required or alternatively a greater amount of insurance is required - consult with ACTIA in the event you are uncertain as to the level and type of insurance required to be maintained].								
22.	Asbestos Insurance (See clauses 1.1.1, 6.2(3) , and 20 and Schedule 7)	<p>To the extent required by law.</p> <p>Any element of the Works involving the removal or disruption of asbestos must be performed by a person licensed to do so.</p> <p>[Note to drafter: Retain default wording unless you are certain no asbestos is on Site – consult with ACTIA regarding the level of insurance which may be required].</p>								
23.	Marine insurance (See clauses 1.1.1, 6, and 20 and Schedule 7)	<p>Not required. [Note to drafter: specify if the Project Manager needs to have this insurance and if so, how much insurance cover is required. The insurance covers the loss or damage of ships, cargo, terminals and any transport or property by which cargo is transferred, acquired or held between the point of origin and the final destination – it may be required if there is significant, unusual or high value transit items, machinery or components necessary as part of the Works, for example, an MRI machine, large chillers or fridge’s or specialist equipment – contact ACTIA as the requirement for such insurance may be required on a case by case basis– if not required rely on default wording].</p>								
24.	Policy (See clauses and 20 and Schedule 7)	<p>[Note to drafter: For the majority of ACT Government construction works a principal arranged insurance policy will be used. Check with the Contracts Manager in each instance to ensure that the policy details are correct and that ACTIA does not need to organise a separate policy for the project.</p> <p>Where a project does not fall within the standard policy a separate policy may have been arranged by the Principal or be required to be arranged. This is particularly the case where there are significant contract limits (for example building works in excess of \$20 million dollars, and road works in excess of \$10 million dollars, other civil works in excess of 5 million dollars may not be covered by the standard policy).</p> <p>There are different policies for works on The Canberra Hospital campus, works performed on SLA controlled sites and some other projects.</p> <p>You should insert the details obtained from the insurer or insurance broker]</p> <table><tr><td>Minimum cover:</td><td>See Policy for details.</td></tr><tr><td>Insurer:</td><td>[refer to IFCW Contracts Manager for details]</td></tr><tr><td>Period of cover:</td><td>Unit the issue of the Certificate of Usability.</td></tr><tr><td>Policy Number:</td><td>[refer to IFCW Contracts Manager for details]</td></tr></table>	Minimum cover:	See Policy for details.	Insurer:	[refer to IFCW Contracts Manager for details]	Period of cover:	Unit the issue of the Certificate of Usability.	Policy Number:	[refer to IFCW Contracts Manager for details]
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Insurer:	[refer to IFCW Contracts Manager for details]									
Period of cover:	Unit the issue of the Certificate of Usability.									
Policy Number:	[refer to IFCW Contracts Manager for details]									
25.	Profit Adjustment Event (See clauses 1.1.1 and 7.1)	<p>10% [Note to drafter: If the definition of Profit Adjustment Event is to be amended to vary the total % of the increase/decrease in the Project Budget from 10% insert different percentage - otherwise retain 10% default].</p>								

26.	Professional Indemnity Insurance <i>(See clauses 1.1.1 and Schedule 7)</i>	<p>(1) Level of cover of Project Manager’s professional indemnity insurance shall not be less than: <i>(If nothing stated \$5,000,000.00).</i></p> <p>(2) Period for which Project Manager’s professional indemnity insurance shall be maintained after the Date of Practical Completion: <i>(If nothing stated 11 years)</i></p> <p>(3) Categories of consultants and levels of consultants professional indemnity insurance</p> <table><tr><td>Category</td><td>Levels of cover</td></tr><tr><td></td><td>\$</td></tr><tr><td></td><td>\$</td></tr><tr><td></td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table> <p style="text-align: right;"><i>(If nothing stated \$1,000,000.00)</i></p> <p>(4) Period for which each consultant’s professional indemnity insurance shall be maintained after the Date of Practical Completion: <i>(If nothing stated 11 yearsk)</i></p>	Category	Levels of cover		\$		\$		\$		\$
Category	Levels of cover											
	\$											
	\$											
	\$											
	\$											
27.	Address for service of notices <i>(See clause 25.2)</i>	<p>(1) The facsimile number of the Principal is: [insert number including area code]</p> <p>(2) The facsimile number of the Project Manager is: [insert number including area code]</p> <p>(3) The email address of the Principal is: [insert email address]</p> <p>(4) The email address of the Project Manager is: [insert email address]</p>										
28.	Trade Contracts <i>(See clause 1.1.1)</i>	<p>Not used – no Trade Contracts permitted.</p> <p>[Note to drafter: the standard position is that Trade Contracts are not permitted. If there is particular reason to use Trade Contracts, delete above text and include the conditions for use of Trade Contracts. For example, you may consider appropriate monetary thresholds and/or specific trade areas or specific subcontractors. Refer to relevant manager for guidance.</p>										
29.	Local Industry Participation <i>(See clause 27)</i>	<p>Not used – no Local Participation Plan</p> <p>[Note to drafter: or, if the value of Contract is \$5 million or more and therefore a Local Industry Participation Plan is required, delete the above and write “clause 27 applies - Local Industry Participation Plan included at Attachment X”. Drafter to include appropriate cross-reference.”</p>										
30.	Order of Works	<p>Not used</p> <p>[Note to drafter: if it is necessary to direct the Project Manager to perform the Works in a particular order or complete stages or parts of the Work in a particular sequence or at stated times, include the order of work in this item. Note that an order of work is not a Stage, but could sit within a Stage (i.e. the order of steps to be undertaken to achieve the Stage).]</p>										

31.	Subcontractor Warranties	<p>Trades or areas of work requiring a Subcontractor’s or trade contractor’s warranty are:</p> <p>[Note to drafter: A warranty may be required for materials, items of plant, security and emergency equipment etc. Do not seek a warranty if the industry will not provide it. “Not required” should be included if no warranties are required. Otherwise, review each specific section and include a list of specified warranties and their required duration, for example:</p> <table><thead><tr><th>Building Element</th><th>Minimum Warranty Period (years)</th></tr></thead><tbody><tr><td>Lifts</td><td>15</td></tr><tr><td>ICT equipment</td><td>15</td></tr><tr><td>Data and Communications</td><td>15</td></tr><tr><td>Audio Visual</td><td>as per manufacturer's warranty</td></tr><tr><td>Electrical fixtures</td><td>10</td></tr><tr><td>Electrical switchboards</td><td>15</td></tr><tr><td>Light fittings</td><td>5</td></tr><tr><td>Electrical, Fire and Mechanical Control Panels</td><td>15</td></tr><tr><td>External lighting fixtures and poles</td><td>15</td></tr><tr><td>Mechanical Services Equipment</td><td>15</td></tr><tr><td>Mechanical Services Ductwork</td><td>20</td></tr><tr><td>Mechanical Services Pipework</td><td>20</td></tr><tr><td>Fire Protection Systems</td><td>15</td></tr><tr><td>Security equipment</td><td>15</td></tr><tr><td>Sanitary Fittings and Fixtures</td><td>as per manufacturer's warranty</td></tr><tr><td>Hydraulic fixtures & pumps</td><td>15</td></tr><tr><td>Rainwater tanks</td><td>15</td></tr><tr><td>UPS units</td><td>10</td></tr><tr><td>Hydrotherapy Pool and Associated Equipment</td><td>10</td></tr></tbody></table>	Building Element	Minimum Warranty Period (years)	Lifts	15	ICT equipment	15	Data and Communications	15	Audio Visual	as per manufacturer's warranty	Electrical fixtures	10	Electrical switchboards	15	Light fittings	5	Electrical, Fire and Mechanical Control Panels	15	External lighting fixtures and poles	15	Mechanical Services Equipment	15	Mechanical Services Ductwork	20	Mechanical Services Pipework	20	Fire Protection Systems	15	Security equipment	15	Sanitary Fittings and Fixtures	as per manufacturer's warranty	Hydraulic fixtures & pumps	15	Rainwater tanks	15	UPS units	10	Hydrotherapy Pool and Associated Equipment	10
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		Medical Gasses	
		Equipment	10
		Nurse Call Equipment	10
		Structural Steel	25
		Concrete Structure	25
		Expansion joint systems	10
		Metalwork	10
		Roof	
		Sheeting/flashings/access panels	20
		Facade	20
		Doors and Door hardware	15
		Roller doors	15
		Waterproofing	15
		Suspended Ceilings Grid	10
		Suspended Ceilings Panels	5
		Internal Partitions	10
		Joinery	5
		Painting	5
		In-ground irrigation	5
		Resilient Finishes	5
		Carpet	5
		Floor and Wall Tiling	5
			as per manufacturer's warranty
		Entry Mats	10
		Windows	2
		Window Furnishings	as per manufacturer's warranty
		FF&E	as per manufacturer's warranty
		Ceiling Mounted Hoists	5
		Signage	5
		Line marking	

Item 1. Progress Reports

1.1 Monthly Progress Reports

- 1.1.1 The Project Manager must provide a written report each month to the Principal's Representative not later than the date specified in **Item 13 - Contract Information** or such other date as is agreed by the Principal's Representative.
- 1.1.2 Each monthly progress report must address:
- (1) the matters set out in the Project Brief;
 - (2) any compliance issues or incidents associated with the following areas:
 - (a) WHS;
 - (b) Industrial Relations Obligations;
 - (c) Procurements;
 - (d) matters relating to design;
 - (e) risks associated with the Project including proposed prevention or minimization measures;
 - (f) environmental matters including the EMS; and
 - (g) QMS;
 - (3) progress against the Master Program and Works Program, and any updates or changes to the Master Program and Works Program;
 - (4) costing by including a detailed monthly cost report as required by **Item 1.2** of this Schedule below; and
 - (5) any other matters required by the Principal's Representative, from time to time.
- 1.1.3 The monthly progress report and cost report must be in a format which is acceptable to the Principal's Representative.

1.2 Cost Plan and Monthly Cost Report

- 1.2.1 The Project Manager must consult with the Principal's Representative as soon as practicable after the Commencement Date and develop a detailed Cost Plan consistent with the Project Budget which details the type and timing of all costs anticipated to be spent to deliver the Services and the Works including contingencies.
- 1.2.2 Once the Cost Plan is endorsed by the Principal, the Project Manager must use its best endeavours to ensure that:
- (1) the total cost to deliver the Works and the Services does not exceed the Project Budget; and
 - (2) Reimbursable Costs do not exceed the relevant Reimbursable Costs Cap for the type of costs; and
 - (3) contingency money is not used from the Project Budget without prior approval by the Principal.
- 1.2.3 The Project Manager must update the Cost Plan and Project Budget as and when directed to do so by the Principal's Representative.
- 1.2.4 The Project Manager must provide a monthly cost report which includes:
- (1) an update of expenditure against the Project Budget and the forecast end cost and cash flow against the current Cost Plan;

- (2) details of any contingency money used from the Project Budget in respect of the Works and any contingency money remaining in the Project Budget;
- (3) all expenditure in relation to Reimbursable Costs;
- (4) the value of all Trade Contracts and Subcontracts and an estimate for future Procurements;
- (5) all costs paid to date under the Trade Contracts and Subcontracts;
- (6) advice on any Claims or disputes that are on hand or in progress;
- (7) a schedule of all Works Variations, both endorsed and pending, with actual or estimated costs as appropriate;
- (8) a schedule of all Site Assets, including their original purchase value where they are not hired or leased Assets; and
- (9) details of whether the Reimbursable Costs Caps are likely to be exceeded.

1.3 Other reports

The Project Manager must provide any other reports specified in the Project Brief at the frequency specified in the relevant brief or as otherwise agreed by the Principal's Representative.

1.4 Trade Contractor Payment Schedule

The Project Manager is to prepare and submit monthly to the Principal a payment schedule and/or suppliers' invoices and statements in respect of each Trade Contractor in accordance with the terms of the relevant Trade Contract.

1.5 Performance Review post Practical Completion

Not later than six weeks after the issue of the Contractor Certificate of Practical Completion for the works performed under each Trade Contract, the Project Manager must undertake a performance review and submit a report to the Principal detailing the outcomes, with the report to be in a form acceptable to the Principal.

Item 2. Meetings

- 2.1.1 The Project Manager must meet with the Principal on a minimum monthly basis.
- 2.1.2 A meeting must be scheduled in the week following the submission of the report referred to in Item 1.1, which will be attended by at a minimum the Principal's Representative and the Project Manager's Representative. The purpose of that meeting will be to discuss the monthly progress report and any other matters provided for in the Agreement.

**SCHEDULE 3 QUALITY ASSURANCE – WORK HEALTH AND SAFETY – ENVIRONMENTAL MANAGEMENT –
OTHER MATTERS**

PREQUALIFICATION AND QUALITY MANAGEMENT SYSTEM		
1.	Project Manager must retain Prequalification	The Project Manager must retain Prequalification until the issue of the Certificate of Completion of the Services.
2.	Implementation of Quality Management System	<p>(1) The Project Manager must within 15 Business Days of the Commencement Date (or such other time as agreed by the Principal) prepare all documents, plans and material which form part of the QMS for the Project and which meet the requirements set out in the Project Brief and submit it to the Principal's representative for endorsement.</p> <p>Note: <i>The quality assurance requirements, TQFs and Quality Record requirements are set out in the Project Brief.</i></p> <p>(2) The Project Manager must modify and resubmit any document, plan or material which is required to form part of the QMS until it is endorsed by the Principal's Representative.</p> <p>(3) The Project Manager must implement the endorsed QMS at all times during the term of this Agreement and as set out in the Project Brief.</p>
WORK HEALTH AND SAFETY		
3.	WHS System Requirements	<p>The Project Manager must have in place at all times during the performance of this Agreement (and in accordance with its obligations in respect of Prequalification) a functioning occupational health and safety system which is:</p> <p>(1) second party certified by the ACT Government or another State, territory, State authority or territory authority which is acceptable to the Principal; or</p> <p>(2) third party certified as being in accordance with the latest edition of "AS4801 - Occupational Health and safety management systems – Specifications with guidance for use."</p>
4.	WHS Management Plan	<p>(1) The Project Manager must prepare and submit to the Principal's Representative for review, a WHS Management Plan either as a discrete plan or as a component of the Project Quality Plan before any work is commenced on Site.</p> <p>(2) If specified in the relevant TQF (see Project Brief) the WHS Management Plan must be supplied no later than the date specified in that TQF, but in any event, prior to work being commenced on the Site.</p> <p>(3) The Principal will notify the Project Manager as to the suitability of the WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 7 days of the date of provision of the WHS Management Plan by the Project Manager.</p> <p>(4) Notification by the Principal in accordance with paragraph (3) will not relieve the Project Manager of its obligations to comply with and demonstrate compliance with this Agreement and the WHS Legislation.</p>

5.	Engagement as Principal Contractor	<p>The Principal:</p> <ul style="list-style-type: none"> (1) engages the Project Manager as principal contractor; (2) authorises the Project Manager to have management or control of the Site; and (3) engages the Project Manager to discharge the duties of a principal contractor under Chapter 6 of the <i>Work Health and Safety Regulation 2011</i> (ACT).
6.	Compliance with WHS Legislation	<ul style="list-style-type: none"> (1) The Project Manager must comply with the WHS Legislation and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk. (2) The Project Manager must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter. (3) The Project Manager must institute and maintain systems to obtain regular written assurances from all Trade Contractors and Subcontractors and other entities engaged to perform work on the Site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation. (4) The Project Manager must provide the written assurances obtained under paragraph (3), together with written assurances from the Project Manager about the Project Manager's ongoing compliance with WHS Legislation, to the Principal's Representative, and, if requested, to the Principal. (5) The Project Manager must provide the Principal's Representative, and, if requested, the Principal, with a written report on all work health and safety matters, or any other relevant matters including a summary of the Project Manager's compliance with WHS Legislation, at least once per month, and at other times as requested. (6) The Project Manager must exercise a duty of utmost good faith to the Principal in carrying out the work under or in accordance with the Agreement to enable the Principal to discharge the Principal's duties under the WHS Legislation. (7) The Project Manager must ensure that if any law requires that a person: <ul style="list-style-type: none"> (a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or (b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised. (8) The Project Manager must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be

		<p>authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.</p> <p>(9) The Project Manager must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and paragraphs (7) and (8) are met.</p> <p>(10) If requested by the Principal's Representative or required by WHS Legislation, the Project Manager must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Project Manager or any Trade Contractor or Subcontractor commences such work.</p> <p>(11) If the Principal's Representative reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Project Manager (or any Trade Contractor or Subcontractors) the Principal's Representative may direct the Project Manager (or the relevant Trade Contractor or Subcontractor) to change its manner of working or cease working and the Project Manager Trade Contractor or Subcontractor (as applicable) must comply.</p> <p>(12) The Principal may take any action necessary to protect the Works and other property or to prevent or minimise risk to health and safety of persons, which the Project Manager must take but does not and the Principal may recover any costs associated with such action from the Project Manager.</p> <p>(13) The Project Manager must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in the Agreement and the WHS Legislation.</p> <p>(14) The Project Manager must demonstrate to the Principal's Representative and Principal, whenever requested, that the Project Manager has met and is meeting at all times, its obligations under this Item but such demonstration does not relieve the Project Manager of its primary obligation to perform work safely.</p> <p>(15) The Project Manager must take all reasonable actions and comply with all reasonable requests of the Principal, the Principal's Representative or their respective authorised persons regarding any safety audits in respect of the Site.</p> <p>(16) Without limiting paragraph (15) the Project Manager must, at all reasonable times, allow the Principal or any person authorised by the Principal:</p> <ul style="list-style-type: none"> (a) to enter upon the Site to conduct a safety audit; (b) to enter upon the Site or any premises occupied by the Project Manager to inspect and copy any records relevant to a safety audit; and
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		<p>(c) to enter upon the Site or any premises occupied by the Project Manager to interview any person as part of a safety audit.</p> <p>(17) In this Item “improvement notice”, “infringement notice”, non-disturbance notice”, “notice of entry”, “prohibition notice” and “provisional improvement notice” all have the same meanings as in the <i>Work Health and Safety Act 2011 (ACT)</i>.</p> <p>(18) The Project Manager must immediately notify the Principal’s Representative and the Principal upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to the Site or the Works and provide the Principal’s Representative and the Principal with a copy of the relevant notice if the Project Manager has the same.</p> <p>(19) The Project Manager must promptly notify the Principal’s Representative and the Principal upon becoming aware of the issue of any provisional improvement notice referable to the Site or the Works and provide the Principal’s Representative and the Principal with a copy of the notice if the Project Manager has the same.</p> <p>(20) The Project Manager must provide reports on work health and safety matters to the Principal and the Principal’s Representative in such form and at such times as reasonably required by the Principal and advised to the Project Manager.</p> <p>(21) The obligations set out in this Agreement do not detract from the Project Manager’s obligations under the WHS Legislation. If there is any inconsistency between this Agreement and WHS Legislation, the Project Manager must comply with the WHS Legislation and inform the Principal of the inconsistency.</p> <p>(22) If design forms part of the Project Manager's Services, 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.</p>
7.	Incident reporting	<p>(1) In this clause, “regulator” and “notifiable incident” have the same meaning as in the Work Health and Safety Act 2011 (ACT).</p> <p>(2) In addition to any obligations under WHS Legislation, the Project Manager must:</p> <ul style="list-style-type: none"> (a) notify the Principal of any notifiable incident immediately after it notifies the regulator; and (b) provide the Principal with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator. <p>(3) In addition to the obligations under paragraph (2) the Project Manager must notify the occurrence and furnish a written report to the Principal of:</p>

		<ul style="list-style-type: none"> (a) incidents resulting in damage to property; (b) incidents resulting in significant delay to the Works; (c) incidents resulting in injury or illness other than a notifiable incident; and (d) incidents that may have resulted or may result in any incidents set out in paragraphs (a), (b) or (c) above or a notifiable incident.
WHS ACTIVE CERTIFICATION POLICY		
8.	WHS Active Certification Policy	<ul style="list-style-type: none"> (1) Unless otherwise stated, capitalised words and phrases used in this Item have the same meaning as in the Australian Capital Territory's WHS Active Certification Policy. (2) Without limiting any other part of the Agreement where the Project Manager: <ul style="list-style-type: none"> (a) is prequalified under a Prequalification Scheme at the date of the Agreement; (b) becomes prequalified under a Prequalification Scheme during the term of the Agreement; or (c) has its prequalification status under a Prequalification Scheme cancelled, suspended or downgraded during the term of the Agreement, the WHS Active Certification Policy will apply. (3) To the extent necessary to give effect to the WHS Active Certification Policy its provisions are incorporated by reference into the Agreement. (4) The Project Manager will pay to the Principal by way of reimbursement the Auditor's costs associated with the conduct of any Follow Up Audit (required as a result of the action or inaction of the Project Manager) and any Close Out Audit conducted under the WHS Active Certification Policy. (5) Unless otherwise agreed by the parties, the costs of the Auditor referred to in paragraph (4) will be paid by the Project Manager to the Principal by way of a deduction from an amount or amounts claimed by the Project Manager in a payment claim made under the Agreement, at the absolute discretion of the Principal. (6) Where all or part of the costs of the Auditor are not paid to the Principal in accordance with paragraph (5) any amount outstanding will be a debt due and payable by the Project Manager to the Principal.
ENVIRONMENTAL MANAGEMENT SYSTEMS		
9.	EMS Requirements	<p>The Project Manager must have in place at all times during the performance of this Agreement a functioning Environmental Management System (EMS) which:</p> <ul style="list-style-type: none"> (1) is second party certified by the ACT Government or another State, territory, State authority or territory authority which is acceptable to the Principal; or (2) is third party certified in accordance with the latest edition of "AS 14000 – Environmental management"; and (3) meets any other environmental management requirements set out in the Project Brief.

10.	Environmental Management Plan	<p>(1) The Project Manager must prepare and submit to the Principal's Representative for review, an Environmental Management Plan (EMP) as a discrete plan or as a part of the Project Quality Plan.</p> <p>(2) The EMP must be provided not later than the date specified in the relevant TQF (see Project Brief) and shall include:</p> <ul style="list-style-type: none"> (a) the environmental objectives to be attained for the Project; (b) the specific procedures, methods and work instructions to be applied; (c) key staff and responsibilities; (d) a staff induction and training plan; (e) a schedule of proposed environmental records to be submitted; (f) an audit program; and (g) any other measures necessary to meet the environmental objectives including a method for changes and modifications to the EMP as the Project proceeds.
11.	Environmental Protection Agreements and Environmental Authorisations	<p>If specified in the Project Brief and/ or if required by law, the Project Manager must enter into an environmental protection agreement and/or obtain any necessary environmental authorisation as required by the <i>Environment Protection Act 1997 (ACT)</i> (or such substituted legislation) necessary for the purpose of the Project. In this Agreement the terms “environmental protection agreement” and “environmental authorisation” have the same meanings as set out in the <i>Environment Protection Act 1997</i>.</p>
12.	Protection of Existing Flora	<p>(1) The Project Manager must take appropriate measures to protect from damage all trees and other plants which:</p> <ul style="list-style-type: none"> (a) are shown or specified to be retained on the Design Documents or other Material relating to the Project; (b) are beyond the limits allowed to be removed; or (c) need not be removed or damaged for construction operations. <p>(2) Unless otherwise stated in the Project Brief, if the Site contains trees, shrubs, lawns and/or gardens (Site Flora) affected by the Works, the Project Manager must comply with all laws (including the obtaining of any necessary approvals or authorisations) associated with the removal, retention and protection of the Site Flora.</p>
13.	Dust and Noise	<p>The Project Manager must take all practicable steps to minimise:</p> <ul style="list-style-type: none"> (1) dust caused by the Works; and (2) noise resulting from the Works.
14.	Waste Management	<p>(1) For Works that are the subject of a development application and/or building application, the Project Manager must comply with any development code or general code identified in the Territory Plan in relation to waste management. The Project Manager must provide to the Principal's Representative copies of any plans required by any relevant code in the Territory Plan (which will form part of this Agreement).</p>

		<p>(2) In respect of recycling of materials:</p> <ul style="list-style-type: none"> (a) existing unit paving, asphalt paving, base course material, concrete kerbing and plant material such as trees and shrubs is to be recycled in a manner approved under any relevant development or general code identified in the Territory Plan; (b) any material to be recycled shall be stored on Site or such other location as is agreed by the Principal's Representative to facilitate efficient handling of the material; and (c) the method of disposal of material to be recycled is to be included in the Project Quality Plan and/or EMP.
15.	Traffic management	The Project Manager must prepare, in respect of any proposed obstruction or deviation of traffic, detailed documents as to the proposal and provide a copy to the Principal's Representative for endorsement. Once endorsed by the Principal's Representative, the Project Manager must submit them for approval to the relevant Authorities and implement the plan as directed.
DELIVERY AND STORAGE OF ITEMS FOR THE WORKS		
16.	Delivery and Storage of Items	<p>The Project Manager must:</p> <ul style="list-style-type: none"> (1) inspect all materials delivered to the Site for use in the Works and check that they are correct in respect of both quality and quantity; and (2) ensure that all materials delivered to the Site are properly stored, protected and accounted for by a continuing inventory.
REQUIREMENTS AFTER CERTIFICATE OF USEABILITY ENDORSED		
17.	Operation and maintenance Manual Requirements	<ul style="list-style-type: none"> (1) Within 20 Business Days of the endorsement of the Certificate of Useability the Project Manager must, unless specified otherwise in the Project Brief, supply 3 copies of each operation and maintenance manual for the use of the building occupier and the maintenance authority. The operation and maintenance manuals must include all necessary information to enable users to: <ul style="list-style-type: none"> (a) properly understand the purposes for which aspects of the Works were designed; (b) properly understand the correct method of operation of fixtures, fittings, Building Services, plant and equipment and other components forming part of the Works; (c) properly understand the requirements for periodic maintenance and repairs; (d) identify the sources for specialist maintenance and repair work or work which must be performed by specialists to maintain warranties and guarantees; (e) identify sources of supply for replacement parts; (f) include all necessary access codes and software to enable operation and maintenance of all items incorporated as part of the Works; and (g) refer to a comprehensive set of documentation to establish locations of Building Services and equipment in the event of future modifications to the Works. (2) Operating guidelines in all operation manuals must include:

		<ul style="list-style-type: none"> (a) a description of the purposes for which all aspects of the Works were designed; (b) a description of environmentally sustainable design features which have been incorporated into the Works and instructions as to how these features should be used to achieve the maximum benefit obtainable; and (c) all final commissioning settings for Building Services which have variable parameter adjustments. <p>(3) Maintenance guidelines in all maintenance manuals must include:</p> <ul style="list-style-type: none"> (a) maintenance instructions for the building fabric, finishes and Building Services; (b) copies of manufacturers' manuals for operation and maintenance of all fittings, Building Services and other items incorporated in the Works; and (c) a comprehensive index of materials and equipment used in the Works, including the name and address of the supplier and service agent for each item.
18.	WAE Drawings	<p>(1) Within 20 Business Days of the endorsement of the Certificate of Useability the Project Manager must provide the Principal with two hard copies of the WAE Drawings and, where computer aided drafting has been used to produce one or more WAE Drawings, one electronic copy of those WAE Drawings (in a format acceptable to the Principal's Representative).</p> <p>(2) All WAE Drawings must include:</p> <ul style="list-style-type: none"> (a) the name of the Project and project number; (b) Division, Section and Block details for the Site; (c) details and locations of all Building Services; (d) fixings of cladding panels and the details of roofing construction; and (e) details of any prestressed or post tensioned reinforced concrete elements. <p>(3) For WAE Drawings sets that exceed ten sheets a cover sheet must be included which contains an index showing:</p> <ul style="list-style-type: none"> (a) the title of plans; and (b) the Project Manager's plan number. <p>(4) All WAE Drawings are to be clearly marked as "WORKS AS EXECUTED", either in or adjacent to title block and must be certified as such by signature of the Project Manager.</p>
DEFECTS LIABILITY PERIOD		
19.	Requirements on handover	<p>On the Handover Date the Project Manager must request approval on the staff and attendance labour or method intended to be used in making reports, supervising Defects rectification work and administering final completions. The cost of such supervision and attendance or method must be within the accepted Cost Plan unless agreed otherwise by the Principal's Representative in writing.</p>

Item 1. Procurements

1.1.2 This Schedule applies where the Project Manager is required to undertake one or more Procurements as part of the Services.

1.1.3 In this Schedule the following terms are defined:

Drafting Instructions means the Principal's current instructions as advised by the Principal to the Project Manager from time to time.

Request means a request for tender, request for quotation, expression of interest or any other means of eliciting responses to a proposed Procurement issued, implemented or actioned by the Project Manager.

Respondent means a person or entity who responds or may potentially respond to a Request.

Response means the response of the Respondent to a Request which may be in the form of a tender, a quotation, response to an expression of interest or such other form as required or sought in a Request.

1.1.4 The Project Manager must prepare all Tender Documents necessary for Procurements required to enable the conduct and completion of the Works.

1.1.5 In preparing the Tender Documents and conducting any process required in respect of Procurements the Project Manager must comply with the Procurement Protocols.

1.1.6 The Project Manager must submit the Tender Documents prepared in respect of Procurements relating to proposed Trade Contracts to the Principal's Representative for review and endorsement prior to issue of the same. In addition the Project Manager must submit to the Principal's Representative, upon the request of the Principal's Representative, any other Tender Documents proposed in respect of Procurements for the review, and if required by the Principal's Representative, endorsement of the Principal's Representative.

1.1.7 The Project Manager must amend the Tender Documents as required by the Principal's Representative.

1.1.8 The Project Manager must not issue the Tender Documents which are required to be endorsed by the Principal's Representative in accordance with **Item 1.1.4** of this Schedule until they have been endorsed by the Principal's Representative.

1.1.9 Tender Documents must:

- (1) include quality assurance requirements consistent with the range of values set out in Form TQF-960 "the Territory's Quality Assurance Arrangements for Suppliers" (or as otherwise advised by the Principal);
- (2) satisfy any requirements set out in the Project Brief; and
- (3) where they include a request for tender, be prepared in accordance with the Drafting Instructions, with the exception of Trade Contracts for the engagement of a supplier.

Note: the Project Manager should contact the Territory's Manager - Contracts and Prequalification at the time of entering into this Agreement to confirm the current version of the Drafting Instructions.

1.1.10 Where the Procurement is in respect of a Trade Contract the Project Manager must submit to the Principal:

- (1) a copy of the preferred tenderer's Response;
- (2) the Project Manager's recommendation identifying the preferred tenderer;

- (3) the evaluation report for the Procurement; and
 - (4) any other document associated with the Procurement requested by the Principal.
- 1.1.11 The Principal's Representative may request any or all of the documents referred to in **Item 1.1.10** in respect of any other Procurement conducted by the Project Manager. The Project Manager must provide the documents requested by the Principal's Representative within 5 Business Days of the date of the request.
- 1.1.12 The Project Manager must in respect of all Procurements:
- (1) ensure they are conducted with probity and in an ethical manner so that no Respondent will have received an unfair advantage or suffered an unfair disadvantage;
 - (2) ensure all Responses are assessed in accordance with an established evaluation methodology which is consistent with the methodology set out in the Request;
 - (3) ensure an evaluation team is established consisting of members with appropriate skills to properly assess Responses;
 - (4) require all proposed and actual members of an evaluation team (and any other persons who have access to any Response or will be involved in any assessment or decision making process associated with a Procurement):
 - (a) to disclose any actual or potential conflicts of interest to the Project Manager; and
 - (b) subject to any other provisions of this Schedule, keep the contents of any Requests (and any other information obtained as part of any assessment of Procurements) confidential;
 - (5) ensure protocols, procedures and measures are in place and enforced to protect the confidentiality of information contained in Requests (and any other information obtained as part of any assessment of Procurements);
 - (6) take appropriate measures to deal with any actual or potential conflicts of interest to ensure probity is maintained;
 - (7) provide to the Principal's Representative, upon written request, copies of any documents created or received in respect of any process associated with Procurements;
 - (8) ensure an evaluation report is prepared in respect of all Procurements setting out at a minimum the following:
 - (a) the evaluation methodology adopted (which must be consistent with that contained in any Request);
 - (b) a summary of the overall ranking of all Respondents;
 - (c) details of the assessment of each Respondent against the criteria or other assessment regime identified in the Request;
 - (d) the identification of any non conforming Response and the reason/s for non conformance;
 - (e) the chosen Respondent; and
 - (f) such other matters as advised by the Principal's Representative to the Project Manager from time to time.
- 1.1.13 In respect of all Procurements:

- (1) if the Project Manager intends to pursue a select (rather than open) tender process, then, prior to approaching the market, it must submit to the Principal a Pre-Tender Notification Form substantially in the form set out in the **Schedule of Collateral Documents – Project Management Agreement** or such other form as advised by the Territory; and
 - (2) prior to each engagement, the Project Manager must provide to the Territory the Project Manager Evaluation Form (as set out in the **Schedule of Collateral Documents – Project Management Agreement**, or such other form as advised by the Territory) including the evaluation report for the Procurement. The Principal may, within 5 Business Days, reject the proposal as set out in the Project Manager Evaluation Form. If the Principal has not advised a rejection within 5 Business Days of receipt of the Project Manager Evaluation Form, the Project Manager may proceed to engage the Trade Contractor or Subcontractor as proposed.
- 1.1.14 Where the Drafting Instructions have application the Project Manager must submit to the Territory its proposed form of subcontract prior to entering into it with the preferred subcontractor and comply with any instructions of the Principal regarding the form and content of that document.
- 1.1.15 In preparing Tender Documents the Project Manager must also prepare, as necessary, any specifications, drawings and the proposed terms of the resulting contracts.
- 1.1.16 Without limiting **Item 1.1.5** the Project Manager must ensure Procurements are conducted in a manner that is consistent with sections 5, 6 or 9 of the *Government Procurement Regulation 2007* (ACT) as applicable, being as follows:
- (1) where the value of the goods, services or works are less than \$25,000 the Project Manager must seek at least one oral quotation;
 - (2) where the value of the goods, services or works is for \$25,000 or more and less than \$200,000 the Project Manager must seek at least 3 written quotations; and
 - (3) where the value of the goods, services or works is for \$200,000 or more the Project Manager must invite public tenders.
- 1.1.17 In respect of any Procurement with an estimated value in excess of \$200,000 the Project Manager must use the Principal's nominated tender box for the submission of any procurement documentation. The Principal will open and register all procurement documentation received through its tender box in accordance with this Item, and provide the procurement documentation to the Project Manager.
- 1.1.18 In respect of all Procurements, the Project Manager must include in the Tender Documents assessment criteria that, at a minimum, relate to the following matters:
- 1. Past projects**
Provide and describe past performance in relevant projects similar to the services including:
 - a. Project scope, value, date and duration;
 - b. Role of nominated personnel on the project.
 - 2. Technical, Managerial Skills and Resources to complete the project**
Provide and describe the following:
 - a. Professional / technical capability of key personnel to meet the requirements of this project;

- b. Statement on the availability for the key personnel;
- 3. Demonstrate the project will be completed within the contract Period.**

Provide and describe the following:

 - a. A detailed preliminary program for the project to complete the works within the contract period;
 - b. Describe critical activities and methods of achieving project milestones and project completion dates; and
- 4. Demonstrated Work Health and Safety system to complete the project**

Provide and describe the following:

 - a. Demonstrated ability to proactively manage the following Work Health and Safety (WHS) requirements;
 - Management
 - Planning
 - Risk & Hazard Management
 - Training, Competency & Supervision
 - High risk Construction work
 - Consultation
 - Reporting
 - b. Records of any fines or other penalties (including Prohibition Notices) issued by WorkSafe ACT, or any corresponding entity in another State or Territory, in the past 5 years and describe how the issue was closed out.

1.1.19 In respect of Procurements of Trade Contractors that will be performing “Territory-Funded Work” as defined in **Schedule 5**, the Project Manager must require (including by specifying in the Tender Documents relevant assessment criteria) tenderers to hold a Secure Local Jobs Code Certificate (as defined in **Schedule 5**) and, if the procurement has an estimated value of \$25,000 or more, to submit a Labour Relations, Training and Workplace Equity Plan (as defined in **Schedule 5**) in a form reasonably required by the Territory. The Project Manager must ensure the Trade Contract includes the model terms substantially in the form set out in the *Government Procurement (Secure Local Jobs Model Contract Terms) Determination 2018* DI2018-282.

Item 1. SECURE LOCAL JOBS

1.1 Defined terms and interpretation

1.1.1 In this Agreement (including this Schedule) the following terms are defined:

- (1) 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 Project Manager or one of its Associated Entities has contravened an Industrial Law;
- (2) **Applicable Subcontractor Work** works or services that would, if provided to a Territory Entity, be Territory-Funded Work;
- (3) **Approved Auditor** has the meaning as set out in the Procurement Act;
- (4) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (ACT);
- (5) **Code** means the Secure Local Jobs Code;
- (6) 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 Project Manager may rely on as grounds for not terminating this Agreement as a result of the Adverse Ruling;
- (7) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
- (8) Labour Relations, Training and Workplace Equity Plan has the meaning as set out in the Procurement Act;
- (9) **Registrar** has the meaning as set out in the Procurement Act;
- (10) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;
- (11) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;
- (12) **Territory Entity** has the meaning as set out in the Procurement Act; and
- (13) **Territory-Funded Work** has the meaning as set out in the Procurement Act.

- 1.1.2 For the purposes of **Item 1.2.2** and **Item 1.3.5** the form set out in the **Attachment** to this Schedule approved unless otherwise advised by the Principal.

1.2 Subcontractors performing Territory-Funded Work

- 1.2.1 The Project Manager must, in relation to any subcontractors engaged to perform Applicable Subcontractor Work:

- (1) 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 this Schedule and imposed on the Project Manager (subject to any necessary variation to reflect the different parties);
- (2) ensure:
 - (a) the subcontractor holds a Secure Local Jobs Code Certificate; and
 - (b) the subcontractor maintains a Secure Local Jobs Code Certificate during the term of their agreement; and
 - (c) the obligations in **Item 1.2.1(2)(a)** and **Item 1.2.1(2)(b)** are included in the relevant agreement with the subcontractor.

- 1.2.2 The Principal may by written notice request the Project Manager obtain a statutory declaration from a subcontractor engaged to perform Applicable Subcontractor 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 Project Manager must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Project Manager to comply with this **Item 1.2.2**.

- 1.2.3 The Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by subcontractors engaged to perform Applicable Subcontractor 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.

1.3 Project Manager's Secure Local Jobs responsibilities

- 1.3.1 The Project Manager must comply with all of its obligations under the Code.
- 1.3.2 The Project Manager must maintain a valid Secure Local Jobs Code Certificate during the term of the Agreement.
- 1.3.3 Failure of the Project Manager to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Agreement entitling the Principal to terminate the Agreement on written notice to the Project Manager.
- 1.3.4 If at any time during the term of the Agreement an Adverse Ruling is made, the Project Manager must, within 7 business days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Project Manager 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.

- 1.3.5 The Project Manager must provide the Principal with a statutory declaration in a form approved by the Principal regarding its compliance with the Code:
- (1) within 5 business days of a written request from the Principal; and
 - (2) if requested in writing by the Principal, at the time the Project Manager provides an Invoice.
- 1.3.6 Failure of the Project Manager to provide a statutory declaration in accordance with **Item 1.3.5** or the making of a false statement in a statutory declaration by the Project Manager or its representative will constitute a breach of this Agreement.
- 1.3.7 If the Project Manager fails to provide a statutory declaration in accordance with **Item 1.3.5(2)** the Principal may withhold payment of monies otherwise due to the Project Manager in respect of the relevant Invoice until the statutory declaration is received.
- 1.3.8 The Principal may require that Project Manager 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.
- 1.3.9 The Principal may require a union workplace delegate or employee representative to attend staff induction sessions held by the Project Manager except in circumstances where attendance would result in a conflict with Commonwealth laws.
- 1.3.10 The Project Manager must, at all reasonable times, allow the Principal, Registrar or person nominated by the Principal or Registrar to enter the Project Manager'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 Principal or Registrar under this **Item 1.3.10** in circumstances where entry would result in a conflict with Commonwealth laws.
- 1.3.11 The Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by the Project Manager 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.
- 1.3.12 If the Project Manager was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the Services:
- (1) the Project Manager must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - (2) the Project Manager must report to the Principal on its compliance with **Item 1.3.12(1)** quarterly during the term of this Agreement;
 - (3) the Project Manager must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - (4) 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.

ETHICAL SUPPLIERS DECLARATION

Statutory Declarations Act 1959 (Cth)

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

1. In this declaration a reference to:

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

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

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

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

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

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

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

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

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

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

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

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

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

“Subcontractor” includes a sub-subcontractor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Set out Full Details of findings]

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

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

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

[Set out Full Details of convictions]

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

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

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

[Set out Full Details of proceedings or prosecutions]

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

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

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

[Set out Full Details of the remedial measures implemented]

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]

[Print name of person making the declaration]

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

Before me:

[Signature of person before whom the declaration is made]

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

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

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

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

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

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
Bailiff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service
Employee of the Australian Trade Commission who is:
(a) in a country or place outside Australia; and

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

Employee of the Commonwealth who is:

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

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

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

Judge of a court

Justice of the Peace

Magistrate

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

Master of a court

Member of Chartered Secretaries Australia

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

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

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

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

Member of:

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

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

Notary public

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

Permanent employee of:

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

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

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

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

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

Sheriff

Sheriff's officer

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

The following Sections A – E constitute Schedule 6.

Item 1. Profit and Support Management Fee**Summary of Profit and Support Management Fee**

1.1.1 The Project Manager's lump sum for Profit and the Support Management Fee for the Services, based on the rates set out in the Panel Deed, are as set out in the following table:

Note: All rates and costs in this section A are GST inclusive

PROFIT	\$_[REFER TO RELEVANT WORK ORDER]
SUPPORT MANAGEMENT FEE	\$_[REFER TO RELEVANT WORK ORDER]
TOTAL PROFIT & SUPPORT MANAGEMENT FEE:	\$_[REFER TO RELEVANT WORK ORDER]

This fee is deemed to include all costs associated with, but not limited to, the following:

*Profit,
Head Office overheads
Head Office accounts staff
Head Office indirect expenses
Support management staff (including but not limited to)
 Director Responsible
 Contract Officer
 Quality Assurance Manager
Support management administration resources,
Site operational costs
Project Manager's salary,
Local travelling expenses,
Mobile telephone costs,
All tools & equipment of the trade
All other operational costs
Safety clothing and equipment issued to on-site staff
Wet weather equipment
First aid equipment
Attendances at Secure Local Jobs and WHS Active
Certification audits*

Note: all head office costs being claimed (for example IT costs) and costs of insurances necessary and referable to the Project must be included as part of the Support Management Fee. Note: Off Site and part time on Site staff must be included in the Support Management Fee

B	REIMBURSABLE COSTS (ADMINISTRATION AND ON SITE PERSONNEL)
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Item 1. Reimbursable Costs

1.1 Reimbursable Costs - Administration

Note: All rates and costs are GST inclusive. A cost not listed in this Section B will be deemed to be included in the Support Management Fee (see Section A). Reimbursement will only be considered where expenditure has occurred and a receipt for that expenditure is provided.

Description of Reimbursable Cost	Reimbursable Costs
Authority fees	\$(REFER TO RELEVANT WORK ORDER)
TOTAL REIMBURSABLE COSTS (ADMINISTRATION)	\$(REFER TO RELEVANT WORK ORDER)

1.2 Reimbursable Costs for on Site Key Personnel

Position and name of Key Personnel**	Loaded Salary (daily rate)	Estimated period (weeks)	Reimbursable Costs
Role			
Nominated staff member	\$XXX.00	xx weeks	XXXX
\$(REFER TO RELEVANT WORK ORDER)	\$(REFER TO RELEVANT WORK ORDER)	\$(REFER TO RELEVANT WORK ORDER)	\$(REFER TO RELEVANT WORK ORDER)
TOTAL REIMBURSABLE COSTS (ON SITE STAFF SALARIES)			\$(REFER TO RELEVANT WORK ORDER)

****List of required Site Key Personnel to be provided confirmed with each project received through the Panel Deed. Rates will be provided from the Panel Deed agreement. Site Personnel may include Foreman, Site Manager, etc. Note that the Project Manager is included in Section A of Schedule 6 (Profit & Support Management Fee).**

1.3 Method of calculation - Reimbursable Costs for on Site Key Personnel

1.3.1 Reimbursable Costs for on Site Key Personnel will be calculated on the basis of the daily rate set out in the table above and will:

- (1) be made on the basis of a five day week and there will be no reimbursement for overtime, weekend work or work undertaken on public holidays; and
- (2) not include reimbursement for rostered days off (RDO) unless the person actually worked on the RDO, in which case they will be reimbursed at the approved daily rate.

1.3.2 In this Section B of Schedule 6, the term '**Loaded Salary**' means the relevant Key Personnel's base salary plus all other costs in respect of the person's position including but not limited to allowances and loadings for payroll tax, workers compensation and common law insurance, annual leave and leave bonus, long service leave, sick leave and superannuation where applicable.

The above loaded salary shall be fixed for a minimum period of 18 months. Adjustments will then only be considered in conjunction with movements in the Wage Price Index for Average Weekly Earnings, Australia catalogue no: 6302.0.

1.4 Summary of Section B of Schedule 6 - Reimbursable Costs Cap

SUMMARY OF REIMBURSABLE COSTS CAP	Reimbursable Cost Cap
Subtotal - Administration Costs (see clause A.1)	[\$[REFER TO RELEVANT WORK ORDER]]
Subtotal - On Site Personnel Costs (see clause A.2)	[\$[REFER TO RELEVANT WORK ORDER]]
TOTAL Section B REIMBURSABLE COSTS CAP	[\$[REFER TO RELEVANT WORK ORDER]]

Note: total reimbursable costs are fixed for the period of the project; and any items not listed above will be deemed to be included in the Support Management Fee.

C	REIMBURSABLE COSTS (SUBCONTRACTORS AND MATERIALS, DAY LABOUR, HIRE OF PLANT AND EQUIPMENT)
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Subcontractor or Materials	Cost \$ (inc GST)
Project Manager's Subcontracts and materials	\$(REFER TO RELEVANT WORK ORDER)
Day Labour allowance (if required)	\$(REFER TO RELEVANT WORK ORDER)
Hire of plant and equipment (if required)	\$(REFER TO RELEVANT WORK ORDER)
TOTAL SUBCONTRACTOR AND MATERIALS, DAY LABOUR AND HIRE OF PLANT AND EQUIPMENT REIMBURSABLE COST CAP	\$(REFER TO RELEVANT WORK ORDER)

D. REIMBURSABLE COSTS (CONSULTANTS)

Consultant	Extent of Service	Fee \$ (inc GST)
Design & Documentation Phase Services	\$(REFER TO RELEVANT WORK ORDER)	\$(REFER TO RELEVANT WORK ORDER)
Head Consultant		
Consultant (name)		
Consultant (name)		
Consultant (name)		
Consultant (name)		
Construction Phase Services		
Head Consultant		
Consultant (name)		
Consultant (name)		
Consultant (name)		
Consultant (name)		
TOTAL CONSULTANCY FEES REIMBURSABLE COST CAP		\$(REFER TO RELEVANT WORK ORDER)

E. PROJECT BUDGET

All rates and costs are GST inclusive

	\$
Lump sum components	\$(REFER TO RELEVANT WORK ORDER)
Profit and Support Management Fee (Section A, Schedule 6)	XXXX.00
Reimbursable components	
Administration costs (Section B, Schedule 6)	XXXX.00
On Site Key Personnel (Section B, Schedule 6)	XXXX.00
Project Manager's Subcontracts and Materials (Section C, Schedule 6)	XXXX.00
Day Labour Allowance (if required) (Section C, Schedule 6)	XXXX.00
Plant and Equipment (if required) (Section C, Schedule 6)	
Project Manager's Consultants (Section D, Schedule 6)	XXXX.00
TOTAL Contract Sum	XXXX.00
Trade Contracts with Principal (if required)	XXXX.00
Contingencies	XXXX.00
MAXIMUM PROJECT BUDGET	XXXX.00

Item 1. Insurance

1.1 Named Insured

- 1.1.1 The Principal has effected the Policy to cover the Principal, contractors and subcontractors employed from time to time in relation to the Works in accordance with the terms of the Policy.
- 1.1.2 The Principal may in its discretion have other insured persons named or included in the Policy, including any other government entity with an interest in the Works or the Site.

1.2 Scope of Policy

The Policy provides cover for named insured with respect to “Works - material damage” and third party liability arising from the Works, on the terms set out in the Policy.

1.3 Period of insurance

The Policy will be maintained by the Principal until the issue of the Certificate of Completion of the Services.

Project Manager's Obligations

- 1.4.1 Within 10 Business Days of receipt of a request from the Principal's Representative to do so the Project Manager must contact the Underwriting Manager, ACT Insurance Authority (or such other person as advised by the Principal's Representative from time to time) and must provide to that person all details reasonably requested for the purpose of the Policy. The Project Manager may be required to comply with multiple requests in accordance with this clause during the term of the Agreement.
- 1.4.2 The Project Manager represents and warrants that it has read the terms of the Policy prior to the Commencement Date. Full copies of the Policy terms are available for inspection by contacting the Manager, Contracts and Prequalification Unit at ACT Procurement Solutions (or such other person as advised by the Principal's Representative from time to time).

1.5 Policy excesses

The Project Manager is responsible for paying or bearing all excesses in relation to insured matters under the Policy in accordance with the Policy terms. The Project Manager may effect its own insurance to cover the amount of any excess.

Item 2. Additional Insurance Policies

2.1 Insurances required

- 2.1.1 The Project Manager must, before starting any work for or in connection with this Agreement, have in place a policy of public liability insurance as specified in **Items 20 – Contract Information**.
- 2.1.2 During the term of this Agreement (and in respect of professional indemnity insurance, for a period of 11 years after the issue of the Certificate of Completion of the Services) the Project Manager must maintain the policies of insurance set out in **Items 20 to 23 Schedule 1**. The Project Manager must provide evidence of the insurances (in a form acceptable to the Principal's Representative) within 3 Business Days of a request by the Principal's Representative to provide the same.
- 2.1.3 If any work for or in connection with the Agreement includes the removal or disruption of asbestos the Project Manager (or the licensed person engaged by the Project Manager in respect of matters associated with the asbestos) must have in place an asbestos liability policy of insurance to cover risks with removal and disruption of asbestos as part of the

Works, as specified in **Item 22 - Contract Information**. The Project Manager must ensure that any person involved with the removal or disruption of asbestos is licensed to deal with the same.

2.1.4 If any work for or in connection with the Agreement requires the Project Manager to have in place of policy of marine insurance the Project Manager must have in place such a policy as specified in **Item 23 - Contract Information**.

2.1.5 The Project Manager must have in place such additional policies of insurance specified in **Item 20 - Contract Information**.

2.2.6 The policies referred to in **Items 2.1** must be in the name of the Project Manager and note the Principal as an interested party for its rights and interests and must cover the Project Manager, the Principal, the Principal's Representative and all Trade Contractors, Subcontractors and Consultants employed from time to time for or in relation to the Agreement and the Works for their respective rights and interests and cover their liabilities to third parties.

2.2 Project Manager obligations in respect of Trade Contractor, Subcontractor and Consultant insurance

2.2.1 The Project Manager must ensure that each policy required to be effected and maintained under the Agreement or under Subcontracts, Trade Contracts or Consultant agreements is in effect for the relevant period specified in this Agreement or the relevant Subcontract, Trade contract of agreement with the Consultant.

2.2.2 All insurance policies of the Project Manager and any Trade Contractor, Subcontractor or Consultant required by this Agreement or any Trade Contract, Subcontract or agreement with a Consultant must:

- (1) require the insurer to notify the Principal (other than in relation to workers compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
- (2) provide that a notice of claim given to the insurer by the Principal, the Project Manager, or a Subcontractor, Trade Contractor or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.

2.2.3 The Project Manager must:

- (1) ensure that in respect of each insurance required to be effected or taken out as required by this Agreement by the Project Manager or any Trade Contractor, Subcontractor or Consultant (in any related Trade Contract, Subcontract or agreement with a Consultant), it:
 - (a) does not do anything which prejudices any insurance;
 - (b) if necessary, rectifies anything which might prejudice any insurance;
 - (c) reinstates an insurance policy if it lapses;
 - (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
 - (e) immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled;

- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (2) ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to suppliers and Consultants;
- (3) ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (4) ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

SCHEDULE 10 PRINCIPAL'S MATERIALS

[Instructional note: Include in this Schedule a list of known Principal's Documents. Ensure the following text is retained]

Principal's Documents provided to the Project Manager include the following. This list is not intended to be a definitive list of Principal's Documents for the purposes of the Contract or in any way limit the definition of Principal's Documents in the Contract.

No.	Document
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Signatures

SIGNED for and on behalf of **the Australian Capital Territory** a body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1998* (Cth):)
)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of **[name of Project Manager ACN XXX XXX XXX]** by:)
)
)

Director

Signature

Director/Company Secretary

Signature

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.