Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CRAFOI2026-007
Date of Application	14 August 2026
Date of Decision	16 October 2026
Processing time (in working days)	45
Fees	Waived
Decision on Access	Partial Release
Information Requested (summary)	"Records held by the City Renewal Authority (CRA) relating to the decision to vary and/or extend contract CRA1087 [Dionysis]"

Publication Details		
Original application	☑ Published	☐ N/A
Decision notice	☑ Published	☐ N/A
Documents and schedule	☑ Published	☐ N/A
Decision made by Ombudsman	N/A	
Additional information identified by Ombudsman	N/A	
Decision made by ACAT	N/A	
Additional information identified by ACAT	N/A	

From: [redacted]
To: CMTEDD FOI
Subject: CMTEDDFOI 2026-224 - FOI Request – CRA1087 Dionysus – Decision not to re-approach market
Date: Friday, 14 August 2026 2:45:37 PM
Attachments: [redacted]

Good afternoon,

Under the Freedom of Information Act 2016, I seek access to the following records held by the City Renewal Authority (CRA) relating to the decision to vary and/or extend contract CRA1087 with Dionysus rather than undertake a fresh procurement or re-approach the market.

This request is limited to:

1. The final brief, submission, memorandum, procurement assessment or other decision record in which re-approaching the market was considered and the decision was made or recommended to instead vary or extend CRA1087.
2. Any final value-for-money assessment, procurement advice, risk assessment or probity advice relied upon in making that decision.
3. The approval or delegate decision authorising:
    - the $2,775,218.99 variation approved on 5 July 2024; and
    - the $5,828,151.50 option/extension approved on 16 May 2025.
4. Any record identifying concerns, risks or issues raised by ACT Government officials in connection with those two decisions regarding contract value, repeated variation, scope, procurement compliance, value for money or re-approaching the market.

For clarity, I do not seek routine administrative correspondence, duplicate records, drafts where a final version exists, or records relating solely to the operational delivery of events or programming.

Date range: 1 January 2024 to 31 May 2025.

I am happy to receive all documents electronically.

Kind regards,

[redacted]



Our ref: CRAFOI2026-007

City Renewal Authority|
ACT Government
ABN 40 746 096 162
T 02 6205 1878
CityRenewal@act.gov.au

Nara Centre
Ground Floor
3 Constitution Avenue
Canberra City

GPO Box 158
Canberra City
ACT 2601

CityRenewalCBR.com.au
@CityRenewalCBR

FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the City Renewal Authority on 14 August 2026.

Specifically, you have sought access to the following information:

"Under the Freedom of Information Act 2016, I seek access to the following records held by the City Renewal Authority (CRA) relating to the decision to vary and/or extend contract CRA1087 with Dionysus rather than undertake a fresh procurement or re-approach the market. This request is limited to:

1. *The final brief, submission, memorandum, procurement assessment or other decision record in which re-approaching the market was considered and the decision was made or recommended to instead vary or extend CRA1087.*
2. *Any final value-for-money assessment, procurement advice, risk assessment or probity advice relied upon in making that decision.*
3. *The approval or delegate decision authorising:*
    - *the $2,775,218.99 variation approved on 5 July 2024; and*
    - *the $5,828,151.50 option/extension approved on 16 May 2025.*
4. *Any record identifying concerns, risks or issues raised by ACT Government officials in connection with those two decisions regarding contract value, repeated variation, scope, procurement compliance, value for money or re-approaching the market.*
   For clarity, I do not seek routine administrative correspondence, duplicate records, drafts where a final version exists, or records relating solely to the operational delivery of events or programming. Date range: 1 January 2024 to 31 May 2025."

Authority

I am an Information Officer appointed by the City Renewal Authority (CRA) under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CRA is required to provide a decision on your access application within 30 days.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **19 October 2026.**

Decision on access

Searches of City Renewal Authority have identified two documents within the scope of your request.

- I have decided to grant **partial access** to both documents.

The records identified as relevant to your application are listed in the schedule enclosed at **Attachment A**. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Release of documents

The information being released to you is provided at **Attachment B**.

Statement of Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request
- third party consultation
- publicly available information
- *Human Rights Act 2004*

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per **Schedule 1** of the Act.
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring nondisclosure in **Schedule 2** of the Act.

Exemptions claimed

Schedule 1: Information taken to be contrary to the public interest

No schedule 1 provisions identified.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and nondisclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and

purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Schedule 2: Factors to be considered when deciding the public interest

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure (Section 2.1)

> *Section 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability.*
>
> *Section 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.*
>
> *Section 2.1(a)(iv) - ensure effective oversight of expenditure of public funds.*

I consider that release of the information relevant to this application would promote open discussion of public affairs and enhance the government's accountability regarding this work. I weigh the factors for promoting open discussion and contributing to informed delate on matters of public interest highly.

I further consider release of this information identified would provide some oversight of expenditure on public funds. Information regarding the funding allocated to the initiative can be further found in publicly available information such as budget papers. I apply moderate weight to this factor for disclosure.

I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure (Section 2.2)

> *Section 2, 2.2(a)(ii) – prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*
>
> *Section 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person.*

Reviewing the information, I consider the protection of an individual's right to privacy is a significant factor when balancing factors for disclosure. I have withheld some information as it contained personal information, such as signatures, mobile numbers and email addresses that may identify individuals. Having reviewed the information, I consider that the protection of an individual's right to privacy, is a significant factor for nondisclosure.

Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, in some circumstances, such as agencies with small numbers or regulatory or specialist agencies, the redaction of direct phone numbers is sensible as release of this information could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

The ACT Government frequently deals with businesses and while business information is subject to information access legislation, third parties should not be adversely affected by the operation of the FOI Act. I have considered that some third-party information could cause harm to the third party if disclosed. I weight this factor significantly.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Under section 107(2)(e) of the Act, a fee must be waived if the applicant is a member of the Legislative Assembly.

Online publishing – Disclosure Log

Under section 28 of the Act, the City Renewal Authority maintains an online record of access applications called a disclosure log.

Your original access application and my decision will be published on the CRA disclosure log. Your personal contact details will not be published.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the Ombudsman.

We recommend using this form *Applying for an Ombudsman Review* to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
http://www.acat.act.gov.au/

Should you have any queries in relation to your request please contact the CMTEDD FOI Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Jennifer Ramsay

Information Officer
City Renewal Authority

16 October 2026

ACT Government | CITY RENEWAL AUTHORITY

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference No.
"Access to the following records held by the City Renewal Authority (CRA) relating to the decision to vary and/or extend contract CRA1087 with Dionysus rather than undertake a fresh procurement or re-approach the market. This request is limited to: 1. *The final brief, submission, memorandum, procurement assessment or other decision record in which re-approaching the market was considered and the decision was made or recommended to instead vary or extend CRA1087.* 2. *Any final value-for-money assessment, procurement advice, risk assessment or probity advice relied upon in making that decision.* 3. *The approval or delegate decision authorising:* o *the $2,775,218.99 variation approved on 5 July 2024; and* o *the $5,828,151.50 option/extension approved on 16 May 2025.* 4. *Any record identifying concerns, risks or issues raised by ACT Government officials in connection with those two decisions regarding contract value, repeated variation, scope, procurement compliance, value for money or re-approaching the market.* *For clarity, I do not seek routine administrative correspondence, duplicate records, drafts where a final version exists, or records relating solely to the operational delivery of events or programming.* *Date range: 1 January 2024 to 31 May 2025."*	**CRA 2024-007 / CMTEDDFOI2026-224**

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-163	Deed of Variation 4	8 July 2024	Partial Release	Schedule 2.2 (a)(ii), 2.2(a) (xi) and outside scope	Yes
2	164-241	Deed of Variation 5	27 May 2025	Partial Release	Schedule 2.2 (a)(ii), 2.2(a) (xi) and outside scope	Yes
Total No of Docs						
2						

DEED OF VARIATION 4

Dated	_____
Parties	**AUSTRALIAN CAPITAL TERRITORY** **AND** **THE DIONYSUS MOVEMENT PTY LTD** **ABN 30 140 868 631**
Prepared by	City Renewal Authority 3 Constitution Avenue GPO Box 158 Canberra City ACT 2601 Email: cityrenewal@act.gov.au
Version	1.0

© Australian Capital Territory Government Solicitor 2019

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) **(Territory)** represented by the **CITY RENEWAL AUTHORITY**.

THE DIONYSUS MOVEMENT PTY LTD ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory and the Supplier executed an agreement (Agreement) on 25 May 2022 in relation to the provision of place management services. The Agreement can be found at **Appendix A**.

B. Section 18.7 of the Agreement outlines that the agreement may be varied by the written agreement of both parties.

C. The parties have agreed to vary the Agreement in accordance with the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

(1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

(2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

2. Effective Date

The variations to the Agreement described in this Deed take effect on 3 July 2024.

3. Variation

(1) **Schedule 1, Item 3 (1)** is deleted and replaced with the following.

Item 3(1) Contract Price $8,209,895.40 (GST inclusive)

SIGNED AS A DEED ON .....8 July 2024.....

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

Sch 2.2(a)(ii)

.....
Signature of witness

Deb Butt
.....
Print name

Sch 2.2(a)(ii)

.....
Signature of Territory delegate

Craig Gillman
.....
Print name

SIGNED by or for and on behalf of)
THE DIONYSUS MOVEMENT PTY LTD ABN)
30 140 868 631 in the presence of:)

Sch 2.2(a)(ii)

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

Kristi Clark
.....
Print name

Sch 2.2(a)(ii)

.....
Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable (see note below)

David Caffery
.....
Print name

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

.....
Print name

Affix common seal if required under constitution

Note:

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

Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the

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

ACT Government | CITY RENEWAL AUTHORITY

Brief

Variation 4- GS2544750 Place Management Services (Dionysus)

To:	Craig Gillman Chief Executive Officer	Objective # A47157966
From:	Mark Usherwood Director Project Operations	
Date:	3 July 2024	

Purpose and critical date

1. This minute seeks your approval of Deed of Variation 4, **Attachment A**, to Agreement GS2544750 – Place Management Services, **Attachment B**.
2. A decision is requested by 5 July 2024 to allow time to implement necessary amendments to the related contract and purchase orders in finance systems required to progress payment of the next monthly service fee invoice.

Background

3. The Authority and the Supplier (Dionysus) executed an agreement (Agreement) on 25 May 2022 for the provision of place management services.
4. The initial term of the Agreement is three years.
5. The total agreement value is managed across two categories. The first covers the costs associated with staff provided by Dionysus (service fee). The second provides Dionysus a budget to deliver activity on behalf of the Authority (program budget).
6. The scope of the service fee was defined in the tender documents and is a fixed amount.
7. The program budget is developed annually based on the Authority's approval of an annual plan and subsequent detailed quarterly plans.
8. The Agreement outlines that the terms of the Agreement may be varied by written agreement of both parties.

Issues and interdependencies

9. Due to an increase in both the number and scope of activities delivered during the first two years of the initial term the total Agreement value, that was intended to be sufficient for the entire three year initial term, has been reached.
10. The estimated value of the program budget over the initial three-year period was based

on previous annual programs delivered by the Authority. The estimated value over the initial three-year period of the Agreement was $2,878,061.95 inclusive of GST (or $959,353.98 per year).

11. Over the initial two years of the agreement the Authority has approved annual plans with a total programming budget of $3,873,706.74 inclusive of GST ($2,021,237.44 in 2022/23 and $1,852,469.30 in 2023/24).
12. A total of $1,459,597.32 inclusive of GST has been paid to Dionysus against the agreed service fee to date.
13. A complete record of all costs paid against the agreement can be found at **Attachment C**.
14. The intent is to vary the current Agreement to increase the total value to allow for delivery of service for the remainder of the current term and provide a programming budget for 2024/25.
15. Advice has been sought from the Government Procurement Board. A copy of the brief that was provided to the Board can be found at **Attachment D**. A summary of the Boards feedback and associated actions can be found at **Attachment E**.
16. The decision to recommend increasing the value of the current Agreement rather than reapproaching the market is informed by several factors including:
    a. The approach to market and ultimate Agreement were developed with the intent to, and include, capacity for the Supplier to scale up delivery on an as needs basis. This provision was clearly articulated to both Procurement ACT and the Government Procurement Board. A summary of the relevant excerpts from these documents can be found at **Attachment F**.
    b. The scope of the services has not changed from the terms outlined in the original approach to market.
    c. The local market is extremely constrained. The two previous approaches to market for the services provided by the Agreement yielded very low response rates (one and two responses respectively). It is not anticipated that an increase to the proposed Agreement value would impact the markets appetite to respond.
    d. Dionysus receives no financial benefit from the program budget regardless of scale. If a larger program budget/Agreement value had been put to market originally it is quite likely the management of this would have increased the service fee costs.

Risk / Sensitivities

17. The proposed variation is not deemed to increase or alter the risks associated with management of the Agreement.
18. The Authority ensures the programming budget developed by Dionysus provides "value for money" and manages other risks associated with the Agreement through several mechanisms including:
    a. The Authority "benchmarks" proposed budgets for activities funded by the

programming budget against industry standards. Annual and quarterly plans as well as individual smaller projects are thoroughly reviewed and only recommended for approval should the value for money proposition be evident. Through the initial term of the Agreement costs associated with activity Dionysus has delivered have consistently been lower than if the activity was procured through a standalone process.

b. The Authority conduct audits of Dionysus's expenditure of the program budget. To date no issues or exceptions have been noted.
c. The terms of the Agreement require Dionysus to manage all Authority funded activities in accordance with a WHS Framework, a copy of the Framework can be found at **Attachment G**. Audits on the implementation of this Framework have been conducted with no significant issues or exceptions noted to date.
d. The terms of the Agreement require Dionysus to align expenditure of the programming budget with ACT Government procurement processes i.e. number of quotes required is based on value of procurement. Advice relating to amendments to the Procurement Act due to take affect from 1 July has been sought from Procurement ACT.

19. Conflict of interest declarations from myself and Teresa Comacchio can be found at **Attachments H** and **I**.

Financial implications

20. The total value of the proposed variation is $2,775,218.99 inclusive of GST.
21. This amount is comprised of:
    a. Service fee June 2024 to June 2025 Sch 2.2(a)(xi) inclusive of GST; and
    b. 2024/25 program budget Sch 2.2(a)(xi) inclusive of GST.
22. Should the proposed variation be approved the amended total contract value would be $8,209,895.40 inclusive of GST.
23. Under the terms of the original Agreement the service fee comprised [redacted] of the total Agreement value (service fee vs programming budget/cost of activity delivered).
24. Under the terms of the proposed variation the service fee would compromise [redacted] of the total agreement value. This represents a significant increase in the scale of activities delivered compared to the fixed cost service fee, and therefore an improved value for money proposition. Noting the details of the original Agreement (service fee being [redacted] of total Agreement value) it is highly unlikely that a lesser annual programming budget (as originally estimated) would yield improved value for money, and highly likely to result in a decrease in value as measured by service fee as a percentage of total Agreement value (service fee vs programming budget/cost of activity delivered).
25. The total value of the proposed variation would be met by the existing PEM budget.

Consultation (Internal and External)

26. The proposed amendments have been discussed with the Dionysus.

Media implications

27. If approved Variation 4 would be notified on the ACT Government Contract Register. The Pricing Schedule would be kept confidential.

28. No media interest is anticipated.

Recommendation(s)

29. That you:

a. note the information contained in this brief;

AGREED / NOT AGREED / PLEASE DISCUSS

a. approve the summary of Authority feedback be provided to the Government Procurement Board, **Attachment E**; and

AGREED / NOT AGREED / PLEASE DISCUSS

b. approve Variation 4, **Attachment A**.

AGREED / NOT AGREED / PLEASE DISCUSS

Craig Gillman Sch 2.2(a)(ii) 05July 2024

Executive clearance: Teresa Comacchio

Action Officer: Mark Usherwood

Attachments

Attachment A – Deed of Variation 4

Attachment B – Agreement GS2544750 – Place Management Services

Attachment C – Contract Management Workbook (CMW) - GS2544750 Place Management Services (Dionysus) - excerpt (invoice log)

Attachment D – Government Procurement Board Briefing pack

Attachment E – Summary of Government Procurement Board feedback and actions

Attachment F – Approach to market and Agreement excerpts

Attachment G – Dionysus work Health & Safety Manual V3 – April 2023

Attachment H – GS2544750 Conflict of Interest Disclosure - Mark Usherwood

Attachment I – GS2544750 Conflict of Interest Disclosure – Teresa Comacchio

DEED OF VARIATION 4

Dated	_____
Parties	**AUSTRALIAN CAPITAL TERRITORY** **AND** **THE DIONYSUS MOVEMENT PTY LTD** **ABN 30 140 868 631**
Prepared by	City Renewal Authority 3 Constitution Avenue GPO Box 158 Canberra City ACT 2601 Email: cityrenewal@act.gov.au
Version	1.0

© Australian Capital Territory Government Solicitor 2019

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) **(Territory)** represented by the **CITY RENEWAL AUTHORITY**.

THE DIONYSUS MOVEMENT PTY LTD ABN 30 140 868 631 of 35/25 Fawkner 5treet, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory and the Supplier executed an agreement (Agreement) on 25 May 2022 in relation to the provision of place management services. The Agreement can be found at **Appendix A**.

B. Section 18.7 of the Agreement outlines that the agreement may be varied by the written agreement of both parties.

C. The parties have agreed to vary the Agreement in accordance with the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

(1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

(2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

2. Effective Date

The variations to the Agreement described in this Deed take effect on 3 July 2024.

3. Variation

(1) **Schedule 1, Item 3 (1)** is deleted and replaced with the following.

Item 3(1) Contract Price $8,209,895.40 (GST inclusive)

SIGNED AS A DEED ON.....

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

.....
Signature of witness

.....
Print name

.....
Signature of Territory delegate

.....
Print name

SIGNED by or for and on behalf of)
THE DIONYSUS MOVEMENT PTY LTD ABN)
30 140 868 631 in the presence of:)

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

.....
Print name

.....
Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable (see note below)

.....
Print name

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

.....
Print name

Affix common seal if required under constitution

Note:

Date:	Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.
Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
Individual:	Must be signed by the individual Contractor and witnessed.
Incorporated Association:	Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ACT Government

GOODS AND SERVICES AGREEMENT

Parties	**AUSTRALIAN CAPITAL TERRITORY** **THE DIONYSUS MOVEMENT PTY LTD, ABN 30 140 868 631** **PLACE MANAGEMENT SERVICES**
Prepared by	Procurement ACT Level 5, 3 Constitution Ave Canberra City, ACT 2601 Ref: GS2544750.210
Version	FINAL

© Australian Capital Territory Government Solicitor 2021

CONTENTS

1. Interpretation 1
2. Supply of Goods 5
3. Services 5
4. Term 5
5. Contract Price 6
6. Delivery 6
7. Acceptance 6
8. Title and Risk 7
9. Warranty 8
10. Ownership and use of material 8
11. Supplier's personnel 10
12. Non-disclosure of Territory Information 10
13. Confidential Text under the Procurement Act 11
14. Secure Local Jobs 12
15. Insurance and indemnity 16
16. Termination 17
17. Dispute resolution 18
18. General 18

1 SCHEDULE 1 21
2 SCHEDULE 2 23
3 SCHEDULE 3 24
4 ATTACHMENT 1 29
5 ATTACHMENT 2 30

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) **(Territory)** represented by the City Renewal Authority.

The Dionysus Movement Pty Ltd, ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory has undertaken a procurement process and has selected the Supplier to supply the Goods and provide the Services.

B. The Territory has agreed to purchase and the Supplier has agreed to supply the Goods and provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

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

Acceptable Quality quality of goods that is:

(1) fit for all the purposes for which goods of that kind are commonly supplied;

(2) acceptable in appearance and finish;

(3) free from defects;

(4) safe; and

(5) durable,

as the Territory, acting reasonably and being fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as being acceptable having regard to the following matters:

(6) the nature of the goods;

(7) the price of the goods (if relevant);

(8) any statements made about the goods on any packaging or label on the goods;

(9) any representation made about the goods by the Supplier; and

(10) any other relevant circumstances relating to the supply of the goods.

Confidential Text any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in **Item 8 Schedule 1**.

Contract Material all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.

Contract Officers in relation to each party, the representatives whose names and contact details are specified in **Item 1 Schedule 1**, or as notified from time to time by one party to the other.

Contract Price the amounts specified in, or calculated in accordance with, **Item 3 Schedule 1**.

Goods the goods described in **Schedule 2**.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act the *Information Privacy Act 2014* (ACT).

Insolvency Event

(1) in respect of a natural person:

(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the *Bankruptcy Act 1966* (Cth); or

(b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or

(2) in respect of all other entities:

(a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or

(b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the:

(i) insolvency;
(ii) winding up; or
(iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,

of the entity.

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

Invoice an invoice that:

(1) references this Agreement;

(2) if GST is payable in respect of the supply of the Goods and/or the provision of the Services, is a valid tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(3) clearly sets out details of the Goods supplied and/or the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Goods that have been supplied and Services that have been performed in accordance with this Agreement;

(4) is accompanied by any other details or reports required under this Agreement; and

(5) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Territory's Contract Officer.

Personal Information is personal information as defined in section 8 of the Information Privacy Act.

Prescribed Insurer an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.

Procurement Act the *Government Procurement Act 2001* (ACT).

Services the services described in **Schedule 2**.

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

Specifications means any technical specifications or drawings of the Goods set out in **Schedule 2**.

Specified Personnel	any person named in **Item 5 Schedule 1**, or any other employee or agent of the Supplier, who is approved by the Territory from time to time for the purpose of **clause 11**.
Support Material	without limitation, any software, documentation or data, including operating manuals, explanatory materials, specifications, technical data, instructions or any other material owned by the Supplier to assist or supplement the Territory's use and understanding of the Goods or Services, including but not limited to the material specified in **Schedule 2** (if any).
Term	the term specified in **Item 2 Schedule 1**, or if extended, the initial term and the extended term.
Territory	when used: (1) in a geographical sense, the Australian Capital Territory; and (2) in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).
Territory Information	the kind of information that: (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential; (2) is notified (whether in writing or not) by the Territory to the Supplier as being confidential; (3) is specified in **Item 7 Schedule 1**; or (4) is Personal Information, but does not include information that: (5) is or becomes public knowledge other than by breach of this Agreement; (6) has been independently developed or acquired by the Supplier; or (7) has been notified by the Territory to the Supplier as not being confidential.
Territory Material	any material provided by the Territory to the Supplier for the purposes of this Agreement

	including documents, equipment, information and data stored by any means.
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 Supplier in the provision of the Services.
Warranty Period	the period specified in **Item 4 Schedule 1** or, if no warranty period is specified, 30 days from the date of acceptance of the Goods by the Territory in accordance with **clause 7**.

1.2 General

In this Agreement, unless a contrary intention is expressed:

(1) references to "Supplier" include any employees, agents or subcontractors of the Supplier;

(2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;

(3) words in the singular include the plural and vice versa;

(4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;

(5) an obligation imposed on more than one person binds them jointly and severally; and

(6) the word "include" and any derivation is not to be construed as a word of limitation.

2. Supply of Goods

The Supplier sells and the Territory agrees to purchases the Goods in accordance with the provisions of this Agreement.

3. Services

The Supplier must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Supplier is engaged.

4. Term

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

5. Contract Price

5.1 Invoice

The Territory must pay the Supplier the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

5.2 Incorrect payments

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

5.3 Effect of payment

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

6. Delivery

6.1 Supplier to deliver, install or commission

(1) The Supplier must deliver the Goods to the Territory at the place(s) and at the time(s) specified in **Schedule 2** or otherwise as notified by the Territory and comply with any reasonable delivery instructions.

(2) The Supplier must install or otherwise commission the Goods in accordance with **Schedule 2**.

6.2 Territory not bound to accept delivery by instalments

Unless specified in **Schedule 2** or agreed in writing by the parties, the Territory is not bound to accept delivery of the Goods by instalments.

7. Acceptance

7.1 Reasonable opportunity to examine

After delivery of the Goods to the Territory, the Territory must have a reasonable opportunity to examine the Goods for the purpose of ascertaining that they are in conformity with this Agreement.

7.2 Territory may reject Goods

The Territory may reject all or part of the Goods if:

(1) the Goods:

(a) do not conform to the Specifications or any other relevant provision of this Agreement;

(b) are not of Acceptable Quality, are defective or in a damaged condition; or

(c) are unfit for the purpose specified in or implied by this Agreement; or

(2) the quantity of Goods delivered is greater or less than the quantity required to be delivered under this Agreement,

and in that event the Supplier must promptly remove the Goods and the Territory may either:

(3) require the Supplier to provide, at the Supplier's cost, replacement Goods which comply with the requirements of this Agreement within a period determined by the Territory; or

(4) terminate this Agreement in accordance with **clause 16.1**.

7.3 Time of acceptance

Acceptance of the Goods by the Territory occurs when:

(1) the Territory notifies the Supplier in writing that it has accepted them;

(2) the Goods have been delivered to the Territory and the Territory does an act in relation to them that is inconsistent with the Supplier's ownership of them; or

(3) after the lapse of a reasonable period of time, the Territory retains the Goods without notifying the Supplier that the Territory has rejected them,

whichever occurs sooner.

8. Title and Risk

8.1 Supplier bears risk

Until all Goods have been delivered to, installed/commissioned (if required) and accepted by the Territory in accordance with this Agreement, the Supplier bears all risks for and associated with the Goods and their delivery to the Territory, including but not limited to insurance for the full replacement value of the Goods.

8.2 Title passes on acceptance

(1) The Supplier must supply the Goods to the Territory free of any encumbrance including any registered security interest.

(2) If requested by the Territory, the Supplier must provide the Territory with evidence to the Territory's satisfaction that the Goods are free of any encumbrance including any registered security interest.

(3) Title to the Goods passes to the Territory on acceptance of the Goods by the Territory pursuant to this Agreement.

9. Warranty

9.1 Additional warranty

Without limiting any other warranty set out in this Agreement or given by the Supplier, the Supplier warrants that the Goods supplied to the Territory under this Agreement:

(1) are free of any encumbrance including any registered security interest;

(2) conform to the Specifications;

(3) are of Acceptable Quality; and

(4) are fit for the purpose specified in or implied by this Agreement.

9.2 Warranty Period

During the Warranty Period, the Supplier must without delay and at no cost to the Territory, correct all defects in the Goods by way of repair, replacement or such other means acceptable to the Territory.

9.3 Third Party Warranties

The Supplier must ensure, to the extent practicable and permitted by law, the Territory receives the benefit of any warranty given by a third party with respect to any Goods. This clause does not in any way relieve the Supplier of any obligation of or warranty given by the Supplier under this Agreement.

9.4 Supplier responsible for costs

The Supplier is liable for all costs incidental to the discharge of the warranty in this **clause 9** and any other warranty given in respect of the Goods, including any packaging, freight, disassembly and reassembly costs.

10. Ownership and use of material

10.1 Supplier to provide Support Material

The Supplier must, in accordance with this Agreement, or as requested by the Territory, provide all Support Material to the Territory.

10.2 Ownership of material

Ownership of:

(1) all Contract Material, including any intellectual property rights, vests on its creation in the Territory;

(2) all Territory Material, including any intellectual property rights, remains with the Territory; and

(3) all Support Material, including any intellectual property rights, remains the property of the Supplier.

10.3 Licence of material

(1) The Territory grants to the Supplier a royalty-free, limited licence to use the Contract Material and Territory Material for the Term.

(2) The Supplier grants to the Territory a perpetual, royalty-free licence to use the Support Material.

(3) For the purpose of this clause, "use" includes:

(a) such uses as are reasonably necessary for the Territory to obtain the full benefit of the Goods and Services, including use of the Contract Material and Support Material; and

(b) such uses as are reasonably necessary for the Supplier to undertake the Services or supply the Goods, or as otherwise agreed by the Territory;

and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

10.4 Third Party Rights

The Supplier must ensure that:

(1) the Territory's use of any Contract Material and any Support Material will not infringe the intellectual property rights of any third party; and

(2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Contract Material and any Support Material.

10.5 Moral rights

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

(1) use its best endeavours to include in the Contract Material an attribution of those authors; and

(2) procure from those authors their genuine written consent for the Territory to:

(a) attribute the authorship of the work to the Territory or a third party where that attribution was inadvertent;

(b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or

(c) materially alter the work in any way.

10.6 Safekeeping and preservation of material

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

expiration or termination of this Agreement (other than copies of material that the Territory has authorised the Supplier to retain).

11. Supplier's personnel

The Supplier must:

(1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;

(2) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Supplier for the performance of Services;

(3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Territory at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

(4) if the Territory requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Territory (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Territory in accordance with any requirements that the Territory notifies.

12. Non-disclosure of Territory Information

12.1 Supplier's use of Territory Information

The Supplier must:

(1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;

(2) not transfer Territory Information held in connection with this Agreement outside the Territory, or allow any person (other than authorised personnel) outside the Territory to have access to it, without the prior approval of the Territory;

(3) notify the Territory immediately if the Supplier becomes aware that a disclosure of Territory Information is required by law or an unauthorised disclosure of Territory Information has occurred; and

(4) in respect of any Personal Information held in connection with this Agreement:

(a) comply with the TPPs and any applicable TPP Code as though the Supplier were a public sector agency and must not (and must ensure that any subcontractor engaged by the Supplier under this Agreement does not) act or engage in any practice that breaches a TPP or a TPP Code; and

(b) cooperate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the

exercise of the functions of the information privacy commissioner under the Information Privacy Act.

12.2 Supplier to protect Territory Information

(1) Except as provided in this Agreement, the Supplier must not disclose Territory Information to any person, nor deal with the Territory Information in any way except for the purposes of this Agreement, without the prior written consent of the Territory except to the extent that the Territory Information is:

(a) required or authorised to be disclosed by law;

(b) disclosed to the Supplier's solicitors, auditors, insurers or advisers;

(c) generally available to the public; or

(d) in the possession of the Supplier without restriction in relation to disclosure before the date of receipt from the Territory.

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

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

12.3 Acknowledgement of effect of Crimes Act

The Supplier acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Supplier is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

13. Confidential Text under the Procurement Act

13.1 Territory may make Agreement publicly available

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

13.2 Confidential Text

If **Item 8 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 9 Schedule 1** and **clause 13.3** applies.

13.3 Territory must not disclose Confidential Text

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

(1) is required or authorised to be disclosed under law;

(2) is reasonably necessary for the enforcement of the criminal law;

(3) is disclosed to the Territory's solicitors, auditors, insurers or advisers;

(4) is generally available to the public;

(5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Supplier;

(6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;

(7) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or

(8) is disclosed to the integrity commissioner.

14. Secure Local Jobs

14.1 Definitions for this clause

(1) This **clause 14** applies if **Item 10 Schedule 1** states that it applies.

(2) In this **clause 14**:

(a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Supplier or one of its Associated Entities has contravened an Industrial Law;

(b) **Applicable Subcontractor Work** means works or service that would, if provided to a Territory Entity, be "Territory-Funded Work";

(c) **Approved Auditor** has the meaning as set out in the Procurement Act;

(d) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);

(e) **Code** means the Secure Local Jobs Code;

(f) **Full Details** means:

(i) the nature of the Adverse Ruling;

(ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;

(iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;

(iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;

(v) the name of the entity against which the Adverse Ruling was made; and

(vi) any other relevant information that the Supplier may rely on as grounds for not terminating this Agreement as a result of the Adverse Ruling;

(g) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;

(h) **Labour Relations, Training and Workplace Equity Plan** has the meaning as set out in the Procurement Act;

(i) **Registrar** has the meaning as set out in the Procurement Act;

(j) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;

(k) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;

(l) **Territory Entity** has the meaning as set out in the Procurement Act; and

(m) **Territory-Funded Work** has the meaning as set out in the Procurement Act.

(3) For the purposes of **clause 14.2(2)** and **clause 14.3(5)** the form set out in **Attachment 2** is approved unless otherwise advised by the Territory.

14.2 Subcontractors performing Applicable Subcontractor Work

(1) The Supplier must, in relation to any subcontractors engaged to perform Applicable Subcontractor Work:

(a) ensure terms are included in the agreement with the subcontractor:

(i) requiring the subcontractor to comply with the Code; and

(ii) imposing obligations on the subcontractor in the same form as those set out in **clause 14** and imposed on the Supplier (subject to any necessary variation to reflect the different parties);

(b) ensure:

(i) the subcontractor holds a Secure Local Jobs Code Certificate; and

(ii) the subcontractor maintains a Secure Local Jobs Code Certificate during the term of their agreement; and

(iii) the obligations in **clause 14.2(1)(b)(i)** and **clause 14.2(1)(b)(ii)** are included in the relevant agreement with the subcontractor.

(2) The Territory may by written notice request the Supplier obtain a statutory declaration from a subcontractor engaged to perform Applicable Subcontractor Work regarding its compliance with the Code and provide it to the Territory within 15 business days of the date of the written notice. The Supplier must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Supplier to comply with this **clause 14.2(2)**.

(3) The Territory (or nominated representative) and Approved Auditors may, at the Territory'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.

14.3 Supplier's Secure Local Jobs responsibilities

(1) The Supplier must comply with all of its obligations under the Code.

(2) The Supplier must maintain a valid Secure Local Jobs Code Certificate during the term of the Agreement.

(3) Failure of the Supplier to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Agreement entitling the Territory to terminate the Agreement on written notice to the Supplier.

(4) If at any time during the term of the Agreement an Adverse Ruling is made, the Supplier must, within 7 business days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Supplier 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.

(5) The Supplier must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the Code:

(a) within 5 business days of a written request from the Territory; and

(b) if requested in writing by the Territory, at the time the Supplier provides an Invoice.

(6) Failure of the Supplier to provide a statutory declaration in accordance with **clause 14.3(5)** or the making of a false statement in a statutory declaration by the Supplier or its representative will constitute a breach of this Agreement.

(7) If the Supplier fails to provide a statutory declaration in accordance with **clause 14.3(5)(b)** the Territory may withhold payment of monies otherwise due to the Supplier in respect of the relevant Invoice until the statutory declaration is received.

(8) The Territory may require the Supplier to 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.

(9) The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the Supplier except in circumstances where attendance would result in a conflict with Commonwealth laws.

(10) The Supplier must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the Supplier's worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Territory or Registrar under this **clause 14.3(10)**

in circumstances where entry would result in a conflict with Commonwealth laws.

(11) The Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by the Supplier 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.

(12) If the Supplier was required to submit a Labour Relations, Training and Workplace Equity Plan as part of its tender for the Services:

(a) the Supplier must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;

(b) the Supplier must report to the Territory on its compliance with **clause 14.3(12)(a)** quarterly during the term of this Agreement;

(c) the Supplier must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and

(d) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

15. Insurance and indemnity

15.1 Supplier's insurance

The Supplier must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

15.2 Manufacturer's insurance

Without limiting **clause 15.1**, if the Supplier does not manufacture the Goods, the Supplier must do all things reasonably necessary to ensure:

(1) the manufacturer of the Goods effects and maintains product liability insurance with coverage in the amount of not less than $20 million in the aggregate; and

(2) the Territory receives the benefit of any product liability insurance coverage effected by the manufacturer of the Goods.

15.3 Indemnity

The Supplier indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused by the Supplier, its employees, agents or subcontractors in connection with:

(1) the Goods;

(2) the supply of the Goods; and

(3) the Services,

except to the extent that the Territory caused the relevant loss, damage or injury.

15.4 Claims to be made good

The Supplier must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 15.3** and the Territory may deduct the amount, or any part of it, from any moneys due or becoming due to the Supplier under this Agreement.

16. Termination

16.1 Default

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

(1) is the subject of an Insolvency Event;

(2) fails to commence timely supply of the Goods or provision of the Services or to meet any timeframes specified in this Agreement; or

(3) is in breach of a provision of this Agreement, where that breach:

(a) if capable of being remedied, is not remedied within the period specified in a notice by the Territory, or

(b) is not capable of being remedied.

16.2 Termination for any reason or reduction of Goods or Services

The Territory may, at any time by notice to the Supplier, terminate this Agreement or reduce the Services or volume of Goods for any reason, and in that event:

(1) the Territory will be liable only for:

(a) payments under this Agreement for Goods supplied and Services rendered before the date of termination; and

(b) subject to **clauses 16.2(2)** and **16.2(3)**, any reasonable costs incurred by the Supplier and directly attributable to the termination or reduction of Services or volume of the Goods, but not in respect of loss of prospective profits;

(2) on receipt of a notice of termination or reduction, the Supplier must:

(a) stop work as specified in the notice;

(b) take all available steps to minimise loss resulting from that termination or reduction of Services or volume of Goods; and

(c) continue to perform any part of the Services or supply any volume of the Goods not affected by the notice; and

(3) in the event of a reduction of the Services or volume of Goods, the Territory's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services or volume of the Goods.

16.3 No prejudice

Nothing in this **clause 16** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

17. Dispute resolution

17.1 Negotiation of Dispute

(1) If a difference or dispute **(Dispute)** arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, refer to matter to appropriate senior executives with authority to finally resolve the matter.

(2) Nothing in this **clause 17** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

18. General

18.1 Cooperation

Each party will fully cooperate with each other to ensure timely progress and fulfilment of this Agreement.

18.2 Conflict of interest

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

18.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Supplier, or its employees,

agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Supplier must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

18.4 No assignment or subcontracting

(1) The Supplier must not subcontract the supply of the Goods and/or the provision of the Services or assign the whole or part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.

(1) A change in the control of the Supplier or a company that controls the Supplier (except a company listed on an Australian stock exchange) is taken to be an assignment, the term "control" including the direct or indirect holding of more than 50% of the share capital of a corporation.

(2) If the Supplier breaches **clause 18.4(1)**, the Territory reserves its rights, including requiring the Supplier to provide information regarding the proposed subcontractor's or assignee's capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

18.5 Entire agreement

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

18.6 Severability

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

18.7 Variation

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement.

18.8 No waiver

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

18.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Supplier

must comply with the laws from time to time in force in the Territory in performing the Services and supplying the Goods.

18.10 Notices

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

(1) if delivered by hand, on delivery;

(2) if sent by prepaid mail, on the expiration of five 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.

18.11 Special Conditions

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

18.12 Survival of clauses

Clauses 5.2, 12, 16.3 and **16.4** will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1

CONTRACT DETAILS

Item 1. **Contract Officers**
See clauses 1.1 and 18.10

For the Territory:

Mark Usherwood
Director Project Operations, Place Experience and Marketing
02 6207 6033
mark.usherwood@act.gov.au

For the Supplier:

Dave Caffery
Founder, Dionysus
0437 790 124
dave@dionysus.place

Item 2. **Term**
See clauses 1.1 and 4

From execution of the agreement until 30 June 2025.

Despite **clause 18.7**, the parties agree that the Territory may extend the Term in its absolute discretion for a further 2 years in the aggregate on the terms and conditions then in effect, by giving written notice to the Contractor prior to the expiration of the then current Term.

Item 3. **Contract Price**
See clauses 1.1 and 5.1

1. Contract Price: $5,300,000 (GST inclusive)
2. The Contract Price (GST inclusive) and instalments for invoicing are as set out in Attachment 1
(3) Except if otherwise stated in this Agreement, the Contract Price is:
   (a) payable within 30 days of receipt by the Territory of an Invoice;
   (b) inclusive of GST and all other taxes, duties and charges; and
   (c) inclusive of all disbursements, including packaging, freight and delivery costs and other out-of-pocket expenses incurred by the Supplier.

Item 4. **Warranty Period**
See clauses 1.1 and 9.2

12 months from the date on which the Territory accepts the Goods from the Supplier in accordance with this Agreement

Item 5.	**Specified Personnel** *See clauses 1.1 and 11*	Dave Caffery
Item 6.	**Other amounts and insurance** *See clause 16.1*	1. Public and Product liability insurance: $20million (in respect of each claim). 2. Professional indemnity insurance: $5million (in the annual aggregate and per event). 3. Workers Compensation for the Australian Capital Territory The Supplier must maintain the professional indemnity insurance coverage required under this **Item 6** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.
Item 7.	**Territory Information** *See clauses 1.1 and 12*	**Item 7** not used.
Item 8.	**Confidential Text** *See clauses 1.1 and 13*	This Agreement is a "notifiable contract" under the Procurement Act and the following is Confidential Text: **Attachment 1 – Pricing** **Attachment 3 – Supplier Proposal**
Item 9.	**Grounds for confidentiality of Confidential Text** *See clause 13*	The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Territory is satisfied that the Confidential Text is "confidential information" for the purposes of that Act because disclosure of the text would: (1) be an unreasonable disclosure of information about the business affairs of a person.
Item 10.	**Secure Local Jobs** *See clause 14*	**Clause 14** does apply.

SCHEDULE 2

THE GOODS AND SERVICES

Refer to separate attachment – GS2544750.210 Schedule 2 – Statement of Requirements

SCHEDULE 3

SPECIAL CONDITIONS

See clause 18.11

Item 1. Additional Warranty

Not Used

Item 2. Sale by sample

Not Used

Item 3. Audit

Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT) the Territory (or its nominated representative) may, at its cost, inspect records kept by the Supplier and conduct audits and other checks, to monitor the Supplier's delivery of the Services, the supply of the Goods and compliance with this Agreement. The Supplier must act reasonably to cooperate with persons authorised to conduct an audits or checks.

Item 4. Changes in control of Supplier

In addition to the circumstances set out in **clause 18.4(2)**, for the purposes of **clause 18.4**, "control" includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

(1) directly or indirectly control the membership of the board of directors of the corporation; or

(2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

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

Item 5. Complaints in relation to interference with privacy

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

(1) if the Territory receives a Complaint it will immediately notify the Supplier of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;

(2) if the Supplier receives a Complaint it must immediately notify the Territory of the nature of the Complaint but will only release Personal Information to the Territory concerning the complainant with that person's consent; and

(3) after the Territory has given or been given notice under (1) or (2), it will keep the Supplier informed of all progress with the Complaint concerning the actions of the Supplier.

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

Item 6. Local Industry Participation

6.1 The Supplier must implement its commitments set out in its Local Industry Participation Plan (**"Local IP Plan**") submitted as part of its tender for the Services.

6.2 The Supplier must provide a Local Industry Participation Report ("**Local IP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Territory within 6 months of the date of this Agreement and on or before the first, and each subsequent, anniversary of this Agreement.

6.3 Before or concurrently with the Supplier's submission to the Territory of its final Invoice for payment under this Agreement, the Supplier must provide to the Territory a Final Local Industry Participation Report ("**Final Local IP Report**") that sets out its level of compliance with the commitments provided for in the Local IP Plan throughout the Term and which is accompanied by a statutory declaration stating the information provided in the Final Local IP Report is true and correct.

6.4 The Territory may withhold payment of the final Invoice until submission of a satisfactory Final Local IP Report by the Supplier.

6.5 The Supplier must attend any meeting scheduled by the Territory to review how its Local IP Plan is being implemented and advanced, and for this purpose, the Supplier must provide all information reasonably requested by the Territory.

6.6 The Supplier's failure to comply, in whole or in part, with the commitments contained within the Local IP Plan may be a factor taken into account in the award of future contracts for the Territory.

Item 7. Work Health and Safety

7.1 The following definitions apply in this Item:

WHS Legislation

(1) the *Work Health and Safety Act 2011* (ACT);

(2) the *Work Health and Safety Regulation 2011* (ACT);

(3) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011*;

(4) all laws that replace the above laws; and

(5) all other laws applicable in the Australian

Capital Territory dealing with work health and safety matters.

7.2 The obligations set out in this Agreement do not detract from the Supplier's obligations under the WHS Legislation. If there is an inconsistency between this Agreement and the WHS Legislation, the Supplier must comply with the WHS Legislation and inform the Territory of the inconsistency.

7.3 The Supplier 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.

7.4 The Supplier 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.

7.5 The Supplier must institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform Services about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.

7.6 The Supplier must provide the written assurances obtained under **Item 7.5**, together with written assurances from the Supplier about the Supplier's ongoing compliance with WHS Legislation, to the Territory when requested.

7.7 The Supplier must provide the Territory with a written report on all work health and safety matters referable to the conduct of the Services, or any other relevant matters required by the Territory including a summary of the Supplier's compliance with WHS Legislation, at least once per month, and at other times as requested.

7.8 The Supplier must exercise a duty of utmost good faith to the Territory in carrying out the work under this Agreement to enable the Territory to discharge the Territory's duties under the WHS Legislation.

7.9 The Supplier must ensure that if any law requires that a person:

(a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

(b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.

7.10 The Supplier must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.

7.11 The Supplier 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 **Items 7.9** and **7.10** are met.

7.12 If requested by the Territory or required by WHS Legislation, the Supplier must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Territory before the Supplier or any subcontractor commences such work.

7.13 If the Territory reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Supplier (or any of its subcontractors) the Territory may direct the Supplier (or the relevant subcontractor) to change its manner of working or cease working and the Supplier or subcontractor must comply.

7.14 The Territory may take any action necessary to protect property or to prevent or minimise risk to health and safety of persons, which the Supplier must take but does not and the Territory may recover any costs associated with such action from the Supplier.

7.15 The Supplier must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in this Agreement and the WHS Legislation.

7.16 The Supplier must demonstrate to the Territory, whenever requested, that the Supplier has met and is meeting at all times, its obligations under this Item but such demonstration does not relieve the Supplier of its primary obligation to perform work safely.

DATE OF THIS AGREEMENT is the date the last party signs this Agreement, after the first party has signed.

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

Sch 2.2(a)(ii)

Signature of witness

Jennifer Ramsay

Print name

25.5.2022

Date

Sch 2.2(a)(ii)

Signature of Territory delegate

Sch 2.2(a)(ii)

Print name

25.05.2022

Date

SIGNED by or for and on behalf of)
The Dionysus Movement Pty Ltd,)
ABN 30 140 868 631)
in the presence of:

Sch 2.2(a)(ii)

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

Guadalupe M. de Zavalia

Print name

25/05/22

Date

Sch 2.2(a)(ii)

Signature of director/ ~~authorised officer/ individual~~*
*DELETE whichever is not applicable (see note below)

DAVID CAFFERY, FOUNDER

Print name and position

25/5/22

Date

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

Print name and position

Date

Affix common seal if required under constitution

Note:

Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Supplier's constitution.
Individual:	Must be signed by the individual Supplier and witnessed.
Incorporated Association:	Must be signed in accordance with the Supplier's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ATTACHMENT 1

Pricing

Refer to separate attachment – GS2544750.210 Attachment 1 – Pricing

ATTACHMENT 2

ETHICAL SUPPLIERS DECLARATION

See clause 14.1(2)

Refer to separate attachment – GS2544750.210 Attachment 2 – Ethical Suppliers Declaration

ATTACHMENT 3

Suppliers Proposal

Refer to separate attachment – GS2544750.210 Attachment 3 – Suppliers Proposal

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

	Recommendation	Authority comment	Action
1	*removing the references to a required number of full-time equivalents to be service outcomes focused instead. As part of this work, the Board recommend a detailed scope of works needs to be undertaken*	The inclusion of a recommended number of FTE's attributed to the delivery of service was informed by advice from ACT Procurement that a common, defined metric is necessary to enable a comparative assessment of tenders as well as the eventual management of any agreement.	The term FTE has been removed from documentation and the language that conveys the intended outcomes strengthened. A number of anticipated hours required to deliver the service has been added so a common metric can be used to comparatively assess tenders. An agreed number of hours provided by the supplier will be included in the final contract so the contract can be appropriately managed.
2	*ensuring the documentation has been reviewed for where there is a risk that the way in which the services are procured blurs the line between employee and contractor.*	During the second pass meeting the Board recommended the Authority seek advice from Fair Work Australia (this advice was not included in the written advice provided). The Authority contacted the Fair Work Ombudsman who confirmed that as the Authority would be engaging a supplier to provide a defined service under contract who would in turn provide defined key staff and that any employer/employee relationship would only exist between the supplier and their staff not the Authority and the suppliers staff.	No changes deemed necessary.
3	*more detail is needed in the documentation around contract management of these services, including governance arrangements, e.g., who has the final approval on the spending of funds for activities – is it the Territory or the contractor? And include requirements that ACT procurement rules must be*	Any funding provided to the supplier for delivery of activity, including the purchase of any goods or service by the supplier, is managed via the approval of quarterly activity plans. Management of any agreement and payment of invoices related to the provision of funding for delivery of approved activity plans is managed via internal contract	Contract amended to include; • the requirement for the supplier to align any Authority funded procurement with ACT Government procurement policy; and

	followed by contractors when procuring on the Territory's behalf.	management and accounting tools (P2P, APIAS) requiring an officer to recommend a purchase order be raised or an invoice be paid and a delegate with sufficient financial delegation to approve. The level of delegation required to approve or amend activity plans (projects) is defined in the City Activation and CCMIL 2019-23 PIP.	• the requirement that quarterly activity plans are approved by the Director, Place Experience and Marketing or other nominated Authority delegate whose financial delegation exceeds to value of the quarterly activity plan budget.
4	*consulting with Workforce Capability and Governance in CMTEDD to reconcile the use of contractors to undertake works that could be undertaken by ACT Public Servants.* *The Board **noted** there is a requirement in the ACT Government that if services can be delivered by public servants, these services cannot be contracted out.* *The Board also **noted** that CRA have a cap on the maximum number of ACT Public Servants that they are permitted to engage.*	The Authority's decision to contract out the required services rather than resource internally was informed by several key requirements including: • Successful delivery of the services requires a broad range of skills. It is highly unlikely a single individual/s could be identified that poses all the required competencies. • Given the likelihood the level of service required will need to be scalable a flexible approach to implementation is required. This could not be achieved through the engagement of internal staff. It should also be noted that: • The Authority does not have a cap on the number of FTE's they can engage however previous discussions with Treasury have strongly indicated that the budget that funds the Authority's staff would not be increased. • A large proportion of the cost associated with the proposed contract is funded through the CCMIL. When the Authority took over the administration of the CCMIL Cabinet made a	No changes deemed necessary.

		direction that the funds not be used to engage ACTPS staff. The Authority sought advice from CMTEDD, Workplace Capability and Governance. This advice stated that: • Although the policy that outlines that if services can be delivered by public servants that these services cannot be contracted out has been established the supporting framework (implementation plan) has not yet been developed. Indicative timelines indicate a pilot program would be launched in Q3-Q4 2021/22. • Given the current circumstances the Authority can proceed with the procurement as planned. • It was also noted that the Authority would continue to work with the Workplace Capability and Governance team on how potential future engagement of these types of services could be better integrated into the ACTPS.	
5	*updating the references and details currently in the documentation about First Nation Suppliers to align and adhere to the ACT Government's Aboriginal and Torres Strait Islander Procurement Policy. The Board also* ***recommend*** *reviewing the wording to ensure the desired outcomes will be achieved.*		Language has been reviewed and updated by ACT Procurement to ensure it aligns with the ACT Government's Aboriginal and Torres Strait Islander Procurement Policy and that it facilitates the desired outcome.
6	*reviewing the weightings in the evaluation criteria in the evaluation plan being released to market compared to the one attached to the Request for Proposal, as the weightings are different.*	ACT Procurement updated weightings in the Evaluation Plan but did not amend the weightings in other documents.	Documents have been reviewed and updated accordingly.
7	*increasing the period of time for the request to market for evidence of experience and performance from the*		The period of time for evidence of past performance outlined in the

	past three years to be five years, given the impacts of COVID-19 in the last two years.		documents has been updated to the past five years.
8	*having an officer from Transport Canberra and City Services on the evaluation panel.*		A representative from TCCS will be added to the evaluation panel, this is outlined in the evaluation plan. The Authority is currently in discussion with TCCS to identify an appropriate representative.
9	*developing Key Performance Indicators to measure performance against outcomes for:* • *Relationships* • *Feedback from the public* *The Board **noted** there are current no measures of success of desired outcomes outlined in the documentation.*	Given the manner in which service will be delivered won't be known until a preferred supplier is identified KPI's relating to delivery of service will be negotiated with the preferred supplier for inclusion in the final contract. This is clearly stated in the Statement of Requirements. The management of KPI's that were defined in procurement documentation in similar previous engagements have proved complex to manage as the suppliers delivery methodology was not understood when the KPIS's were developed.	Additional indicative KPI's have been added to the documents.
10	*reviewing the Risk Plan ratings, as the Board's experience is that some of the risks should be rated higher.*	There is not specific advice regarding which risk rating should be re-considered. All risk ratings have been reviewed and are considered appropriate. The Authority is experienced in delivering these services and has developed these risk ratings accordingly.	No changes deemed necessary.
11	*reviewing the probity arrangements for this procurement and engaging a probity advisor (if not already done so).*	An independent probity advisor (OCM) was engaged. A draft probity plan has already been developed and was provided to the Board.	Probity Plan has been reviewed and updated. The independent probity advisor has also been engaged to provide support during the tender assessment phase.

Additional Board comments that do not have recommendations attached.

A. *Some of the first pass feedback from the Board has been responded to in this second pass, but most of the advice has not, e.g., the timings around the end of year period and the references to engaging full-time equivalents.*
B. *CRA's governing legislation requires that the City Centre Marketing and Improvements Levy is not permitted to be used to engage and fund ACT Public Service employees.*
C. *Their concerns around the current proposed approach to engaging full-time equivalents as this is blurring the distinction between ACT Public Servants and Contractors, especially as a employee duty statement is included in the documentation.*
D. *The documentation notes thot CRA ore looking for one supplier; however, this could be a consortium which sub-contracts out components of the work.*
E. *CRA noted that in the past Aboriginal and Torres Strait Islander enterprises have not been successful in tending for the complete range of works required and hope through this procurement to offer opportunities for these enterprises to undertake components of the required works.*

Authority comments

A. All feedback provided from the Board at the first pass stage was addressed in the *Outcome of Strategic Review* document that was provided to the Board during the second pass review, including the timing of the tender. No reference to full-time equivalents appeared in the Boards advice from the first pass.
B. This requirement is not outlined in the *City Renewal Authority and Suburbon Land Agency Act 2017* nor was the Act referenced in any documentation or verbal advice provided to the Board. The advice provided to the Board was that the Cabinet decision that shifted the administration of the City Centre Marketing and Improvements Levy from a private organisation to the ACT Government was accompanied by a direction that levy funds not be spent on engaging public servants.
C. No employee duty statement appears in any of the documentation.
D. Development of documentation has been informed by the Boards recommendation during the first pass stage that the Authority facilitate smaller, community and social enterprises to form consortia capable of tendering. All advice from ACT Procurement indicates that regardless of the number of individual organisations that may form a partnership or consortium a single contractor or head contractor would still need to be identified in any agreement (contract).
E. This is why a specific, weighted criteria developed to ensure opportunities are provided to First Nations suppliers and subcontractors referenced in recommendation 5 has been included.

ACT Government

GOODS AND SERVICES AGREEMENT

Parties	**AUSTRALIAN CAPITAL TERRITORY** **THE DIONYSUS MOVEMENT PTY LTD, ABN 30 140 868 631** **PLACE MANAGEMENT SERVICES**
Prepared by	Procurement ACT Level 5, 3 Constitution Ave Canberra City, ACT 2601 Ref: GS2544750.210
Version	FINAL

© Australian Capital Territory Government Solicitor 2021

CONTENTS

1. Interpretation 1
2. Supply of Goods 5
3. Services 5
4. Term 5
5. Contract Price 6
6. Delivery 6
7. Acceptance 6
8. Title and Risk 7
9. Warranty 8
10. Ownership and use of material 8
11. Supplier's personnel 10
12. Non-disclosure of Territory Information 10
13. Confidential Text under the Procurement Act 11
14. Secure Local Jobs 12
15. Insurance and indemnity 16
16. Termination 17
17. Dispute resolution 18
18. General 18

1 SCHEDULE 1 21
2 SCHEDULE 2 23
3 SCHEDULE 3 24
4 ATTACHMENT 1 29
5 ATTACHMENT 2 30

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) **(Territory)** represented by the City Renewal Authority.

The Dionysus Movement Pty Ltd, ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory has undertaken a procurement process and has selected the Supplier to supply the Goods and provide the Services.

B. The Territory has agreed to purchase and the Supplier has agreed to supply the Goods and provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

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

Acceptable Quality quality of goods that is:

(1) fit for all the purposes for which goods of that kind are commonly supplied;

(2) acceptable in appearance and finish;

(3) free from defects;

(4) safe; and

(5) durable,

as the Territory, acting reasonably and being fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as being acceptable having regard to the following matters:

(6) the nature of the goods;

(7) the price of the goods (if relevant);

(8) any statements made about the goods on any packaging or label on the goods;

(9) any representation made about the goods by the Supplier; and

(10) any other relevant circumstances relating to the supply of the goods.

Confidential Text any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in **Item 8 Schedule 1**.

Contract Material all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.

Contract Officers in relation to each party, the representatives whose names and contact details are specified in **Item 1 Schedule 1**, or as notified from time to time by one party to the other.

Contract Price the amounts specified in, or calculated in accordance with, **Item 3 Schedule 1**.

Goods the goods described in **Schedule 2**.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act the *Information Privacy Act 2014* (ACT).

Insolvency Event

(1) in respect of a natural person:

(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the *Bankruptcy Act 1966* (Cth); or

(b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or

(2) in respect of all other entities:

(a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or

(b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the:

(i) insolvency;
(ii) winding up; or
(iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,

of the entity.

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

Invoice an invoice that:

(1) references this Agreement;

(2) if GST is payable in respect of the supply of the Goods and/or the provision of the Services, is a valid tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(3) clearly sets out details of the Goods supplied and/or the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Goods that have been supplied and Services that have been performed in accordance with this Agreement;

(4) is accompanied by any other details or reports required under this Agreement; and

(5) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Territory's Contract Officer.

Personal Information is personal information as defined in section 8 of the Information Privacy Act.

Prescribed Insurer an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.

Procurement Act the *Government Procurement Act 2001* (ACT).

Services the services described in **Schedule 2**.

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

Specifications means any technical specifications or drawings of the Goods set out in **Schedule 2**.

Specified Personnel	any person named in **Item 5 Schedule 1**, or any other employee or agent of the Supplier, who is approved by the Territory from time to time for the purpose of **clause 11**.
Support Material	without limitation, any software, documentation or data, including operating manuals, explanatory materials, specifications, technical data, instructions or any other material owned by the Supplier to assist or supplement the Territory's use and understanding of the Goods or Services, including but not limited to the material specified in **Schedule 2** (if any).
Term	the term specified in **Item 2 Schedule 1**, or if extended, the initial term and the extended term.
Territory	when used: (1) in a geographical sense, the Australian Capital Territory; and (2) in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).
Territory Information	the kind of information that: (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential; (2) is notified (whether in writing or not) by the Territory to the Supplier as being confidential; (3) is specified in **Item 7 Schedule 1**; or (4) is Personal Information, but does not include information that: (5) is or becomes public knowledge other than by breach of this Agreement; (6) has been independently developed or acquired by the Supplier; or (7) has been notified by the Territory to the Supplier as not being confidential.
Territory Material	any material provided by the Territory to the Supplier for the purposes of this Agreement

	including documents, equipment, information and data stored by any means.
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 Supplier in the provision of the Services.
Warranty Period	the period specified in **Item 4 Schedule 1** or, if no warranty period is specified, 30 days from the date of acceptance of the Goods by the Territory in accordance with **clause 7**.

1.2 General

In this Agreement, unless a contrary intention is expressed:

(1) references to "Supplier" include any employees, agents or subcontractors of the Supplier;

(2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;

(3) words in the singular include the plural and vice versa;

(4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;

(5) an obligation imposed on more than one person binds them jointly and severally; and

(6) the word "include" and any derivation is not to be construed as a word of limitation.

2. Supply of Goods

The Supplier sells and the Territory agrees to purchases the Goods in accordance with the provisions of this Agreement.

3. Services

The Supplier must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Supplier is engaged.

4. Term

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

5. Contract Price

5.1 Invoice

The Territory must pay the Supplier the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

5.2 Incorrect payments

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

5.3 Effect of payment

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

6. Delivery

6.1 Supplier to deliver, install or commission

(1) The Supplier must deliver the Goods to the Territory at the place(s) and at the time(s) specified in **Schedule 2** or otherwise as notified by the Territory and comply with any reasonable delivery instructions.

(2) The Supplier must install or otherwise commission the Goods in accordance with **Schedule 2**.

6.2 Territory not bound to accept delivery by instalments

Unless specified in **Schedule 2** or agreed in writing by the parties, the Territory is not bound to accept delivery of the Goods by instalments.

7. Acceptance

7.1 Reasonable opportunity to examine

After delivery of the Goods to the Territory, the Territory must have a reasonable opportunity to examine the Goods for the purpose of ascertaining that they are in conformity with this Agreement.

7.2 Territory may reject Goods

The Territory may reject all or part of the Goods if:

(1) the Goods:

(a) do not conform to the Specifications or any other relevant provision of this Agreement;

(b) are not of Acceptable Quality, are defective or in a damaged condition; or

(c) are unfit for the purpose specified in or implied by this Agreement; or

(2) the quantity of Goods delivered is greater or less than the quantity required to be delivered under this Agreement,

and in that event the Supplier must promptly remove the Goods and the Territory may either:

(3) require the Supplier to provide, at the Supplier's cost, replacement Goods which comply with the requirements of this Agreement within a period determined by the Territory; or

(4) terminate this Agreement in accordance with **clause 16.1**.

7.3 Time of acceptance

Acceptance of the Goods by the Territory occurs when:

(1) the Territory notifies the Supplier in writing that it has accepted them;

(2) the Goods have been delivered to the Territory and the Territory does an act in relation to them that is inconsistent with the Supplier's ownership of them; or

(3) after the lapse of a reasonable period of time, the Territory retains the Goods without notifying the Supplier that the Territory has rejected them,

whichever occurs sooner.

8. Title and Risk

8.1 Supplier bears risk

Until all Goods have been delivered to, installed/commissioned (if required) and accepted by the Territory in accordance with this Agreement, the Supplier bears all risks for and associated with the Goods and their delivery to the Territory, including but not limited to insurance for the full replacement value of the Goods.

8.2 Title passes on acceptance

(1) The Supplier must supply the Goods to the Territory free of any encumbrance including any registered security interest.

(2) If requested by the Territory, the Supplier must provide the Territory with evidence to the Territory's satisfaction that the Goods are free of any encumbrance including any registered security interest.

(3) Title to the Goods passes to the Territory on acceptance of the Goods by the Territory pursuant to this Agreement.

9. Warranty

9.1 Additional warranty

Without limiting any other warranty set out in this Agreement or given by the Supplier, the Supplier warrants that the Goods supplied to the Territory under this Agreement:

(1) are free of any encumbrance including any registered security interest;

(2) conform to the Specifications;

(3) are of Acceptable Quality; and

(4) are fit for the purpose specified in or implied by this Agreement.

9.2 Warranty Period

During the Warranty Period, the Supplier must without delay and at no cost to the Territory, correct all defects in the Goods by way of repair, replacement or such other means acceptable to the Territory.

9.3 Third Party Warranties

The Supplier must ensure, to the extent practicable and permitted by law, the Territory receives the benefit of any warranty given by a third party with respect to any Goods. This clause does not in any way relieve the Supplier of any obligation of or warranty given by the Supplier under this Agreement.

9.4 Supplier responsible for costs

The Supplier is liable for all costs incidental to the discharge of the warranty in this **clause 9** and any other warranty given in respect of the Goods, including any packaging, freight, disassembly and reassembly costs.

10. Ownership and use of material

10.1 Supplier to provide Support Material

The Supplier must, in accordance with this Agreement, or as requested by the Territory, provide all Support Material to the Territory.

10.2 Ownership of material

Ownership of:

(1) all Contract Material, including any intellectual property rights, vests on its creation in the Territory;

(2) all Territory Material, including any intellectual property rights, remains with the Territory; and

(3) all Support Material, including any intellectual property rights, remains the property of the Supplier.

10.3 Licence of material

(1) The Territory grants to the Supplier a royalty-free, limited licence to use the Contract Material and Territory Material for the Term.

(2) The Supplier grants to the Territory a perpetual, royalty-free licence to use the Support Material.

(3) For the purpose of this clause, "use" includes:

(a) such uses as are reasonably necessary for the Territory to obtain the full benefit of the Goods and Services, including use of the Contract Material and Support Material; and

(b) such uses as are reasonably necessary for the Supplier to undertake the Services or supply the Goods, or as otherwise agreed by the Territory;

and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

10.4 Third Party Rights

The Supplier must ensure that:

(1) the Territory's use of any Contract Material and any Support Material will not infringe the intellectual property rights of any third party; and

(2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Contract Material and any Support Material.

10.5 Moral rights

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

(1) use its best endeavours to include in the Contract Material an attribution of those authors; and

(2) procure from those authors their genuine written consent for the Territory to:

(a) attribute the authorship of the work to the Territory or a third party where that attribution was inadvertent;

(b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or

(c) materially alter the work in any way.

10.6 Safekeeping and preservation of material

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

expiration or termination of this Agreement (other than copies of material that the Territory has authorised the Supplier to retain).

11. Supplier's personnel

The Supplier must:

(1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;

(2) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Supplier for the performance of Services;

(3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Territory at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

(4) if the Territory requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Territory (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Territory in accordance with any requirements that the Territory notifies.

12. Non-disclosure of Territory Information

12.1 Supplier's use of Territory Information

The Supplier must:

(1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;

(2) not transfer Territory Information held in connection with this Agreement outside the Territory, or allow any person (other than authorised personnel) outside the Territory to have access to it, without the prior approval of the Territory;

(3) notify the Territory immediately if the Supplier becomes aware that a disclosure of Territory Information is required by law or an unauthorised disclosure of Territory Information has occurred; and

(4) in respect of any Personal Information held in connection with this Agreement:

(a) comply with the TPPs and any applicable TPP Code as though the Supplier were a public sector agency and must not (and must ensure that any subcontractor engaged by the Supplier under this Agreement does not) act or engage in any practice that breaches a TPP or a TPP Code; and

(b) cooperate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the

exercise of the functions of the information privacy commissioner under the Information Privacy Act.

12.2 Supplier to protect Territory Information

(1) Except as provided in this Agreement, the Supplier must not disclose Territory Information to any person, nor deal with the Territory Information in any way except for the purposes of this Agreement, without the prior written consent of the Territory except to the extent that the Territory Information is:

(a) required or authorised to be disclosed by law;

(b) disclosed to the Supplier's solicitors, auditors, insurers or advisers;

(c) generally available to the public; or

(d) in the possession of the Supplier without restriction in relation to disclosure before the date of receipt from the Territory.

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

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

12.3 Acknowledgement of effect of Crimes Act

The Supplier acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Supplier is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

13. Confidential Text under the Procurement Act

13.1 Territory may make Agreement publicly available

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

13.2 Confidential Text

If **Item 8 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 9 Schedule 1** and **clause 13.3** applies.

13.3 Territory must not disclose Confidential Text

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

(1) is required or authorised to be disclosed under law;

(2) is reasonably necessary for the enforcement of the criminal law;

(3) is disclosed to the Territory's solicitors, auditors, insurers or advisers;

(4) is generally available to the public;

(5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Supplier;

(6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;

(7) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or

(8) is disclosed to the integrity commissioner.

14. Secure Local Jobs

14.1 Definitions for this clause

(1) This **clause 14** applies if **Item 10 Schedule 1** states that it applies.

(2) In this **clause 14**:

(a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Supplier or one of its Associated Entities has contravened an Industrial Law;

(b) **Applicable Subcontractor Work** means works or service that would, if provided to a Territory Entity, be "Territory-Funded Work";

(c) **Approved Auditor** has the meaning as set out in the Procurement Act;

(d) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);

(e) **Code** means the Secure Local Jobs Code;

(f) **Full Details** means:

(i) the nature of the Adverse Ruling;

(ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;

(iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;

(iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;

(v) the name of the entity against which the Adverse Ruling was made; and

(vi) any other relevant information that the Supplier may rely on as grounds for not terminating this Agreement as a result of the Adverse Ruling;

(g) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;

(h) **Labour Relations, Training and Workplace Equity Plan** has the meaning as set out in the Procurement Act;

(i) **Registrar** has the meaning as set out in the Procurement Act;

(j) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;

(k) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;

(l) **Territory Entity** has the meaning as set out in the Procurement Act; and

(m) **Territory-Funded Work** has the meaning as set out in the Procurement Act.

(3) For the purposes of **clause 14.2(2)** and **clause 14.3(5)** the form set out in **Attachment 2** is approved unless otherwise advised by the Territory.

14.2 Subcontractors performing Applicable Subcontractor Work

(1) The Supplier must, in relation to any subcontractors engaged to perform Applicable Subcontractor Work:

(a) ensure terms are included in the agreement with the subcontractor:

(i) requiring the subcontractor to comply with the Code; and

(ii) imposing obligations on the subcontractor in the same form as those set out in **clause 14** and imposed on the Supplier (subject to any necessary variation to reflect the different parties);

(b) ensure:

(i) the subcontractor holds a Secure Local Jobs Code Certificate; and

(ii) the subcontractor maintains a Secure Local Jobs Code Certificate during the term of their agreement; and

(iii) the obligations in **clause 14.2(1)(b)(i)** and **clause 14.2(1)(b)(ii)** are included in the relevant agreement with the subcontractor.

(2) The Territory may by written notice request the Supplier obtain a statutory declaration from a subcontractor engaged to perform Applicable Subcontractor Work regarding its compliance with the Code and provide it to the Territory within 15 business days of the date of the written notice. The Supplier must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Supplier to comply with this **clause 14.2(2)**.

(3) The Territory (or nominated representative) and Approved Auditors may, at the Territory'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.

14.3 Supplier's Secure Local Jobs responsibilities

(1) The Supplier must comply with all of its obligations under the Code.

(2) The Supplier must maintain a valid Secure Local Jobs Code Certificate during the term of the Agreement.

(3) Failure of the Supplier to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Agreement entitling the Territory to terminate the Agreement on written notice to the Supplier.

(4) If at any time during the term of the Agreement an Adverse Ruling is made, the Supplier must, within 7 business days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Supplier 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.

(5) The Supplier must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the Code:

(a) within 5 business days of a written request from the Territory; and

(b) if requested in writing by the Territory, at the time the Supplier provides an Invoice.

(6) Failure of the Supplier to provide a statutory declaration in accordance with **clause 14.3(5)** or the making of a false statement in a statutory declaration by the Supplier or its representative will constitute a breach of this Agreement.

(7) If the Supplier fails to provide a statutory declaration in accordance with **clause 14.3(5)(b)** the Territory may withhold payment of monies otherwise due to the Supplier in respect of the relevant Invoice until the statutory declaration is received.

(8) The Territory may require the Supplier to 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.

(9) The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the Supplier except in circumstances where attendance would result in a conflict with Commonwealth laws.

(10) The Supplier must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the Supplier's worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Territory or Registrar under this **clause 14.3(10)**

in circumstances where entry would result in a conflict with Commonwealth laws.

(11) The Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by the Supplier 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.

(12) If the Supplier was required to submit a Labour Relations, Training and Workplace Equity Plan as part of its tender for the Services:

(a) the Supplier must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;

(b) the Supplier must report to the Territory on its compliance with **clause 14.3(12)(a)** quarterly during the term of this Agreement;

(c) the Supplier must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and

(d) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

15. Insurance and indemnity

15.1 Supplier's insurance

The Supplier must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

15.2 Manufacturer's insurance

Without limiting **clause 15.1**, if the Supplier does not manufacture the Goods, the Supplier must do all things reasonably necessary to ensure:

(1) the manufacturer of the Goods effects and maintains product liability insurance with coverage in the amount of not less than $20 million in the aggregate; and

(2) the Territory receives the benefit of any product liability insurance coverage effected by the manufacturer of the Goods.

15.3 Indemnity

The Supplier indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused by the Supplier, its employees, agents or subcontractors in connection with:

(1) the Goods;

(2) the supply of the Goods; and

(3) the Services,

except to the extent that the Territory caused the relevant loss, damage or injury.

15.4 Claims to be made good

The Supplier must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 15.3** and the Territory may deduct the amount, or any part of it, from any moneys due or becoming due to the Supplier under this Agreement.

16. Termination

16.1 Default

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

(1) is the subject of an Insolvency Event;

(2) fails to commence timely supply of the Goods or provision of the Services or to meet any timeframes specified in this Agreement; or

(3) is in breach of a provision of this Agreement, where that breach:

(a) if capable of being remedied, is not remedied within the period specified in a notice by the Territory, or

(b) is not capable of being remedied.

16.2 Termination for any reason or reduction of Goods or Services

The Territory may, at any time by notice to the Supplier, terminate this Agreement or reduce the Services or volume of Goods for any reason, and in that event:

(1) the Territory will be liable only for:

(a) payments under this Agreement for Goods supplied and Services rendered before the date of termination; and

(b) subject to **clauses 16.2(2)** and **16.2(3)**, any reasonable costs incurred by the Supplier and directly attributable to the termination or reduction of Services or volume of the Goods, but not in respect of loss of prospective profits;

(2) on receipt of a notice of termination or reduction, the Supplier must:

(a) stop work as specified in the notice;

(b) take all available steps to minimise loss resulting from that termination or reduction of Services or volume of Goods; and

(c) continue to perform any part of the Services or supply any volume of the Goods not affected by the notice; and

(3) in the event of a reduction of the Services or volume of Goods, the Territory's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services or volume of the Goods.

16.3 No prejudice

Nothing in this **clause 16** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

17. Dispute resolution

17.1 Negotiation of Dispute

(1) If a difference or dispute **(Dispute)** arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, refer to matter to appropriate senior executives with authority to finally resolve the matter.

(2) Nothing in this **clause 17** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

18. General

18.1 Cooperation

Each party will fully cooperate with each other to ensure timely progress and fulfilment of this Agreement.

18.2 Conflict of interest

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

18.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Supplier, or its employees,

agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Supplier must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

18.4 No assignment or subcontracting

(1) The Supplier must not subcontract the supply of the Goods and/or the provision of the Services or assign the whole or part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.

(1) A change in the control of the Supplier or a company that controls the Supplier (except a company listed on an Australian stock exchange) is taken to be an assignment, the term "control" including the direct or indirect holding of more than 50% of the share capital of a corporation.

(2) If the Supplier breaches **clause 18.4(1)**, the Territory reserves its rights, including requiring the Supplier to provide information regarding the proposed subcontractor's or assignee's capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

18.5 Entire agreement

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

18.6 Severability

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

18.7 Variation

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement.

18.8 No waiver

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

18.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Supplier

must comply with the laws from time to time in force in the Territory in performing the Services and supplying the Goods.

18.10 Notices

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

(1) if delivered by hand, on delivery;

(2) if sent by prepaid mail, on the expiration of five 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.

18.11 Special Conditions

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

18.12 Survival of clauses

Clauses 5.2, 12, 16.3 and **16.4** will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1

CONTRACT DETAILS

Item 1. **Contract Officers**
See clauses 1.1 and 18.10

For the Territory:

Mark Usherwood
Director Project Operations, Place Experience and Marketing
02 6207 6033
mark.usherwood@act.gov.au

For the Supplier:

Dave Caffery
Founder, Dionysus
0437 790 124
dave@dionysus.place

Item 2. **Term**
See clauses 1.1 and 4

From execution of the agreement until 30 June 2025.

Despite **clause 18.7**, the parties agree that the Territory may extend the Term in its absolute discretion for a further 2 years in the aggregate on the terms and conditions then in effect, by giving written notice to the Contractor prior to the expiration of the then current Term.

Item 3. **Contract Price**
See clauses 1.1 and 5.1

1. Contract Price: $5,300,000 (GST inclusive)
2. The Contract Price (GST inclusive) and instalments for invoicing are as set out in Attachment 1
(3) Except if otherwise stated in this Agreement, the Contract Price is:
   (a) payable within 30 days of receipt by the Territory of an Invoice;
   (b) inclusive of GST and all other taxes, duties and charges; and
   (c) inclusive of all disbursements, including packaging, freight and delivery costs and other out-of-pocket expenses incurred by the Supplier.

Item 4. **Warranty Period**
See clauses 1.1 and 9.2

12 months from the date on which the Territory accepts the Goods from the Supplier in accordance with this Agreement

Item 5.	**Specified Personnel** *See clauses 1.1 and 11*	Dave Caffery
Item 6.	**Other amounts and insurance** *See clause 16.1*	1. Public and Product liability insurance: $20million (in respect of each claim). 2. Professional indemnity insurance: $5million (in the annual aggregate and per event). 3. Workers Compensation for the Australian Capital Territory The Supplier must maintain the professional indemnity insurance coverage required under this **Item 6** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.
Item 7.	**Territory Information** *See clauses 1.1 and 12*	**Item 7** not used.
Item 8.	**Confidential Text** *See clauses 1.1 and 13*	This Agreement is a "notifiable contract" under the Procurement Act and the following is Confidential Text: **Attachment 1 – Pricing** **Attachment 3 – Supplier Proposal**
Item 9.	**Grounds for confidentiality of Confidential Text** *See clause 13*	The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Territory is satisfied that the Confidential Text is "confidential information" for the purposes of that Act because disclosure of the text would: (1) be an unreasonable disclosure of information about the business affairs of a person.
Item 10.	**Secure Local Jobs** *See clause 14*	**Clause 14** does apply.

SCHEDULE 2

THE GOODS AND SERVICES

Refer to separate attachment – GS2544750.210 Schedule 2 – Statement of Requirements

SCHEDULE 3

SPECIAL CONDITIONS

See clause 18.11

Item 1. Additional Warranty

Not Used

Item 2. Sale by sample

Not Used

Item 3. Audit

Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT) the Territory (or its nominated representative) may, at its cost, inspect records kept by the Supplier and conduct audits and other checks, to monitor the Supplier's delivery of the Services, the supply of the Goods and compliance with this Agreement. The Supplier must act reasonably to cooperate with persons authorised to conduct an audits or checks.

Item 4. Changes in control of Supplier

In addition to the circumstances set out in **clause 18.4(2)**, for the purposes of **clause 18.4**, "control" includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

(1) directly or indirectly control the membership of the board of directors of the corporation; or

(2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

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

Item 5. Complaints in relation to interference with privacy

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

(1) if the Territory receives a Complaint it will immediately notify the Supplier of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;

(2) if the Supplier receives a Complaint it must immediately notify the Territory of the nature of the Complaint but will only release Personal Information to the Territory concerning the complainant with that person's consent; and

(3) after the Territory has given or been given notice under (1) or (2), it will keep the Supplier informed of all progress with the Complaint concerning the actions of the Supplier.

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

Item 6. Local Industry Participation

6.1 The Supplier must implement its commitments set out in its Local Industry Participation Plan (**"Local IP Plan**") submitted as part of its tender for the Services.

6.2 The Supplier must provide a Local Industry Participation Report ("**Local IP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Territory within 6 months of the date of this Agreement and on or before the first, and each subsequent, anniversary of this Agreement.

6.3 Before or concurrently with the Supplier's submission to the Territory of its final Invoice for payment under this Agreement, the Supplier must provide to the Territory a Final Local Industry Participation Report ("**Final Local IP Report**") that sets out its level of compliance with the commitments provided for in the Local IP Plan throughout the Term and which is accompanied by a statutory declaration stating the information provided in the Final Local IP Report is true and correct.

6.4 The Territory may withhold payment of the final Invoice until submission of a satisfactory Final Local IP Report by the Supplier.

6.5 The Supplier must attend any meeting scheduled by the Territory to review how its Local IP Plan is being implemented and advanced, and for this purpose, the Supplier must provide all information reasonably requested by the Territory.

6.6 The Supplier's failure to comply, in whole or in part, with the commitments contained within the Local IP Plan may be a factor taken into account in the award of future contracts for the Territory.

Item 7. Work Health and Safety

7.1 The following definitions apply in this Item:

WHS Legislation

(1) the *Work Health and Safety Act 2011* (ACT);

(2) the *Work Health and Safety Regulation 2011* (ACT);

(3) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011*;

(4) all laws that replace the above laws; and

(5) all other laws applicable in the Australian

Capital Territory dealing with work health and safety matters.

7.2 The obligations set out in this Agreement do not detract from the Supplier's obligations under the WHS Legislation. If there is an inconsistency between this Agreement and the WHS Legislation, the Supplier must comply with the WHS Legislation and inform the Territory of the inconsistency.

7.3 The Supplier 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.

7.4 The Supplier 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.

7.5 The Supplier must institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform Services about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.

7.6 The Supplier must provide the written assurances obtained under **Item 7.5**, together with written assurances from the Supplier about the Supplier's ongoing compliance with WHS Legislation, to the Territory when requested.

7.7 The Supplier must provide the Territory with a written report on all work health and safety matters referable to the conduct of the Services, or any other relevant matters required by the Territory including a summary of the Supplier's compliance with WHS Legislation, at least once per month, and at other times as requested.

7.8 The Supplier must exercise a duty of utmost good faith to the Territory in carrying out the work under this Agreement to enable the Territory to discharge the Territory's duties under the WHS Legislation.

7.9 The Supplier must ensure that if any law requires that a person:

(a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

(b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.

7.10 The Supplier must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.

7.11 The Supplier 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 **Items 7.9** and **7.10** are met.

7.12 If requested by the Territory or required by WHS Legislation, the Supplier must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Territory before the Supplier or any subcontractor commences such work.

7.13 If the Territory reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Supplier (or any of its subcontractors) the Territory may direct the Supplier (or the relevant subcontractor) to change its manner of working or cease working and the Supplier or subcontractor must comply.

7.14 The Territory may take any action necessary to protect property or to prevent or minimise risk to health and safety of persons, which the Supplier must take but does not and the Territory may recover any costs associated with such action from the Supplier.

7.15 The Supplier must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in this Agreement and the WHS Legislation.

7.16 The Supplier must demonstrate to the Territory, whenever requested, that the Supplier has met and is meeting at all times, its obligations under this Item but such demonstration does not relieve the Supplier of its primary obligation to perform work safely.

DATE OF THIS AGREEMENT is the date the last party signs this Agreement, after the first party has signed.

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

Sch 2.2(a)(ii)

Signature of witness

Jennifer Ramsay

Print name

25.5.2022

Date

Sch 2.2(a)(ii)

Signature of Territory delegate

Malcolm C. Snow.

Print name

25.05.2020.

Date

SIGNED by or for and on behalf of)
The Dionysus Movement Pty Ltd,)
ABN 30 140 868 631)
in the presence of:

Sch 2.2(a)(ii)

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

Guadalupe M. de Zavalia

Print name

25/05/22

Date

Sch 2.2(a)(ii)

Signature of director/ ~~authorised officer/ individual~~*
*DELETE whichever is not applicable (see note below)

DAVID CAFFERY, FOUNDER

Print name and position

25/5/22

Date

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

Print name and position

Date

Affix common seal if required under constitution

Note:

Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Supplier's constitution.
Individual:	Must be signed by the individual Supplier and witnessed.
Incorporated Association:	Must be signed in accordance with the Supplier's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ATTACHMENT 1

Pricing

Refer to separate attachment – GS2544750.210 Attachment 1 – Pricing

ATTACHMENT 2

ETHICAL SUPPLIERS DECLARATION

See clause 14.1(2)

Refer to separate attachment – GS2544750.210 Attachment 2 – Ethical Suppliers Declaration

ATTACHMENT 3

Suppliers Proposal

Refer to separate attachment – GS2544750.210 Attachment 3 – Suppliers Proposal

ACT Government

DEED OF VARIATION 1

Dated	1/2/2023
Parties	**AUSTRALIAN CAPITAL TERRITORY** **AND** **THE DIONYSUS MOVEMENT PTY LTD** **ABN 30 140 868 631**
Prepared by	City Renewal Authority 3 Constitution Avenue GPO Box 158 Canberra City ACT 2601 Email: cityrenewal@act.gov.au
Version	1.0

© Australian Capital Territory Government Solicitor 2019

PARTIES: **AUSTRALIAN CAPITAL TERRITORY,** the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) **(Territory)** represented by the **CITY RENEWAL AUTHORITY.**

THE DIONYSUS MOVEMENT PTY LTD ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier).**

BACKGROUND

A. The Territory and the Supplier executed an agreement (Agreement) on 25 May 2022 in relation to the provision of place management services. The Agreement can be found at **Appendix A.**

B. Section 18.7 of the Agreement outlines that the agreement may be varied by the written agreement of both parties.

C. The parties have agreed to vary the Agreement in accordance with the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

(1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

(2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

2. Effective Date

The variations to the Agreement described in this Deed take effect on 1 February 2023.

3. Variation

(1) **Schedule 1, Item 3 (1)** is deleted and replaced with the following.

Item 3(1) Contract Price $5,315,708 (GST inclusive)

(2) Schedule 2, Item 2.1 is deleted and replaced with the following

SIGNED AS A DEED ON 1/2/23

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

Sch 2.2(a)(ii)

Signature of Territory delegate

Sch 2.2(a)(ii)

Signature of witness

Craig Gillman

Print name

Debbie Butt

Print name

SIGNED by or for and on behalf of)
THE DIONYSUS MOVEMENT PTY LTD ABN)
30 140 868 631 in the presence of:)

Sch 2.2(a)(ii)

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

Sch 2.2(a)(ii)

Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable (see note below)

Kristi Clark

Print name

DAVID CAFFERY

Print name

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

Print name

Affix common seal if required under constitution

Note:

Date:	Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.
Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
Individual:	Must be signed by the individual Contractor and witnessed.
Incorporated Association:	Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ACT Government

DEED OF VARIATION 2

Dated	14 September 2023
Parties	**AUSTRALIAN CAPITAL TERRITORY** **AND** **THE DIONYSUS MOVEMENT PTY LTD** **ABN 30 140 868 631**
Prepared by	City Renewal Authority 3 Constitution Avenue GPO Box 158 Canberra City ACT 2601 Email: cityrenewal@act.gov.au
Version	1.0

© Australian Capital Territory Government Solicitor 2019

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) **(Territory)** represented by the **CITY RENEWAL AUTHORITY**.

THE DIONYSUS MOVEMENT PTY LTD ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory and the Supplier executed an agreement (Agreement) on 25 May 2022 in relation to the provision of place management services. The Agreement can be found at **Appendix A**.

B. Section 18.7 of the Agreement outlines that the agreement may be varied by the written agreement of both parties.

C. The parties have agreed to vary the Agreement in accordance with the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

(1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

(2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

2. Effective Date

The variations to the Agreement described in this Deed take effect on 8 September 2023.

3. Variation

(1) **Schedule 1, Item 3 (1)** is deleted and replaced with the following.

Item 3(1) Contract Price $5,403,708 (GST inclusive)

SIGNED AS A DEED ON 12 September 2022

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

Sch 2.2(a)(ii)

Signature of witness

Debbie Butt

Print name

Sch 2.2(a)(ii)

Signature of Territory delegate

Malcolm Snow.

Print name

SIGNED by or for and on behalf of)
THE DIONYSUS MOVEMENT PTY LTD ABN)
30 140 868 631 in the presence of:)

Sch 2.2(a)(ii)

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

Alison Plevey

Print name

Sch 2.2(a)(ii)

Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable (see note below)

David Caffery

Print name

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

Print name

Affix common seal if required under constitution

Note:

Date:	Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.
Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
Individual:	Must be signed by the individual Contractor and witnessed.
Incorporated Association:	Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ACT Government

DEED OF VARIATION 3

Dated	31 Jan 2024
Parties	**AUSTRALIAN CAPITAL TERRITORY** **AND** **THE DIONYSUS MOVEMENT PTY LTD** **ABN 30 140 868 631**
Prepared by	City Renewal Authority 3 Constitution Avenue GPO Box 158 Canberra City ACT 2601 Email: cityrenewal@act.gov.au
Version	1.0

© Australian Capital Territory Government Solicitor 2019

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) **(Territory)** represented by the **CITY RENEWAL AUTHORITY**.

THE DIONYSUS MOVEMENT PTY LTD ABN 30 140 868 631 of 35/25 Fawkner Street, Braddon ACT 2612 **(Supplier)**.

BACKGROUND

A. The Territory and the Supplier executed an agreement (Agreement) on 25 May 2022 in relation to the provision of place management services. The Agreement can be found at **Appendix A**.

B. Section 18.7 of the Agreement outlines that the agreement may be varied by the written agreement of both parties.

C. The parties have agreed to vary the Agreement in accordance with the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

(1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

(2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

2. Effective Date

The variations to the Agreement described in this Deed take effect on 1 January 2024.

3. Variation

(1) **Attachment 1** *Pricing* is deleted and replaced with **Attachment 1** *Pricing December 2023*.

(2) **Schedule 1, Item 3 (1)** is deleted and replaced with the following.

Item 3(1) Contract Price $5,434,676.41 (GST inclusive)

SIGNED AS A DEED ON 31 January 2024

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

Sch 2.2(a)(ii)

Signature of witness

Claudia Chappé de Léonval

Print name

Sch 2.2(a)(ii)

Signature of Territory delegate

Malcolm C. Snow

Print name

SIGNED by or for and on behalf of)
THE DIONYSUS MOVEMENT PTY LTD ABN)
30 140 868 631 in the presence of:)

Sch 2.2(a)(ii)

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

Guadalupe Maria de Zavalia Stordeur

Print name

Sch 2.2(a)(ii)

Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable (see note below)

David Caffery

Print name

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

Print name

Affix common seal if required under constitution

Note:

Date:	Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.
Company:	Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
Individual:	Must be signed by the individual Contractor and witnessed.
Incorporated Association:	Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ACT Government | CITY RENEWAL AUTHORITY

Brief

Variation 3 - GS2544750 Place Management Services (Dionysus)

To:	Mal Sch 2.2(a)(ii) O	Objective # A44177803
From:	Mark Usherwood	
Date:	20 December 2023	

Purpose and critical date

1. This minute seeks your approval of Deed of Variation 3, **Attachment A**, to Agreement GS2544750 – Place Management Services, **Attachment B**.
2. A decision is requested by 22 December 2023 to allow time for the Supplier to raise the January 2024 invoice for Place Management Services.

Background

3. The Authority and the Supplier (Dionysus) executed an agreement (Agreement) on 25 May 2022 for the provision of place management services.
4. The Agreement and associated Statements of Requirements outline that the terms of the Agreement may be varied by written agreement of both parties.
5. Variations 1 and 2 to the Agreement, **Attachments C and D**, were executed to increase the defined scope to include development of a draft activation plan for the temporary Acton Waterfront Park (Variation 1) and delivery of a sustainable travel event (Variation 2).
6. The funding associated with the Agreement is split into two parts, the first being the provision of staff, the second a budget to delivery activity against approved plans.
7. The terms of the tender process undertaken to appoint the Supplier required the Supplier to provide costings related to the annual provision of staff for a period of five years.
8. The term of the Agreement is three years with an option to extend by two years. The maximum contract term is five years.
9. The Supplier requested the Agreement Pricing Schedule be kept confidential. This request was approved and the Pricing Schedule is not notified on the ACT Government contracts register.

Issues and interdependencies

10. In July 2023 the Supplier requested a potential increase to the costs associated with the annual provision of staff be discussed. The Supplier cited unanticipated increases to CPI, dramatic increases to the general cost of conducting business and an appetite to increase remuneration to existing staff to mitigate potential staff turnover as the main contributing factors to this request.
11. During the period the Supplier was preparing their tender response the annual CPI increases, as reported by the Australian Bureau of Statistics (ABS), for the previous four quarters were:
    a. 12 months to December 2021 3.5%
    b. 12 months to September 2021 3.0%
    c. 12 months to June 2021 3.8%
    d. 12 months to March 2021 1.1%
12. The Suppliers tender response (Agreement Pricing Schedule) outlined an annual increase to the costs associated with the provision of staff of 3.5% per annum over the five year period.
13. The ABS's annual increase to CPI over the last four quarters were:
    a. 12 months to September 2023 5.4%
    b. 12 months to June 2023 6.0%
    c. 12 months to March 2023 7.0%
    d. 12 months to December 2022 7.8%
14. The matter has been discussed with the Supplier and an increase to the costs associated with the annual provision of staff from year one to year two of the Agreement from 3.5% to 6% is proposed. Further annual increase would remain consistent at 3.5% per annum.
15. An amended Pricing Schedule can be found at **Attachment E**.
16. I can confirm that I have no conflict of interest relating to the proposed variation. A copy of my Conflict-of-Interest Disclosure can be found at **Attachment F**.

Risk / Sensitivities

17. To ensure appropriate contractual and financial controls continue to underpin the management of the Agreement a contract management workbook that outlines all costs associated with the current scope of the Agreement, as well as any variations, has been developed. A copy of this workbook can be found at **Attachment G**.
18. The CRA Board did not approve the Agreement prior to execution. A minute outlining the details and agreed actions to manage this can be found at **Attachment H**. Please note it was agreed that the Board would be notified prior to any proposal to vary the term of the Agreement. Variation 3 does not propose to vary the term of the Agreement. If approved it is proposed to note the details of Variation 3 in the next CEO's report to the Board.

Financial implications

19. The value of the current Agreement is $5,403,708 inc gst.
20. The value of the proposed variation is $30,968.41 inc gst.
21. This represents an increase of 0.6% to the current Agreement.
22. If the proposed variation is approved the total value of the Agreement would be $5,434,676.41 inc gst.
23. Any increase in funding approved would be managed within the existing PEM budget.

Consultation (Internal and External)

24. The proposed amendments have been discussed with the Supplier.

Media implications

25. If approved Variation 3 would be notified on the ACT Government Contract Register. The Pricing Schedule would be kept confidential.
26. No media interest is anticipated.

Recommendation(s)

27. That you:

    a. note the information contained in this brief;

    AGREED / NOT AGREED / PLEASE DISCUSS

    b. include the details of Variation 3 in the next CEO's Board report;

    AGREED / NOT AGREED / PLEASE DISCUSS

    c. approve Variation 3, **Attachment A**; and

    AGREED / NOT AGREED / PLEASE DISCUSS

    a. approve the Agreement Pricing Schedule, **Attachment E,** be kept confidential.

    AGREED / NOT AGREED / PLEASE DISCUSS

Sch 2.2(a)(ii)

Malcolm Snow … ..... .02…/…01./….2024….

Executive clearance: Jen Ramsay

Action Officer: Mark Usherwood

Attachments

Attachment A – Deed of Variation 3

Attachment B – Agreement GS2544750 – Place Management Services

Attachment C – Variation 1

Attachment D – Variation 2

Attachment E – Pricing Schedule

Attachment F - GS2544750 Conflict of Interest Disclosure – Mark Usherwood

Attachment G – Contract management workbook – GS22544750 Place Management Services (Dionysus)

Attachment H – CEO Minute, review of procurement process, GS2544750 Place Management Services (Dionysus)

Sch 2.2(a)(xi)

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope