



AUSTRALIAN CAPITAL TERRITORY

CONTRACT NUMBER: [INSERT]

CONTRACT NAME: [INSERT]

CONTRACTOR: [INSERT]

MANAGING CONTRACTOR CONTRACT

(MCC-ACT-2013)

VERSION: [DRAFT/FINAL - INSERT DATE]

[RFT ANNEXURE VERSION: LAST AMENDED: 25 AUGUST 2021]

NOTE TO RESPONDENTS: WHILE THIS DRAFT COMPRISES THE ESSENTIAL TERMS AND CONDITIONS UNDER WHICH THE TERRITORY ANTICIPATES ENTERING INTO CONTRACT WITH THE SELECTED RESPONDENT, THE TERRITORY RESERVES THE RIGHT TO AMEND THE CONTRACT (INCLUDING THE ADDITION OF SPECIAL CONDITIONS) BEFORE THE CONTRACT IS SIGNED.

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FORMAL AGREEMENT

This Contract is made on _____ day of _____

[drafting instruction: OR, if the Contract is entered into by way of a letter of acceptance, delete the above line and include "The Territory has accepted a tender by the Consultant for the Services. Notwithstanding the date of this Formal Agreement, the date of the parties' contract is the date specified in the letter of acceptance of the Consultant's tender issued by the Territory (or, if no date is specified, the date of the letter of acceptance).]

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

The contractor set out in the Contract Particulars (Contractor)

1. The Territory and the Contractor promise to carry out and complete their respective obligations in accordance with:
 - (a) the attached Conditions of Contract; and
 - (b) the other documents referred to in **clause 1.1** of the Conditions of Contract as constituting the Contract.
2. The Contractor acknowledges (without limiting any provision of the Contract) that the managing contractor delivery method:
 - (a) is intended to:
 - (i) increase collaboration between the Territory and the Contractor and promote a "one team" culture across all stakeholders;
 - (ii) (maximise the scope of work delivered for the available funds, so as to optimise the utility of the Works to the end users; and
 - (iii) provide a monetary incentive for exceptional performance;
 - (b) involves two phase delivery comprising:
 - (i) an initial preliminary contract in the Planning Phase; and
 - (ii) subject to the achievement of Delivery Phase Agreement and Delivery Phase Approval, a subsequent consolidated contract in the Delivery Phase;
 - (c) in the Planning Phase, involves two sub-phases, comprising:
 - (i) Delivery Phase Agreement; and
 - (ii) Delivery Phase Approval;
 - (d) in the Planning Phase, involves the Contractor:
 - (i) prior to Delivery Phase Agreement:
 - A. preparing Planning Phase Design Documentation, programs, a cost plan and project plans to the satisfaction of the Territory; and

- B. assisting the Territory to achieve the Planning Phase Milestones by the Planning Phase Milestone Dates;
- (ii) prior to Delivery Phase Approval - assisting the Territory to obtain Government Approval;
- (iii) generally performing the other activities forming part of the Contractor's Work (Planning); and
- (iv) being paid the Contractor's Work Fee (Planning) in consideration of the Contractor performing the Contractor's Work (Planning);
- (e) before the end of the Planning Phase, allows the Territory to elect not to proceed with the Contractor to the Delivery Phase if:
 - (i) it is not satisfied with the design development, programming and cost planning undertaken, or the project plans prepared, by the Contractor;
 - (ii) the Contractor has not demonstrated that it will absolutely comply with the Building Code 2016 during the Delivery Phase;
 - (iii) the Planning Phase Milestones are not achieved by the Planning Phase Milestone Dates;
 - (iv) it does not agree with the adjustment to the fees for the Delivery Phase proposed by the Contractor;
 - (v) the Territory does not obtain Government Approval;
 - (vi) the Contract Particulars (Delivery Phase) have not been agreed and executed in accordance with clause 6.5(f) of the Conditions of Contract; or
 - (vii) the Contractor otherwise fails to perform all of the Contractor's Work (Planning) in accordance with the Contract;
- (f) if the conditions in paragraph (e) are satisfied, requires the Territory to proceed with the Contractor to the Delivery Phase, on the terms of the new contract referred to in clause 6.6(b)(i)B of the Conditions of Contract, under which the Contractor will:
 - (i) complete (to the extent not completed in the Planning Phase) the design of; and
 - (ii) commence, construct, commission, complete and handover, the Works;
- (g) if the conditions in paragraph (e) are not satisfied, allows the Territory to proceed to have the Works executed:
 - (i) by a third party, including any of the other Tenderers which submitted a tender for the Contractor's Activities (whether on the basis of that tender or otherwise as negotiated), without being obliged to carry out any further tender process; and
 - (ii) using the Project Documents prepared and the Subcontractors engaged by the Contractor in the Planning Phase; and
- (h) alternatively, if the Territory requires certain parts of the Works to be delivered notwithstanding that the conditions in paragraph (e) are not satisfied, allows it to

elect (in its absolute discretion) to waive the satisfaction of those conditions in relation to those parts of the Works, in accordance with clause 6.7(d) of the Conditions of Contract.

SIGNED as an agreement on _____ 20____

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

Signature of Witness

Name of Witness in full

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

Signature of Director

Name of Director in full

Signature of Authorised Signatory

Name of Authorised Signatory in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Note:

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

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

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

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

CONDITIONS OF CONTRACT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

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

ABCC

The Australian Building and Construction Commission referred to in subsection 29(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

ABC Commissioner

The Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Accredited Building Surveyor

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

Act of Prevention

Any one of:

- (a) a breach of the Contract by the Territory;
- (b) any other act or omission of the Territory, the Contract Administrator or an Other Contractor engaged by the Territory; or
- (c) (other than for the purpose of clause 10.4(b)(ii)), a Variation the subject of a Direction by the Contract Administrator, except where the Variation is instructed in the circumstances described in clause 9.9(b).

Approval

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

- (a) carry out the Contractor's Activities; or
- (b) service, occupy and use the completed Works or a completed Stage.

Approved Security

An unconditional undertaking (duly stamped) in the form set out in the Schedule of Collateral Documents and otherwise on terms, and given by a financial institution, approved by the Territory.

Approved Subcontract Agreement

An agreement which is entered into by the Contractor with a Subcontractor on the terms:

- (a) which have been approved in writing by the Contract Administrator under clause 8.7(a); or
- (b) of any agreement with a Territory's Novated Design Consultant novated under clause 6.20,

as adjusted (if applicable) by the Contract Particulars (Delivery Phase).

Award Date

The date specified in (or, if no date was specified, the date of) the letter of acceptance given by the Territory to the Contractor in accordance with the Standard Conditions of Tender referenced in the request for tender for the Services.

Brief

The document referred to in Item 2 of the Contract Particulars.

Building Code 2016

The *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Contractor

Has the same meaning as in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Industry Participant

Has the same meaning as in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Work

Has the same meaning as in subsection 3(4) of the Building Code 2016.

Change of Control

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

Claim

Includes any claim for an increase in the Contract Price or payment of money (including damages):

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

Code Monitoring Group

Has the meaning in the [Building Code 2013](#) and the Building Code 2013 - Supporting Guidelines for Commonwealth Funding Entities.

Collateral Warranty

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

Commissioning and Handover Plan

The commissioning and handover plan prepared by the Contractor and finalised under **clause 9.2**, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a commissioning and handover perspective to ensure:

- (a) the timely, efficient and comprehensive commissioning of the Works (including the inspection and testing process including but not limited to the testing requirements set out in **Annexure 3**);
- (b) the smooth handover of the Works to the Territory; and
- (c) that all required planned and unplanned maintenance is provided during the Defects Liability Period,

in accordance with the Contract and the Commissioning, Handover and Takeover Guidelines.

Commonwealth

Commonwealth of Australia.

Commonwealth Funded Building Work

Means Building Work in items 1-8 of Schedule 1 of the Building Code 2016, other than Building Work to which item 10 of that Schedule applies.

Completion

The point in time when, in respect of the Works or a Stage:

- (a) the Works are, or the Stage is, complete except for minor Defects:
 - (i) which do not prevent the Works or the Stage from being reasonably capable of being used for the intended purpose of the Works or the Stage; and
 - (ii) which can be corrected without prejudicing the convenient use of the Works or the Stage;
- (b) those inspections and tests which are required by the Contract to be carried out and passed before the Works or the Stage reach Completion have been carried out and passed;
- (c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, operation and maintenance of the Works or the Stage have been supplied to the Contract Administrator; and
- (d) without limiting paragraph (c), the Contractor has done everything which the Contract requires it to do as a condition precedent to Completion, including those things described in **Annexure 1** and in Item 4 of the Contract Particulars.

Confidential Text

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

Construction Risks Insurance

A policy of insurance for material damage to the Works and liabilities to third parties arising from the Works with coverage as set out in the terms of the policy.

Consultant Deed of Covenant

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

Consultant Deed of Novation

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

Consultant Design Certificate

The certificate set out in the Schedule of Collateral Documents.

Contamination

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

Contract

The contractual relationship between the parties constituted by:

- (a) for the Planning Phase:
 - (i) the letter of acceptance, if given by the Territory, in accordance with the Standard Conditions of Tender specified in the request for tender for the Services;
 - (ii) the Formal Agreement (if executed);
 - (iii) the Special Conditions;
 - (iv) these Conditions of Contract (including Annexures);
 - (v) the Contract Particulars (Planning Phase);
 - (vi) the Brief; and
 - (vii) the other documents (if any) referred to in Item 5 of the Contract Particulars (Planning Phase); and
- (b) if clause 6.6(b)(i)B applies, for the Delivery Phase:
 - (i) the documents referred to in paragraph (a) (except to the extent that the Contract Particulars (Planning Phase) are superseded by the Contract Particulars (Delivery Phase);
 - (ii) the Contract Particulars (Delivery Phase); and
 - (iii) the other documents (if any) referred to in the Contract Particulars (Delivery Phase).

Contract Administrator

The person nominated in Item 6 of the Contract Particulars or any other person nominated by the Territory from time to time under **clause 3.2** to replace that person.

Contract Administrator's Office

The office provided by the Contractor pursuant to **clause 8.33**.

Contractor

The person named in Item 7 of the Contract Particulars.

Contractor's Activities

All things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations, including the Contractor's Work (Planning), the Contractor's Work (Delivery) and the Reimbursable Work.

Contractor Design Certificate

The certificate set out in the Schedule of Collateral Documents.

Contractor's Representative

The person named in Item 8 of the Contract Particulars or any other person from time to time appointed as Contractor's Representative in accordance with **clause 3.6**.

Contractor's Work (Delivery)

That part of the Contractor's Activities, other than the Reimbursable Work, which must be performed by the Contractor itself (rather than by engaging Subcontractors) during the Delivery Phase, including:

- (a) the discharge of its obligations under these Conditions of Contract;
- (b) without limitation, those things or tasks required by any Direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation instructed by the Contract Administrator by a document titled "Variation Order"; and
- (c) without limitation, those things or tasks more particularly described in the Brief.

Contractor's Work (Planning)

That part of the Contractor's Activities, other than the Reimbursable Work, which must be performed by the Contractor itself (rather than by engaging Subcontractors) during the Planning Phase, including:

- (a) the discharge of its obligations under these Conditions of Contract;
- (b) without limitation, those things or tasks required by any Direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation instructed by the Contract Administrator by a document titled "Variation Order"; and
- (c) without limitation, those things or tasks more particularly described in the Brief.

Contractor's Work Fee (Delivery)

The lump sum payable to the Contractor for performing the Contractor's Work (Delivery):

- (a) if a notice is given under clause 6.6(a)(i) - either:
 - (i) set out in the Contract Particulars (Planning Phase); or

- (ii) if the amount set out in the Contract Particulars (Planning Phase) is adjusted under clause 6.4(a)(i) - set out in the Contract Particulars (Delivery Phase); or
- (b) if a notice is given under clause 6.6(a)(ii)B - agreed or determined under clause 6.7(d)(iii) and set out in Item 9 of the Contract Particulars (Delivery Phase),

as adjusted under clause 8.19(e), 8.29, 8.35(d)(i), 10.4(c), 10.5(d)(i), or 11.3(a)(iii).

Contractor's Work Fee (Planning)

The lump sum payable to the Contractor for performing the Contractor's Work (Planning) set out in Item 10 of the Contract Particulars (Planning Phase), which is not subject to adjustment other than for a Planning Phase Strategic Works Variation, a Planning Phase Design Continuation Variation or as otherwise contemplated by clause 8.35(d)(i) (as the case may be).

Contract Particulars

In the Planning Phase, means the Contract Particulars (Planning Phase) and in the Delivery Phase, means the Contract Particulars (Delivery Phase).

Contract Particulars (Delivery Phase)

The particulars prepared and completed in accordance with **clause 6.5(d)** and **(e)** or **clause 6.7(d)(iii)** (as the case may be), executed by the parties in accordance with **clause 6.5(f)**, annexed to these Conditions of Contract and entitled "Contract Particulars (Delivery Phase)".

Contract Particulars (Planning Phase)

The particulars annexed to these Conditions of Contract and entitled "Contract Particulars (Planning Phase)".

Contract Price

Subject to this Contract, the sum of:

- (a) the Contractor's Work Fee (Planning);
- (b) the Reimbursable Costs;
- (c) the Contractor's Work Fee (Delivery); and
- (d) the Management Fee.

Control

Includes:

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

Cost Plan

The cost plan approved by the Contract Administrator under **clause 6.2(d)**, as revised with the approval of the Contract Administrator under **clause 6.19**.

Date for Delivery Phase Agreement

The date set out in Item 11 of the Contract Particulars (Planning Phase), as adjusted (if at all) under **clause 6.6(d)**.

Date for Delivery Phase Approval

The date set out in Item 12 of the Contract Particulars (Planning Phase), as adjusted (if at all) under **clause 6.6(d)**.

Date of Completion

The date of Completion set out in a Notice of Completion.

Date of Delivery Phase Agreement

The date stated in a notice under **clause 6.6(a)(i)**.

Date of Delivery Phase Approval

The date stated in a notice under **clause 6.6(a)(iii)A**.

DCAP

The Detailed Contractor's Activities Proposal set out in Annexure 4, as amended from time to time in accordance with **clause 6.17**.

Deed of Guarantee, Undertaking and Substitution

A deed of guarantee, undertaking and substitution in the form set out in the Schedule of Collateral Documents.

Defect

Any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of this Contract.

Defects Liability Period

The period which commences on the Date of Completion of the Works or a Stage, and which continues for the period described in Item 14 of the Contract Particulars, as extended by **clause 9.11**.

Delivery Phase

The period following the Date of Delivery Phase Approval during which Contractor's Activities are performed.

Delivery Phase Agreement

Means:

- (a) the Contractor has finalised the Planning Phase Design Documentation as required by clause 6.1;

- (b) the Contractor has prepared a cost plan which has been approved by the Contract Administrator as required by clause 6.2;
- (c) the Contractor has prepared programs which have been approved by the Contract Administrator as required by clause 6.3;
- (d) agreement on all of the matters in subparagraphs (i) - (iii) of clause 6.4(a) has been reached;
- (e) the Contractor has demonstrated to the satisfaction of the Commonwealth that the Contractor will absolutely comply with the Building Code 2016 if it is engaged to perform the Contractor's Activities during the Delivery Phase;
- (f) the Planning Phase Milestones have been achieved;
- (g) the Proposed Contract Particulars (Delivery Phase) have been agreed and prepared in accordance with clause 6.5(d); and
- (h) the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date of Delivery Phase Agreement.

Delivery Phase Approval

Means:

- (a) the Contractor has achieved Delivery Phase Agreement;
- (b) Government Approval has been obtained;
- (c) the parties have executed the Contract Particulars (Delivery Phase) in accordance with clause 6.5(f); and
- (d) the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date of Delivery Phase Approval.

Delivery Phase Fee Proposal

The Delivery Phase Fee Proposal set out in Annexure 5.

Delivery Phase Design Documentation

All design documentation (including drawings, specifications, reports, models, samples and calculations equipment technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written forms necessary for the Contractor to complete any part of the Works which is not fully designed and documented in the Planning Phase Design Documentation.

Direction

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

Enterprise Agreement

Has the same meaning as in the *Fair Work Act 2009* (Cth).

Environment

Includes:

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

Environmental Clearance Certificate

The Environmental Clearance Certificate issued by the Territory relating to the Works or the Contractor's Activities and any conditions incorporated in that certificate.

Environmental Harm

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

Environmental Incident

Any Environmental Harm or Contamination caused by or in relation to the Contractor's Activities.

Environmental Management Plan

The environmental management plan prepared by the Contractor and finalised under **clause 9.2**, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from an environmental perspective to:

- (a) ensure compliance with the Environmental Requirements and Statutory Requirements; and
- (b) maximise the achievement of the ESD Principles, Environmental Objectives and WOL Objectives.

The Environmental Management Plan must address, at a minimum:

- (a) all Environmental Requirements;
- (b) without limiting paragraph (c), all Statutory Requirements;
- (c) all Environmental Objectives;
- (d) without limiting paragraph (e), all ESD Principles and WOL Objectives,
- (e) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's key people under clause 3.6(a)) regarding the Environment;
- (f) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding the Environment during the Contractor's Activities and the Works;
- (g) the training and awareness programmes provided to Contractor and subcontractor personnel regarding the Environment;
- (h) the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 9.2;
- (i) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:

- (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
- (j) the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 9.2 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on Commonwealth property or the Site during the Contractor's Activities and the Works);
- (k) the procedure for ensuring subcontractor compliance with the Environmental Management Plan;
- (l) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the Environmental Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
- (m) the additional matters specified in the Contract Particulars; and
- (n) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Environmental Objectives

The Environmental Objectives are:

- (a) to encourage best practice environmental management through planning, commitment and continuous improvement of environmental management procedures during the Contractor's Activities and the Works;
- (b) to prevent and minimise adverse impacts on the Environment;
- (c) to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
- (d) the additional objectives specified in the Contract Particulars.

Environmental Requirements

Includes:

- (a) the Environmental Clearance Certificate;
- (b) the Territory Environmental Requirements; and
- (c) any other matter or requirement specified in Item 15 of the Contract Particulars.

ESD

Ecologically sustainable development.

ESD and WOL Manager

The person specified in the Contract Particulars or any other person from time to time appointed as the ESD and WOL Manager for the Contractor's Activities in accordance with clause 3.6.

ESD and WOL Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Works from an ESD and WOL perspective to:

- (a) ensure compliance with Statutory Requirements; and
- (b) maximise the achievement of the ESD Principles and the WOL Objectives.

The ESD and WOL Plan must address, at a minimum:

- (a) all Statutory Requirements;
- (b) all ESD Principles and WOL Objectives;
- (c) the roles and responsibilities of all Contractor and subcontractor personnel (including the ESD and WOL Manager and the Contractor's key people under clause 3.6(a)) regarding ESD and WOL;
- (d) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Territory and Other Contractors regarding ESD and WOL during the Contractor's Activities and the Works;
- (e) the training and awareness programmes provided to Contractor and subcontractor personnel regarding ESD and WOL;
- (f) the procedure for preparing (including tailoring) and finalising the ESD and WOL Plan under clause 9.2;
- (g) the procedure for regularly reviewing, updating and amending the ESD and WOL Plan under clause 9.2;
- (h) the procedure for ensuring subcontractor compliance with the ESD and WOL Plan;
- (i) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the ESD and WOL Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding ESD and WOL during the Contractor's Activities and the Works;
- (j) the additional matters specified in the Contract Particulars; and
- (k) any other matters required by:
 - (i) the Contract; or

- (ii) the Contract Administrator.

ESD Principles

Means:

- (a) efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
- (b) increased energy conservation and efficiency;
- (c) sustainable use of renewable energy resources;
- (d) reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
- (e) improvements to interior and exterior environments leading to increased productivity and better health;
- (f) efficiency in resource and materials utilisation, especially water resources;
- (g) selection of materials and products based on their life-cycle environmental impacts;
- (h) increased use of materials and products with recycled content;
- (i) recycling of construction waste and building materials after demolition;
- (j) reduction in harmful waste products produced during construction;
- (k) use, operation and maintenance practices that reduce or minimise harmful effects on people and the natural environment;
- (l) maintaining the cultural, economic, physical and social wellbeing of people and communities; and
- (m) the additional specific matters (if any) relating to ESD specified in Item 16 of the Contract Particulars.

Exclusion Sanction

Has the same meaning as in subsection 3(3) of the Building Code 2016.

Executive Negotiators

The representatives of the parties nominated in Item 17 of the Contract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Expert Determination Agreement

An expert determination agreement on the terms set out in the Schedule of Collateral Documents.

Government Approval

Written approval for the delivery of the Works on behalf of the Territory and/or the Commonwealth.

GST

The tax payable on taxable supplies under the GST Legislation.

GST Group

A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Incentive

The incentive (if any) to which the Contractor may become entitled under **clause 18.4** and which is to be calculated on the basis:

- (a) agreed under **clause 6.4(a)(iii)**; and
- (b) set out in the Contract Particulars (Delivery Phase).

Indigenous Enterprise

An organisation that is 50% or more indigenous owned that is operating a business.

Indigenous Participation Plan

The plan prepared by the Contractor and set out in Annexure 6.

Indigenous Procurement Policy

The Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy.

Initial Target Date

The date, in respect of the Works or a Stage, set out in Item 19 of the Contract Particulars (Planning Phase).

Insolvency Event

Any one of the following:

- (a) the Contractor becomes, is declared to be, is taken under any applicable law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs the Territory in writing or its creditors generally that the Contractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Contractor;
- (d) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

- (iii) is made bankrupt; or
- (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

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

Intellectual Property Rights

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

IT Equipment

Any software, hardware or telecommunications equipment:

- (a) produced; or
- (b) provided, or required to be provided, to the Territory or the Contract Administrator, under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor.

KPIs

The key performance indicators (if any) agreed under **clause 6.4(a)(iii)**.

Long Service Leave Legislation

Means:

- (a) *Long Service Leave (Portable Schemes) Act 2009 (ACT)*;
- (b) *Building and Construction Industry Long Service Payments Act 1986 (NSW)*;
- (c) *Construction Industry Long Service Leave and Benefits Act 2005 (NT)*;
- (d) *Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)*;
- (e) *Construction Industry Long Service Leave Act 1987 (SA)*;
- (f) *Construction Industry (Long Service) Act 1997 (Tas)*;
- (g) *Construction Industry Long Service Leave Act 1997 (Vic)*;
- (h) *Construction Industry Portable Paid Long Service Leave Act 1985 (WA)*;
- (i) the long service leave obligations in the National Employment Standards in the *Fair Work Act 2009 (Cth)*; and
- (j) any legislation in any State or Territory of Australia addressing long service leave in the building and construction industry.

Management Fee

The lump sum:

- (a) if a notice is given under **clause 6.6(a)(i)** - either:
 - (i) set out in Item 20 of the Contract Particulars (Planning Phase); or
 - (ii) if the amount set out in Item 20 of the Contract Particulars (Planning Phase) is adjusted under **clause 6.4(a)(i)** or **11.3(c)(iii)** - set out in Item 20 of the Contract Particulars (Delivery Phase); or

- (b) if a notice is given under **clause 6.6(a)(ii)B** - agreed or determined under **clause 6.7(d)(iii)** and set out in Item 20 of the Contract Particulars (Delivery Phase).

Material Effect

In respect of a Variation instructed by the Contract Administrator under **clause 11** during the Delivery Phase, a material increase in:

- (a) the scope of the Contractor's Work (Delivery); and
 - (b) the resources required for, and the costs of, performing the Contractor's Work (Delivery),
- which a prudent, competent and experienced contractor would not have anticipated as at the Date of Delivery Phase Approval.

Milestone Fee Payment Schedule

The schedule:

- (a) during the Planning Phase - set out in Item 21 of the Contract Particulars (Planning Phase); and
- (b) during the Delivery Phase:
 - (i) if a notice is given under **clause 6.6(a)(i)** - as agreed under **clause 6.4(a)(ii)** and set out in Item 21 of the Contract Particulars (Delivery Phase); or
 - (ii) if a notice is given under **clause 6.6(a)(ii)B** - as agreed or determined under **clause 6.7(d)(iii)** and set out in Item 21 of the Contract Particulars (Delivery Phase),

otherwise as adjusted from time to time in accordance with **clause 11.3**, setting out:

- (a) the instalments in which the Contractor's Work Fee (Planning), Contractor's Work Fee (Delivery) and Management Fee are to be payable; and
- (b) the milestones which must be achieved by the Contractor for each instalment to become payable.

Moral Rights

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

Moral Rights Consent

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

NATA

National Association of Testing Authorities Australia.

National Construction Code

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

Notice of Completion

A notice under clause 13.2(b)(i) by the Contract Administrator stating that Completion of the Works or a Stage has been achieved.

Other Contractor

Any contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors.

Outline Cost Plan

The outline cost plan (if any) referred to in Item 22 of the Contract Particulars (Planning Phase).

Outline Program

The outline program referred to in Item 23 of the Contract Particulars (Planning Phase).

Pandemic

The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Relief Event

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

Personal Information

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

Planning Phase

The period from the Award Date to the earlier of:

- (a) the Date for Delivery Phase Approval;
- (b) the Date of Delivery Phase Approval; or
- (c) the date of a notice under clause 6.6(a)(ii)A or B or (a)(iii)B.

Planning Phase Design Continuation Variation

A Direction by the Contract Administrator under **clause 11** during the Planning Phase which:

- (a) involves bringing forward design from the Delivery Phase to the Planning Phase; and
- (b) causes a material increase in the scope of the Contractor's Work (Planning) and the resources required for, and the costs of, performing the Contractor's Work (Planning).

Planning Phase Design Documentation

All design documentation (including drawings, specifications, reports, models, samples and calculations) in computer readable and written forms which:

- (a) the Contract Administrator determines is necessary for:
 - (i) the Contractor to establish the scope of the Works and to prepare (and for the Contract Administrator to review and approve) the Cost Plan and Target Cost in accordance with clause 6.2(a); and
 - (ii) Delivery Phase Approval to be achieved; and

- (b) is required by any Planning Phase Strategic Works Variation or any Planning Phase Design Continuation Variation (as the case may be).

Planning Phase Milestone Dates

The dates set out or referred to in Item 24 of the Contract Particulars (Planning Phase), as adjusted (if at all) under clause 6.6(d).

Planning Phase Strategic Works Variation

A change to the Works (whether by way of addition, increase, decrease, omission, deletion, demolition or removal to or from the Works) during the Planning Phase which:

- (a) arises out of a direction of the Territory;
- (b) does not arise out of or in connection with any act or omission of the Contractor;
- (c) has a material effect on the scope of the Contractor's Work (Planning) and the resources required for, and the costs of, performing the Contractor's Work (Planning) which a prudent, competent and experienced contractor would not have anticipated as at the Award Date.

Planning Phase Milestones

The milestones set out or referred to in the Contract Particulars (Planning Phase).

Planning Phase Reimbursable Costs

The amount of Reimbursable Costs paid during (and otherwise payable arising out of) the Planning Phase, as set out in the Contract Particulars (Delivery Phase).

Plant, Equipment and Work

Those things used, or work undertaken, by the Contractor to construct the Works or a Stage but which will not form part of the Works or the Stage.

Privacy Act

The *Information Privacy Act 2014* (ACT).

Procurement Act

The *Government Procurement ACT 2001* (ACT).

Professional Indemnity Insurance

A policy of insurance to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) and unintentional breaches of third party intellectual property, by the Contractor or its subcontractors in carrying out the Contractor's Activities.

Proforma Building Code 2016 Subcontract Provisions

The proforma tender and subcontract provisions relating to the Building Code 2016, as set out in the Schedule of Collateral Documents.

Program

A program approved by the Contract Administrator under clause 6.3(a) or 6.3(e), as updated with the approval of the Contract Administrator under clause 10.2.

Project Documents

Includes:

- (a) Planning Phase Design Documentation and Delivery Phase Design Documentation;
- (b) cost plans (including the Cost Plan);
- (c) programs;
- (d) Approved Subcontract Agreements;
- (e) DCAP;
- (f) Project Plans;
- (g) Approvals;
- (h) operation and maintenance manuals and warranties from subcontractors;
- (i) IT Equipment;
- (j) the documents which the Contractor is obliged to maintain under clause 12.17;
- (k) without limiting paragraphs (a)-(k), any other data, documents, drawings, records and information and material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Territory or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor (including by subcontractors).

Project Plans

The:

- (a) Environmental Management Plan;
- (b) ESD and WOL Plan;
- (c) Site Management Plan;
- (d) Quality Plan;
- (e) Commissioning and Handover Plan;
- (f) Work Health and Safety Plan; and
- (g) the additional plans referred to in Item 1 of the Contract Particulars and prepared and finalised by the Contractor under clause 9.2(a)(ii),

as updated and amended under clause 9.2.

Proposed Contract Particulars (Delivery Phase)

The proposed Contract Particulars (Delivery Phase) prepared in accordance with clause 6.5(d)(ii).

Public Liability Insurance

A policy of liability insurance covering the Contractor and all subcontractors for their respective liabilities:

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

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

Quality Manager

The person specified in the Contract Particulars or any other person from time to time appointed as the Quality Manager for the Contractor's Activities in accordance with clause 3.6.

Quality Objectives

Means to:

- (a) encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Contractor's Activities and the Works;
- (b) prevent and minimise adverse quality impacts during the Contractor's Activities and the Works (including Defects before, at and after Completion);
- (c) optimise the value for money achieved by the Territory in respect of the Contractor's Activities and the Works; and
- (d) achieve the additional objectives specified in the Contract Particulars.

Quality Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from a quality perspective to:

- (a) ensure compliance with Statutory Requirements; and
- (b) maximise the achievement of the Quality Objectives.

The Quality Plan must address, at a minimum:

- (c) all Statutory Requirements;
- (d) all Quality Objectives;
- (e) the Contractor's quality assurance procedure, system or framework (which may or may not be a certified quality assurance procedure, system or framework);
- (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the Quality Manager and the Contractor's key people under clause 3.6(a)) regarding quality;
- (g) the procedure for consultation, cooperation and coordination of activities with the Contract Administrator, the Commonwealth and Other Contractors regarding quality generally during the Contractor's Activities and the Works;

- (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding quality;
- (i) the procedure for preparing (including tailoring) and finalising the Quality Plan under clause 9.2 (including how the Contractor will ensure maximum consistency between the Contractor's quality assurance procedure, system or framework and the Quality Plan);
- (j) the procedure for regularly reviewing, updating and amending the Quality Plan under clause 9.2;
- (k) the procedure for ensuring subcontractor compliance with the Quality Plan;
- (l) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Works;
- (m) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the Quality Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Works;
- (n) the procedure for ensuring that the Trust Account and all payments to Subcontractors are administered strictly in accordance with all applicable requirements (including the procedure for ensuring compliance with the requirements of clause 12.23);
- (o) the additional matters specified in the Contract Particulars; and
- (p) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Reimbursable Costs

The aggregate of:

- (a) all amounts properly and actually incurred and payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements:
 - (i) excluding:
 - A. any adjustments in accordance with the Approved Subcontract Agreements for the performance of Variations;
 - B. amounts incurred and payable to Subcontractors for correcting Defects;
 - C. amounts (including damages) paid or payable by the Contractor to any Subcontractor by reason of any breach of contract or other wrongful act or omission by the Contractor including a breach by the Contractor of

the Contract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of the Territory; and

D. other amounts not properly incurred in respect of the execution of the Reimbursable Work or which the Contract provides are to be borne by the Contractor or to be a debt due from the Contractor to the Territory; and

(ii) adjusted for Variations by the amounts determined in accordance with clause 11.3(a)(i);

(b) any fixed price agreed, or amount incurred and payable in accordance with a basis otherwise agreed, under clause 8.15(b); and

(c) any other amounts stated in this Contract to be "Reimbursable Costs",

less, in respect of any Defect which is the subject of an instruction under clause 9.6(b) or (c), the amount that, in the opinion of the Contract Administrator, would have been payable to Subcontractors for correcting the Defect if an instruction had been made under clause 9.6(a).

Reimbursable Work

That part of the Contractor's Activities for which the Contractor must engage Subcontractors, being the entirety of the Contractor's Activities other than the Contractor's Work (Planning) and Contractor's Work (Delivery).

Related Body Corporate

Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).

Related Entity

Has the meaning in subsection 3(2) of the Building Code 2016.

Schedule of Collateral Documents

The schedule of proforma contracts and other documents applicable to the Managing Contractor Contract :

- (a) posted on the Territory's website located at <https://www.act.gov.au/majorprojectscanberra/procurement/construction-documents/managing-contractor-collateral-documents> (or any alternative location notified by the Territory), as amended from time to time by the Territory; and
- (b) which as at the Award Date include the contracts and other documents referred to in Item 25 of the Contract Particulars.

Security of Payment Legislation

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

Site

The site for the Works:

- (a) for the purposes of the Planning Phase - described in Item 26 the Contract Particulars (Planning Phase); and

- (b) for the purposes of the Delivery Phase - described in Item 26 of the Contract Particulars (Delivery Phase).

Site Management Plan

The site management plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities on and near the Site including:

- (a) the matters specified in Item 27 of the Contract Particulars;
- (b) any other matters required by the Contract Administrator.

Special Conditions

The document referred to in Item 28 of the Contract Particulars.

Stage

A stage of the Works:

- (a) described in Item 29 of the Contract Particulars (Planning Phase);
- (b) agreed under clause 6.3 and described in Item 29 of the Contract Particulars (Delivery Phase);
- (c) created under clause 6.7(d)(i); or
- (d) directed by the Contract Administrator under clause 13.5.

Statutory Requirements

Means:

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

Subcontractor

Any person (including a consultant, subcontractor or supplier) engaged by the Contractor under **clause 8** or otherwise in accordance with the Contract to perform any part of the Reimbursable Work, including the Territory's Novated Design Consultants (if any) novated under clause 6.20.

Subcontractor Deed of Covenant

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

Subcontractor Design Certificate

The certificate set out in the Schedule of Collateral Documents.

Subcontract Proposal

A document issued by the Contractor under clause 8.2.

Subcontract Tender Documentation

In relation to a Subcontract Proposal, means:

- (a) the Delivery Phase Design Documentation, which the Contractor is entitled to use for tendering purposes under clause 6.8(d), relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the subcontract agreement which must, unless otherwise expressly directed in writing by the Contract Administrator, be on the terms of the subcontract set out in the Schedule of Collateral Documents;
- (c) if the Contract Administrator so directs, a request for tender; and
- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

Table of Variation Rates and Prices

The table set out or referred to in Item 30 of the Contract Particulars containing rates and prices to be used for the purpose of:

- (a) agreeing the adjustment (if any) to the Contractor's Work Fee (Delivery) and Management Fee under clause 6.4(a)(i);
- (b) agreeing or determining the Contractor's Work Fee (Delivery) and Management Fee under clause 6.7(d)(iii); and
- (c) valuing adjustments to the Contractor's Work Fee (Planning) or Contractor's Work Fee (Delivery) where clause 11.3(a)(ii)B or 11.3(a)(iii)B applies (as the case may be).

Target Cost

The Target Cost:

- (a) approved by the Contract Administrator under clause 6.2(d); or
- (b) agreed or determined under clause 6.7(d)(iii),

and set out in the Contract Particulars (Delivery Phase), which is to comprise:

- (c) the Contractor's Work Fee (Planning);
- (d) the Management Fee;
- (e) the Contractor's Work Fee (Delivery); and
- (f) the Target Reimbursable Costs.

Target Date

In relation to the Works or a Stage, means the date, or period of time:

- (a) either:
 - (i) agreed under clause 6.3(e); or
 - (ii) agreed or determined under clause 6.7(d)(iii),and set out in the Contract Particulars (Delivery Phase); or

- (b) directed by the Contract Administrator under clause 13.5.

Target Reimbursable Costs

The target Reimbursable Costs (which include the Planning Phase Reimbursable Costs):

- (a) approved by the Contract Administrator under clause 6.2(a)(ii) (based upon the cost analysis carried out under clause 6.2(b)(ii)); or
- (b) agreed or determined under clause 6.7(d)(iii),
- and set out in the Contract Particulars (Delivery Phase).

Territory

Means when used:

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

Territory Environmental Management System

The environmental management system applicable to the Site (if any).

Territory Environmental Plan

The environmental plan applicable to the Site (if any).

Territory Environmental Requirements

The Territory Environmental Management System and Territory Environmental Plan which relate to the Site, the Works or the Contractor's Activities and includes any procedures, instructions, requirements and standing orders which have been developed or issued under the Territory Environmental Management System or Territory Environmental Plan (as the case may be).

Territory Material

All material provided to the Contractor by the Territory, including documents, equipment, machinery and data (stored by any means).

Territory Requirements

Includes all policies, plans, manuals, guidelines, instructions (including procurement policy instructions) and other Territory requirements which are, or may become, applicable to the Site, the Works or the Contractor's Activities. To the extent that any of the requirements would require or suggest the insertion of provisions into this Contract, then:

- (a) those provisions will be incorporated by reference into this Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the Contract Administrator in accordance with **clause 6.16**.

Territory Risks

Any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any subcontractor or any of their employees or agents.

Territory's Novated Design Consultants

The consultants (if any) described in Item 3 of the Contract Particulars, to be novated to the Contractor.

TPPs

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

TPP Code

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

Trust Account

The bank account set up under the Trust Deed under clause 12.19.

Trust Deed

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

Variation

Unless otherwise stated in the Contract, means:

- (a) during the Planning Phase:
 - (i) a Planning Phase Design Continuation Variation; or
 - (ii) a Planning Phase Strategic Works Variation; and
- (b) during the Delivery Phase, any change to the Works directed by the Contract Administrator under clause 11 during the Delivery Phase including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WHS Accreditation Scheme

The Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

WHS Legislation

- (a) *Work Health and Safety Act 2011* (ACT);
- (b) *Work Health and Safety Regulation 2011* (ACT);

- (c) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011*;
- (d) all laws that replace the above laws; and
- (e) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

WOL

Whole of life.

WOL Cost

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

WOL Objectives

Means balancing:

- (a) WOL Cost;
- (b) the useful life of the Works;
- (c) the reliability and availability for use of the Works throughout their useful life;
- (d) the operability and maintainability of the Works throughout their useful life;
- (e) the value for money achieved by the Territory from the design, construction, operation and maintenance of the Works;
- (f) the achievement of the ESD Principles; and
- (g) the achievement of the specific additional matters (if any) relating to WOL specified in Item 31 of the Contract Particulars.

Work Health and Safety Plan

The plan prepared by the Contractor and finalised under clause 9.2 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation).

The Work Health and Safety Plan must address, at a minimum:

- (a) the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities and the Works;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (**PCBU**) at the workplace where the Contractor's Activities and the Works are being undertaken regarding consulting, cooperating and coordinating activities where the PCBU(s) at the workplace and the Contractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);

- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Contractor's Activities and the Works are carried out, including:
 - (i) incident (including notifiable incident) reporting procedures;
 - (ii) preventative and corrective action procedures; and
 - (iii) record-keeping and reporting requirements, including reporting to the Contract Administrator with respect to incidents and accidents under clause **Error! Reference source not found.**;
- (d) any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (f) the procedures for:
 - (i) conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
 - (ii) carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
 - (iii) ensuring the results of such calculations, analysis, testing or examinations are provided to the Commonwealth, including as a condition precedent to:
 - A. in the Planning Phase - Delivery Phase Agreement; and
 - B. in the Delivery Phase - Completion and prior to the expiry of the Defects Liability Period;
- (g) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Contractor's work health and safety policy;
 - (ii) details of any work health and safety management system (whether certified or uncertified);
 - (iii) inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and
 - (iv) emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
- (h) procedures for ensuring the provision of written assurances to the Contract Administrator under clause **Error! Reference source not found.** regarding compliance with the WHS Legislation by the Contractor, subcontractors and Other Contractors;
- (i) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause **Error! Reference source not found.** (including as a consequence of any review of hazards, risks and control measures regarding the Contractor's Activities, the Works and any notifiable incident or systemic risk management failure);

- (j) procedures for the management of subcontractors, including:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in subparagraph (g)(g)(iii));
 - (ii) the subcontractor's development and provision of safe work method statements, job safety assessments or equivalent documentation;
 - (iii) ensuring subcontractors comply with their obligation to consult, cooperate and coordinate activities (including the information-sharing and communication of information); and
 - (iv) ensuring subcontractor compliance with the Contractor's Work Health and Safety Plan;
- (k) details of the project and Contract specific hazards and risks identified by the Contractor and the Contractor's approach to the management of these hazards and risks including how the Contractor will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
 - (i) prior to commencing the Contractor's Activities and the Works; and
 - (ii) during the delivery of the Contractor's Activities and the Works;
- (l) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning Hazardous Substances, including, where they are used or handled in the delivery of the Contractor's Activities, incorporated into the Works, stored by the Contractor at the workplace or transported by the Contractor to or from the workplace;
- (m) the actions the Contractor will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Contractor's Activities and the Works;
- (n) the procedures the Contractor will adopt to audit or otherwise monitor and verify its (and its subcontractors') compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
- (o) the procedures the Contractor will adopt to ensure it provides to the Commonwealth, when conducting commissioning and handover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the Works including for the purpose for which they were designed or manufactured;
- (p) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning high risk construction;
- (q) any additional matters specified in the Contract Particulars; and

- (r) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Workers Compensation Insurance

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

Works

The physical works, a brief description of which is set out in Item 34 of the Contract Particulars, which the Contractor must plan, design, construct, commission, complete and hand over to the Territory in accordance with the Contract.

1.2 Interpretation

In this Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of this Contract;
- (d) references to any party to this Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to this Contract;
- (f) references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
 - (i) a Direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 12.5),

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the Australian Capital Territory will not be counted in computing the number of days;

- (l) for the purposes of clause 10.4, any reference to "day" will exclude public holidays and include only those days which are stated in the Contractor's approved program under clause 10.2 as working days;
- (m) for the purposes of clauses 12.4 and 12.5, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT);
- (n) other than as set out in paragraphs (k), (l) and 1.1(a) references to "day" are references to calendar days;
- (o) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (p) the word "subcontractor" will include subcontractors, suppliers, consultants and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subcontract Agreement);
- (q) where a clause contains two options, the option specified in the Contract Particulars will apply;
- (r) derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1; and
- (s) unless agreed or notified in writing by the Contract Administrator, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief, Planning Phase Design Documentation or Delivery Phase Design Documentation is a reference to the edition last published prior to the preparation of the Planning Phase Design Documentation or Delivery Phase Design Documentation (as the case may be). If requested by the Contract Administrator, the Contractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief, Planning Phase Design Documentation and Delivery Phase Design Documentation available to the Contract Administrator.

1.3 Miscellaneous

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in the Contract Particulars.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
 - (ii) otherwise, both parties agree in writing.
- (c) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:

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

2. NATURE OF CONTRACT

2.1 Agreement

- (a) The Territory engages the Contractor to:
- (i) plan and (to the extent required under the Contract) design the Works in the Planning Phase; and
 - (ii) if Delivery Phase Approval is achieved - complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete and handover the Works in the Delivery Phase,
- in accordance with the Contract.
- (b) In consideration of the Contractor undertaking the Contractor's Activities, the Territory will pay the Contractor the Contract Price.

2.2 Contractor's Primary Obligations

- (a) The Contractor:
- (i) will be primarily responsible for the performance of the Contractor's Activities in accordance with the Contract; and
 - (ii) acknowledges that the Territory is relying upon the advice, skill and judgment of the Contractor in the planning, design, commencement, construction, commissioning, completion and handover of the Works.
- (b) Without limiting the generality of the Contractor's obligations, the Contractor will be responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, commissioning, completion and handover of the Works including:
- (i) the performance of the Contractor's Work (Planning) and the Contractor's Work (Delivery); and
 - (ii) the engagement, supervision, control, co-ordination and Direction of all subcontractors and the execution of the Reimbursable Work.

2.3 Contractor's Warranties

Without limiting clause 2.2, the Contractor warrants that:

- (a) without limiting the strict or absolute nature of any of its other obligations or warranties under this Contract, it will exercise (and ensure that its subcontractors exercise) the standard of skill, care and diligence in the performance of the Contractor's Activities that would be expected of an expert professional provider of the Contractor's Activities;
- (b) the design of the Works will be:
- (i) performed in accordance, and so as to comply, with the Brief; and
 - (ii) fit for its intended purpose;
- (c) without limiting its obligations under paragraph (a), it will ensure that the Reimbursable Work is performed:
- (i) in a proper and workmanlike manner;

- (ii) so that it is fit for its intended purpose; and
 - (iii) in compliance with clauses 8.17 and 9.1;
- (d) the Works and each Stage will when constructed be fit for their intended purpose and comply with all Statutory Requirements (subject to paragraph (g)(i)) and all other requirements of the Contract;
- (e) it will use its best endeavours to ensure that:
 - (i) it achieves Completion of the Works so that the Contract Price does not exceed the Target Cost;
 - (ii) it achieves Completion of the Works and each Stage by the relevant Target Date; and
 - (iii) it performs the Contractor's Activities so as to maximise the achievement of the objectives set in, and to be reasonably inferred from, the Brief;
- (f) it will exercise a duty of the utmost good faith to the Territory in performing its obligations under the Contract, including:
 - (i) the preparation of the Cost Plan in accordance with clause 6.2, the preparation of the program in accordance with clause 6.3 and undertaking negotiations under clause 6.4;
 - (ii) the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract Agreement;
 - (iii) the administration of Approved Subcontract Agreements including all negotiations concerning Variations and extensions of time; and
 - (iv) in making payment claims under clause 12.2;
- (g) it will:
 - (i) unless otherwise specified in the Contract Particulars, in performing the Contractor's Activities, comply with all Statutory Requirements; and
 - (ii) apply for, obtain and give the Territory copies of all Approvals, other than those referred to in the Contract Particulars;
- (h) without limiting its other Contract obligations, it will at all times in the performance of the Contractor's Activities comply with the DCAP; and
- (i) without limiting its other Contract obligations, it will keep the Contract Administrator fully and regularly informed as to all matters affecting or relating to the Contractor's Activities or the Works, including any matter which may change or which has changed:
 - (i) the nature, scope or timing of the Works; or
 - (ii) the possible levels of expenditure by the Territory under this Contract or in connection with or relating to the operation or maintenance of the Works.

2.4 Contractor's Work (Planning)

The Contractor must:

- (a) immediately following the Award Date, commence to plan the Works in consultation with the Contract Administrator;
- (b) take all possible steps to achieve Delivery Phase Agreement before the Date for Delivery Phase Agreement, including:
 - (i) design development in accordance with clause 6.1;
 - (ii) cost planning in accordance with clause 6.2;
 - (iii) programming in accordance with clause 6.3;
 - (iv) agreeing the matters required to be agreed in accordance with clause 6.4;
 - (v) demonstrating to the satisfaction of the Territory that the Contractor will absolutely comply with the Building Code 2013 if it is engaged to perform the Contractor's Activities during the Delivery Phase;
 - (vi) achievement of the Planning Phase Milestones by the Planning Phase Milestone Dates in accordance with clause 6.5;
 - (vii) agreement to and preparation of the Proposed Contract Particulars (Delivery Phase) in accordance with clause 6.5(d); and
 - (viii) compliance with all of its other obligations under the Contract to the extent applicable before the Date of Delivery Phase Agreement, including finalisation of all Project Plans under clause 9.2; and
- (c) take all possible steps to enable Delivery Phase Approval to be achieved before the Date for Delivery Phase Approval, including:
 - (i) for the purposes of assisting the Territory to obtain Government Approval under clause 6.5(b)(i);
 - (ii) agreement to and execution of the Contract Particulars (Delivery Phase) in accordance with clause 6.5(f); and
 - (iii) compliance with all of its other obligations under the Contract to the extent applicable before the Date of Delivery Phase Approval.

For the purposes of this clause 2.4 and clauses 6.2(c)(iii) and 6.5, "all possible steps" includes attending such meetings, providing such drafts of documents and such other information, responding to such queries and proposals and obtaining such assistance from consultants and other third parties as may be required by the Contract Administrator for the purpose of achieving the required outcome.

3. PERSONNEL

3.1 Contract Administrator

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

The Contractor must:

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

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

3.2 Replacement of Contract Administrator

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

Any substitute Contract Administrator appointed under this clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

3.3 Parties' Conduct

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

3.4 Contract Administrator's Representative

The Contract Administrator may:

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

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

All references in the Contract to Contract Administrator include a reference to a representative appointed under this clause 3.4.

3.5 Contractor's Representative

The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

3.6 Key People for Contractor's Activities

The Contractor must:

- (a) employ those people specified in the Contract Particulars, including the Contractor's Representative, ESD and WOL Manager and Quality Manager in the jobs specified in the Contract Particulars;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

3.7 Removal of Persons

The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

3.8 Industrial Relations

Without limiting the Contractor's obligations under clause 20, the Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
- (d) comply with all other requirements of the Contract relating to industrial relations.

3.9 Monthly Meeting

The Contractor must:

- (a) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
- (b) discuss the reports it has prepared under clause 3.10 and such other matters as the Contract Administrator may from time to time require;
- (c) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
- (d) if it requires instructions from the Territory, make all necessary recommendations as to the action required.

The Contract Administrator must:

- (e) before each meeting – prepare and issue an agenda for that meeting; and
- (f) after each meeting – prepare and issue minutes of the meeting.

3.10 Contractor's Monthly Report

At least 7 days prior to each meeting under clause 3.9 the Contractor must provide the Contract Administrator with a monthly report in such form and on such matters as the Contract Administrator requires from time to time and which must include at a minimum:

- (a) detailed particulars on the progress of the Contractor's Activities and the Works including:
 - (i) key activities, meetings and other events in the previous month, including the status of all procurement and engagement activities for Reimbursable Work and each Approved Subcontract Agreement;
 - (ii) to the extent that the Works or a Stage have been designed, the status of all Planning Phase Design Documentation and Delivery Phase Design Documentation (including any dispensations being pursued);
 - (iii) the status of all Approvals;
 - (iv) photographs of the Contractor's Activities and the Works; and
 - (v) any deviations from the programs;
- (b) detailed particulars of all:
 - (i) payment claims, payment statements and payments (including detailed particulars of all distributions of Reimbursable Costs from the Trust Account and all other matters required under clause 12.23);
 - (ii) Variation Price Requests, responses, Variation Orders, Contractor requests for Variation under clause 11.6 and proposed adjustments to the amounts payable under the Contract;
 - (iii) written claims and notices given and received under clause 10 in respect of delays;
 - (iv) other Claims made by the Contractor (including in respect of Statutory Requirements and the resolution of ambiguities under clause 6.16);
 - (v) calls, attendances, recommendations and actions taken in respect of all Defects (in accordance with clause 9.14);
 - (vi) disputes under clause 15;
 - (vii) notices under clause 16.1 or 16.2; and
- (c) detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
 - (i) are significantly impacting; or
 - (ii) have the potential to significantly impact,

the Contractor's Activities or the Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters;
- (d) confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.23, including:

- (i) the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 9.2);
 - (ii) details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Contractor's Activities and the Works;
 - (iii) details of lead indicator data, including:
 - A. inductions, training and other work health and safety awareness programmes conducted;
 - B. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
 - C. inspections of Plant, Equipment and Work;
 - (iv) without limiting the Contractor's obligations to notify the Contract Administrator under clause 8.23(b), summary data regarding notifiable incidents details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
 - (v) relevant statistics and other information regarding lost time injury days; and
 - (vi) all other work health and safety matters required by the Contract or the Contract Administrator;
- (e) confirmation of compliance with:
- (i) the Building Code 2016;
 - (ii) the WHS Accreditation Scheme;
 - (iii) quality assurance requirements, including the Quality Plan;
 - (iv) ESD and WOL requirements, including the ESD and WOL Plan;
 - (v) Site-related requirements, including the Site Management Plan;
 - (vi) commissioning and handover requirements, including the Commissioning and Handover Plan;
 - (vii) environmental requirements, including the Environmental Management Plan; and
- together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (vii);
- (f) in respect of hazardous substances (if any) (as defined in the WHS Legislation) any information as required by the Special Conditions; and
 - (g) any other matters required by the Contract Administrator.

4. SECURITY

4.1 Form

The Contractor must provide security to the Territory:

- (a) in the form of Approved Security;
- (b) in the amount set out in the Contract Particulars; and
- (c) as a condition precedent to Delivery Phase Approval.

4.2 Release

The Territory must:

- (a) within 14 days of the issue of a Notice of Completion for the Works or for each and every Stage, release from the security held under clause 4.1, 50% of the security required under clause 4.1;
- (b) within 14 days of the expiration of the last Defects Liability Period (excluding any extensions under clause 9.11), release such amount of the security under clause 4.1 then held, as the Contract Administrator determines to be reasonable, having regard to the work to which the remaining Defects Liability Periods apply, to ensure the Territory's interests are not prejudiced; and
- (c) release the balance of the security under clause 4.1 following the latest of:
 - (i) the expiry of the last Defects Liability Period; and
 - (ii) the Contractor has complied with all its obligations under the Contract.

4.3 Interest

- (a) The Territory:
 - (i) is not obliged to pay the Contractor interest on:
 - A. the Approved Security; or
 - B. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
- (b) If the Territory makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
 - (i) the Territory will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which the Territory is entitled at the time of such call; and
 - (ii) the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Territory at the time such amounts become payable.

4.4 Deed of Guarantee, Undertaking and Substitution

The Contractor must, if so requested in writing by the Territory, provide to the Territory a Deed of Guarantee, Undertaking and Substitution executed by the Contractor and the Related Body Corporate of the Contractor nominated in the Territory's request by the date and time set out in the request. If such request is made during the Planning Phase, the Contractor's compliance with clause 4.4 is a condition precedent to Delivery Phase Approval.

5. RISKS AND INSURANCE

5.1 Risk of Works

Except to the extent that it arises from a Territory Risk, the Contractor will bear the risk of and indemnify the Territory against:

- (a) any loss of or damage to:
 - (i) the Works or a Stage;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Territory to the Contractor or brought onto Site by a Subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss of or damage to the Works or a Stage, a Notice of Completion is issued for the Works or the Stage; and
 - (v) otherwise, a Notice of Completion is issued for the Works or the last Stage to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works or the Stage, any loss of or damage to the Works or the Stage arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Works or the Stage.

5.2 Other risks

Except to the extent that it arises from a Territory Risk, the Contractor will bear the risk of and indemnify the Territory against:

- (a) any loss of or damage to property of the Territory (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by or arising out of or in connection with the Contractor's Activities or the Works, provided that the Contractor's responsibility to indemnify the Territory will be reduced to the extent that an act or omission of the Territory, the Contract Administrator or an Other Contractor contributed to the loss, damage, injury or death.

5.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good any loss of, or repair the damage to, the Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
- (b) where the loss or damage arises from a Territory Risk, only comply with paragraph (a) to the extent directed by the Contract Administrator.

If paragraph (a) applies, the Contractor will bear the cost of such replacement, making good or repair. If paragraph (b) applies, the replacement, making good or repair directed by the Contract Administrator will be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) effect, maintain and pay all premiums for the following insurance:
 - (i) Public Liability Insurance from the Award Date (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums);
 - (ii) Workers Compensation Insurance in each State and Territory in which the Contractor's Activities are to be performed or the Contractor's employees are employed or normally reside from the Award Date;
 - (iii) Professional Indemnity Insurance for the amount included in the Contract Particulars from the Award Date;
 - (iv) compulsory third party insurance for all registered vehicles and machinery together with third party property damage as a condition precedent to Delivery Phase Approval;
 - (v) for any unregistered vehicles, machinery or mobile plant equipment, a public liability policy as a condition precedent to Delivery Phase Approval; and
 - (vi) such other insurances on such terms as are set out in the Contract Particulars, each of which is to be:
 - (vii) for the respective amount referred to in:
 - A. in respect of the insurances required by subparagraphs (i), (ii) and (iii) - the Contract Particulars; and
 - B. in respect of the insurance required by subparagraph (iv) – (v) the Contract Particulars (Planning Phase) and confirmed in the Contract Particulars (Delivery Phase);
 - (viii) with reputable insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (ix) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to the Workers Compensation Insurance:
 - (i) ensure that to the extent permitted by law, the insurance policy extends to provide indemnity to the Territory in respect of any statutory liability to the Contractor's employees; and
 - (ii) ensure that each of its subcontractors legally required to do so, has Workers Compensation Insurance covering the subcontractor in respect of its statutory liability to employees, in the same manner as the Contractor is required to do so under paragraph (a)(ii);

- (c) provide the Contract Administrator with evidence satisfactory to the Contract Administrator that each policy is current as required by the Contract Administrator from time to time;
- (d) ensure that:
 - (i) if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs the Territory in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld; and
 - (ii) if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor as soon as possible obtains replacement insurance as required by this Contract and informs the Territory in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract;
- (e) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (v) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy (which for the avoidance of doubt includes the Construction Risks Insurance) lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies (which for the avoidance of doubt includes the Construction Risks Insurance); and
- (f) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4(a)(iii), for not less than the amount referred to in the Contract Particulars.

The obtaining of insurance as required under this clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under any other provisions of the Contract or otherwise at law or in equity.

5.5 Failure to Insure

If the Contractor fails to:

- (a) provide evidence satisfactory to the Contract Administrator that a policy is current; or
- (b) obtain insurance in accordance with clause 5.4,

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

5.6 Period of Insurance

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

- (a) Not used
- (b) in the case of Public Liability Insurance and Workers Compensation Insurance, until the latest of:
 - (i) the end of the last Defects Liability Period;
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract; and
 - (iii) the date upon which the Contractor ceases to carry out the Contractor's Activities; and
- (c) in the case of Professional Indemnity Insurance, until the expiration of the period specified in the Contract Particulars following the latest of:
 - (i) if Delivery Phase Approval is achieved - the last Date of Completion;
 - (ii) if Delivery Phase Approval is not achieved - the last day of the Planning Phase; and
 - (iii) the date upon which the Contractor ceases to carry out the Contractor's Activities.

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Territory in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract (or, in the case of the Construction Risks Insurance, the Territory's nominated Construction Risks Insurance broker);
- (b) keep the Territory informed (or, in the case of an occurrence that may give rise to a claim under the Construction Risks Insurance, the Territory's nominated Construction Risks Insurance broker) of all significant developments concerning the claim, except in circumstances where the Territory is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and the Territory or its nominated Construction Risks Insurance Broker, as the case may be, in respect of occurrences which may give rise to claims by them,

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

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

5.8 Procedure upon Loss or Damage

If loss of or damage to any part of the Works or a Stage occurs whilst the Contractor bears the risk of loss of or damage to the Works or the Stage under clause 1.1:

- (a) the Contractor must:
 - (i) make the Works or the Stage and the Site safe and secure;
 - (ii) notify the Territory's Construction Risks Insurance broker and comply with their instructions; and
 - (iii) promptly consult with the Contract Administrator to discuss the steps to be taken to ensure that, to the greatest extent possible, the Contractor continues to comply with its other obligations under this Contract; and
- (b) upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, an amount equivalent to the amount of money received from this insurance (excluding any amount provided for the fees of any of the Territory's consultants) will:
 - (i) be paid to the Contractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Contractor replaces, makes good or repairs the loss of or damage to the Works or the Stage; and
 - (ii) be the limit of the Contractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Works or the Stage.

5.9 Cross liability

Clause 5.9 does not apply to Professional Indemnity Insurance, Public Liability Insurance or Workers Compensation Insurance.

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

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

6. PLANNING AND DESIGN

6.1 Planning Phase Design Documentation

- (a) Prior to the Date for Delivery Phase Agreement, the Contractor must:
- (i) develop the design of the Works, and for this purpose prepare all relevant Planning Phase Design Documentation, in accordance with the Brief and the other requirements of this Contract;
 - (ii) undertake such:
 - A. site investigations including topographical surveys, soil reports, bore holes and other geotechnical tests; and
 - B. other risk reduction studies,as a prudent, competent and experienced contractor would consider necessary for the comprehensive, safe and accurate planning, scoping, design, costing and programming of the Works during the Planning Phase;
 - (iii) advise the Contract Administrator of:
 - A. every reasonably available method of design and construction for the Works; and
 - B. the possible alternative materials which are suitable for use with each particular method,having regard to the investigations and studies undertaken under subparagraph (ii) and any limitations on the design and construction of the Works (if any):
 - C. imposed by the Site; or
 - D. arising from the Contractor's obligation under clause 2.3(g) to comply with all Statutory Requirements and obtain all Approvals unless otherwise specified;
 - (iv) as part of the program it is to prepare under clause 6.3(a), submit to the Contract Administrator for approval a design development program which makes allowance for the Planning Phase Design Documentation to be submitted to the Contract Administrator at each of the design review milestones as identified in the DCAP and otherwise in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Planning Phase Design Documentation within the period of time within which the Contract Administrator may review it under paragraph (b);
 - (v) conduct design reviews at each of the design review milestones as identified in the Contract; and
 - (vi) submit the Planning Phase Design Documentation it prepares to the Contract Administrator in accordance with the design development program approved by the Contract Administrator under subparagraph (iv).
- (b) The Contract Administrator may (in its absolute discretion):
- (i) review any Planning Phase Design Documentation, or any resubmitted Planning Phase Design Documentation, prepared and submitted by the Contractor; and

- (ii) within the number of days set out in the Contract Particulars (Planning Phase) of the submission by the Contractor of such Planning Phase Design Documentation, or resubmitted Planning Phase Design Documentation, reject the Planning Phase Design Documentation.
- (c) If any Planning Phase Design Documentation is rejected, the Contractor must submit amended Planning Phase Design Documentation to the Contract Administrator.
- (d) Without limiting clause 6.7, the Contractor must not commence the next phase of the Contractor's Activities (including any design of the part of the Works to which any Planning Phase Design Documentation which it has submitted to the Contract Administrator applies):
 - (i) unless the Contract Administrator has had the number of days set out in the Contract Particulars (Planning Phase) to review the relevant Planning Phase Design Documentation and has not rejected it; and
 - (ii) where the next phase of the Contractor's Activities would include preparation of Delivery Phase Design Documentation under clause 6.8, until the Date of Delivery Phase Approval.
- (e) If the Contractor does not finalise the Planning Phase Design Documentation to the satisfaction of the Contract Administrator (in its absolute discretion) by the Date for Delivery Phase Agreement, then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

6.2 Cost Planning

- (a) Prior to the Date for Delivery Phase Agreement, the Contractor must:
 - (i) prepare a cost plan for the Contractor's Activities:
 - A. if an Outline Cost Plan exists - based on that Outline Cost Plan; and
 - B. in accordance with the requirements of the Territory notified in writing by the Contract Administrator; and
 - (ii) conduct the cost planning and value management activities identified in the Contract at the design review milestones identified in the Contract in accordance with the design development program approved by the Contract Administrator under clause 6.1(a)(iv);
 - (iii) submit the cost plan to the Contract Administrator for approval, no later than the date notified in writing by the Contract Administrator.
- (b) The cost plan to be prepared under paragraph (a) must include:
 - (i) identification in detail of all work required for, and all risks which could be encountered in, Completion of the Works, which a prudent, competent and experienced contractor would anticipate and provide for in its cost plan for the Contractor's Activities;
 - (ii) a cost analysis in respect of each part of the Works, including:
 - A. a detailed break-up of the Planning Phase Reimbursable Costs; and
 - B. a detailed break-up, by reference to each separate construction package, of the Reimbursable Costs to be payable during the Delivery

Phase, including a budget and detailed break-up for each construction package;

- (iii) a detailed recommendation as to every reasonably possible alternative amount which the Territory could set as the Target Cost, having regard to all relevant considerations including:
 - A. the budgetary limitations and requirements of the Territory in respect of the Works which the Contract Administrator may from time to time notify to the Contractor in writing;
 - B. the paramount importance to the Territory of balancing between minimising both the cost and time to achieve Completion of the Works (on the one hand) and maximising the scope of the Works to be delivered, the extent to which the WOL Objectives are furthered in the design and construction of the Works and cost certainty for the Territory (on the other hand);
 - C. the principles in relation to "value for money", including having regard to "open and effective competition", "probity and ethical behaviour", "management of risk" and the need to achieve the best available procurement outcome, as described in the Procurement Act;
 - D. without limiting subparagraph (C), all opportunities for cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract; and
 - E. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subparagraphs A - D, which the Contract Administrator may from time to time notify to the Contractor in writing;
 - (iv) the proposed Management Fee and Contractor's Work Fee (Delivery), including a detailed breakdown of each fee against milestones for the purposes of the payment of each instalment of each fee under the Milestone Fee Payment Schedule; and
 - (v) all such other matters as the Contract Administrator may require in writing.
- (c) The Contractor must:
- (i) if any cost plan submitted by the Contractor is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended cost plan;
 - (ii) in the process of preparing the cost plan or an amended cost plan, co-operate with the Territory, the Contract Administrator and all other people nominated by the Contract Administrator for the purpose of furthering the considerations referred to in paragraph (b)(iii); and
 - (iii) take all possible steps necessary to ensure that the Target Cost does not exceed the budgetary limitations and requirements of the Territory in respect of the Works notified to the Contractor under paragraph (b)(iii)A, including all such reasonable steps directed by the Contract Administrator.

- (d) If (in the Contract Administrator's absolute discretion) the cost plan and the target cost are approved by the Contract Administrator, then the Contract Administrator will issue a written notice to the Contractor.
- (e) If the Contractor does not prepare a cost plan (or a revised cost plan) which is approved by the Contract Administrator (in the Contract Administrator's absolute discretion) under paragraph (d) before the Date for Delivery Phase Agreement, then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.
- (f) To assist the Contract Administrator in determining whether or not to approve a cost plan (or a revised cost plan):
 - (i) the Contract Administrator may engage a third party to perform an external audit of the cost plan; and
 - (ii) the Contractor must:
 - A. co-operate with the Contract Administrator and that third party; and
 - B. without limiting clause 6.18 comply with its obligations under clause 6.18.

6.3 Programming

- (a) The Contractor must:
 - (i) within 14 days of the Award Date, give a program of the Contractor's Activities during the Planning Phase to the Contract Administrator for approval; and
 - (ii) update such program within 14 days of any Planning Phase Strategic Works Variation or Planning Phase Design Continuation Variation (as the case may be) and submit such updated program to the Contract Administrator for approval.
- (b) Prior to the Date for Delivery Phase Agreement, the Contractor must:
 - (i) prepare a program, based on the Outline Program, for the Contractor's Activities during the Delivery Phase;
 - (ii) as part of the program it is to prepare under subparagraph (i), submit to the Contract Administrator for approval a documentation program which makes allowance for the Delivery Phase Design Documentation to be submitted to the Contract Administrator at each of the design review milestones identified in the DCAP and otherwise in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Delivery Phase Design Documentation within the period of time within which the Contract Administrator may review the Delivery Phase Design Documentation under clause 6.8; and
 - (iii) conduct the program management activities identified in the Contract at the design review milestones identified in the Contract in accordance with the design development program approved by the Contract Administrator under clause 6.1(a)(iv)); and
 - (iv) submit the program to the Contract Administrator for approval no later than the date notified in writing by the Contract Administrator.

- (c) The program to be prepared under paragraph (b) must:
- (i) include identification in detail of all work required for, and all risks which could be encountered in, Completion of the Works, which a prudent competent and experienced contractor would anticipate and provide for in its program for the Contractor's Activities;
 - (ii) include a separate sub-program for each separate construction package;
 - (iii) include a detailed recommendation as to every reasonably possible:
 - A. Stage which could be created; and
 - B. date which the Territory could set as the Target Date for the Works or each Stage;
 - (iv) have regard to all relevant considerations including:
 - A. the desirability of staging and sequencing the Works so as to avoid disruption to the Territory (and, if applicable, Other Contractors), and enable the Territory to have use of the Works safely and as soon as possible; and
 - B. the paramount importance to the Territory of balancing between minimising the time to achieve Completion of the Works (on the one hand) and maximising time certainty for the Territory (on the other hand),

provided that no Target Date can be after the Initial Target Date;
 - (v) include the milestones set out in the Milestone Fee Payment Schedule; and
 - (vi) include all such other matters as the Contract Administrator may require in writing.
- (d) The Contractor must:
- (i) if any program submitted by the Contractor under paragraph (a) or (b) is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended program (within the time required by the Contract Administrator);
 - (ii) in the process of preparing a program under paragraph (a) or (b) or an amended program, co-operate with the Territory, the Contract Administrator and all other people nominated by the Contract Administrator for the purpose of furthering the considerations referred to in paragraph (c)(iv); and
 - (iii) ensure that the Target Date does not exceed the Initial Target Date.
- (e) If (in the Contract Administrator's absolute discretion) any program and target dates are approved by the Contract Administrator, then the Contract Administrator will issue a written notice to the Contractor.
- (f) If the Contractor does not prepare a program (or a revised program) under paragraph (b) which is approved by the Contract Administrator (in the Contract Administrator's absolute discretion) under paragraph (e) before the Date for Delivery Phase Agreement, then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

- (g) To assist the Contract Administrator in determining whether or not to approve a program (or a revised program) submitted under paragraph (b):
 - (i) the Contract Administrator may engage a third party to perform an external review of the program; and
 - (ii) the Contractor must:
 - A. co-operate with the Contract Administrator and that third party; and
 - B. without limiting clause 6.18 comply with its obligations under clause 6.18.

6.4 Adjustment of Fees

- (a) As part of the process of preparing the Cost Plan for the approval of the Contract Administrator under clause 6.2, and in any event by no later than the Date for Delivery Phase Agreement, the Contractor must undertake genuine and good faith negotiations with the Territory to reach agreement, in the Territory's absolute discretion, as to:
 - (i) the adjustment (if any) required to the Management Fee, the Contractor's Work Fee (Delivery) and the subcontract price under any Approved Subcontract Agreement then in place as a result of any change in scope, cost of and resources required for the Contractor's Work (Delivery) arising out of the design development, cost planning and programming carried out under clauses 6.1, 6.2 and 6.3;
 - (ii) the adjustment (if any) required to the Milestone Fee Payment Schedule; and
 - (iii) the KPIs and other bases for calculating the amount of the Incentive, and all related matters required, for the purposes of clause 18,
 having regard to:
 - (iv) the Delivery Phase Fee Proposal and, in the case of the adjustment (if any) to the Management Fee, Contractor's Work Fee (Delivery), Milestone Fee Payment Schedule and the Table of Variation Rates and Prices;
 - (v) the budgetary limitations and requirements of the Territory notified to the Contractor under clause 6.2(b)(iii)A;
 - (vi) the paramount importance to the Territory of balancing between minimising both the cost and time to achieve Completion of the Works (on the one hand) and maximising the scope of the Works to be delivered, the extent to which the WOL Objectives are furthered in the design and construction of the Works and cost certainty for the Territory (on the other hand);
 - (vii) the principles in relation to "value for money", including having regard to "open and effective competition", "probity and ethical behaviour ", "management of risk", "optimising whole of life costs" and the need to achieve the best available procurement outcome, as described in the Procurement ACT;
 - (viii) without limiting subparagraph (vii), all opportunities for cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract;; and

- (ix) all other relevant considerations, arising out of, reasonably incidental to or to be inferred from the considerations in subparagraphs (iv) - (ix), which the Territory may from time to time notify to the Contractor in writing.
- (b) If agreement on all of the matters in subparagraphs (i) - (iii) of paragraph (a) is reached by the Date for Delivery Phase Agreement, then the Territory will record the agreement in Proposed Contract Particulars (Delivery Phase).
- (c) If agreement on all the matters in subparagraphs (i) - (iii) of paragraph (a) is not reached and recorded in Proposed Contract Particulars (Delivery Phase) by the Date for Delivery Phase Agreement, then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

6.5 Other Planning Phase Obligations

- (a) In addition to design development under clause 6.1, cost planning under clause 6.2 and programming under clause 6.3, the Contractor must:
 - (i) take all possible steps to ensure that the Planning Phase Milestones are achieved by the relevant Planning Phase Milestone Dates;
 - (ii) do all such things or tasks as may be required to be done as part of the Contractor's Work (Planning) before the Date of Delivery Phase Agreement; and
 - (iii) do all such other things or tasks as may be necessary to achieve Delivery Phase Agreement and provide the Territory with such other assistance as the Contract Administrator may require in connection with the Contractor's Activities or the Works, before the Date for Delivery Phase Agreement.
- (b) In addition to its other obligations under this Contract, the Contractor must do all such things or tasks as may be:
 - (i) necessary to achieve Delivery Phase Approval, including provide the Territory with such assistance, prepare and provide such evidence and attend such meetings and hearings as the Contract Administrator may require in writing for the purpose of obtaining Government Approval;
 - (ii) required to be done as part of the Contractor's Work (Planning),
 before the Date for Delivery Phase Approval.
- (c) If:
 - (i) a Planning Phase Milestone is not achieved by the relevant Planning Phase Milestone Date, or the Contractor does not comply with paragraph (a)(ii) or (a)(iii), then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B; and
 - (ii) the Contractor does not comply with paragraph 1.1(a)(i) or (b)(ii), then the Territory may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(iii)B.
- (d) By no later than the Date for Delivery Phase Agreement:
 - (i) the parties must agree on all details to be included in the Contract Particulars (Delivery Phase) to be executed in accordance with paragraph (f); and

- (ii) the Territory will prepare the Proposed Contract Particulars (Delivery Phase) setting out the details referred to in subparagraph (i).
- (e) If any amendments are required to the Proposed Contract Particulars (Delivery Phase) as a result of fulfilling any of the requirements for Delivery Phase Approval referred to in paragraph (b)(i)A-C, then the Contractor must undertake genuine and good faith negotiations with the Territory to reach agreement on any such amendments.
- (f) The parties must execute the Contract Particulars (Delivery Phase) (incorporating the amendments (if any) agreed in accordance with paragraph (e)):
 - (i) subject to subparagraph (ii), on the date required by the Territory after the date upon which Government Approval is obtained; or
 - (ii) if the Territory issues a notice under clause 6.6(a)(ii)B - by the date stated in the notice.

6.6 Delivery Phase Agreement and Approval

- (a) The Territory must:
 - (i) if Delivery Phase Agreement is achieved, issue a written notice to the Contractor stating the date upon which Delivery Phase Agreement was achieved;
 - (ii) if Delivery Phase Agreement has not been achieved, issue a written notice so advising the Contractor and:
 - A. stating that clause 6.7(d) does not apply; or
 - B. stating the date from which and to the extent to which clause 6.7(d) is to apply;
 - (iii) after a notice has been issued under subparagraph (i):
 - A. if Delivery Phase Approval is achieved, issue a written notice to the Contractor stating the date upon which Delivery Phase Approval was achieved; and
 - B. if Delivery Phase Approval has not been achieved, issue a written notice so advising the Contractor.
- (b) If the Territory issues a notice under paragraph (a)(ii)B or (a)(iii)A, then:
 - (i) the parties will immediately upon the issue of the notice be deemed to have:
 - A. terminated the Contract; and
 - B. entered into a new contract, on the same terms as this Contract as amended by the Contract Particulars (Delivery Phase) (and from that point in time (other than in subsubparagraph A) references to "Contract" will be references to that new contract on those amended terms), under which the Contractor will complete (to the extent not completed during the Planning Phase) the design of, commence, construct, commission, complete and handover the Works;
 - (ii) the Territory must give the Contractor sufficient access to the Site to allow it to commence execution of the Works on the later of:
 - A. the date for access to the Site specified in the notice;

- B. the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(c) that the Contractor has effected the insurances then required in accordance with clause 5.4;
- C. the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 9.2; and
- D. the satisfaction of the conditions precedent to access set out in the Contract Particulars,

and, subject to other provisions of the Contract affecting access, continue to allow the Contractor to have sufficient access to the Site to enable it to carry out the Contractor's Activities; and

(iii) the Contractor must:

- A. immediately commence to carry out the remainder of the Contractor's Activities; and
- B. commence execution of the Works on the later of the dates under subparagraph (ii).

(c) The Contractor acknowledges that:

- (i) it will have no entitlement to complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete and handover any part of the Works during the Delivery Phase unless the Territory issues a notice under paragraph (a)(ii)B or (a)(iii)A; and
- (ii) the splitting of the Contractor's Activities into the Delivery Phase and the Delivery Phase is solely for the benefit of the Territory, to enable the Territory (in its absolute discretion) to ascertain whether it will achieve value for money outcomes for the Territory and otherwise further the considerations referred to in clauses 6.2(b)(iii) and 6.3(c)(iv), and the rights and obligations of the parties and the functions of the Contract Administrator are to be construed accordingly.

(d) The Territory may, in the Territory's absolute discretion, at any time and from time to time, by written notice to the Contractor unilaterally extend:

- (i) a Planning Phase Milestone Date;
- (ii) the Date for Delivery Phase Agreement; or
- (iii) the Date for Delivery Phase Approval.

(e) Neither an extension of a Planning Phase Milestone Date, the Date for Delivery Phase Agreement or the Date for Delivery Phase Approval under paragraph (d), nor the issue of a notice under paragraph (a)(ii)A or (a)(iii)B, will:

- (i) limit or affect the Contractor's obligations or liabilities under this Contract or prejudice the right of the Territory to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Contractor breaches the Contract, whether under the Contract or otherwise according to law; or
- (ii) entitle the Contractor to bring a Claim against the Territory.

- (f) The Contractor acknowledges that any Act of Prevention which prevents Delivery Phase Agreement being achieved by the Date for Delivery Phase Agreement or Delivery Phase Approval being achieved by the Date for Delivery Phase Approval including:
- (i) finalisation of the Planning Phase Design Documentation as required under clause 6.1(e) by the Date for Delivery Phase Agreement;
 - (ii) finalisation of a cost plan which is approved by the Contract Administrator as required under clause 6.2(a) by the Date for Delivery Phase Agreement;
 - (iii) finalisation of a program which is approved by the Contract Administrator as required under clause 6.3(b) by the Date for Delivery Phase Agreement;
 - (iv) agreement on all the matters in clause 6.4(a)(i)-(iii) as required under clause 6.4(a) by the Date for Delivery Phase Agreement;
 - (v) achievement of a Planning Phase Milestone by the relevant Planning Phase Milestone Date; or
 - (vi) Government Approval being obtained by the Date for Delivery Phase Approval,
- will not:
- (vii) entitle the Contractor to bring a Claim against the Territory; or
 - (viii) limit or affect any right of the Territory or the Contract Administrator, including the right of the Territory to elect not to proceed with the Contractor to deliver the Works or to issue a notice under paragraphs (a)(ii) or (a)(iii)B,
- whether on the basis that the obligation to finalise, agree, achieve or obtain the relevant matter has become an obligation to finalise, agree, achieve or obtain the relevant matter within a reasonable time or on any other basis at law or in equity.
- (g) The Contractor acknowledges that:
- (i) an absolute discretion in the Contract Administrator or the Territory under this clause 6 is not required to be exercised for the benefit of the Contractor;
 - (ii) neither the Contract Administrator nor the Territory is bound to exercise any such absolute discretion in any particular manner or having regard to any particular consideration notwithstanding that such considerations might be stated in this Contract;
 - (iii) no provision of clause 6 conferring such an absolute discretion gives the Contractor any rights (including any right to make any Claim arising out of the exercise or failure to exercise the discretion); and
 - (iv) the exercise or failure to exercise such an absolute discretion is not capable of being the subject of a dispute or difference for the purpose of clause 15.1 or otherwise subject to review.

6.7 Failure to Achieve Delivery Phase Agreement or Approval

If the Territory issues a notice under clause 6.6(a)(ii) or 6.6(a)(iii)B, then:

- (a) subject to paragraph (d), the Contractor will:

- (i) have no entitlement to complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete or handover any part of the Works;
 - (ii) be entitled to payment of the Contractor's Work Fee (Planning) and Reimbursable Costs due and payable for the Contractor's Activities completed in accordance with the Contract before issue of the relevant notice; and
 - (iii) not be entitled to payment of any portion of the Management Fee or the Contractor's Work Fee (Delivery) or to make any Claim (to the extent permitted by law) against the Territory arising out of, or in any way in connection with, the relevant notice, this Contract, the Contractor's Activities or the Works other than for the amount payable under subparagraph (ii);
- (b) subject to paragraph (d), the Contractor must:
- (i) immediately hand over to the Territory copies (or, where required by the Contract Administrator, originals) of all Project Documents prepared by the Contractor to the date of issue of the relevant notice (whether complete or not);
 - (ii) immediately take all steps necessary to novate to the Territory any of the Subcontractors required by the Contract Administrator to be novated; and
 - (iii) co-operate with the Territory and any third parties required by the Contract Administrator, and take all other steps necessary, to ensure that the Territory is able to re-tender or procure the execution of the Works under paragraph (c)(i);
- (c) subject to paragraph (d), the Territory may:
- (i) re-tender the execution of the Works (whether with or without obtaining a tender from the Contractor) or procure the execution of the Works in any other manner which the Territory may determine; and
 - (ii) without limiting the licence granted under clause 6.13, use the Project Documents for the purposes of re-tendering or procuring the execution of the Works under subparagraph (i); and
- (d) the Territory may (in its absolute discretion) waive the requirement that the Contractor achieve Delivery Phase Agreement and Delivery Phase Approval before designing, constructing and commissioning certain parts of the Works, in its notice under clause 6.6(a)(ii)B, in which case:
- (i) each such part of the Works will be a Stage as identified in the notice;
 - (ii) the relevant provisions of the Contract will apply to each Stage as if it were the only work included in the Contractor's Activities and the Works;
 - (iii) the Target Cost, Target Date, Target Reimbursable Costs, Management Fee, Contractor's Work Fee (Delivery) and Milestone Fee Payment Schedule will be:
 - A. as agreed by the parties; or
 - B. if not agreed by the date stated in the notice, the reasonable Target Date, Target Cost, Target Reimbursable Costs, Management Fee, Contractor's Work Fee (Delivery) and Milestone Fee Payment Schedule as determined by the Contract Administrator,

and recorded by the Territory in the Contract Particulars (Delivery Phase) to be executed by the parties in accordance with clause 6.5(f); and

- (iv) such other conditions specified by the Territory in the notice under clause 6.6(a)(ii)B will apply.

6.8 Delivery Phase Design Documentation

(a) After the Date of Delivery Phase Approval the Contractor must:

- (i) design the Works in accordance with the Brief, the Planning Phase Design Documentation and the other requirements of this Contract and for this purpose (but without limitation) prepare all relevant Delivery Phase Design Documentation;
- (ii) without limiting clause 8.24(a)(iii), be responsible for co-ordinating the work of its design subcontractors, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these subcontractors in a manner and at a rate of progress so that the Contractor complies with its obligations under subparagraph (iii);
- (iii) conduct design reviews at each of the design review milestones as identified in the DCAP; and
- (iv) submit the Delivery Phase Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 6.3(e).

(b) The Contract Administrator may:

- (i) review any Delivery Phase Design Documentation, or any resubmitted Delivery Phase Design Documentation, prepared and submitted by the Contractor; and
- (ii) within the number of days set out in the Contract Particulars of the submission by the Contractor of such Delivery Phase Design Documentation or resubmitted Delivery Phase Design Documentation, reject the Delivery Phase Design Documentation.

(c) If any Delivery Phase Design Documentation is rejected, the Contractor must submit amended Delivery Phase Design Documentation to the Contract Administrator.

(d) The Contractor must not:

- (i) issue any Subcontract Tender Documentation to tenderers for; or
- (ii) commence construction of,

any part of the Works to which Delivery Phase Design Documentation which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the Delivery Phase Design Documentation and has not rejected the Delivery Phase Design Documentation.

6.9 No Obligation to Review

(a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Planning Phase Design Documentation or Delivery Phase Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.

- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Planning Phase Design Documentation or Delivery Phase Design Documentation prepared by the Contractor or any other Direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Territory in relation to, the Planning Phase Design Documentation or Delivery Phase Design Documentation will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
 - (ii) prejudice the Territory's rights against the Contractor whether under the Contract or otherwise according to law.

6.10 Copies of Design

For the purposes of clauses 6.1(a)(vi) and (c) and 6.8(a)(iv) and (c), the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Planning Phase Design Documentation or Delivery Phase Design Documentation in:

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

in each case in accordance with the requirements set out in the Contract Particulars.

6.11 Fitness for Purpose

The Contractor warrants that:

- (a) the Planning Phase Design Documentation and Delivery Phase Design Documentation it prepares will be fit for their intended purpose; and
- (b) upon Completion, the Works or each Stage will, to the extent that:
 - (i) they have been designed by the Contractor; or
 - (ii) the Contractor is otherwise responsible for their design under clause 6.21 (if applicable),
 be fit for their intended purpose.

6.12 Availability

The Contractor must keep available for the use of the Contract Administrator, the Territory and any person authorised by either the Contract Administrator or the Territory:

- (a) on the Site, one complete set of the Brief, all Planning Phase Design Documentation and Delivery Phase Design Documentation and all other Project Documents directed in writing by the Contract Administrator; and
- (b) at any area off-Site where the Contractor's Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

6.13 Licence over Project Documents

The Contractor grants to the Territory a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents,

including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

- (a) arises, for each Project Document, immediately the Project Document is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Territory or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor;
- (b) includes an unlimited right to sub-licence;
- (c) without limitation, extends to:
 - (i) any subsequent operation, maintenance or servicing of, or additions, alterations or repairs to the Works; and
 - (ii) use in any way for any other Territory project; and
- (d) survives the termination of this Contract on any basis.

6.14 Intellectual Property Warranties

The Contractor warrants that:

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

6.15 Intellectual Property Rights

The Contractor must:

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

6.16 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Planning Phase Design Documentation (which the Contractor is entitled to use for the purposes of preparing the Delivery Phase Design Documentation under clause 6.1(d)), Delivery Phase Design Documentation (which the Contractor is entitled to use for tender or construction purposes under clause 6.8(d)) or any other Project Document:

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

6.17 DCAP

The Contractor:

- (a) warrants that:
 - (i) the DCAP complies with the requirements of this Contract;
 - (ii) preparation of the Planning Phase Design Documentation and Delivery Phase Design Documentation in accordance with the DCAP will ensure that the Planning Phase Design Documentation and Delivery Phase Design Documentation comply with the requirements of this Contract and that the Contractor otherwise discharges its obligations under the Contract; and
 - (iii) construction in accordance with the DCAP will ensure that the Works achieve Completion in accordance with, and will otherwise enable the Contractor to discharge its obligations under, the Contract;
- (b) acknowledges that the DCAP:
 - (i) does not limit the Contractor's obligations under this Contract; and
 - (ii) may require updating and refining throughout the execution of the Contractor's Activities:
 - A. to the extent that it does not reflect all the tasks and other things to be done or provided to perform the Contractor's Activities in accordance with the Contract; and
 - B. without limiting subsubparagraph A, on account of Variations;
- (c) must update and refine the DCAP:
 - (i) as required by paragraph (b)(ii);
 - (ii) on each anniversary of the Award Date; and

- (iii) as a condition precedent to Delivery Phase Agreement (including for the purposes of accurately reflecting all the tasks and other things to be done and performed in the Contractor's Activities during the Delivery Phase in accordance with the Contract),

with the written approval of the Contract Administrator,

- (d) will not be entitled to bring any Claim against the Territory arising out of or in connection with any work which the Contractor is required to carry out arising out of or in connection with paragraph (b) or (c); and
- (e) acknowledges that the Territory has not made and does not make any representation or give any warranty as to any of the matters referred to in subparagraphs (i) - (iii) of paragraph (a).

6.18 Access to Premises and Project Documents

The Contractor must:

- (a) at the request of the Contract Administrator at any time during the execution of the Contractor's Activities and the period of 10 years following the issue of a Notice of Completion for the Works (or, if the Territory issues a notice under clause 6.6(a)(ii)A or 6.6(a)(iii)B, 10 years following the issue of that notice):
 - (i) provide access to its premises and make the Project Documents available for inspection and copying by the Contract Administrator or any other person nominated by the Contract Administrator;
 - (ii) provide to the Contract Administrator such copies of the Project Documents as the Contract Administrator or any nominated person may require;
 - (iii) provide all such facilities and assistance and answer all questions of the Contract Administrator or any nominated person; and
 - (iv) make available any officers, employees, agents or subcontractors for interviews with the Contract Administrator or any nominated person;
- (b) as a condition precedent to Completion of each Stage or the Works, deliver to the Contract Administrator a copy of the installed version of each item of software comprising the IT Equipment incorporated in that Stage or the Works, in a storage medium reasonably satisfactory to the Territory, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 6.18 as if the subcontractor were the Contractor.

6.19 Cost Control

The Contractor must:

- (a) use its best endeavours to ensure that it achieves Completion of the Works so that the Contract Price does not exceed the Target Cost;
- (b) without limiting paragraph (a), review the Cost Plan with the Contract Administrator as the preparation of the Delivery Phase Design Documentation proceeds, to:

- (i) ensure that the cost of construction of the design is in accordance with the Cost Plan; and
 - (ii) advise the Contract Administrator how the design should or can be modified to ensure that the cost of the design is in accordance with the Cost Plan;
- (c) without limiting paragraph (a), institute a system of cost control and, together with the Contract Administrator, review and, where approved by the Contract Administrator, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan, and advise the Contract Administrator as to the alternative steps available where:
 - (i) the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Cost Plan; or
 - (ii) the costs incurred under any Approved Subcontract Agreement exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract Agreement in the Cost Plan.

6.20 Territory's Novated Design Consultants

Clauses 6.20 and 6.21 do not apply unless the Contract Particulars state that they apply.

The Contractor agrees that it will accept a novation of the agreements between the Territory and the Territory's Novated Design Consultants by:

- (a) executing a Consultant Deed of Novation (completed with all relevant particulars) for each of the Territory's Novated Design Consultants;
- (b) delivering those deeds to the Territory on the Award Date; and
- (c) thereafter having the Territory's Novated Design Consultants complete the design of the Works.

6.21 Warranties Unaffected

The Contractor:

- (a) acknowledges that it is aware that substantial work has already been performed upon the design of the Works by the Territory's Novated Design Consultants in preparing the Brief;
- (b) warrants that it has checked and carefully considered the design work referred to in paragraph (a) and that the design work is proper, adequate and suitable for the purposes for which the Works are intended; and
- (c) agrees that:
 - (i) the warranties given in this Contract (including those in clause 6.11) will remain unaffected;
 - (ii) it will comply with its obligations to complete the Works as required by this Contract; and
 - (iii) it will bear and continue to bear full liability and responsibility for the design and construction of the Works in accordance with this Contract (including the risk of any Defects which may arise (whether directly or indirectly) as a result of or in any way in connection with any design work prepared by the Territory's Novated Design Consultants incorporated into the Brief), and that this will not affect its

obligations to complete the Works in accordance with this Contract or thereafter its obligations during the Defects Liability Period,

notwithstanding paragraph (a) and that it is required to:

- (iv) adopt the design which was prepared by the Territory's Novated Design Consultants incorporated into the Brief; and
- (v) accept a novation of the agreements between the Territory and the Territory's Novated Design Consultants under clause 6.20.

6.22 Design Certification

Without limiting the Contractor's obligations, the Contractor must, with each payment claim under clause 12.2 and as a condition precedent to Completion of the Works or a Stage (as the case may be), provide the Contract Administrator with:

- (a) a certificate in the form of the Contractor Design Certificate which certifies that (to the extent then applicable):
 - (i) the Planning Phase Design Documentation or the Delivery Phase Design Documentation (as the case may be) complies with:
 - A. subject to clause 2.3(g), all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the Contract; and
 - (ii) the Works comply or the Stage complies (as the case may be) with the Delivery Phase Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.8(d); and
- (b) a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form of the Consultant Design Certificate or Subcontractor Design Certificate (as the case may be) which certifies that (to the extent then applicable):
 - (i) all design carried out by that subcontractor complies with:
 - A. subject to the subcontract, all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the subcontract; and
 - (ii) the Works comply or the Stage complies (as the case may be) with the design carried out by that subcontractor,

except to the extent set out in such certificates.

6.23 Samples

- (a) The Contractor must:
 - (i) obtain each sample or range of samples required by the Contract; and
 - (ii) submit the sample or range of samples it obtains to the Contract Administrator:
 - A. in the Planning Phase - in accordance with the documentation program approved by the Contract Administrator under clause 6.3(a); or

B. in the Delivery Phase - in accordance with the program approved by the Contract Administrator under clause 6.3(e),
as updated with the approval of the Contract Administrator under clause 10.2.

- (b) The Contract Administrator may:
- (i) review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Contractor; and
 - (ii) within the number of days set out in the Contract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples.
- (c) If any sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Contract Administrator.
- (d) The Contractor must not:
- (i) issue any Subcontract Tender Documentation to tenderers for; or
 - (ii) commence construction of,
- any part of the Works to which the sample or range of samples which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the sample or range of samples and has not rejected the sample or samples.
- (e) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract.
- (f) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Contractor or any other Direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Territory in relation to, the sample or range of samples will:
- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
 - (ii) prejudice the Territory's rights against the Contractor whether under the Contract or otherwise according to law.

7. SITE

7.1 Contractor to Inform Itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that it has made sufficient allowances in the amounts comprising the Contract Price to protect it against any of these risks eventuating.

7.2 Site Information

Without limiting clause 7.5:

- (a) the Territory has made available to the Contractor, before the Award Date and may make available on or after the Award Date, certain information, data and documents which were obtained by the Territory for the purposes of the Works from investigations it carried out as to the conditions on, in, under or in the vicinity of the Site;
- (b) the Territory does not warrant, guarantee or make any representation about the accuracy or adequacy of any such information, data and documents made available to the Contractor;
- (c) the Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 7.5 applies to the information, data and documents; and
- (d) to the extent permitted by law, the Territory will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, that information, data and documents.

7.3 Site Access

- (a) The Territory:
 - (i) is not obliged to:
 - A. provide the Contractor with sole access to the Site; or
 - B. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
 - (ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
 - (iii) must use reasonable endeavours to ensure that any Other Contractors engaged by the Territory comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, insurance and hours of working.
- (b) The Territory is not obliged to provide the Contractor with access to the Site during the Planning Phase unless:
 - (i) the Site Management Plan and the Work Health and Safety Plan have been finalised under clause 9.2;

- (ii) the Contractor has provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(c) that the Contractor has effected the insurances then required in accordance with clause 5.4;
- (iii) the Contractor has submitted a request, in writing to the Contract Administrator during the Planning Phase for access to the Site setting out:
 - A. the area where access is requested;
 - B. the timing of the proposed access;
 - C. the reasons why the proposed access is necessary to enable the Contractor to commence and progress investigations and design work for the purpose of preparing the Planning Phase Design Documentation; and
 - D. the mitigation measures that the Contractor proposes to put in place to avoid any disruption or inconvenience that may be caused to the Territory, Other Contractors and any other person authorised by the Territory or the Contract Administrator to occupy, use, operate, maintain or access the Site if the Contractor is given the proposed access;
- (iv) the Contractor's request under paragraph (iii) is approved by the Contract Administrator in writing; and
- (v) the Contractor has otherwise satisfied the conditions precedent to access set out in the Contract Particulars (Planning Phase),

in which event, the Territory must give the Contractor such access to the Site during the Planning Phase as set out in the Contractor's request approved by the Contract Administrator under paragraph (iv).

7.4 Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to the Territory and any person authorised by the Territory or the Contract Administrator to occupy, use or attend upon the Site in their occupation or use of, or attendance upon, any part of the Site, including any occupation or use of a part of the Works or a Stage under clause 13.5;
- (b) at all reasonable times give the Territory, the Contract Administrator and any person authorised by either the Territory or the Contract Administrator access to the Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
- (c) provide the Territory and the Contract Administrator with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.5 Non-Reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Territory or anyone on behalf of the Territory;

- (ii) any information, data or document provided to the Contractor in accordance with clause 7.2(a); or
- (iii) the accuracy or adequacy of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

- (b) warrants that it enters into this Contract, and will carry out the Contractor's Activities based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Territory has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. REIMBURSABLE WORK

8.1 Restrictions on Reimbursable Work

- (a) Subject to **clause 6.20** (if applicable), Reimbursable Work must, unless otherwise agreed by the Contract Administrator in writing, be performed under Approved Subcontract Agreements which will be made between the Contractor and Subcontractors in accordance with:
 - (i) the procedure in this **clause 8**; or
 - (ii) if the Contract Administrator gives the Contractor a written Direction to that effect, the relevant procedure in the DCAP.
- (b) The Contractor must not include any of the work which forms part of the Contractor's Work (Planning) or the Contractor's Work (Delivery) in the scope of any part of the Reimbursable Work.
- (c) The Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
 - (i) consistently with the Procurement Act;
 - (ii) on terms which achieve value for money outcomes for the Territory;
 - (iii) with the highest standards of probity, fairness and equal opportunity; and
 - (iv) in accordance with all other Statutory Requirements.

8.2 Subcontract Proposal

The Contractor must:

- (a) advise the Territory and the Contract Administrator on (and obtain the consent of the Contract Administrator to) how the Reimbursable Work should be divided into packages for the purposes of facilitating the calling of tenders for Subcontractors;
- (b) before inviting tenders for the performance of Reimbursable Work by Subcontractors, issue a document titled "Subcontract Proposal" to the Contract Administrator for approval which will set out particulars of:
 - (i) the part of the Reimbursable Work to be the subject of the tender;
 - (ii) the amount included for this work in the Cost Plan;
 - (iii) the method of delivery for the work;
 - (iv) if the Contractor proposes to enter into an Approved Subcontract Agreement based upon conditions of subcontract other than those contained in the Schedule of Collateral Documents, details of the proposed conditions of subcontract; and
 - (v) the proposed date for calling of tenders and for tender responses;
- (c) subject to paragraph (d), for the purposes of paragraph (b)(i), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:
 - (i) preparing and arranging advertising;

- (ii) preparing and distributing briefing documents;
- (iii) evaluating responses from prospective tenderers; and
- (iv) making a recommendation to the Contract Administrator for the purposes of clause 8.4(a);
- (d) obtain the prior written approval of the Contract Administrator to all advertisements and briefing documents prior to requesting expressions of interest; and
- (e) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest. The Contractor will not be entitled to payment or reimbursement of any such costs by the Territory (whether as Reimbursable Costs or otherwise).

8.3 Subcontract Tender Documentation

After the Contract Administrator has approved the Subcontract Proposal, the Contractor must:

- (a) prepare the Subcontract Tender Documentation and submit a copy of it to the Contract Administrator for approval at least 21 days before tenders are to be invited; and
- (b) subsequently amend the Subcontract Tender Documentation as required by the Contract Administrator.

8.4 Tendering

- (a) The Contractor must:
 - (i) subject to subparagraph (iii)B, recommend to the Contract Administrator those persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
 - (ii) subject to subparagraph (iii)B, subsequently finalise the tender list in consultation with the Contract Administrator who may (in the Contract Administrator's absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list subject to the Contractor not making a reasonable objection to any person which the Contract Administrator may remove from or add to the tender list;
 - (iii) call tenders from:
 - A. subject to subsubparagraph B, the persons in the tender list finalised with the Contract Administrator; or
 - B. for those design disciplines listed in the Contract Particulars - the persons listed in the Contract Particulars,

in sufficient time to avoid delays or disruption to the progress of the Works; and
 - (iv) if so requested by the Contract Administrator, promptly provide a copy of each tender to the Contract Administrator.

8.5 Consideration of Tenders

The Contractor must:

- (a) examine and analyse all tenders received;

- (b) recommend to the Contract Administrator which tenderer, if any, should be accepted by the Contractor (which recommendation will be deemed to include a warranty by the Contractor that the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the Contractor knows of no reason why that tenderer's tender should not be accepted and that the tenderer's tender will provide value for money for the Territory); and
- (c) submit together with any such recommendation:
 - (i) the work to be covered and executed under the proposed subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3;
 - (ii) the time for commencement and completion of that work and confirmation that these times are in accordance with the then current program under clause 10.2;
 - (iii) the proposed subcontract price (including any amount allowed for contingency) and the amounts tendered by other tenderers;
 - (iv) any proposed amendments to the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3;
 - (v) the proposed tenderer's contact details;
 - (vi) if requested by the Contract Administrator, a Subcontractor Deed of Covenant or Consultant Deed of Covenant (as the case may be), duly completed with all relevant particulars and executed by the Contractor and the proposed tenderer; and
 - (vii) any other details which may be required by the Contract Administrator.

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

8.6 Post Tender Negotiations

If required by the Contract Administrator, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Contract Administrator so requires, be held in the presence of the Contract Administrator.

8.7 Subcontracts

The Contract Administrator will consider the recommended tenderer and (in its absolute discretion) approve or disapprove the Contractor's recommendation. If the Contract Administrator approves the Contractor's recommended tenderer, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3 with only such amendments as the Contract Administrator may have approved in writing; and
 - (ii) the subcontract price approved by the Contract Administrator; and

- (b) if required by the Contract Administrator, provide the Contract Administrator with a copy of the executed subcontract agreement including the Planning Phase Design Documentation or Delivery Phase Design Documentation relevant to that agreement.

Without limiting paragraph (a)(i), the Contractor must ensure that each subcontract contains provisions:

- (c) which bind the subcontractor to participate in any novation required by the Territory under clause 14.5(a)(ii); and
- (d) as otherwise required by this Contract.

8.8 Procedure on Disapproval

If the Contract Administrator disapproves the Contractor's recommended tenderer and the Contract Administrator directs the Contractor to accept the tender of another tenderer, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3 with only such amendments as the Contract Administrator may have approved in writing; and
 - (ii) the subcontract price approved by the Contract Administrator; and
- (b) if required by the Contract Administrator, provide the Contract Administrator with a copy of the executed subcontract agreement including the Planning Phase Design Documentation or Delivery Phase Design Documentation relevant to that agreement.

8.9 Collateral Warranties

As a condition precedent to Completion of the Works or any Stage specified in the Contract Particulars, procure and provide the Territory with the warranties described in the Contract Particulars:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty; and
- (b) in the form of the Collateral Warranty.

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

If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by this Contract:

- (c) the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
- (d) the Territory will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
- (e) for the purpose of paragraph (d), the Contractor irrevocably appoints the Territory as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of the Territory against the Contractor whether under the Contract or otherwise.

8.10 Co-ordination of Subcontractors

Without limiting clause 8.24(a)(iii), the Contractor must:

- (a) administer, supervise, inspect, co-ordinate and control the work of all subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Approved Subcontract Agreements and all subcontractors engaged by it;
- (c) appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Approved Subcontract Agreements and otherwise ensure the Approved Subcontract Agreements are administered in accordance with:
 - (i) the terms of the Approved Subcontract Agreements; and
 - (ii) the Directions of the Contract Administrator; and
- (d) at all times co-ordinate the Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
 - (i) the Delivery Phase Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.8(d); and
 - (ii) the obligations of the respective subcontractors.

8.11 Work under Approved Subcontract Agreements not to be varied

The Contractor must:

- (a) not vary the work which is the subject of an Approved Subcontract Agreement unless:
 - (i) the Contract Administrator has provided the Contractor with a Variation Order in accordance with clause 11.2 and that Variation Order relates directly to the work the subject of the Approved Subcontract Agreement; or
 - (ii) the Contractor makes a written request to the Contract Administrator to authorise it to issue a Direction to a Subcontractor to vary the work, and the Contract Administrator gives written consent to this request; and
- (b) indemnify the Territory from any costs, expenses, losses or damages suffered or incurred by the Territory arising out of or in any way in connection with any variation to the work which is the subject of an Approved Subcontract Agreement other than as provided for under paragraph (a).

8.12 Subcontractor's Compliance with Statutory Requirements

The Contractor must ensure that all subcontractors comply with all Statutory Requirements.

8.13 Responsibility for Subcontractors

- (a) The Contractor will:
 - (i) not be relieved from any of its liabilities or obligations under the Contract including those under clause 2.3; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any

subcontractors default or otherwise fail to observe or comply with the requirements of the relevant subcontract,

despite:

- (iii) subcontracting any part of the Contractor's Work (Planning), the Contractor's Work (Delivery) or the Reimbursable Work;
 - (iv) any comments upon, consent to or review, approval or disapproval of:
 - A. a Subcontract Proposal under clause 8.2; or
 - B. a tenderer recommended by the Contractor under clause 8.5(b), by the Territory or the Contract Administrator;
 - (v) the Territory listing the persons from whom tenders are to be obtained under clause 8.4(a)(iii)B for the design disciplines listed in the Contract Particulars;
 - (vi) any Direction by the Contract Administrator under clause 8.7 to accept the tender of a tenderer other than that recommended by the Contractor; or
 - (vii) any other act or omission of the Territory or the Contract Administrator in connection with the subcontracting of any part of the Contractor's Work (Planning), Contractor's Work (Delivery) or the Reimbursable Work.
- (b) Subject to clause 8.14 but otherwise without limitation, if the Contractor terminates an Approved Subcontract Agreement, the Contractor must:
- (i) complete the work the subject of the terminated Approved Subcontract Agreement; and
 - (ii) bear the costs incurred by the Contractor in completing this work, and such costs will not form part of the Reimbursable Costs, except to the extent that they do not exceed the amount of Reimbursable Costs which would have been payable under the terminated Approved Subcontract Agreement.

8.14 Subcontractor Insolvency

Where an event analogous to an Insolvency Event occurs in relation to a Subcontractor, the Contractor must:

- (a) promptly notify the Contract Administrator of this fact; and
- (b) if the Contractor terminates the Approved Subcontract Agreement:
 - (i) promptly notify the Contract Administrator of this; and
 - (ii) engage another person as Subcontractor in accordance with this clause 8 to complete the work the subject of the terminated Approved Subcontract Agreement.

8.15 Reimbursable Work by Contractor or Related Body Corporate

The Contractor or a Related Body Corporate of the Contractor may not itself carry out any part of the Reimbursable Work unless:

- (a) the express written approval of the Contract Administrator is obtained; and

- (b) the Contractor and the Contract Administrator agree in writing upon a fixed price (or other agreed basis for payment) for the work prior to the Contractor or the Related Body Corporate of the Contractor commencing the work.

8.16 Tendering Ethics

The Contractor must use its best endeavours to ensure that:

- (a) none of the tenderers for any of the Reimbursable Work has any arrangement or arrives at any understanding with any of the other tenderers or with any employee of an association of which any of the tenderers is a member about the work the subject of tender; and
- (b) without limitation, no tenderer engages in:
 - (i) any discussion or correspondence with any such persons concerning the sum of money it is going to tender as its tender sum; or
 - (ii) any collusive tendering with any of the other tenderers or any conduct or any arrangement or arrives at any understanding with any of the other tenderers which in any way could have the effect of reducing the competitiveness of the tender process for the work and increasing the price,(as the case may be).

8.17 Description of Works

Subject to clause 6.16, the Contractor must construct the Works in accordance with:

- (a) the Brief;
- (b) any Delivery Phase Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.8(d);
- (c) any Direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation directed by the Contract Administrator by a document titled "Variation Order"; and
- (d) the other requirements of the Contract.

8.18 Statutory Requirements

The Contract Particulars describe the Approvals which exist at the Award Date or which the Territory will obtain after the Award Date.

In carrying out the Contractor's Activities, the Contractor must:

- (a) comply with all applicable Statutory Requirements (as set out in clause 2.3(g)(i));
- (b) without limiting paragraph (a):
 - (i) apply for and obtain all Approvals (as set out in clause 2.3(g)(ii)); and
 - (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
- (c) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Works or the carrying out of the Contractor's Activities issues to the Contractor.

8.19 Change in Statutory Requirements or Variance with Contract

If:

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

then:

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

in carrying out the Contractor's Work (Delivery) after the giving of the notice under paragraph (c) and arising directly from the change or variance (as the case may be) or the Contract Administrator's instruction, in either case as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C.

8.20 Co-operation with Other Contractors

Without limiting clause 8.24(a)(iii), the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.21 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

8.22 Survey

The Contractor must:

- (a) as a condition precedent to Completion of the Works or of any Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:
 - (i) the whole of the Works or the Stage are within any particular boundaries stipulated in the Contract except only for parts of the Works or Stage specifically required by the Contract to be outside those boundaries; and

- (ii) where so required by this Contract, structural elements of the Works or the Stage are within the tolerances specified; and
- (b) ensure that all work required under paragraph (a) is performed under Approved Subcontract Agreements and must not include any allowance in the Contractor's Work Fee (Delivery) or Management Fee for such work.

8.23 Work Health and Safety

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all Statutory Requirements and other requirements of the Contract for work health and safety management;
 - (ii) all subcontractors comply with the requirements referred to in this clause 8.24; and
 - (iii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iv) it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking;
 - (v) it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless it is to:
 - A. assist an injured person or remove a deceased person;
 - B. make the area safe or to minimise the risk of a further notifiable incident; or
 - C. the relevant regulator/ inspector has given permission to disturb the site;
- (b) without limiting the Contractor's obligations under this Contract or at law, notify the Contract Administrator and the Territory immediately after it notifies the regulator of the occurrence of any notifiable incident and provide copies of all referable notices and communications issued by a regulator or agent of the regulator to the Territory and the Contract Administrator immediately upon receiving the same;
- (c) **[TBC if applicable:]** comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- (d) regularly review its Work Health and Safety Plan, continue to update and amend its Work Health and Safety Plan and submit it (as necessary) in accordance with clause 9.2 and the WHS Legislation;
- (e) institute systems to obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;

- (f) provide the written assurances obtained under paragraph (e), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation, to the Contract Administrator;
- (g) provide the Contract Administrator with a written report at each meeting in accordance with clause 3.9 on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause 8.23), or any other relevant matters as the Contract Administrator may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
- (h) exercise a duty of the utmost good faith to the Territory in carrying out the Contractor's Activities to enable the Territory to discharge the Territory's duties under the WHS Legislation;
- (i) ensure its subcontracts include provisions equivalent to the obligations of the Contractor in this clause 8.23;
- (j) ensure that, if any Statutory Requirement, including in the State or Territory in which the Works are situated or the Contractor's Activities are carried out (as the case may be), requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that 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 to be 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; or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (k) 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 Statutory Requirement and paragraph (j) are met;
- (l) without limiting the Contractor's obligations under this Contract or at law:
 - (i) provide any information or copies of documentation held by the Contractor or a Subcontractor to the Contract Administrator within 14 days of a request by the Contract Administrator (and in the case of notifiable incidents, immediately and if not immediately, as soon as that information is in the possession of the Contractor), to enable the Territory to comply with its obligations under the WHS Legislation; and
 - (ii) subject to paragraph (b), (o) and (p) provide copies of:
 - A. all notices and communications issued by a regulator, agent of the regulator or a health and safety representative to the Contractor or a Subcontractor; and

B. all notices, communications and undertakings given by the Contractor or a Subcontractor to the regulator, agent of the regulator or a health and safety representative,

in connection with or related to the Contractor's Activities or the Works to the Contract Administrator within 14 days of receipt or submission of the notice, communication or undertaking by the Contractor or Subcontractor (as the case may be);

- (m) if requested by the Contract Administrator or required by the WHS Legislation, 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 Contract Administrator before the Contractor or any subcontractor commences such work;
- (n) take all reasonable actions and comply with all reasonable requests of the Territory, the Contract Administrator or their respective authorised persons regarding any safety audits in respect of the Site (including any audits under the Territory's WHS Active Certification Policy);
- (o) without limiting paragraph (m), at all reasonable times allow the Territory, the Contract Administrator or their respective authorised persons:
 - (i) to enter upon the Site to conduct a safety audit;
 - (ii) to enter upon the Site or any premises occupied by the Contractor to inspect and copy any records relevant to a safety audit; and
 - (iii) to enter upon the Site or any premises occupied by the Contractor to interview any person as part of a safety audit;
- (p) without limiting the Contractor's obligations under this Contract or at law, immediately notify the Territory and the Contract Administrator upon becoming aware of the issue of any improvement notice, infringement notice, non disturbance notice, notice of entry or prohibition notice referable to the Site or the Works and provide copies of all referable notices and communications issued by a regulator or agent of the regulator to the Territory and the Contract Administrator immediately upon receiving the same;
- (q) without limiting the Contractor's obligations under this Contract or at law promptly notify the Territory and the Contract Administrator upon becoming aware of the issue of any provisional improvement notice referable to the Site or the Works and provide copies of all referable notices and communications issued by a regulator or agent of the regulator to the Territory and the Contract Administrator promptly upon receiving the same;
- (r) subject to paragraphs (b), (o) and (p) and without limiting the Contractor's obligations under this Contract or at law, notify the Contract Administrator promptly (and in any event within 12 hours of such matter arising) of all work, health and safety matters arising out of , or in any way in connection with the Contractor's Activities; and
- (s) act as principal contractor for the purpose of the WHS Legislation and the Territory:
 - (i) engages the Contractor as principal contractor;
 - (ii) authorises the Contractor to have management and control of the Site; and
 - (iii) engages the Contractor to discharge the duties of principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011*(ACT).

In this clause “regulator”, improvement notice”, infringement notice”, “non-disturbance notice”, “notice of entry”, “modifiable incident” “principal contractor”, “prohibition notice” and “provisional Improvement notice” have the same meaning as in the WHS Legislation.

8.24 Plant, Equipment and Work

The Contractor must not remove from the Site any Plant, Equipment and Work without the Contract Administrator's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.26(b).

8.25 Cleaning Up

The Contractor must:

- (a) in carrying out the Contractor's Activities, keep the Site and the Works clean and tidy and free of refuse;
- (b) as a condition precedent to Completion of the Works and each Stage, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Works or the Stage; and
- (c) ensure that all work required under paragraph (b) is performed under Approved Subcontract Agreements and must not include any allowance in the Contractor's Work Fee (Delivery) or Management Fee for such work.

8.26 The Environment

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (ii) it does not cause any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies the Contract Administrator of:
 - A. any non-compliance with the requirements of this clause 8.27;
 - B. a breach of any Statutory Requirement for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its subcontractors comply with the requirements referred to in this clause 8.27; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of, or in any way in connection with, the Contractor's Activities, whether or not it

has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment.

8.27 Urgent Protection

The Territory may take any action necessary to protect the Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor must take but does not take.

8.28 Valuable Objects Found on Site

Any things of value or archaeological or special interest found on or in the Site will, as between the parties, be the property of the Territory.

Where such an item is found the Contractor must:

- (a) immediately notify the Contract Administrator;
- (b) protect it and not disturb it further; and
- (c) comply with any instructions of the Contract Administrator in relation to the item.

The reasonable extra costs incurred by the Contractor in complying with its obligations under paragraphs (a) - (c) will be determined by the Contract Administrator, in accordance with clause 11.3(a)(iii)B or C, and added to the Contractor's Work Fee (Delivery).

8.29 The Territory May Act

The Territory may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses and damages suffered or incurred by the Territory in so carrying out such a Contract obligation will be a debt due from the Contractor to the Territory.

8.30 Access Hours

Unless otherwise agreed in writing between the Contractor and the Contract Administrator, the hours of access applicable to the Contractor's Activities to be carried out on Site are those set out in the Contract Particulars.

8.31 Salvaged Materials

Subject to clause 8.29, unless expressly stated to the contrary in the Contract or directed by the Contract Administrator, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Works are the property of the Contractor.

8.32 Contract Administrator's Office

- (a) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, provide and erect on the Site, where directed by the Contract Administrator, the temporary office and associated facilities and services specified in the Contract Particulars for the sole use of the Contract Administrator and the Contract Administrator's Representatives.
- (b) The Contract Administrator's Office will remain the property of the Contractor.
- (c) Without limiting paragraph (a), the Contractor must:

- (i) carry out all installations and connections necessary to provide lighting, heating, air conditioning and a separate telephone line to the Contract Administrator's Office;
- (ii) install all lighting, heating, air conditioning and telephones in the Contract Administrators Office as directed by the Contract Administrator;
- (iii) maintain the Contract Administrator's Office at its cost until the last Date of Completion, including all necessary attendances, cleaning and maintenance;
- (iv) pay all costs of installation, consumption, rental and removal of all lighting, heating, air conditioning and telephone services in the Contract Administrator's Office (excluding the cost of calls which to be paid for by the Contract Administrator); and
- (v) remove the Contract Administrator's Office within 7 days of the last Date of Completion.

8.33 Project Signboards

- (a) The Contractor must provide the number of project signboards specified in the Contract Particulars, each of which must:
 - (i) be in the dimensions specified in the Contract Particulars;
 - (ii) set out:
 - A. the name of the project;
 - B. the names of the parties to the Contract;
 - C. the name of the Contract Administrator;
 - D. a general description of the Works;
 - E. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
 - F. the Target Date;
 - G. the location of the Site office (if any); and
 - H. any other information specified in the Contract Particulars or required by the Contract Administrator.
- (b) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, submit the proposed layout of the project signboards to the Contract Administrator for approval.
- (c) Once approved by the Contract Administrator, the Contractor must:
 - (i) fix the project signboards in the locations directed by the Contract Administrator;
 - (ii) maintain the project signboards until the last Date of Completion; and
 - (iii) dismantle and remove the project signboards within 7 days of the last Date of Completion.

8.34 Measurements and Dimensions

Without limiting clause 8.21:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
- (c) the Territory will not be liable upon any Claim by the Contractor resulting from the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by this clause.

8.35 Pandemic Relief Event

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

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

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

9. QUALITY

9.1 Construction

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard prescribed in the Contract; or
 - B. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Works and which is at least to the same standard as that found in the development referred to in the Contract Particulars; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which:
 - A. comply with the requirements of the Contract; or
 - B. if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Works and which are at least to the same standard as those found in the development referred to in the Contract Particulars; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works; and
- (c) comply with the requirements of the Contract and the National Construction Code and to the extent they are not inconsistent, all relevant standards of Standards Australia.

9.2 Project Plans

- (a) The Contractor:
 - (i) must carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Plans; and
 - (ii) for the purposes of subparagraph (i), must:
 - A. prepare draft Project Plans based on the outline approach to preparing the Project Plans, and performing the Contractor's Activities to be covered by the Project Plans, submitted by the Contractor in its tender for the Contractor's Activities, and otherwise in accordance with the requirements of the Contract and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event no later than the number of days set out in the Contract Particulars after the Award Date for each Project Plan;
 - B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of

days set out in the Contract Particulars to review the draft Project Plans and has not rejected them;

- C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Contract Administrator;
- D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator by the Date for Delivery Phase Agreement;
- E. after the Project Plans have been finalised, continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor) and submit an amended draft of the Project Plan to the Contract Administrator, after which:
 - 1) the Contractor must continue to comply with the requirements of the then current Project Plan until the process in subparagraph (ii) has been completed in respect of the amended draft Project Plan; and
 - 2) subsubparagraphs B - D will apply (to the extent applicable); and
- F. document and maintain detailed records of:
 - 1) reviews, updates, amendments and submissions of each Project Plan;
 - 2) audits or other monitoring of each Project Plan; and
 - 3) training and awareness programs and communications provided to Contractor and Subcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

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

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

9.3 Contract Administrator's Right to Inspect

The Contract Administrator may at any time inspect the Contractor's Activities.

The Contractor however acknowledges that:

- (a) the Contract Administrator owes no duty to the Contractor to:
 - (i) inspect the Contractor's Activities; or
 - (ii) review construction for errors, omissions or compliance with the requirements of this Contract if it does so inspect; and
- (b) no inspection of the Contractor's Activities or review of construction by the Contract Administrator will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations whether under this Contract or otherwise according to law; or
 - (ii) the Territory's rights against the Contractor whether under this Contract or otherwise according to law.

9.4 Inspections and Tests

The Contractor must carry out all tests required by the Contract or directed by the Contract Administrator.

All tests are to be carried out in accordance with any procedure:

- (a) set out in the Contract which may apply to the tests; or
- (b) if no procedure exists, as reasonably directed by the Contract Administrator.

9.5 Costs of inspections and tests

If:

- (a) the Contract Administrator directs the Contractor to carry out a test which:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Defect in respect of which the Contract Administrator gave an instruction under clause 9.6; and
- (b) the results of the test show the work is in accordance with the Contract,

the Contractor will be entitled to have the Contractor's Work Fee (Delivery) increased by the extra costs reasonably incurred by the Contractor which arise directly from Contract Administrator's inspection or test, as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C.

To the extent permitted by law, the Contractor will not be entitled to make (nor will the Territory be liable upon) any Claim arising out of or in connection with the inspection or test, other than:

- (c) under this clause 9.5; or
- (d) for Reimbursable Costs.

9.6 Defects

Subject to paragraphs (b) and (c), the Contractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Works or a Stage, the Contract Administrator discovers or believes there is a Defect, the Contract Administrator may give the Contractor an instruction specifying the Defect and doing one or more of the following:

- (a) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising the Contractor that the Territory will accept the work, or any part of it, despite the Defect.

9.7 Correction of Defect or Variation

If an instruction is given under clause 9.6(a) or (b), the Contractor must correct the Defect or carry out the Variation:

- (a) within the time specified in the Contract Administrator's instruction; and
- (b) if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Works or the Stage as is reasonably possible.

9.8 Claim for Correction of Defect

Where an instruction is given under clause 9.6(a):

- (a) the Contractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a Direction by the Contract Administrator and clause 11.3 applied.

9.9 Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

- (a) the Contractor is not responsible for the Defect (or the relevant part) - the cost of the Variation will be valued in accordance with clause 11.3; or
- (b) the Contractor is responsible for the Defect (or the relevant part):
 - (i) the Contract Administrator will determine:
 - A. the value of the Variation in accordance with clause 11.3; and
 - B. the cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied; and
 - (ii) the difference between the valuations under subparagraph (i) will be dealt with as follows:
 - A. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Contractor will be entitled to the excess; or
 - B. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the difference will be a debt due from the Contractor to the Territory.

9.10 Acceptance of Work

If:

- (a) an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Contractor to the Territory.

9.11 Extension of Defects Liability Period

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

9.12 Common Law Rights not Affected

Neither the Territory's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Territory or Contract Administrator by this clause 9 or any other provision of the Contract;
- (b) the failure by the Territory or the Contract Administrator to exercise any such rights; or
- (c) any instruction of the Contract Administrator under clause 9.6.

9.13 Commissioning and Handover

Without limiting clause 8.24(a)(iii) or the Contractor's obligations or liabilities, or the Territory's or the Contract Administrator's rights under clause 13, the Contractor must:

- (a) fully co-operate with Other Contractors and otherwise to take all steps necessary to ensure:
 - (i) the timely, efficient and comprehensive commissioning of the Works; and
 - (ii) the smooth handover of the Works to, and the initial occupation of the Works by, the Territory;
- (b) without limiting paragraph (a):
 - (i) comply with:
 - A. its Commissioning and Handover Plan; and
 - B. the Commissioning, Handover and Takeover Guidelines; and
 - (ii) in consultation with the Contract Administrator, provide the Territory with such other specific assistance as may be required by the Contract Administrator to

facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Territory;

- (c) as a condition precedent to Completion, hand to the Contract Administrator or any Other Contractor or other person nominated by the Contract Administrator all Project Documents which are required for the use, operation and maintenance of the Works or the relevant Stage; and
- (d) as and when reasonably required by the Contract Administrator, meet with the Contract Administrator and such Other Contractors or other persons as are nominated by the Contract Administrator with a view to ensuring that the Territory and the nominated Other Contractors or other persons have sufficient information to enable the Territory, the nominated Other Contractors or other persons to:
 - (i) occupy, use, operate and maintain the Works or a Stage; and
 - (ii) perform such other activities as may be required by the Territory in respect of the Works.

9.14 Maintenance during Defects Liability Period

To the extent set out in the Contract Particulars, the Contractor must ensure that during the Defects Liability Period for the Works or each Stage such planned and unplanned maintenance is carried out:

- (a) as required by the Commissioning and Handover Plan; and
- (b) as is otherwise necessary to ensure that the Works are, or each Stage is, throughout and at the end of the Defects Liability Period in a condition fit for their intended purpose.

Any maintenance work carried out by the Contractor under this clause is to be Reimbursable Work.

9.15 Defects Records and Reports

- (a) Without limiting clause 9.6, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects during the Defects Liability Period.
- (b) Within 14 days of the end of the Defects Liability Period for the Works or a Stage, the Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator which sets out:
 - (i) adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects;
 - (ii) recommendations for the future maintenance of the Works;
 - (iii) any matters in respect of work health and safety issues; and
 - (iv) any other matters specified in the Contract Particulars or required by the Contract Administrator.

9.16 Quality Assurance

The Contractor:

- (a) must implement the quality assurance process, system or framework in its Quality Plan;

- (b) without limiting clause 6.18, must allow the Contract Administrator or anyone else acting on behalf of the Territory access to the quality assurance process, system or framework of the Contractor and its Subcontractors so as to enable auditing or other monitoring; and
- (c) will not be relieved from compliance with its obligations under the Contract or otherwise at law or in equity as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any direction by the Contract Administrator concerning the Contractor's quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;
 - (iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Territory of the Contractor's compliance with the quality assurance process, system or framework; or
 - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of the Territory, to detect any Contractor's Activities or aspects of the Works which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

10. TIME

10.1 Progress and Time for Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) use its best endeavours to achieve Completion of the Works or each Stage by the relevant Target Date.

10.2 Programming

The Contractor must:

- (a) ensure that all programs prepared by the Contractor under the Contract contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the Program periodically, at least at intervals of no less than that specified in the Contract Particulars, to take account of:
 - (i) changes to the Program; or
 - (ii) delays which may have occurred;
- (c) give the Contract Administrator copies of all programs for approval;
- (d) ensure that the subcontractors adhere to the Program; and
- (e) provide all programs in a format compatible with the software described in the Contract Particulars.

10.3 Contractor Not Relieved

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

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

10.4 Adjustment of Contractor's Work Fee (Delivery) due to Delays

Where:

- (a) the Contractor demonstrates to the satisfaction of the Contract Administrator that the Contractor has actually been delayed:
 - (i) after the Date of Delivery Phase Approval and prior to the Target Date for the Works or a Stage - in achieving Completion of the Works or the Stage by the relevant Target Date; or
 - (ii) after the Target Date for the Works or a Stage - in achieving Completion of the Works or the Stage;

- (b) the cause of the delay:
 - (i) is beyond the control of the Contractor;
 - (ii) arises directly out of an Act of Prevention; and
 - (iii) was not contributed to by the failure of the Contractor to comply with its obligations under the Contract; and

(c) the Contractor:

- (i) within 14 days of the commencement of the delay gives a written notice to the Contract Administrator that in the Contractor's opinion it is entitled to an adjustment of the Contractor's Work Fee (Delivery) under this clause 10.4;
- (ii) as soon as reasonably practicable after providing the notice under subparagraph (i), provides the Contract Administrator with sufficiently detailed particulars to enable the Contract Administrator to make an informed decision; and
- (iii) has taken all proper and reasonable steps necessary and within its control both to preclude, and to minimise the consequences of, the occurrence of the cause of delay,

the Contractor will be entitled to have the Contractor's Work Fee (Delivery) will be increased by the amount of extra costs:

- (iv) reasonably incurred by the Contractor as a result of the delay or disruption;
- (v) less the amount of any costs, expenses or damages suffered or incurred by the Contractor as a result of such delay or disruption which have been included in the value of any Variation or which are otherwise payable to the Contractor under any other provision of the Contract,

as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C.

This amount will be a limitation upon the Territory's liability to the Contractor for any delay or disruption which:

- (d) the Contractor encounters in carrying out the Contractor's Activities; and
- (e) arises out of, or in any way in connection with, an Act of Prevention,

and the Contractor will not be entitled to make, nor will the Territory be liable upon, any Claim in these circumstances other than for the adjustment to be made under paragraph (c) or for Reimbursable Costs.

10.5 Suspension

(a) The Contract Administrator:

- (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
- (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.

(b) If a suspension under this clause 10.5 arises during the Planning Phase, the Contractor will not be entitled to:

- (i) include any costs incurred as a result of the suspension in the Reimbursable Costs;
 - (ii) any adjustment of the Contractor's Work Fee (Planning); or
 - (iii) make any other Claim against the Territory arising out of, or in any way in connection with, the suspension.
- (c) If a suspension under this clause 10.5 arises during the Delivery Phase and as a result of the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (ii) the Contractor's Work Fee (Delivery) will not be adjusted as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any other Claim against the Territory arising out of, or in any way in connection with, the suspension.
- (d) If a suspension under this clause 10.5 arises during the Delivery Phase and as a result of a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) an instruction to suspend under this clause 10.5 will entitle the Contractor to have the Contractor's Work Fee (Delivery) increased by the amount of extra costs reasonably incurred by the Contractor as a result of the suspension, as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C;
 - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any Claim against the Territory arising out of, or in any way in connection with, the suspension other than:
 - A. under this paragraph (d); or
 - B. for Reimbursable Costs.
- (e) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the Contractor's Activities when instructed to do so under this clause 10.5.

10.6 Extension of Time in Approved Subcontract Agreements

The Contractor is required to administer the provisions of each Approved Subcontract Agreement strictly in accordance with their terms and must not approve an extension of time or unilaterally grant an extension of time to any Subcontractor unless:

- (a) the Subcontractor is entitled to such extension of time under the terms of the Approved Subcontract Agreement;
- (b) the Contractor has given notice of the proposed extension of time to the Contract Administrator; and
- (c) the Contract Administrator has given written approval to the extension of time.

11. VARIATIONS

11.1 Variation Price Request

At any time during:

- (a) the Planning Phase; or
- (b) the Delivery Phase prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Territory is considering.

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

Within 21 days of the receipt of a "Variation Price Request" the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:

- (c) the adjustment (if any) to:
 - (i) in the case of a proposed Planning Phase Strategic Works Variation or a proposed Planning Phase Design Continuation Variation, the Contractor's Work Fee (Planning) to carry out the proposed Variation; and
 - (ii) in any other case the Contractor's Work Fee (Delivery) (subject to clause 11.10) to carry out the proposed Variation; and
- (d) the effect (if any) that the carrying out of the proposed Variation will have on:
 - (i) the Reimbursable Costs;
 - (ii) if clause 11.3(c)(i) applies, the Contractor's Work Fee (Delivery) set out in the Delivery Phase Fee Proposal;
 - (iii) if clause 11.3(c)(ii) applies, the Management Fee set out in the Delivery Phase Fee Proposal; and
 - (iv) the then approved program, including the achievement of:
 - A. in the Planning Phase - the Planning Phase Milestone Dates and each Initial Target Date; and
 - B. in the Delivery Phase - each Target Date.

11.2 Variation Order

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 11.1, the Contract Administrator may at any time during:

- (a) the Planning Phase; or
- (b) the Delivery Phase prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.6),

instruct the Contractor to carry out a Variation by a written document titled "Variation Order" in which the Contract Administrator will state one of the following:

- (c) the proposed adjustments to the amounts payable under the Contract as set out in the Contractor's notice under clause 11.1 are agreed and will be made; or
- (d) any adjustment to the amounts payable under the Contract will be determined under clause 11.3.

11.3 Valuation of Variation

- (a) Subject to clauses 9.9(b) and 11.8, the amounts payable under the Contract will be adjusted as follows:
 - (i) where the Variation requires more or less Reimbursable Work, the adjustments to the Reimbursable Costs will be valued as follows:
 - A. as agreed under clause 11.2(c);
 - B. if subsubparagraph A does not apply, in accordance with the rates or prices included in any schedule of rates or schedule of prices under any relevant Approved Subcontract Agreement, if and insofar as the Contract Administrator determines that those rates or prices are applicable to the Variation; or
 - C. if subsubparagraph B does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Contract Administrator;
 - (ii) in the case of a Planning Phase Strategic Works Variation or a Planning Phase Design Continuation Variation, the adjustment to the Contractor's Work Fee (Planning) will be:
 - A. as agreed under clause 11.2(c);
 - B. if subsubparagraph A does not apply, in accordance with the rates and prices in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates or prices are applicable; or
 - C. if subsubparagraph B does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Contract Administrator,

to which will be added or from which will be subtracted the percentage set out in the Table of Variation Rates and Prices of the amount otherwise calculated under this subparagraph (ii); and
 - (iii) where a Variation during the Delivery Phase has a Material Effect, the adjustment to the Contractor's Work Fee (Delivery) will be valued as follows:
 - A. as agreed under clause 11.2(c);
 - B. if subsubparagraph A does not apply, in accordance with the rates and prices in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates or prices are applicable; or

- C. if subsubparagraph B does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Contract Administrator,

to which will be added or from which will be subtracted the percentage set out in the Table of Variation Rates and Prices of the amount otherwise calculated under this subparagraph (iii).

- (b) If the Contractor's Work Fee (Planning), Contractor's Work Fee (Delivery) or Management Fee is adjusted under paragraphs (a)(ii), (a)(iii) or (c)(iii) (as the case may be), then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
 - (i) as agreed by the Contractor and the Contract Administrator; or
 - (ii) if not agreed, as reasonably determined by the Contract Administrator.
- (c) If the Contractor's Work Fee (Planning) is adjusted under paragraph (a)(ii) for a Planning Phase Design Continuation Variation, then:
 - (i) the proposed Contractor's Work Fee (Delivery) in the Delivery Phase Fee Proposal will be adjusted by a corresponding amount:
 - A. as agreed by the Contractor and the Territory; or
 - B. if not agreed under subsubparagraph A, as reasonably determined by the Contract Administrator;
 - (ii) the Contractor's Work Fee (Planning) will be increased by the amount of the Management Fee (if any) foregone as a result of the Planning Phase Design Continuation Variation:
 - A. as agreed by the Contractor and the Territory; or
 - B. if not agreed under subsubparagraph A, as reasonably determined by the Contract Administrator; and
 - (iii) if paragraph (c)(ii) applies, the proposed Management Fee in the Delivery Phase Fee Proposal will be adjusted by a corresponding amount:
 - A. as agreed by the Contractor and the Territory; or
 - B. if not agreed under subsubparagraph A, as reasonably determined by the Contract Administrator.

11.4 Variations Generally

The adjustment determined under clause 11.2 or 11.3 in respect of any Reimbursable Work required for a Variation will be deemed to be in full satisfaction of all Claims in respect of such further work required for the Variation, notwithstanding that the amounts actually payable by the Contractor to relevant Subcontractors in respect of such Reimbursable Work may be more or less than the adjustment.

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

11.5 Omissions

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

11.6 Variations Requested by Contractor

The Contractor may, for its convenience, request the Contract Administrator to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Territory including the amount;
- (c) any benefits which will flow to the Territory from the Variation; and
- (d) the effect which the Variation will have upon the future cost of operating and maintaining the Works.

11.7 Contract Administrator's Determination

After a request is made by the Contractor in accordance with clause 11.6, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or
- (b) approving the request either conditionally or unconditionally.

The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.

11.8 Variation Approved by Contract Administrator

If the Contract Administrator issues a written notice under clause 11.7 approving the Contractor's request under clause 11.6:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Territory arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Territory, the amounts payable under the Contract (or the methods of determining them) will be reduced or adjusted in accordance with the Contractor's offer; and
- (c) the Contractor will be responsible for all parts of the Works which are in any way affected by the Variation.

11.9 Allowances in Contractor's Work Fee (Planning)

The Contractor acknowledges and agrees that:

- (a) during the Planning Phase, the Contractor's obligations are output-based rather than input-based, in that (without limitation) it is paramount to the Territory in engaging the Contractor under the Contract that it achieve:
 - (i) the Planning Phase Milestones by the Planning Phase Milestone Dates;
 - (ii) Delivery Phase Agreement by the Date for Delivery Phase Agreement; and

- (iii) Delivery Phase Approval by the Date for Delivery Phase Approval;
- (b) the scope of the Contractor's Work (Planning) is therefore not fixed but subject to fluctuation depending on the requirements of users of the Works, internal administrative processes, political imperatives and other matters which may be beyond the reasonable control of the Contractor;
- (c) it is deemed to have allowed in its lump sum Contractor's Work Fee (Planning) for all of the Contractor's Work (Planning) that may be required, whether to achieve the paramount matters referred to in paragraph (a) or otherwise, during the Planning Phase, other than in respect of:
 - (i) a Planning Phase Strategic Works Variation or a Planning Phase Design Continuation Variation; or
 - (ii) any entitlement to an adjustment of the Contractor's Work Fee (Planning in accordance with clause 8.35(d)(i); and
- (d) it will not be entitled to any increase in the Contractor's Work Fee (Planning), or to make any other Claim against the Territory, arising out of or in connection with any change in the scope of the Contractor's Work (Planning) (from what the Contractor had anticipated at the time that it tendered the Contractor's Work Fee (Planning)), other than in respect of:
 - (i) a Planning Phase Strategic Works Variation or a Planning Phase Design Continuation Variation; or
 - (ii) any entitlement to an adjustment of the Contractor's Work Fee (Planning in accordance with clause 8.35(d)(i).

A.

11.10 Allowances in Reimbursable Costs

- (a) Without limiting clause 11.9 and subject to paragraph (b), the Contractor acknowledges and agrees that all Subcontractors engaged to perform Reimbursable Work during the Planning Phase on a lump sum basis:
 - (i) are deemed to have allowed in their lump sums for all of the Reimbursable Work that may be required, whether to achieve the paramount matters referred to in clause 11.9(a) or otherwise, during the Planning Phase, other than in respect of:
 - A. a Planning Phase Strategic Works Variation or a Planning Phase Design Continuation Variation; or
 - B. any entitlement for Reimbursable Costs as contemplated by clause 8.35(e)(ii); and
 - (ii) will not be entitled to any increase in the lump sum or to make any other Claim against the Territory arising out of or in connection with any change in the scope of the Reimbursable Work during the Planning Phase (from that which the relevant Subcontractor anticipated at the time that it tendered its lump sum), other than in respect of:
 - A. a Planning Phase Strategic Works Variation or a Planning Phase Design Continuation Variation; or

- B. any entitlement for Reimbursable Costs as contemplated by clause 8.35(e)(ii),

and the Contractor must ensure that this is reflected in the terms of each relevant Approved Subcontract Agreement.

- (b) The Contract Administrator may (in its absolute discretion) direct the Contractor in writing that paragraph (a) does not apply to the Approved Subcontract Agreement specified in the notice (whether with or without such conditions as the Territory thinks fit).
- (c) The Contractor acknowledges and agrees that:
 - (i) nothing in clause 11.10 confers any rights or entitlements on the Contractor;
 - (ii) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Territory be liable upon) any Claim arising out of or in connection with the giving of, or failure to give, a direction under clause 11.10; and
 - (iii) except to the extent that the Contract Administrator directs in writing that paragraph (a) is not to apply to an Approved Subcontract Agreement, neither clause 11.10 nor the giving of, or failure to give, a direction under paragraph (b):
 - A. relieves the Contractor from, or alters or affects, the Contractor's liabilities or responsibilities whether under the Contract or otherwise at law or in equity; or
 - B. prejudices the Commonwealth's rights against the Contractor whether under the Contract or otherwise at law or in equity.

11.11 Allowances in Contractor's Work Fee (Delivery)

The Contractor acknowledges and agrees that:

- (a) it is deemed to have made an allowance in its lump sum Contractor's Work Fee (Delivery) for all of the Contractor's Work (Delivery) which may be required during the Delivery Phase, other than additional Contractor's Work (Delivery):
 - (i) arising out of Variations instructed by the Contract Administrator in the Delivery Phase under this clause 11 which have a Material Effect; or
 - (ii) for which the Contractor is entitled to an adjustment under clause 8.19(e), 8.29, 8.35(d)(i), 10.4(c), 10.5(d)(i), or 11.3(a)(iii); and
- (b) it will not be entitled to any increase in the Contractor's Work Fee (Delivery), or to make any other Claim against the Territory other than:
 - (i) under paragraph (a)(i) where the Variation during the Delivery Phase has a Material Effect; or
 - (ii) for Reimbursable Costs.

12. PAYMENT

12.1 Payment obligation

Subject to clause 12.15 and to any other right to set-off which the Territory may have, the Territory will pay the Contractor in progressive payments as follows:

- (a) the Contractor's Work Fee (Planning) in instalments in accordance with the Milestone Fee Payment Schedule;
- (b) the Reimbursable Costs (both during the Planning Phase and (if the Territory proceeds to the Delivery Phase) the Delivery Phase) in monthly instalments based on the contract value of the Reimbursable Work which has been carried out;
- (c) if the Territory proceeds to the Delivery Phase - the:
 - (i) Contractor's Work Fee (Delivery); and
 - (ii) Management Fee,in instalments in accordance with the Milestone Fee Payment Schedule;
- (d) the Incentive (if any) - in accordance with clause 18.4 and at the times set out in the Contract Particulars (Delivery Phase); and
- (e) any other amounts which are payable by the Territory under the Contract.

12.2 Payment Claims

Subject to clause 12.3, the Contractor must give the Contract Administrator claims for payment on account of all amounts then payable by the Territory to the Contractor under the Contract:

- (a) monthly, at the times stated in the Contract Particulars until Completion or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after Completion or the Defects Liability Period (as the case may be), within the time required by clause 12.9 or 12.11 (as the case may be);
- (c) in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
- (d) which show separately the amounts (if any) claimed on account of:
 - (i) the Contractor's Work Fee (Planning);
 - (ii) the Reimbursable Costs payable to:
 - A. Subcontractors; and
 - B. the Contractor;
 - (iii) the Contractor's Work Fee (Delivery);
 - (iv) the Management Fee;
 - (v) the Incentive; and
 - (vi) all other amounts then payable by the Territory to the Contractor under the Contract; and

- (e) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Territory to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally; and
- (f) by way of email to the email address specified in the Contract Particulars marked to the attention of the Contract Administrator.

12.3 Conditions Precedent to submission of a Payment Claim

- (a) The Contractor's entitlement to submit a payment claim under clause 12.2 is conditional upon the Contractor having:
 - (i) provided the Territory with Approved Security for the amount (if any) required under clause 4.1 and any related company guarantee required under clause 4.4;
 - (ii) obtained the insurance required by clause 5.4 and (if requested) provided evidence of this to the Contract Administrator;
 - (iii) complied with its programming obligations under clause 10.2;
 - (iv) complied with clause 12.16;
 - (v) complied with clause 12.21;
 - (vi) complied with clause 12.22;
 - (vii) provided the Contract Administrator with duly executed copies of:
 - A. the Trust Deed;
 - B. any Subcontractor Deed of Covenant or Consultant Deed of Covenant (as the case may be) that the Contractor is required to obtain under the Contract;
 - C. the Consultant Deeds of Novation (if any) required under clause 6.20; and
 - D. the certificates required under clause 6.22;
 - (viii) if clause 6.7(b) or 14.8(b)(ii) applies - complied with clause 6.7(b) or 14.8(b)(ii) (as the case may be); and
 - (ix) provided all relevant information as required under the WHS Legislation or under this Contract arising out of or in connection with work health and safety.
- (b) If the Contractor has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
 - (i) the payment claim is deemed to have been invalidly submitted under clause 12.2;

- (ii) the Contract Administrator will not be obliged to include in any payment schedule under clause 12.4 any amount included in the payment claim; and
 - (iii) the Territory will not be liable to pay any amount included in the payment claim.
- (c) If the Contractor:
- (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of clause 12.2(e) in relation to any amount (or portion of any amount) claimed in the payment claim,
- then:
- (iii) the Contractor will not be entitled to payment of;
 - (iv) the Contract Administrator will not be obliged to include in any payment schedule it may choose to issue under clause 12.4; and
 - (v) the Territory will not be liable to pay,
- the amount (or the portion of the amount) claimed in the payment claim in relation to which the Contractor has failed to comply with the requirements of clause 12.2(e), unless:
- (vi) the Contract Administrator (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Contractor) issues a written notice to the Contractor identifying the documentation or information which the Contractor has failed to provide under clause 12.2(e); and
 - (vii) the Contractor provides that documentation or information to the Contract Administrator within the time required in the Contract Administrator's notice.

12.4 Payment Schedules

The Contract Administrator:

- (a) may, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or
- (b) may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time,

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

- (c) the payment claim to which it relates (if any);
- (d) the Contractor's total value of entitlement to payment under the Contract;
- (e) the amount already paid to the Contractor;
- (f) the amount (if any) which the Contract Administrator believes to be then payable by the Territory to the Contractor on account of all amounts payable in accordance with the Contract and which the Territory proposes to pay to the Contractor; and
- (g) if the amount in paragraph (f) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and

- (ii) if the reason for the difference is that the Territory has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

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

- (h) approval of the Contractor's Activities or the Works, nor will it be taken as an admission or evidence that the part of the Works covered by the payment schedule has been satisfactorily carried out in accordance with the Contract; or
- (i) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which the Territory expressly waives such requirements in respect of the payment claim the subject of the payment schedule;
- (j) an admission or evidence of the value of the Contractor's Activities or the Works or that the Contractor's Activities or the Works comply with the Contract;
- (k) an admission or evidence of liability; or
- (l) otherwise, any approval, admission or evidence by the Territory or the Contract Administrator of the Contractor's performance or compliance with the Contract.

12.5 Payment

Within the number of business days stated in the Contract Particulars of the Territory receiving a payment claim under clause 12.4, the Territory will pay the Contractor either:

- (a) the amounts set out in the payment claim; or
- (b) if the payment schedule is issued, the amount set out in the payment schedule,

with the amount set out in the payment schedule to prevail in the event of inconsistency, and in that case:

- (c) the Reimbursable Costs payable to the Subcontractors will be:
 - (i) paid by the Territory into the Trust Account; and
 - (ii) held by the Contractor on trust for the Subcontractors in accordance with the terms of the Trust Deed; and
- (d) the balance will be paid by the Territory to the Contractor.

The Contractor acknowledges and agrees that:

- (e) subject to subparagraph (g):
 - (i) only Reimbursable Cost payable to Subcontractors must be paid into or distributed out of the Trust Account; and
 - (ii) monies payable to the Contractor under the Contract must not be paid into or distributed out of the Trust Account;
- (f) where an Approved Subcontract Agreement provides for retention monies, such retention monies must not be paid into or distributed out of the Trust Account unless or until they are due and payable in accordance with the relevant Approved Subcontract Agreement; and

- (g) the Contractor is only entitled to payment out of the Trust Account in accordance with the Trust Deed.

12.6 Payment on Account

Any payment of moneys under clause 12.5 is not:

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

but is only to be taken as payment on account.

12.7 Unfixed Goods and Materials

Unfixed goods or materials will not be included in the value of work in a payment schedule under clause 12.4 unless:

- (a) the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
- (b) the Contractor gives the Contract Administrator with its payment claim under clause 12.2:
 - (i) additional Approved Security equal to the payment claimed for the unfixed goods and materials; and
 - (ii) such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in the Territory upon payment;
- (c) the unfixed goods and materials are clearly marked as the property of the Territory and are on the Site or available for immediate delivery to the Site; and
- (d) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.

Upon payment of the amount set out in a payment claim or payment schedule, if one is issued, which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Territory.

12.8 Release of Additional Approved Security

If the Contractor has given the Territory additional Approved Security for payment for unfixed goods and materials, the Territory must release it to the Contractor once those goods and materials are incorporated into the Works.

12.9 Completion Payment Claim and Notice

Within 56 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Notice of Completion for the Works or a Stage, the Contractor must give the Contract Administrator:

- (a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Territory on account of all amounts payable under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Territory,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

- (c) in the case of the Works, occurred prior to the Date of Completion of the Works; or
- (d) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under this clause 12.9 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.10 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.9 has passed, the Contractor releases the Territory from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

- (a) in the case of the Works, occurred prior to the Date of Completion of the Works; or
- (b) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.9 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.9.

12.11 Final Payment Claim and Notice

Within 56 days (or such longer period agreed in writing by the Contract Administrator) after the end of the Defects Liability Period for the Works or a Stage, the Contractor must give the Contract Administrator:

- (a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from the Territory on account of all amounts payable under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Territory,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

- (c) in the case of the Works, occurred during the Defects Liability Period for the Works; or
- (d) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under this clause 12.11 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.12 Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Contractor releases the Territory from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

- (a) in the case of the Works, occurred during the Defects Liability Period for the Works; or
- (b) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

12.13 Interest

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

- (a) amount in a payment claim (or if an alternative amount is proposed in a payment schedule under clause 12.4, the amount in that payment schedule) which is not paid by the Territory within the time required by the Contract; and
- (b) damages.

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

12.14 Correction of Payment Schedule

The Contract Administrator may, in any payment schedule:

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

issued by the Contract Administrator.

12.15 Right of Set-Off

The Territory may:

- (a) deduct from moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to the Territory; and
 - (ii) any claim to money which the Territory may have against the Contractor whether for damages or otherwise, under the Contract or otherwise at law or in equity arising out of or in connection with the Works or the Contractor's Activities; and
- (b) without limiting paragraph (a), deduct any debt, other moneys due or any claim referred to in paragraphs (a)(i) or (a)(ii) from any:
 - (i) amount which may be or thereafter become payable to the Contractor by the Territory in respect of any Variation the subject of a "Variation Order" under clause 11.2; or
 - (ii) without limiting the unconditional nature of the security held under clause 4.1, the security held under clause 4.1.

12.16 Payment of Workers and Subcontractors

The Contractor must, if requested by the Contract Administrator in relation to any payment claim under clause 12.2, with that payment claim provide the Contract Administrator with:

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

The Territory is entitled to withhold from any payment which would otherwise be due to the Contractor under the Contract the amount disclosed as unpaid under this clause 12.16.

12.17 Accounting Records

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

- (a) Reimbursable Costs incurred or expended by the Contractor;
- (b) Variations; and
- (c) the Trust Account.

12.18 GST

- (a) Subject to paragraphs (b) and (c), where any supply occurs under or in connection with the Contract or the Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Reimbursable Costs payable into the Trust Account will not be reduced for any input tax credits and will be paid in full into the bank account. In consideration of this, the Contractor is not entitled to any additional amount in respect of GST on Reimbursable Costs.
- (c) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Works (other than on account of Reimbursable Costs paid into the Trust Account) which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).

- (d) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (e) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (f) In this clause 12.18, subject to clause 1.1, terms used that are defined in the GST Legislation have the same meaning given to them in the GST Legislation.

12.19 Trust Deed and Trust Account

- (a) Within 7 days of the Award Date, the Contractor must:
 - (i) execute the Trust Deed;
 - (ii) set up a bank account in accordance with the Trust Deed (**Trust Account**); and
 - (iii) deliver an executed copy of the Trust Deed to the Contract Administrator.
- (a) The Territory or the Contract Administrator may (in its absolute discretion and without an obligation to do so):
 - (i) review, audit or otherwise monitor; or
 - (ii) engage a third party to review, audit or otherwise monitor,
 the Contractor use and operation of the Trust Account and the Contractor must:
 - (iii) co-operate with the Territory, the Contract Administrator and any third party; and
 - (iv) otherwise comply with its obligations under clause 6.18.

12.20 Security of Payment Legislation

- (a) The Contractor agrees with the Territory that:
 - (i) a payment claim submitted to the Contract Administrator under clause 12.2 which also purports to be a payment claim under the relevant Security of Payment Legislation is received by the Contract Administrator as agent for the Territory;
 - (ii) unless otherwise notified to the Contractor by the Territory in writing, the Contract Administrator will give payment schedules and carry out all other functions of the Territory under the relevant Security of Payment Legislation as the agent of the Territory; and
 - (iii) to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clauses 12.2(a) and 12.2(b) on which the Contractor has satisfied the requirements of clause 12.3(a).

- (b) Failure by the Contract Administrator to set out in a payment schedules issued under the relevant Security of Payment Legislation or otherwise an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Territory will not prejudice:
 - (i) the Contract Administrator's ability or power to set out in a subsequent payment schedule an amount which the Territory is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Territory; or
 - (ii) the Territory's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (c) The Contractor agrees that the amount set out in the payment schedule in accordance with clause 12.4(f) is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of this Contract, which the Contractor is entitled to in respect of the Contract.
- (d) The Contractor irrevocably chooses the person set out in the Contract Particulars as, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation and to the extent that the relevant Contractor's Activities are to be carried out in the Territory, as authorised nominating authority.
- (e) The Contractor must not at any time, without the written consent of the Territory, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Territory or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation (in this paragraph, the **Information**).

For the avoidance of doubt:

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

12.21 Cost Allocation Advice

Without limiting clauses 3.10 and 12.2, for the purposes of assisting the Territory to report on an accrual basis, the Contractor must, with each payment claim under clause 12.2, provide the Contract Administrator with accurate information which apportions monthly costs against buildings,

infrastructure and expenses for all work completed in the previous month, in a format approved by the Contract Administrator.

12.22 Facilities and Infrastructure Accounting

Without limiting clauses 3.10 and 12.2, for the purposes of assisting the Territory to bring all completed facilities and infrastructure to account, as a condition precedent to Completion of the Works or a Stage, the Contractor must provide a cost report to the Contract Administrator which sets out:

- (a) details of the Contract Price (or part) paid in respect of the Works or the Stage;
- (b) the matters specified in the Contract Particulars; and
- (c) any other matters required by the Contract Administrator.

12.23 Trust Account Administration

- (a) The Contractor must:
 - (i) operate the Trust Account strictly in accordance with the terms of the Contract and the Trust Deed;
 - (ii) maintain a current and detailed list of all Approved Subcontract Agreements and retain full executed copies of all Approved Subcontract Agreements;
 - (iii) pay all Subcontractors:
 - A. within two business days of the time the relevant Reimbursable Costs are paid into the Trust Account by the Territory under clause 12.5(c)(i); or
 - B. where:
 - 1) the Contractor has submitted a claim for payment under clause 12.2, which includes an amount claimed on account of Reimbursable Costs payable to a Subcontractor; and
 - 2) the Contract Administrator has issued a payment schedule under clause 12.4 rejecting the Contractor's claim for payment on the basis that the Contractor has failed to satisfy a condition precedent to payment under clause 12.3,but where the Subcontractor is nonetheless entitled to payment under the relevant Approved Subcontract Agreement, within two business days;
 - (iv) each month, perform a reconciliation of the Trust Account to the satisfaction of the Contract Administrator, to establish that the Trust Account is being operated strictly in accordance with the terms of the Contract and the Trust Deed; and
 - (v) include in each monthly report submitted by the Contractor under clause 3.10, detailed particulars of:
 - A. the status of the Trust Account;
 - B. the outcome of the monthly reconciliation under subparagraph (iv), including any unreconciled amounts and a detailed explanation of the reason for any such unreconciled amounts;

- C. the balance of any interest accrued, cumulative operating costs and bank charges in respect of the Trust Account, together with the balance owing to each beneficiary; and
 - D. any identified actual or potential non-compliances in the operation of the Trust Account with the terms of the Contract or the Trust Deed, including in respect of the payment of Subcontractors or otherwise.
- (b) The Contractor acknowledges and agrees that:
 - (i) only Reimbursable Costs due and payable to Subcontractors must be paid into the Trust Account; and
 - (ii) monies (other than Reimbursable Costs payable to Subcontractors) not due and payable to Subcontractors must not be claimed by the Contractor as Reimbursable Costs payable by the Territory into the Trust Account (including any retention monies that have not yet become due and payable the relevant Subcontractor under the relevant Approved Subcontract Agreement).
- (c) The Contractor must ensure that each subcontract (including each Approved Subcontract Agreement) includes provisions giving effect to the obligations of the Contractor in clause 12.23(a)(iii).

For the avoidance of doubt, any retention monies retained by the Contractor under Approved Subcontract Agreements do not form part of the Reimbursable Cost unless or until such retention monies become due and payable under the relevant Approved Subcontract Agreement.

13. COMPLETION

13.1 Contractor to Notify

- (a) Nothing in this clause 13 limits the Contractor's obligations or liabilities, or the Territory's or the Contract Administrator's rights, under clause 9.13.
- (b) The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Completion of the Works or a Stage.

13.2 Contract Administrator to Inspect

The Contract Administrator must:

- (a) promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Works or the Stage; and
- (b) if:
 - (i) satisfied that Completion has been achieved, issue a notice to the Territory and the Contractor:
 - A. stating the date upon which the Contract Administrator determines Completion was achieved; and
 - B. containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Completion" in clause 1.1; or
 - (ii) not satisfied that Completion has been achieved, issue a notice so advising the Contractor and the Territory.

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

- (c) proceed to bring the Works or the Stage to Completion; and
- (d) when it considers it has achieved Completion, give the Contract Administrator written notice to that effect (after which this clause 13.2 will reapply).

13.3 Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1(b) or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Completion of the Works or a Stage has been achieved, the Contract Administrator may issue a Notice of Completion under clause 13.2(b)(i) for the Works or the Stage.

13.4 Take Over Upon Completion

Upon the issue of a Notice of Completion, the Contractor must:

- (a) hand over the Works or the Stage to the Territory; and
- (b) correct all Defects listed in the Notice of Completion as soon as possible.

13.5 Part of the Works or a Stage

- (a) The Territory may, after written notice is given to the Contractor by the Contract Administrator, occupy or use any part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.

- (b) If any such notice is given by the Contract Administrator, the Territory must allow the Contractor reasonable access to the part of the Works or the Stage referred to in the notice and being occupied or used by the Territory, to enable the Contractor to bring the Works or the relevant Stage of which the area being occupied or used forms part to Completion.
- (c) Without limiting paragraph (a), the Contract Administrator may, at any time during the Delivery Phase by written notice to the Contractor, direct that:
 - (i) any part of the Works or any part of a Stage is to be a new Stage notwithstanding the whole of the Works or the Stage has not reached Completion; and
 - (ii) the Target Date for the new Stage created under subparagraph (i) is to be the date set out in the notice.
- (d) A notice under paragraph (a) or (c) will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to use its best endeavours to achieve Completion of the Works or each Stage by the relevant Target Date.

13.6 Effect of Notice of Completion

A Notice of Completion will not:

- (a) constitute approval of the Contractor's Activities, the Works or the Stage, nor will it be taken as an admission or evidence that the Contractor's Activities, the Works or the Stage have or has been satisfactorily carried out in accordance with the Contract;
- (b) constitute an admission or evidence that the Contractor's Activities, the Works or the Stage comply or complies with the Contract;
- (c) otherwise, constitute any approval, admission or evidence by the Commonwealth or the Contract Administrator of the Contractor performance or compliance with the Contract; or
- (d) prejudice any rights or remedies of the Commonwealth or Contract Administrator under the Contract or otherwise at law or in equity.

14. TERMINATION

14.1 Preservation of Rights

Subject to clause 14.6, nothing in this clause 14 or that the Territory does or fails to do pursuant to this clause 14 will prejudice the right of the Territory to exercise any right or remedy (including recovering damages) which it may have where the Contractor breaches (including repudiates) the Contract.

14.2 Contractor Default

The Territory may give a written notice under clause 14.3 to the Contractor if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.5 or otherwise does not proceed with the Contractor's Activities regularly and diligently;
- (c) fails to provide security as required by clause 4.1 or the related company guarantee as required under clause 4.4;
- (d) fails to comply with any of its obligations under clause 5.4 or 5.6;
- (e) fails to comply with any of its obligations under clause 8.23 and 8.24;
- (f) fails to comply with any of its obligations under clause 12.19;
- (g) fails to comply with any of its obligations under clause 22;
- (h) [TBC if required:] materially fails implement the Indigenous Participation Plan or comply with a direction issued by the Contractor Administrator under clause 18.2(f);
- (i) fails to use the materials or standards of workmanship required by the Contract;
- (j) does not comply with any Direction of the Contract Administrator made in accordance with the Contract;
- (k) is otherwise in substantial breach of the Contract;
- (l) fails to comply with any of its obligations under Annexure 2; or
- (m) is found to have made (or had made by its representative) a false statement in a statutory declaration provided in accordance with this Contract.

14.3 Contents of Notice of Default

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Territory requires the Contractor to remedy the breach within the number of days set out in the Contract Particulars of receiving the notice.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within the number of days set out in the Contract Particulars of receiving the notice under clause 14.3,

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

14.5 Territory's Entitlements after Termination

Subject to clause 14.1, if the Territory terminates the Contract under clause 14.4, or if the Contractor repudiates the Contract and the Territory otherwise terminates the Contract:

- (a) the Territory will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works;
 - (ii) be entitled to require the Contractor to novate to the Territory or the Territory's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Territory;
 - (iii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or a payment schedule under clause 12.4; and
 - (iv) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Contractor must immediately hand over to the Territory all copies of:
 - (i) documents provided by the Territory in connection with the Contractor's Activities; and
 - (ii) Project Documents prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's Entitlements after Termination

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

- (a) be entitled to claim an amount determined in accordance with clause 14.8 as if the Territory had terminated the Contract under clause 14.7; and
- (b) not be entitled to a quantum meruit.

This clause 14.6 will survive the termination of the Contract.

14.7 Termination for Convenience

Without prejudice to any of the Territory's other rights under this Contract, and without being limited by the Territory's rights under clause 6, the Territory may:

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

14.8 Contractor's Entitlements after Termination for Convenience by Territory

If the Territory terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Contract Administrator:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:
 - A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - B. title in the goods and materials will vest in the Territory upon payment; and
 - (iii) the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
 - (ii) immediately hand over to the Territory all copies of:
 - A. documents provided by the Territory in connection with the Contractor's Activities; and
 - B. Project Documents prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Territory's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)) and the Contractor will not be entitled to make any Claim against the Territory arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

This clause 14.8 will survive the termination of the Contract by the Territory under clause 14.7 or by the Contractor following repudiation by the Territory.

15. DISPUTES

15.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Territory or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

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

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

15.2 Expert Determination

If the dispute or difference is in relation to a Direction of the Contract Administrator under one of the clauses referred to in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

15.3 The Expert

- (a) The expert determination under clause 15.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under this clause 15.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under this clause 15; or
 - (v) does not make a determination within the time required by clause 15.8,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

15.4 Not Arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.5 Procedure for Determination

The expert will:

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

15.6 Disclosure of Interest

The expert must:

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

15.7 Costs

Each party will:

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

15.8 Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 28 days from the acceptance by the expert of his or her appointment.

15.9 Agreement with Expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

- (b) The parties must enter into an agreement with the appointed expert on the terms set out in the Schedule of Collateral Documents or such other terms as the parties and the expert may agree.

15.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant Direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

15.11 Executive Negotiation

- (a) If:
 - (i) clause 15.2 applies, and a notice of appeal is given under clause 15.10; or
 - (ii) clause 15.2 does not apply,the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
 - (i) 21 days of:
 - A. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - B. otherwise, the notice of appeal given under clause 15.10; or
 - (ii) such longer period of time as the Executive Negotiators may agree in writing, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

15.12 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - (ii) otherwise, the notice of appeal given under clause 15.10; or
- (b) such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

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

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

15.13 Arbitration

- (a) Arbitration pursuant to this clause will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in this clause.
- (b) The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
- (c) Nothing in this clause is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 1986* (ACT). For the avoidance of doubt, the second sentence of Article 28(6) of the ICC Rules (in force from 1 January 1998) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under this clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
 - (ii) any arbitration conducted pursuant to this clause will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Federal Court of Australia at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Canberra, Australia and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

- (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
 - (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

15.14 Proportional Liability

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

15.15 Continuation of Contractor's Activities

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

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

16. NOTICES

16.1 Notice of Variation

If a Direction by the Contract Administrator, other than a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Territory arising out of, or in any way in connection with, the Direction:

- (a) within 7 days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Contract Administrator that it considers the Direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Contract Administrator, including any Direction in respect of which notice has been given under this clause 16.1.

16.2 Notices of Other Claims

Except for claims for:

- (a) payment under clause 12.2 of any component of the Contract Price; or
- (b) a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Contractor must give the Contract Administrator the notices required by clause 16.3 if it wishes to make a Claim against the Territory in respect of any Direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by the Territory) under, arising out of, or in any way in connection with, the Contractor's Activities or the Contract, including anything in respect of which:

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

16.3 Prescribed Notices

The notices referred to in clause 16.2 are:

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

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

16.4 Continuing Events

If the Direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contract Administrator, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time Bar

If the Contractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

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

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

16.6 Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Territory.

16.7 Address for Service

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

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post, sent by electronic mail (except for notices under clauses 14 and 15 which, if sent by electronic mail, must additionally be delivered by hand or sent by prepaid express post), as the case may be, to the relevant address:
 - (i) stated in the Contract Particulars; or
 - (ii) last notified in writing to the party giving or serving the notice,for the party to whom or upon which the notice is to be given or served; and

- (b) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
- (c) in the case of notices sent by email:
 - (i) be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
 - (ii) include the words "This is a notice under clause 16.7 of the Contract" in the subject field of the email.

16.8 Receipt of Notices

A notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:

- (a) delivery by hand, on delivery;
- (b) prepaid post sent to an address in the same country, on the fifth day after the date of posting;
- (c) prepaid post sent to an address in another country, on the seventh day after the date of posting;
- (d) electronic mail, on the other party's acknowledgement of receipt by any means.

In the case of notices under clauses 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post, the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:

- (e) the date the notice sent by email is taken to be received; or
 - (f) the date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with paragraphs (a) – (d).

17. ESD AND WOL

17.1 Design and Construction

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

- (a) design the parts of the Works which the Contract requires it to design; and
- (b) construct the Works,

in a manner which:

- (c) complies with the requirements of the EDS and WOL Plan; and
- (d) achieves the ESD Principles and WOL Objectives.

17.2 Consultation

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

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

17.3 ESD and WOL Proposals

Without limiting its other Contract obligations, the Contractor must at all times in carrying out the Contractor's Activities:

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

17.4 Reporting

The Contractor must provide the Contract Administrator with a written performance report:

- (a) at least 14 days prior to each meeting in accordance with clause 3.9(a); and
- (b) in such form and on such matters as the Contract Administrator may require from time to time, including a detailed explanation of the Contractor's compliance with the ESD and WOL Plan.

17.5 Post Occupancy Evaluation

The Contract Administrator may:

- (a) at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and

- (b) without limiting paragraph (a):
 - (i) inspect the Works to review the extent to which the Contractor has complied with the ESD and WOL Plan and otherwise maximised the achievement of the ESD Principles and WOL Objectives in the design and construction of the Works; and
 - (ii) issue a report to the Territory and the Contractor:
 - A. stating the extent to which the Contractor has complied with the ESD and WOL Plan and otherwise maximised the achievement of the ESD Principles and WOL Objectives in the design and construction of the Works; and
 - B. containing a list of any aspects of the Works which do not conform with the requirements of the Contract.

The Contractor:

- (c) must consult with the Contract Administrator and Other Contractors, and must provide such other assistance as is necessary, for the purposes of the Contract Administrator carrying out the requirements in paragraphs (a) and (b); and
- (d) acknowledges that the results of the post occupancy evaluation may be used in the evaluation of future tenders submitted by the Contractor to the Territory.

17.6 Rights and Obligations Not Affected

Neither the Territory's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Territory or Contract Administrator by this clause 17 or the failure by the Territory or the Contract Administrator to exercise any such rights;
- (b) the obligations imposed upon the Contractor by this clause 17 or the Contractor's compliance with those obligations; or
- (c) any Direction of the Contract Administrator under or purported to be given under the Contract, including any comment or Direction upon or review, acceptance or rejection of:
 - (i) any advice, recommendation or other assistance provided by the Contractor under this clause 17; or
 - (ii) any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.5.

18. KPIS AND INCENTIVE

18.1 Purpose of KPIs

- (a) Clause 18 (other than this paragraph (a)) does not apply unless it is agreed by the parties under clause 6.4 that it applies.
- (b) The Contractor acknowledges that the purpose of the KPIs is to specify quantitative and qualitative assessment mechanisms to enable the parties to measure the performance of the Contractor under the Contract against specified targets for the purpose of calculating the extent to which the Incentive is payable to the Contractor.

18.2 Recording Performance Against KPIs

The Contractor:

- (a) must keep sufficient records of its performance as against the KPIs to enable the Contract Administrator to evaluate the performance of the Contractor under the Contract; and
- (b) acknowledges that the records required to be kept under paragraph (a) will not limit the Contract Administrator's evaluation of the performance of the Contractor under the Contract and the Contract Administrator may consider all such other matters as it considers (in its absolute discretion) to be relevant to the evaluation of the performance of the Contractor under the Contract.

18.3 Meetings

At meetings under clause 3.9, the Contractor must (without limiting clause 3.9) discuss and provide the Territory with all advice which it may require on measurement, review and improvement of the Contractor's performance under the Contract, including the Contractor's performance against the KPIs and determination of any action required where the KPIs indicate that the Contractor's performance under the Contract is unsatisfactory.

18.4 Incentive

- (a) The Contractor must, at the times set out in the Contract Particulars (Delivery Phase), give the Contract Administrator written notice of the amount of the Incentive which it believes it is entitled to be paid.
- (b) The Contract Administrator will determine the amount of the Incentive payable to the Contractor in accordance with clause 12.4 and include that amount (if any) in the payment statement it issues in accordance with clause 12.4.

18.5 Rights and Obligations Not Affected

The parties acknowledge that:

- (a) the purpose of the KPIs is as set out in clause 18.1(b); and
- (b) the parties' rights and obligations, whether under the Contract or otherwise at law or in equity, in relation to the Contractor's Activities, the Works or this Contract, will not be affected or limited by the provisions of this clause 18, anything done or omitted to be done under or purported to be under this clause, the KPIs or the Contractor's performance as against the KPIs.

19. GENERAL

19.1 Workplace Gender Equality

The Contractor must:

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

19.2 [TBC – If the Indigenous participation policy applies to this procurement, insert clauses here]

19.3 Local Industry Participation

- (a) This clause applies unless **Item 90** of the Contract Particulars states that it does not apply.
- (b) The Contractor must implement its commitments set out in its local industry participation plan ("**LIP Plan**") submitted as part of its tender for the Works (subject to any amendments agreed in writing by the Territory).
- (c) The Contractor must provide a local industry participation report ("**LIP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Territory within 6 months of the date of this Contract and on or before the first, and each subsequent, anniversary of this Contract.
- (d) Before or concurrently with the Contractor's submission to the Territory of its final payment claim under clause 12.11 of this Contract, the Contractor must provide to the Territory a final LIP Report ("**Final LIP Report**") that sets out its level of compliance with the commitments provided for in the LIP Plan throughout the term and which is accompanied by a statutory declaration stating the information provided in the Final LIP Report is true and correct.
- (e) The Territory may withhold payment of the final payment claim until submission of a satisfactory Final LIP Report by the Contractor.
- (f) The Contractor must attend any meeting scheduled by the Territory to review how its LIP Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the Principal.
- (g) The Contractor's failure to comply, in whole or in part, with the commitments contained within the LIP Plan may be a factor taken into account in the award of future contracts for the Territory.

19.4 IT Equipment

- (a) Without limiting any other clause of this Contract, the Contractor warrants that:
 - (i) each item of IT Equipment:
 - A. is free of defects in materials and workmanship;
 - B. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Equipment in the Contract or in any documentation accompanying that IT Equipment; and

- C. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Equipment and other parts of the Works, will not be adversely affected by the date; and
 - (ii) no virus will be introduced into the Territory's systems as a result of the supply by the Contractor of any IT Equipment or as a result of any other act or omission of the Contractor in connection with carrying out the Contractor's Activities.
- (b) Without limiting clause 8.9, the Contractor must assign to the Territory, the benefits of warranties given by any supplier from whom the Contractor sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Contractor becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to this clause does not in any way relieve the Contractor of the obligation to comply with warranties given by the Contractor under this Contract.

19.5 Protection of Personal Information

- (a) The Contractor agrees:
 - (i) to comply with the TPPs when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Contract, as if it were an agency as defined in the Privacy Act;
 - (ii) to use Personal Information received, created or held by the Contractor for the purposes of this Contract only for the purposes of fulfilling its obligations under this Contract;
 - (iii) not to disclose Personal Information received, created or held by the Contractor for the purposes of this Contract without the prior written approval of the Contract Administrator;
 - (iv) not to transfer Personal Information received, created or held by the Contractor for the purposes of this Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;
 - (v) to co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with this Contract;
 - (vi) to ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of this Contract is made aware of, and undertakes in writing to observe, the TPPs;
 - (vii) to comply with policy guidelines laid down by the Territory or issued by the Federal Privacy Commissioner from time to time relating to the handling of Personal Information;
 - (viii) to ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of this Contract are, at the expiration or earlier termination of this Contract, at the Contract Administrator's election, to be either returned to the Territory or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;

- (ix) to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;
- (x) to ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of this clause 19.5, as if the subcontractor were the Contractor;
- (xi) to enforce the obligations referred to in subparagraph (x) in accordance with such Directions as the Contract Administrator may give;
- (xii) that Personal Information collected by the Contractor in connection with the Contract must not be used for, or in any way relating to, any direct marketing purpose;
- (xiii) to indemnify the Territory against any loss, liability or expense suffered or incurred by the Territory arising out of, or in connection with:
 - A. a breach of the obligations of the Contractor under this clause 19.5;
 - B. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (x);
 - C. the misuse of Personal Information held in connection with this Contract by the Contractor or a subcontractor; or
 - D. the disclosure of Personal Information held in connection with this Contract by the Contractor or a subcontractor in breach of an obligation of confidence; and
- (xiv) in respect of any Personal Information held in connection with this Contract:
 - A. comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Consultant under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
 - B. co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Privacy Act.
- (b) For the purposes of paragraph (a)(xiii), **loss, liability or expense** includes any compensation paid to a person by or on behalf of the Territory to settle a complaint arising out of, or in any way in connection with, a breach of this clause 19.5 by the Contractor.
- (c) The Contractor must immediately notify the Territory in writing if the Contractor:
 - (i) becomes aware of a breach of the obligations under paragraph (a) by itself or by a subcontractor;
 - (ii) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by paragraph (a)(x);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.

- (d) The Contractor acknowledges that, in addition to the requirements of this clause 19.5, the Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, such as other provisions in the Privacy Act or under provisions of the *Privacy Act 1988* (Cth) (including the Information Privacy Principles) and State and Territory legislation.
- (e) Nothing in this clause 19.5 limits any of the Contractor's other obligations or liabilities under the Contract.
- (f) In this clause 19.5:
 - (i) **Information Privacy Principle** has the meaning given in the *Privacy Act 1988* (Cth); and
 - (ii) **received** includes collected.

19.6 Moral Rights

- (a) To the extent permitted by law, the Contractor:
 - (i) must not, and must take all reasonable steps to ensure that its directors, other officers, employees and subcontractors do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Award Date) in respect of any Project Documents or the Works by:
 - A. the Territory;
 - B. any third party to whom the Territory sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Project Documents or any part of the Works (**Sub-Licensee**);
 - C. any third party to whom the Territory assigns any Intellectual Property Rights in the Project Documents or any part of the Works (**Assignee**); or
 - D. any Other Contractors;
 - (ii) without limiting subparagraph (i), consents to any of the Territory, Other Contractors, Sub-Licensees and Assignees:
 - A. failing to acknowledge or attribute the Contractor's or any other person's authorship of any Project Documents or any part of the Works;
 - B. falsely attributing authorship of any Project Documents or any part of the Works; and
 - C. making any modification, variation or amendment of any nature whatsoever to any Project Documents or any part of the Works, whether or not:
 - 1) it results in a material distortion of or destruction or mutilation of the Project Documents or any part of the Works; or
 - 2) it is prejudicial to the honour or reputation of the Contractor or any other author of any Project Documents or any part of the Works; and

- (iii) without limiting subparagraphs (i) and (ii), consents to any of the Territory, Other Contractors, Sub-Licensees and Assignees:
 - A. using any Project Document or any part of the Works other than for the purpose for which it was intended at the time the Project Document or any part of the Works (as the case may be) was created;
 - B. altering any Project Documents or any part of the Works by adding to or removing elements from, or rearranging elements of, the Project Documents or any part of the Works, including by combining elements of any of the Project Documents or any part of the Works with any other material; or
 - C. changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Project Documents.
- (b) The Contractor must:
 - (i) in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of any Project Documents or any part of the Works, obtain from that person, before he or she creates any Project Documents or any part of the Works, a duly completed and executed Moral Rights Consent;
 - (ii) ensure that no person creates any Project Documents or any part of the Works before that person has duly completed and executed a Moral Rights Consent;
 - (iii) not coerce any person to complete or execute a Moral Rights Consent;
 - (iv) pay to each person who executes a Moral Rights Consent in accordance with this clause 19.6 the sum of \$1 on behalf of the Territory;
 - (v) within 7 days of a Moral Rights Consent having been executed in accordance with this clause 19.6, provide that Moral Rights Consent to the Contract Administrator; and
 - (vi) maintain an up-to-date record of the names and addresses of each person who is an author of any Project Documents or any part of the Works, and the Project Documents or any part of the Worksof which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.

19.7 Freedom of Information

The *Freedom of Information Act 1989* (ACT) (**FOI Act**) gives members of the public rights of access to official documents of the Territory Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Territory Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by directorates and public authorities.

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

19.8 Long Service Leave

Clause 19.8 only applies if any relevant Long Service Leave Legislation applies to the Contractor's Activities.

- (a) Without limiting its other obligations or liabilities under this Contract or otherwise, the Contractor must comply with its obligations under any relevant Long Service Leave Legislation.
- (b) If required by any relevant Long Service Leave Legislation, the Contractor must pay any levy, charge, contribution or associated amount in respect of the Contractor's Activities.
- (c) Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Contractor's Work Fee (Planning) and the Contractor's Work Fee (Delivery) and the Contractor will have no Claim against the Territory arising out of or in connection with its obligations under this clause 19.8 or any other obligation under the relevant Long Service Leave Legislation.

19.9 Assignment

- (a) The Contractor must not, without the prior written approval of the Territory and except on the terms and conditions determined in writing by the Territory, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
- (b) For the purpose of but without limiting paragraph (a), an assignment of this Contract will be deemed to have occurred where there has been a Change of Control.
- (c) Where an assignment of the Contract occurs, the Contractor must:
 - (i) carry out all relevant activities required to properly close the Trust Account;
 - (ii) provide written notice to the Contract Administrator that the Trust Account has been closed;
 - (iii) conduct a full reconciliation of the Trust Account to the satisfaction of the Contract Administrator, to establish that the Trust Account is being operated strictly in accordance with the terms of the Contract and the Trust Deed;
 - (iv) provide a detailed, written report to the Contract Administrator setting out the status of the Trust Account and the outcome of the reconciliation; and
 - (v) provide such other documents or information and do all such other things as the Contract Administrator may require to ensure that the Trust Account is closed and all Subcontractors are paid in accordance with the terms of the Contract and the Trust Deed and that any replacement trust account is opened in accordance with the Contract (as assigned).

19.10 Publicity

Without limiting clause 1.3(f), the Contractor must:

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

19.11 WHS Accreditation Scheme [TBC if applicable]

The Contractor must maintain accreditation under the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme), while the building work is carried out.

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

The Contractor must comply with all conditions of Scheme accreditation.

19.12 National Construction Code Certification

Without limiting clauses 6.22, 8.18, 8.19 and 9.1, the Contractor must provide to the Contract Administrator written certification from an Accredited Building Surveyor:

- (a) at the time it submits any Planning Phase Design Documentation to the Contract Administrator under clause 6.1(a) or Delivery Phase Design Documentation to the Contract Administrator under clause 6.8(a) for the Works or a Stage (as the case may be) - that the Planning Phase Design Documentation or Delivery Phase Design Documentation (as the case may be) submitted at that time complies with the National Construction code; and
- (b) as a condition precedent to Completion of the Works or a Stage - that the Works comply or the Stage complies (as the case may be) with the National Construction Code.

20. BUILDING CODE 2016

20.1 General

This clause applies unless **Item 89 of the Contract Particulars** states that it does not apply.

(a) In these clauses:

ABCC	means the body referred to in subsection 29(2) of the Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
Act	means the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> .
Building Code	means the <i>Code for the Tendering and Performance of Building Work 2016</i> , which is available at Code for the Tendering and Performance of Building Work 2016 (legislation.gov.au) .
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code.
Subcontractor	means a Building Contractor or Building Industry Participant who the Contractor has entered, or proposes to enter, into a subcontract with to undertake any of the Works.
Works	means Commonwealth Funded Building Work that is the subject of this Contract.

(b) The Contractor declares as at the date of commencement of this Contract in relation to Works that it and its subcontractors are not subject to an Exclusion Sanction.

(c) The Contractor:

(i) declares as at the date of commencement of this Contract in relation to the Works; and

(ii) must ensure during the term of this Contract in relation to the Works:

that it and its Subcontractors will comply with the Building Code.

(d) Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any defect in the Works arising from compliance with the Building Code.

- (e) The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (f) The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act and responding to requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (g) The Contractor must only enter into a subcontract for any of the Works where:
 - (i) The subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (ii) The subcontractor is not subject to an exclusion sanction or is excluded from undertaking work funded by a state or territory government unless approval to do so is provided by the ABC Commissioner;
- (h) The Contractor must ensure as far as is reasonably practicable that subcontractors that are engaged by the Contractor in respect of the Works take remedial action to rectify non-compliant behaviour.
- (i) The Contractor must only enter into a subcontract for any of the Works where:
 - (i) The Subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document titled Model Clauses Type B-Indirectly Funded available on the ABCC website (www.abcc.gov.au)); and
 - (ii) the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code (located in Part 5 in the document titled Model Clauses Type B-Indirectly Funded available on the ABCC website (www.abcc.gov.au)).
- (j) *[Note: This clause is not required on indirectly Commonwealth funded building work but may be included as a matter of best practice]*. The Contractor must only use products in building work that comply with the relevant Australian standards published by, or on behalf, Standards Australia.
- (k) *[Note: This clause is not required on indirectly Commonwealth funded building work but may be included as a matter of best practice]* The Contractor must ensure that any agreement entered into in relation to the Works with a Subcontractor requires the Subcontractor to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia

21. CONFIDENTIAL TEXT UNDER THE PROCUREMENT ACT

21.1 General

In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Contract may be a notifiable contract under the *Government Procurement Act 2001* (ACT) and, if so, the Territory will be required to make the text of this Contract available to the public, including by publication on a public contracts register.

In this clause 21, “**Confidential Text**” means any text of this Contract which, for the purposes of the *Government Procurement Act 2001* (ACT) either party proposes should not be published and which is specified in the Contract Particulars.

21.2 Confidential Text

If it is stated in the Contract Particulars that this Contract is a notifiable contract under the *Government Procurement Act 2001* (ACT) and Confidential Text is specified, the grounds on which the text is confidential are set out in the Contract Particulars and **clause 21.3** applies.

21.3 Territory must not disclose Confidential Text

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

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

22. NOT USED

23. NOT USED

24. DRAWINGS

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

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

CONTRACT PARTICULARS (PLANNING PHASE)

ITEM CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

- 1 Additional Project Plans:**
(Clause 1.1)
- 2 Brief:**
(Clause 1.1)
- 3 Territory's Novated Design Consultants:**
(Clause 1.1)
- 4 Completion - additional conditions precedent to Completion:**
(Clause 1.1)
- 5 Contract - other documents forming part of the Contract:**
(Clause 1.1)
- 6 Contract Administrator:**
(Clause 1.1)
- 7 Contractor:**
(Clause 1.1)
- 8 Contractor's Representative:**
(Clause 1.1)
- 9 Contractor's Work Fee (Delivery):** \$ (GST Exclusive)
(Clause 1.1)
- 10 Contractor's Work Fee (Planning):** \$ (GST Exclusive)
(Clause 1.1)
- 11 Date for Delivery Phase Agreement:**
(Clause 1.1)
- 12 Date for Delivery Phase Approval:**
(Clause 1.1)
- 13 DCAP (Detailed Contractor's Activities**

- Proposal):**
(Clause 1.1)
- 14 Defects Liability Period:**
(Clause 1.1)
- 15 Environmental Requirements (additional):**
(Clause 1.1)
- 16 ESD Principles (additional):**
(Clause 1.1)
- 17 Executive Negotiators:**
(Clause 1.1) **Territory:** Executive Director, Procurement and Capital Works
Contractor:
- 18 Delivery Phase Fee Proposal:**(GST exclusive)
(Clause 1.1)
- 19 Initial Target Date:** Where there are no Stages, for the Works is:
(Clause 1.1)
.....

Where there are Stages, for each Stage is:

Stage	Initial Target Date
.....
.....
.....
- 20 Management Fee:** \$ (GST exclusive)
(Clause 1.1)
- 21 Milestone Fee Payment Schedule:**
(Clause 1.1)

22 Outline Cost Plan:
(Clause 1.1)

23 Outline Program:
(Clause 1.1)

24	Planning Phase Milestones and Planning Phase Milestone Dates: (Clause 1.1)	Planning Phase Milestones	Description	Planning Phase Milestone Dates
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25 Schedule of Collateral Documents: (Clause 1.1)	<ol style="list-style-type: none"> 1. Approved Security (Unconditional Undertaking) 2. Design Services Subcontract (DSSC-1 2003 - for use with MCC-1 2003) 3. Medium Works Subcontract (MESC-1 2003) 4. Major Works Subcontract (MASC-1 2004) 5. Collateral Warranty 6. Commissioning, Handover and Takeover Guidelines 7. Moral Rights Consent 8. Subcontractor Deed of Covenant 9. Consultant Deed of Covenant 10. Consultant Deed of Novation 11. Trust Deed 12. Deed of Guarantee, Undertaking and Substitution 13. Proforma Subcontract Provisions 14. Contractor Design Certificate 15. Consultant Design Certificate 16. Subcontractor Design Certificate 17. Payment Claim 19. Expert Determination Agreement 20. Proforma Building Code 2013 Subcontract Provisions 20. ESD and WOL Plan Guide
26 Site: (Clause 1.1)	.....
27 Site Management Plan: (Clause 1.1)	<p>Security procedures</p> <p>Access to the Site by visitors, pedestrians and vehicles</p> <p>Site induction procedures</p> <p>Safety procedures</p> <p>Emergency procedures</p> <p>Waste management procedures</p>

	Site maintenance and cleaning procedures
	Site establishment procedures
	Dangerous, prohibited and hazardous materials and goods procedures
	Approval procedures
	User group and stakeholder procedures
	Noise management procedures
	Military expeditions and military exercises procedures
	Vehicle and traffic management procedures
28	Special Conditions:
	(Clause 1.1)
29	Stages of the Works:
	(Clause 1.1)
30	Table of Variation Rates and Prices:
	(Clause 1.1)
31	WOL Objectives (specific additional):
	(Clause 1.1)
32	WOL Plan:
	(Clause 1.1)
33	Work Health and Safety Plan:
	(Clause 1.1)
	1. Matters required to be covered in a Work Health and Safety Management Plan by the WHS Legislation, including:
	a. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities;
	b. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Contractor's Activities are being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;
	c. the arrangements in place, or to be

- implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Contract Administrator with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
- d. any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
 - e. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace; and
 - f. ensuring that work health and safety is a compulsory agenda item at all meetings in accordance with clause 3.9 of the Conditions of Contract and ensuring that the outcomes of those agenda items are communicated to the Contract Administrator.
2. If design forms part of the Contractor's Activities, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting Statutory Requirements regarding design and the process for addressing design changes relevant to work health and safety considerations.
3. Management of work health and safety generally, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication, information-sharing and provision of assurances to the Contract Administrator under clause 8.24 of the Conditions of Contract, and dispute resolution on work health and safety matters.
4. Provision of assurances to the Contract Administrator regarding compliance with any relevant or applicable requirements or standards (or codes of practice) in accordance with clause

9.1 of the Conditions of Contract relating to work health and safety management plans.

5. Management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication, information-sharing and provision of assurances under clause 8.24 of the Conditions of Contract and the process for ensuring subcontractor compliance with the Work Health and Safety Plan.
6. Management of project hazards and risks generally, including work involving:
 - a. fall hazards;
 - b. telecommunications towers;
 - c. demolition;
 - d. disturbance or removal of asbestos;
 - e. structural alterations requiring temporary supports;
 - f. confined spaces;
 - g. excavation deeper than 1.5 metres;
 - h. tunnels;
 - i. use of explosives;
 - j. pressurised gas distribution mains and consumer piping;
 - k. chemical, fuel or refrigerant lines;
 - l. electrical work, including involving energised electrical installations and services;
 - m. hazardous atmospheres;
 - n. tilt-up and precast concrete;
 - o. roadways or railways used by road or rail traffic;
 - p. movement of powered mobile plant;
 - q. artificial extremes of temperature;
 - r. water or other liquids where there is a risk

of drowning;

- s. diving;
- t. remote or isolated work;
- u. above-standard exposure to noise;
- v. other hazardous manual tasks;
- w. exposure to falling objects;
- x. abrasive blasting; and
- y. hazardous chemicals.

34 Works:
(Clause 1.1)

35 Governing law: Australian Capital Territory
(Clause 1.3(a))

CLAUSE 2 - NATURE OF CONTRACT

36 Statutory Requirements with which the Contractor does not need to comply:
(Clauses 2.3(g)(i) and 8.18)

37 Existing Approvals and other Approvals which the Territory is to obtain:
(Clauses 2.3(g)(ii) and 8.18)

CLAUSE 3 – PERSONNEL

38 Contract Administrator's representatives and their functions: (Clause 3.4)	Representative	Function(s)

39 Contractor's key people: (Clause 3.6(a))	Person	Position

	To be inserted following selection of successful Tenderer	.....

To be inserted following
selection of successful
Tenderer

.....
.....

CLAUSE 4 - SECURITY

- 40 Security to be provided by the Contractor:** \$..... or % of the sum of the Contractor's Work Fee (Planning), the Contractor's Work Fee (Delivery) and the Management Fee (in the form of two Approved Securities, each for 50% of this amount).
(Clause 4.1)

CLAUSE 5 - RISKS AND INSURANCE

- 41 Insurance policies required to be obtained by the Contractor:**
(Clause 5.4(a)(viii)A)

Public Liability Insurance
Amount of Cover: \$
in respect of any one occurrence and \$..... in the aggregate, all occurrences during the period of insurance.

Workers Compensation Insurance

Amount of Cover: The minimum amounts required by statute in each State and Territory in which the Contractor's Activities are to be performed or the Contractor's employees are employed or normally reside.

Professional Indemnity Insurance

Amount of Cover: \$..... per claim and \$..... in the aggregate, all claims during the period of insurance.

Other Insurances: (Clause 5.4(a)(vii))

.....

- 42 Construction Risks Insurance to be effected by the Territory in the Delivery Phase:**
(See Special Conditions)

Amount of Cover:

- (a) \$
(the Target Cost if no amount is specified);
(b) \$
or% of the Target Cost to cover the costs of demolition and removal of debris;
(c) \$
or% of the Target Cost to cover the Territory's consultant fees;

- (d) \$
for the value of materials or things to be
supplied by the Territory; and
- (e)% of the total of the amounts in (a) to (d)
to cover escalation costs.

(The Construction Risks Insurance will be effected by the Territory and will be required for the Delivery Phase with the amount based on the Target Cost for the Delivery Phase. Accordingly, this contract particular has been completed for the purposes of "information only" during the Planning Phase.)

- 43 Minimum amount of subcontractors' Professional Indemnity Insurance (Clause 5.4(f))** **Professional Indemnity Insurance**
Amount of Cover: \$..... per claim and \$..... in the aggregate, all claims during the period of insurance.
- 44 Period for maintenance of Professional Indemnity Insurance: (Clause 5.6(c))** 11 years

CLAUSE 6 - PLANNING AND DESIGN

- 45 Period for Planning Phase Design Documentation review: (Clauses 6.1(b)(ii) and 6.1(d)(i))**
- 46 Conditions precedent to Site access for the Delivery Phase: (Clause 6.6(b)(ii)D)**
- 47 Period for Delivery Phase Design Documentation review: (Clauses 6.8(b)(ii) and 6.8(d))**
- 48 Number of copies of Planning Phase Design Documentation and Delivery Phase Design Documentation (if any) to be submitted by the Contractor to the Contract Administrator: (Clause 6.10)**hard [copy /
copies]
.....electronic [copy /
copies]
- 49 Planning Phase Design Documentation and Delivery Phase Design Documentation** Compatible with [INSERT eg Autocad 14]
To scale

hard copy requirements: Printed in black ink on white or transparent ISO
(Clause 6.10(a)) Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator)

50 Planning Phase Design Documentation and Delivery Compatible with [INSERT eg Autocad 14]
CD-ROM, or as determined by the Contract Administrator
Phase Design Documentation
electronic copy requirements:
(Clause 6.10(b))

51 Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:
(Clause 6.16(a))

1. Letter of acceptance
2. Formal Agreement
3. Special Conditions
4. Conditions of Contract
5. Contract Particulars (Planning Phase)
6. Brief
7. Any other documents forming part of the Contract (as set out in the relevant item under clause 1.1 in these Contract Particulars (Planning Phase))
8. Planning Phase Design Documentation (which the Contractor is entitled to use under clause 6.1(d))
9. DCAP
10. Project Plans

52 Applicability of document and construct delivery clauses:
(Clauses 6.20 and 6.21)

Clauses 6.20 and 6.21 [do/do not] apply.
(Clauses 6.20 and 6.21 do not apply unless otherwise stated)

53 Period for sample review:days.
(Clauses 6.23(b)(ii) and 6.23(d))

CLAUSE 7 - SITE

54 Conditions precedent to Site access during the Planning Phase:
(Clause 7.3(b)(v))

CLAUSE 8 - REIMBURSABLE WORK

55 Design Discipline Subcontractor

	Design disciplines and Subcontractors: (Clause 8.4(a)(iii)B)	Architectural	To be inserted following selection of the preferred Tenderer
		Services	To be inserted following selection of the preferred Tenderer
		Structural	To be inserted following selection of the preferred Tenderer
		Specialist Consultancies	To be inserted following selection of the preferred Tenderer
		Quantity Surveyor	To be inserted following selection of the preferred Tenderer
		[OTHER]	To be inserted following selection of the preferred Tenderer
56	Stages for which Collateral Warranty required: (Clause 8.9)	.....
57	Collateral Warranties required to be procured by the Contractor from subcontractors and provided to the Territory: (Clause 8.9)	.....
58	Stages for which a certificate signed by a surveyor is required as condition precedent to Completion: (Clause 8.22)	.....
59	Access hours for Contractor's Activities on Site during	.....

Planning Phase:

(Clause 8.31)

60 Access hours for Contractor's Activities on Site during Delivery Phase:
(Clause 8.31)

61 Requirements for Contract Administrator's Office:
(Clause 8.33(a))

62 Number of project signboards:
(Clause 8.34(a))

63 Project signboard dimensions:
(Clause 8.34(a)(i))

64 Project signboard information (additional):
(Clause 8.34(a)(ii)H)

CLAUSE 9 - QUALITY

65 Reference development for purpose of determining minimum standards for workmanship and materials:
(Clauses 9.1(a)(i)B and 9.1(b)(i)B)

66 Number of days for submission of Project Plans: (Clause 9.2(a)(ii)A)

Environmental Management Plan:	.....
Site Management Plan:	.....
Commissioning and Handover Plan:	.....
Work Health and Safety Plan:	.....
Quality Plan	.....
Other: <i>[SPECIFY]</i>	

67 Number of days for review of.....
Project Plans:
(Clause 9.2(a)(ii)B)

**68 Period by which Defects Liability Period will be extended following
rectification of a Defect or completion of a Variation to overcome a Defect:**
(Clause 9.11)

69 Maintenance required from Contractor during Defects Liability Period: **Planned:**
Unplanned:
(Clause 9.14)

70 Defects Liability Period Review and Report (additional):
(Clause 9.15)

CLAUSE 10 - TIME

**71 Maximum intervals between
program updates by Contractor:**
(Clause 10.2(b))

72 Program format to be compatible with:
(Clause 10.2(e))

CLAUSE 12 - PAYMENT

73 Times for submission of payment claims by the Contractor to the Contract Administrator: Monthly on the 1st day of each month
(Clause 12.2(a)) For the purposes of **clause 12.2**, payment claims are to be:

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

[1. If a different electronic system or email address for Payment Claims is required from this default, delete the

above and write the appropriate system or email. Seek advice from an appropriate senior manager prior to amending this email address.

2. Insert the name of the Directorate, their representative and all other information that the Directorate requires to be provided in the Payment Claim so that they are able to process the Payment Claim after assessment by the PAP.]

74 Number of business days for 20 payment:
(Clause 12.5)

75 Interest rate: In relation to all clauses
(Clause 12.13)

The rate of interest applying from time to time under the *Court Procedure Rules 2006 (ACT)*, **Schedule 2 Part 2.2** (Interest after judgement) as if unpaid amount of the judgement of the Supreme Court.

76 Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority: The Chair of the Institute of Arbitrators and Mediators Australia of the Chapter in the Territory.
(Clause 1.1(a))

77 Facilities and infrastructure accounting (additional):
(Clause 12.22(b))

CLAUSE 14 - TERMINATION

78 Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b)) 14 days

CLAUSE 15 - DISPUTES

79 Directions to be subject of an expert determination if disputed: Directions under clauses: 4.2(b), 6.7(d)(iii)B, 8.19(e), 8.29, 9.5, 9.9(b)(i), 9.10, 10.4, 10.5(d)(i), 11.3(a)(i)B, 11.3(a)(i)C, 11.3(a)(ii)B 11.3(a)(ii)C, 11.3(a)(iii)B, 11.3(a)(iii)C, 11.3(b)(ii), 11.3(c)(i)B, 11.3(c)(ii)B, 11.3(c)(iii)B, 12.4, 13.2(b)(ii), 14.8(a), 18.4(b), 1.1(a).
(Clause 15.2)

- 80 **Industry expert who will conduct expert determinations:**
(Clause 15.3(a)(i))
- 81 **Nominating authority for industry expert:**
(Clause 15.3(a)(ii)) (The President for the time being of the Institute of Arbitrators and Mediators Australia unless otherwise stated)

CLAUSE 16 - NOTICES

- 82 **Address and fax number, for Territory:**
the giving or serving of notices, upon: [ATTN: name]
(Clause 16.7(b)(i)) [INSERT street address]
[INSERT postal address]
[INSERT email address]
- Contract Administrator:**
[Name – if a company, or persons name if a Territory officer]
[ATTN: name of Contract Administrator’s Representative, if different to the above]
[INSERT street address]
[INSERT postal address]
[INSERT email address]
- Contractor:**

CLAUSE 21 - CONFIDENTIAL TEXT UNDER THE PROCUREMENT ACT

- 83 **Confidential Text:**
(Clause 21.2)
- 84 **Grounds for Confidentiality of Text**
(Clause 21.2)

ANNEXURE 1 - COMPLETION

- 85 **Number of copies of Final Operation and Maintenance Manuals:**
(Clause 3(e))

- 86 Content of manuals**
(additional):
(Clause 3(h)(xii))
- 87 Number of persons to be**
trained:
(Clause 4(a))
- 88 Categories of persons to be**
trained:
(Clause 4(a))
- 89 Application of the Building** Clause 20 applies.
Code 2016
(Clause 20) *("Clause 20 does not apply" if item is not filled in)*
- 90 Application of the Local** Clause 19.3 **applies/does not apply.**
Industry Participation Policy
(Clause 19.3) *("Clause 19.3 does not apply" if item is not filled in)*

CONTRACT PARTICULARS (DELIVERY PHASE)

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Additional Project Plans:

(Clause 1.1)

.....

Adjustment to Approved Subcontract Agreement

Adjustment

Agreement terms:

(Clause 1.1)

.....

.....

..

Brief:

(Clause 1.1)

.....

Territory's Novated Design

Consultants:

(Clause 1.1)

.....

Completion - additional conditions

precedent to Completion:

(Clause 1.1)

.....

Contract - other documents forming

part of the Contract:

(Clause 1.1)

.....

Contract Administrator:

(Clause 1.1)

.....

Contractor:

(Clause 1.1)

.....

Contractor's Representative:

(Clause 1.1)

.....

Contractor's Work Fee (Delivery):

(Clause 1.1)

\$ (GST Exclusive)

DCAP (Detailed Contractor's Activities

Proposal):

(Clause 1.1)

.....

Defects Liability Period:

(Clause 1.1)

.....

Environmental Requirements**(additional):**

(Clause 1.1)

.....

ESD Principles (additional):

(Clause 1.1)

.....

Executive Negotiators:

(Clause 1.1)

Territory:**Contractor:**.....**Incentive:**

(Clause 1.1)

\$

Management Fee:

(Clause 1.1)

\$ (GST Exclusive)

Milestone Fee Payment Schedule:

(Clause 1.1)

.....

Planning Phase Reimbursable Costs:

(Clause 1.1)

\$ (GST Exclusive)

Schedule of Collateral Documents:

(Clause 1.1)

1. Approved Security (Unconditional Undertaking)
2. Design Services Subcontract (DSSC-1 2003 - for use with MCC-1 2003)
3. Medium Works Subcontract (MESC-1 2003)
4. Major Works Subcontract (MASC-1 2004)
5. Collateral Warranty
6. Commissioning, Handover and Takeover Guidelines
7. Moral Rights Consent
8. Subcontractor Deed of Covenant
9. Consultant Deed of Covenant
10. Consultant Deed of Novation
11. Trust Deed
12. Deed of Guarantee, Undertaking and Substitution
13. Proforma Subcontract Provisions
14. Contractor Design Certificate
15. Consultant Design Certificate
16. Subcontractor Design Certificate

17. Payment Claim
18. Payment Schedule
19. Expert Determination Agreement

Site:

(Clause 1.1)

.....

Site Management Plan:

(Clause 1.1)

Security procedures
 Access to the Site by visitors, pedestrians and vehicles
 Site induction procedures
 Safety procedures
 Emergency procedures
 Waste management procedures
 Site maintenance and cleaning procedures
 Site establishment procedures
 Dangerous, prohibited and hazardous materials and goods procedures
 Approval procedures
 User group and stakeholder procedures
 Noise management procedures
 Military expeditions and military exercises procedures
 Vehicle and traffic management procedures

Special Conditions:

(Clause 1.1)

.....

Stages of the Works:

(Clause 1.1)

.....

Table of Variation Rates and Prices:

(Clause 1.1)

.....

Target Cost:

(Clause 1.1)

\$ (GST exclusive)

Target Date:

(Clause 1.1)

Where there are no Stages, for the Works is:

.....

Where there are Stages, for each Stage is:

Stage

Target Date

.....
.....
Target Reimbursable Costs:
(Clause 1.1)

..... (GST Exclusive)

WOL Objectives (specific additional):
(Clause 1.1)

.....

WOL Plan:
(Clause 1.1)

.....

Work Health and Safety Plan:
(Clause 1.1)

1. Matters required to be covered in a Work Health and Safety Management Plan by the WHS Legislation, including:
 - a. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities;
 - b. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Contractor's Activities are being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;
 - c. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Contract Administrator with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
 - d. any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
 - e. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace; and
 - f. ensuring that work health and safety is a compulsory agenda item at all meetings in accordance with clause 3.9 of the Conditions of Contract and ensuring that the

outcomes of those agenda items are communicated to the Contract Administrator.

2. If design forms part of the Contractor's Activities, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting Statutory Requirements regarding design and the process for addressing design changes relevant to work health and safety considerations.
3. Management of work health and safety generally, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication, information-sharing and provision of assurances to the Contract Administrator under clause 8.24 of the Conditions of Contract, and dispute resolution on work health and safety matters.
4. Provision of assurances to the Contract Administrator regarding compliance with any relevant or applicable requirements or standards (or codes of practice) in accordance with clause 9.1 of the Conditions of Contract relating to work health and safety management plans.

Works:

(Clause 1.1)

.....

Governing law:

(Clause 1.3(a))

Australian Capital Territory

CLAUSE 2 - NATURE OF CONTRACT

Statutory Requirements with which the Contractor does not need to comply:

(Clauses 2.3(g)(i) and 8.18)

.....

Existing Approvals and other Approvals which the Territory is to obtain:

(Clauses 2.3(g)(ii) and 8.18)

.....

CLAUSE 3 – PERSONNEL

Contract Administrator's representatives and their functions:
(Clause 3.4)

Representative

Function(s)

.....

.....

....

.....

.....

....

Contractor's key people:
(Clause 3.6(a))

Person

Position

.....

.....

....

.....

.....

....

CLAUSE 4 - SECURITY

Security to be provided by the Contractor:
(Clause 4.1)

\$..... or % of the sum of the Contractor's Work Fee (Planning), the Contractor's Work Fee (Delivery) and the Management Fee (in the form of two Approved Securities, each for 50% of this amount).

CLAUSE 5 - RISKS AND INSURANCE

Insurance policies required to be obtained by the Contractor:
(Clause 5.4(a)(viii)A)

Public Liability Insurance

Amount of Cover: \$.....
in respect of any one occurrence and \$..... in the aggregate, all occurrences during the period of insurance.

Workers Compensation Insurance

Amount of Cover: The minimum amounts required by statute in each State and Territory in which the Contractor's Activities are to be performed or the Contractor's employees are employed or normally reside.

Professional Indemnity Insurance

Amount of Cover: \$..... per claim and \$..... in the aggregate, all claims during the period of insurance.

Other Insurances (Clause 5.4(a)(vii)):

.....

Construction Risks Insurance to be

Amount of Cover:

- effected by the Territory:**
(See: Special Conditions)
- (a) \$
(the Target Cost if no amount is specified)
 - (b) \$
or% of the Target Cost to cover the costs of
demolition and removal of debris;
 - (c) \$
or% of the Target Cost to cover the Territory's
consultant fees;
 - (d) \$
for the value of materials or things to be supplied by
the Territory; and
 - (e)% of the total of the amounts in (a) to (d) to
cover escalation costs.

Minimum amount of subcontractors' Professional Indemnity Insurance:
(Clause 5.4(f))

Professional Indemnity Insurance
Amount of Cover: \$..... per claim and \$..... in the
aggregate, all claims during the period of insurance.

Period for maintenance of Professional Indemnity Insurance:
(Clause 5.6(c))

11 years.

CLAUSE 6 - PLANNING AND DESIGN

Conditions precedent to Site access for the Delivery Phase:
(Clause 6.6(b)(ii)D)

.....

Period for Delivery Phase Design Documentation review:
(Clause 6.8(b)(ii) and 6.8(d))

.....

Number of copies of Delivery Phase Design Documentation to be submitted by the Contractor to the Contract Administrator:
(Clause 6.10)

.....hard [copy / copies]
.....electronic [copy/copies]

Delivery Phase Design Documentation hard copy requirements:
(Clause 6.10(a))

Compatible with Autocad 14
To scale
Printed in black ink on white or transparent ISO Standard
Sheet (size A1, A3, A4 or as determined by the Contract
Administrator)

**Delivery Phase Design Documentation
electronic copy requirements:**
(Clause 6.10(b))

Compatible with Autocad 14
CD-ROM, or as determined by the Contract
Administrator

**Order of precedence of documents in the
case of any ambiguity, discrepancy or
inconsistency:**
(Clause 6.16(a))

1. Formal Agreement or letter of acceptance
(whichever is applicable)
2. Special Conditions
3. Conditions of Contract
4. Contract Particulars (Delivery Phase)
5. Contract Particulars (Planning Phase)
6. Brief
7. Any other documents forming part of the
Contract (as set out in the relevant item under
clause 1.1 in these Contract Particulars
(Delivery Phase))
8. Delivery Phase Design Documentation (which
the Contractor is entitled to use under
clause 6.8(d))
9. Planning Phase Design Documentation (which
the Contractor is entitled to use under
clause 6.1(d))
10. DCAP
11. Project Plans

**Applicability of document and construct
delivery clauses:**
(Clauses 6.20 and 6.21)

Clauses 6.20 and 6.21 do/do not apply.
(Clauses 6.20 and 6.21 do not apply unless otherwise
stated)

Period for sample review:
(Clause 6.23(b)(ii) and 6.23(d))

.....

CLAUSE 8 - REIMBURSABLE WORK

Design disciplines and Subcontractors:
(Clause 8.4(a)(iii)B)

Design Discipline

Subcontractor

Architectural

.....

Services

.....

Structural

.....

Specialist Consultancies

.....

Quantity Surveyor

.....

[OTHER]

.....

**Stages for which Collateral Warranty
required:**
(Clause 8.9)

.....

**Collateral Warranties required to be
procured by the Contractor from
subcontractors and provided to the
Territory:**
(Clause 8.9)

.....

**Stages for which a certificate signed by a
surveyor is required as condition precedent
to Completion:**
(Clause 8.22)

.....

**Access hours for Contractor's Activities on
Site during Delivery Phase:**
(Clause 8.31)

.....

**Requirements for Contract Administrator's
Office:**
(Clause 8.33)

.....

Number of project signboards:
(Clause 8.34(a))

.....

Project signboards dimensions:

Project signboard information (additional):
(Clause 8.34(a)(ii)H)

CLAUSE 9 - QUALITY

Reference development for purpose of determining minimum standards for workmanship and materials:
(Clauses 9.1(a)(i)B and 9.1(b)(i)B)

Number of days for submission of Project Plans:
(Clause 9.2(a)(ii)A)

Environmental Management Plan:

Site Management Plan:

Commissioning and Handover Plan:

Work Health and Safety Plan:

Other: **[SPECIFY]**

Number of days for review of Project Plans:
(Clause 9.2(a)(ii)B)

Period by which Defects Liability Period will be extended following rectification of a Defect or completion of a Variation to overcome a Defect:
(Clause 9.11)

Maintenance required from Contractor during Defects Liability Period:
(Clause 9.14)

Planned:

Unplanned:

Defects Liability Period Review and Report (additional):
(Clause 9.15)

CLAUSE 10 - TIME

Maximum intervals between program updates by Contractor:
(Clause 10.2(b))

Program format to be compatible with: [Primavera Suretrak/Microsoft Project] or approved equivalent
(Clause 10.2(e))

CLAUSE 12 - PAYMENT

Times for submission of payment claims for the Incentive (if any) by the Contractor to the Contract Administrator:
(Clauses 12.1(d) and 18.4(a))

Times for submission of payment claims by the Contractor to the Contract Administrator: Monthly, on the day of each month
(Clause 12.2(a))

Number of business days for payment: 20
(Clause 12.5)

Interest rate: The rate of interest applying from time to time under the
(Clause 12.13) *Court Procedure Rules 2006 (ACT), Schedule 2 Part 2.2*
(Interest after judgement) as if unpaid amount of the judgement of the Supreme Court.

Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority: To the extent that the relevant part of the Contractor's Activities is carried out in:
(Clause 1.1(a))

1. the Northern Territory or Western Australia:
 - (a) the appointed adjudicator is; or
 - (b) if no appointed adjudicator is appointed, the prescribed appointer is the Chair of the Institute of Arbitrators and Mediators Australia, Northern Territory Chapter or Western Australian Chapter (as the case may be); or
2. any other State or Territory, the Chair of the Institute of Arbitrators and Mediators Australia of the Chapter in that State or Territory.

Facilities and infrastructure accounting (additional):
(Clause 12.22(b))

CLAUSE 14 - TERMINATION

Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b))

CLAUSE 15 - DISPUTES

Directions to be subject of an expert determination if disputed: Directions under clauses: 4.2(b), 6.7(d)(iii)B, 8.19(e), 8.29, 9.5, 9.9(b)(i), 9.10, 10.4, 10.5(d)(i), 11.3(a)(i)B, 11.3(a)(i)C, 11.3(a)(ii)B 11.3(a)(ii)C, 11.3(a)(iii)B, 11.3(a)(iii)C, 11.3(b)(ii), 11.3(c)(i)B, 11.3(c)(ii)B,
(Clause 15.2)

11.3(c)(iii)B, 12.4, 13.2(b)(ii), 14.8(a), 18.4(b), 1.1(a).

Industry expert who will conduct expert determinations:

(Clause 15.3(a)(i))

.....

Nominating authority for industry expert:

(Clause 15.3(a)(ii))

.....
(The President for the time being of the Institute of Arbitrators and Mediators Australia unless otherwise stated)

CLAUSE 16 - NOTICES

Address and fax number, for the giving or serving of notices, upon:

(Clause 16.7(b)(i))

Territory:

.....

.....

Contract Administrator:

.....

.....

Contractor:

.....

.....

CLAUSE 20 – APPLICATION OF THE BUILDING CODE 2013

(Clause 20)

Clause 20 applies.

CLAUSE 21 - CONFIDENTIAL TEXT

Confidential Text:

(Clause 21.2)

Confidential Text:

(Clause 21.2)

Grounds for Confidentiality of Text

(Clause 21.2)

Grounds for Confidentiality of Text

(Clause 21.2)

.....

.....

.....

ANNEXURE 1 - COMPLETION

**Number of copies of Final Operation and
Maintenance Manuals:**

(Clause 3(e))

.....

Content of manuals (additional):

(Clause 3(h)(xii))

.....

Number of persons to be trained:

(Clause 4(a))

.....

Categories of persons to be trained:

(Clause 4(a))

.....

The parties agree that the Contract Particulars (Delivery Phase) set out in these Contract Particulars (Delivery Phase) are a true and accurate record of all matters detailed above.

SIGNED as an agreement for the purpose of clause 6.5(f) of **[INSERT DETAILS OF CONTRACT SIGNED BETWEEN THE PARTIES]** on _____ day of _____

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

Signature of Witness

Name of Witness

Signature of Authorised Signatory

Name of Authorised Signatory

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

Signature of Secretary/other Director

Name of Secretary/other Director

Signature of Director

Name of Director

Note:

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

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

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

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

ANNEXURE 1 - COMPLETION

1. "As-Constructed" Drawings and Documents

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

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

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

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

2. Warranties

- (a) Without limiting the definition of "Completion" in clauses 1.1, 2, 8.9 and 9.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage, provide the Contract Administrator with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

Description	Warranty Period
Mechanical Services Pipework	20
Fire Protection Systems	15
Security equipment	15
Sanitary Fittings and Fixtures	as per manufacturer's warranty
Hydraulic fixtures & pumps	15
Rainwater tanks	15
UPS units	10
Structural Steel	25
Concrete Structure	25
Expansion joint systems	10
Metalwork	10
Roof Sheeting/flashings/access panels	20

Description	Warranty Period
Facade	20
Doors and Door hardware	15
Roller doors	15
Waterproofing	15
Suspended Ceilings Grid	10
Suspended Ceilings Panels	5
Internal Partitions	10
Joinery	5
Painting	5
In-ground irrigation	5
Resilient Finishes	5
Carpet	5
Floor and Wall Tiling	5
Entry Mats	as per manufacturer's warranty
Windows	10
Window Furnishings	2
FF&E	as per manufacturer's warranty
Ceiling Mounted Hoists	as per manufacturer's warranty
Signage	5
Line marking	5
<i>[INSERT OTHER WARRANTIES. THE WARRANTIES REFERRED TO ABOVE ARE EXAMPLES ONLY]</i>	<i>[INSERT]</i>

3. Operation and Maintenance Manuals

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

- (a) compile specific operation and maintenance manuals for each aspect of the Works or the Stage, including obtaining and coordinating information provided by the Contractor and its subcontractors;

- (b) prior to the commencement of commissioning of the Works or the Stage, provide one copy of draft operation and maintenance manuals in respect of each aspect of the Works or the Stage (**Draft Operation and Maintenance Manuals**) to the Contract Administrator for approval;
- (c) within 14 days of the completion of the commissioning of the Works or the Stage, provide one copy of all operation and maintenance manuals in respect of the Works or the Stage which have been amended during commissioning (**Draft Amended Operation and Maintenance Manuals**) (such amendments being clearly indicated in each Draft Amended Operation and Maintenance Manual) to the Contract Administrator for approval;
- (d) resubmit the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals to the Contract Administrator as necessary; and
- (e) once approved by the Contract Administrator, submit the number of copies of the final, approved versions of the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) set out in the Contract Particulars to the Contract Administrator.

For the purposes of this clause 3:

- (f) catalogues, sales brochures and other documents giving general information in respect of aspects of the Works or the Stage will not be acceptable;
- (g) all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Works or the Stage; and
- (h) without limiting the generality of this clause 3, the manuals must be securely bound in 2 ring binders and include:
 - (i) a comprehensive list of contents including illustrations and drawings;
 - (ii) function, application, specification and comprehensive technical data of all equipment including sub-assemblies, proprietary items, and system circuit and schematic diagrams where applicable;
 - (iii) a description of the equipment and its principles of operation;
 - (iv) routine maintenance and lubrication schedules;
 - (v) dismantling and re-assembly procedures;
 - (vi) trouble-shooting suggestions;
 - (vii) a complete lists of parts;
 - (viii) a list of spare parts recommended to be held in stock;
 - (ix) the procedure for ordering spare parts;
 - (x) clear and comprehensive illustrations and/or drawings with parts readily identifiable;

- (xi) text which is clearly printed on good quality A4 size matt paper, not less than 95 gsm;
- (xii) the matters specified in the Contract Particulars; and
- (xiii) any other matter required by the Contract Administrator.

4. Training

Without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Stage:

- (i) during commissioning of the Works or the Stage, plan, manage and deliver a comprehensive training program in respect of all operational and maintenance aspects of the Works or the Stage for the number of and each category of persons set out in the Contract Particulars; and
- (j) carry out such training using:
 - (i) trained instructors, fully experienced in respect of all operational and maintenance aspects of the Works or the Stage; and
 - (ii) the Final Operation and Maintenance Manuals produced by the Contractor, with copies of such manuals to be made available during the training to all trainees.

ANNEXURE 2 – SECURE LOCAL JOBS

Item 1. Secure Local Jobs Code requirements

1.1 Definitions

.1 In this **Annexure 2**:

- .1 *Adverse Ruling* means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Contractor or one of its *Associated Entities* has contravened an *Industrial Law*;
- .2 *Applicable Subcontractor Work* means services or works that would, if provided to a Territory Entity, be “Territory-Funded Work”;
- .3 *Approved Auditor* has the meaning as set out in the *Procurement Act*;
- .4 *Associated Entity* has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
- .5 *Code* means the *Secure Local Jobs Code*;
- .6 *Full Details* means:
 - .1 the nature of the *Adverse Ruling*;
 - .2 any conviction recorded or adverse finding made in respect of the *Adverse Ruling*;
 - .3 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*;
 - .4 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;
 - .5 the name of the entity against which the *Adverse Ruling* was made; and
 - .6 any other relevant information that the Contractor may rely on as grounds for not terminating this Contract as a result of the *Adverse Ruling*;
- .7 *Industrial Law* means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
- .8 *Labour Relations, Training and Workplace Equity Plan* has the meaning as set out in the *Procurement Act*;
- .9 *Procurement Act* means the *Government Procurement Act 2001* (ACT);
- .10 *Registrar* has the meaning as set out in the *Procurement Act*;
- .11 *Secure Local Jobs Code* has the meaning as set out in the *Procurement Act*;
- .12 *Territory Entity* has the meaning as set out in the *Procurement Act*; and
- .13 *Territory-Funded Work* has the meaning as set out in the *Procurement Act*.

Subcontractors performing Territory-Funded Work

- .2 The Contractor must, in relation to any subcontractors engaged to perform *Applicable Subcontractor Work*:
 - .1 ensure terms are included in the agreement with the subcontractor:
 - .1 requiring the subcontractor to comply with the *Code*; and
 - .2 imposing obligations on the subcontractor in the same form as those set out in Item 1 and imposed on the Contractor (subject to any necessary variation to reflect the different parties);
 - .2 ensure:
 - .1 the subcontractor holds a *Secure Local Jobs Code Certificate*; and
 - .2 the subcontractor maintains a *Secure Local Jobs Code Certificate* during the term of their subcontract; and
 - .3 the obligations in Item 1.1.2.2.1 and Item 1.1.2.2.2 are included in the relevant subcontract with the subcontractor.

- .3 The Territory may by written notice request the Contractor 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 Contractor must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Contractor to comply with this Item 1.1.3.
- .4 The Territory (or nominated representative) and *Approved Auditors* may, at the Contractor's cost, access records kept by subcontractors engaged to perform *Territory-Funded Work* and conduct audits and other reviews and checks, to monitor compliance with this clause and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

Contractor's Secure Local Jobs responsibilities

- .5 The Contractor must comply with all of its obligations under the *Code*.
- .6 The Contractor must maintain a valid *Secure Local Jobs Code Certificate* during the term of the Contract.
- .7 Failure of the Contractor to maintain a valid *Secure Local Jobs Certificate* will constitute a breach of an essential term of this Contract entitling the Territory to terminate the Contract on written notice to the Contractor.
- .8 If at any time during the term of the Contract an *Adverse Ruling* is made, the Contractor must, within 7 *Business Days* of the making of the *Adverse Ruling*, provide a statutory declaration by an authorised representative of the Contractor setting out the *Full Details* of the *Adverse Ruling* and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the *Adverse Ruling* is based from recurring.
- .9 The Contractor must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the *Code*:
 - .1 within 5 working days of a written request from the Territory; and
 - .2 if requested in writing by the Territory, at the time the Contractor provides a *Payment Claim*.
- .10 Failure of the Contractor to provide a statutory declaration in accordance with Item 1.1.8 or 1.1.9 or the making of a false statement in a statutory declaration by the Contractor or its representative will constitute a breach of this Contract.
- .11 If the Contractor fails to provide a statutory declaration in accordance with Item 1.1.9.2 the Territory may withhold payment of monies otherwise due to the Contractor in respect of the relevant *Payment Claim* until the statutory declaration is received.
- .12 The Territory may require that Contractor conduct face-to-face induction sessions with employees at the commencement of *Territory-Funded Work* or commencement of employment in relation to *Territory-Funded Work*.
- .13 The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the Contractor except in circumstances where attendance would result in a conflict with Commonwealth laws.
- .14 The Contractor must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the Contractor's worksite where the *Territory-Funded Work* is being performed in order to undertake education and awareness raising activities in relation to the *Code*. A person may not be nominated by the Territory or Registrar under this Item 1.1.14 in circumstances where entry would result in a conflict with Commonwealth laws.
- .15 The Territory (or nominated representative) and *Approved Auditors* may, at the Territory's cost, access records kept by the Contractor and conduct audits and other reviews and checks, to monitor compliance with this Schedule and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.
- .16 If the Contractor was required to submit a Labour Relations, Training and Workplace Equity Plan as part of its tender for the Works:
 - .1 the Contractor must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - .2 the Contractor must report to the Territory on its compliance with Item 1.1.16.1 quarterly during the term of this Contract;

- .3 the Contractor must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - .4 failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.
- .17 For the purposes of Item 1.1.3 and Item 1.1.9 the following form is approved unless otherwise advised by the Territory:

ETHICAL SUPPLIERS DECLARATION

Statutory Declarations Act 1959 (Cth)

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

1. In this declaration a reference to:

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

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

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

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

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

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

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

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

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

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

“Principal” means the Australian Capital Territory.

“Project” means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];

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

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

“Subcontractor” includes a sub-subcontractor; and

“Supplier” means an entity engaged by the Contractor to supply part of the Works (including temporary works).

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

2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.

4. The Contractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
5. All Subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement by each of them for the performance of Work or the supply of materials for or in connection with the Contract.
6. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the Work done in connection with the Contract have been paid.
7. All payroll tax payable by the Contractor in respect of wages paid or payable to the relevant Employees of the Contractor for Work done in connection with the Contract to the date of this statutory declaration has been paid.
8. The Contractor holds a current Secure Local Jobs Code Certificate.
9. The Contractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Set out Full Details of findings]

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

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

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

[Set out Full Details of convictions]

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

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

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

[Set out Full Details of proceedings or prosecutions]

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

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

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

[Set out Full Details of the remedial measures implemented]

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

[Signature of person making the declaration]]

[Print name of person making the declaration]

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

Before me:

[Signature of person before whom the declaration is made]

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

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

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

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

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

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

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
Bailiff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service
Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that placeEmployee of the Commonwealth who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that placeFellow of the National Tax Accountants' Association
Finance company officer with 5 or more years of continuous service
Holder of a statutory office not specified in another item in this list
Judge of a court
Justice of the Peace
Magistrate
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961
Master of a court
Member of Chartered Secretaries Australia
Member of Engineers Australia, other than at the grade of student
Member of the Association of Taxation and Management Accountants
Member of the Australasian Institute of Mining and Metallurgy
Member of the Australian Defence Force who is:
 - (a) an officer; or

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

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

Member of:

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

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

Notary public

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

Permanent employee of:

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

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

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

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

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

Sheriff

Sheriff's officer

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

ANNEXURE 3 – TESTING REQUIREMENTS

ANNEXURE 4 - DCAP

ANNEXURE 5 – DELIVERY PHASE FEE PROPOSAL

ANNEXURE 6 – INDIGENOUS PARTICIPATION PLAN