

User Guidance

The following **MW21 General Conditions of Contract and Contract Information** are adapted for use in the Australian Capital Territory.

Guide Notes

The document contains guidance in hidden text, i.e.

GUIDE NOTES

Guide Note examples

If the guide notes are not visible, then:

- On the **MS OFFICE** menu, click **Word Options**;
- Click the **Display** tab;
- Tick the **Hidden Text** check box and click the **OK** button.

Drawing Objects

The document contains pages which hold “drawing objects”, i.e. rounded rectangles with added text and arrowed connections.

If drawing objects are not visible, then:

- On the **MS OFFICE** menu, click **Word Options**;
- Click the **Advanced** tab;
- Tick the **Show Drawings and text boxes** check box and click the **OK** button.

If drawing objects are visible but do not appear when printing the document, then:

- On the **MS OFFICE** menu, click **Word Options**;
- Click the **Display** tab;
- Tick the **Drawing Created in Word** check box and click the **OK** button.

General

All clauses and text are mandatory unless indicated in the Guide Notes. Some clauses require options to be selected and others are not applicable in specific circumstances. Read and follow all Guide Notes carefully.

Do not change any of the standard text. It reflects the approved contract risk allocation. Any change may introduce unexpected risks and/or compromise the integrity of the contract.

Where the symbol ‘»’ appears, information specific to the project and the responsible agency must be inserted. Click onto each ‘»’ and over-type.

If additional clauses or paragraphs are required to suit project-specific needs, carefully consider the associated risks, in consultation with the responsible agency and seek advice from the ACT Government Solicitor. Ensure the additions do not create ambiguities in the documents.

Note: Guide notes must be removed from the RFT documents prior to issue.

Remove all guide notes manually or using the following steps:

- On the **Editing** menu, click **Replace**; then (if required)
- Click the **More** button;
- Click the **Format** button, click on **Font**;
- Tick the **Hidden** check box and click the **OK** button;
- Click the **Special** button, click on **Any Character**; then
- Click the **Replace All** button.

Delete this **User Guidance**, along with the following **Page Break**.

EXAMPLE ONLY



**ACT Government modified version for use in the
Australian Capital Territory
Amended MW21 (Edition 1)
General Conditions of Contract**

for Design (to the extent specified) and Construction

Version 1.3 – August 2025

Project Name:

Contract No:

Prepared by: Infrastructure Canberra
GPO Box 158
CANBERRA CITY ACT 2601

Ref:

EXAMPLE ONLY

Revision History

Version	Issue Date	Details
1.1	June 2024	Revision History added. Clause 1A. Acknowledgement added Drafting of prompt note regarding Confidential Text updated Ability to include LWERTY / LIP plans in the Agreement. Minor tidy ups.
1.2	September 2024	Deletion of Clause 1A Acknowledgement
1.3	August 2025	Minor Update – change from MPC to iCBR, PMARS to ContrACTs, and removal of references to Infrastructure Delivery Partners and the Infrastructure Project Solutions
1.4	November 2025	Minor Update from ContrACTs to CAMPS

MW21 General Conditions of Contract

Table of Contents

MW21 General Conditions of Contract	1
1. Definitions	1
1A. Acknowledgement	Error! Bookmark not defined.
2. The Contract	6
3. Design and Construction.....	7
4. Care of People, Property and the Environment.....	10
5. Insurance.....	11
6. Site Access.....	13
7. Site Conditions.....	14
8. Materials, Work and Subcontractors.....	15
9. Variations.....	16
10. Suspension	18
11. Completion	19
12. Delay to Completion	20
13. Payment and Retention	21
14. After Completion	24
15. Claims	25
16. Disputes	26
17. Contractor's Default and Insolvency	28
18. Termination for the Principal's Convenience	30
19. Termination for the Principal's Default	31
20. Work Health and Safety.....	32
21. OHS Management System.....	35
22. Engagement as Principal Contractor.....	36
23. If not engaged as Principal Contractor.....	37
24. WHS Active Certification.....	38
25. Industrial relations requirements.....	39
26. Territory Information	42
27. Confidential Text under the Procurement Act	43
28. Local Industry Participation.....	44
29. Service of notices.....	45
Formal Instrument of Agreement	46
Schedule 1 – Unconditional Undertaking	49
Schedule 2 – Ethical Supplier's Declaration	50
Schedule 3 – Schedule of Rates	55
MW21 Contract Information	56
1. Authorised Person	56
2. Purpose of the Works	57
3. Milestones	57
4. Post Completion Period	59
5. Principal	60
6. Senior Executive	60
7. Extent of Design	61
8. Design Documents	61
9. Works and Public Liability Insurance	62
10. Professional Indemnity and other insurance	63
11. Site Access	64
12. Time for Completion	64
13. Delay Costs	64
14. Liquidated Damages	64
15. Payment Claims	65
16. Conditions of Site Access	66
17. Working Days and Hours	66
18. Program	66
19. Confidential Text	67
20. Territory Information	68
21. Appointment as Principal Contractor	68

22. Preferred Subcontractors.....	68
23. Contract Price	69
24. Contractor	69
25. Date of Contract.....	69
26. Local Industry Participation.....	69
27. Industrial Relations Requirements.....	69
MW21 Special Conditions of Contract	70
ATTACHMENT A - Contract Documents	70
ATTACHMENT B - Labour Relations, Training and Workplace Equity Plan	83
ATTACHMENT C - Local Industry Participation Plan	84

EXAMPLE ONLY

MW21 General Conditions of Contract

1. Definitions

1.1 Authorised Person

The person stated in Contract Information - **Item 1** who is appointed by the relevant party to act with its full authority in all matters relating to the Contract.

1.2 Business Day

Any day other than a Saturday, Sunday, Public Holiday in the Australian Capital Territory or 27, 28, 29, 30 or 31 December. When counting Business Days, the first day of any stated time frame is the first Business Day after a Contract event occurs.

1.3 Completion

The state of the work under the Contract or any Milestone when:

- (a) it is capable of use for the purpose stated in the Contract Information;
- (b) it has passed all required tests and is free from any known Defects;
- (c) the Contractor has provided all the required documents; and
- (d) the Contractor has made good the Site and surroundings.

1.4 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 in Contract Information – **Item 19**.

1.5 Contract

The agreement between the parties for the carrying out of the work under the Contract, as set out in the Contract Documents and accepted in writing by the Principal.

1.6 Contractor

The entity that is to carry out the work under the Contract, specified in Contract Information – **Item 24**.

1.7 Contract Documents

- (a) the Letter of Award (if one is issued);
- (b) these MW21 General Conditions of Contract;
- (c) Contract Information;
- (d) annexed Schedules (which include, for the avoidance of doubt, the Special Conditions of Contract);
- (e) any other documents prepared by the Principal for the Contract and provided to the Contractor;
- (f) Contractor's signed "Form of Tender" (if applicable);
- (g) the Contractor's Labour Relations, Training and Workplace Equity Plan submitted with its tender for the Works (if any) (as updated and amended from time to time);
- (h) the Contractor's Local Industry Participation Plan (as defined in **clause 28.2**) and submitted with its tender for the Works (if any) (as updated and amended from time to time);
- (i) the request for tender and any addenda to the request for tender (howsoever named) for the Works (if any);
- (j) any variations to the above documents agreed to by the parties in writing or made under the Contract.

1.8 Contract Information

The documents described as such in the Contract Documents, which sets out information for the purposes of the Contract

1.9 Contract Price

Means:

- (a) where the Principal accepted only a lump sum, the lump sum specified in Contract Information – **Item 23**; or
- (b) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item in the **Schedule of Rates**, plus any lump sums in the **Schedule of Rates**, as adjusted in accordance with the Contract.

1.10 Date of Contract

The date specified in Contract Information – **Item 25**.

1.11 Day

A period of 24 hours or a calendar day. A calendar day commences at twelve o'clock midnight and ends at twelve o'clock on the following midnight. A week is a period of 7 days. When counting days, the first day of any stated time frame is the first day after a Contract event occurs.

1.12 Defect

Any aspect of the work under the Contract that does not conform with the Contract.

1.13 Direct Costs

Costs incurred by the Contractor excluding costs of supervision, site establishment, general tools, administration, overheads, fees, delay, disruption and profit.

1.14 Improvement notice, infringement notice, non-disturbance notice, notice of entry, notifiable incident, prohibition notice, provisional improvement notice and regulator

All have the same meanings as in the *Work Health and Safety Act 2011* (ACT).

1.15 Information Privacy Act

The *Information Privacy Act 2014* (ACT).

1.16 Insolvency Event

The occurrence of any of the following events in relation to the Contractor:

- (a) a liquidator, provisional liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the Contractor or any asset of the Contractor;
- (b) a distress, attachment or other execution is levied or enforced upon or against any assets of the Contractor and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (c) an order is made for the administration, dissolution or winding up of the Contractor, or a resolution is passed for the administration or winding up of the Contractor other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Principal;
- (d) the Contractor ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Principal;
- (e) the Contractor enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class

of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Principal;

- (f) an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the Contractor in relation to a possible contravention by the Contractor of that legislation and the appointment:
 - (i) is not withdrawn within 10 Business Days; and
 - (ii) in the reasonable opinion of the Principal, may have a material adverse effect;
- (g) the Contractor is, in the reasonable opinion of the Principal, unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law; or
- (h) where the Contractor is a registered corporation under the *Corporations Act 2001* (Cth), a step is taken under section 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) to cancel its registration.

1.17 Letter of Award

A letter from the Principal to the Contractor awarding the Contract to the Contractor and form the Contract.

1.17A Labour Relations, Training and Workplace Equity Plan

Has the meaning given by the Procurement Act.

1.18 Milestone

A part of the work under the Contract that is specified as a Milestone in Contract Information - **Item 3**.

1.19 OHS Management System

An occupational health and safety system listed on the Joint Accreditation System of Australia & New Zealand (JAS-ANZ) register as having current third party certification in accordance with the latest edition, as amended, of AS/NZS ISO 4801 (or such other occupational health and safety system as is found acceptable to the Principal).

1.20 Parties

The Principal and the Contractor.

1.21 Personal Information

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

1.22 Post Completion Period(s)

The period(s) stated in Contract Information - **Item 4**.

1.23 Preferred Subcontractor

A subcontractor included on the list in Contract Information – **Item 22** and provided by the Principal to the Contractor for a specified trade or area of work.

1.24 Principal

The entity stated in Contract Information - **Item 5**.

1.25 Procurement Act

The *Government Procurement Act 2001* (ACT) as amended from time to time.

1.26 Provisional Allowance

An amount included in the Contract Price for work for which payment will be made as a Provisional Sum or a Provisional Rate Amount.

1.27 Provisional Sum

An amount included in the Contract Price, which is identified as a provision for the work specified in the Contract against that Provisional Sum.

1.28 Provisional Rate Amount

An amount included in the Contract Price, based on a rate tendered for a provisional item of work.

1.29 Schedule of Rates

Schedule 3.

1.30 Scheduled Progress

The rate of progress to be achieved by the Contractor in designing and constructing the Works, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the contractual Completion date is adjusted under the Contract), so that it will (or is likely to) complete the Works and all Milestones by their respective contractual Completion dates.

1.31 Senior Executive

The person stated in Contract Information - **Item 6**.

1.32 Site

The lands and other places made available to the Contractor by the Principal for the purpose of the Contract.

1.33 Site Conditions

The physical conditions on, about or below the Site, excluding conditions resulting from weather.

1.34 Variation

Any change to the character, form, quality and extent of the work under the Contract instructed or accepted in writing by the Principal including any additions, increases, omissions or reductions to and from the Works but not including such changes or otherwise in respect of the development by the Contractor of *Design* (including without limitation the development of shop drawings). A Variation shall not invalidate the Contract.

1.35 Territory Information

The kind of information that:

- (a) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Principal which are by their nature confidential;
- (b) is notified (whether in writing or not) by the Principal to the Contractor as being confidential;
- (c) is specified in Contract Information - **Item 20**; or
- (d) is Personal Information,

but does not include information that:

- (e) is or becomes public knowledge other than by breach of this Contract;
- (f) has been independently developed or acquired by the Contractor; or
- (g) has been notified by the Principal to the Contractor as not being confidential.

- 1.36** **TPP Code**
A code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Contractor in the provision of the Works.
- 1.37** **TPPs**
The “Territory Privacy Principles” provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
- 1.38** **WHS Legislation**
- (a) the *Work Health and Safety Act 2011* (ACT);
 - (b) the *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.
- 1.39** **Works**
The works to be designed and constructed under the Contract.

2. The Contract

2.1 The Contract is made up of the Contract Documents, which supersede all understandings, representations and communications between the parties related to the subject matter of the Contract made before the Date of Contract. The Contract Documents are mutually explanatory and anything contained in one document but not in another shall be treated as if contained in all.

Headings, arrows and guidance notes are for convenience only and do not affect interpretation.

2.2 If the Contractor finds any error, discrepancy or ambiguity in the Contract Documents, then the Contractor is to inform the Principal before commencing the affected work and follow any instructions given by the Principal.

2.3 The Principal may give an instruction in relation to the Contract. The Contractor is to comply with the instruction within the time stated in the instruction or, if no time is stated, within a reasonable time.

2.4 The Contractor must not:

- (a) subcontract all the work under the Contract; or
- (b) enter into a single subcontract for the majority of the work under the Contract, without first obtaining the Principal's written consent.

2.5 The Contractor is solely responsible for all subcontractors and for their acts and omissions.

2.6 During claim and dispute resolution procedures undertaken under **Clauses 15** and **16**, the parties must continue to perform their obligations under the Contract.

2.7 This Contract is governed by the laws of the Australian Capital Territory.

2.8 If the Contractor was required to obtain or hold prequalification with the Territory at the time of tendering, the Contractor must, during the term, hold and maintain prequalification with the Territory at an equivalent or higher level.

2.9 The Contractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Contractor's Authorised Person and must keep the Principal informed in writing of the name of that person, and of any change. If the Principal reasonably objects to the person appointed from time to time, the Contractor must replace that person.

2.10 The Principal must ensure that there is a person appointed to act on behalf of the Principal in relation to the Contract as the Principal's Authorised Person and will advise the Contractor in writing of any limitations, qualifications or delegations of the powers of the Principal's Authorised Person. The person does not act as independent certifier, assessor or valuer. The person acts only as agent of the Principal.

2.11 Where a Letter of Award is used to form the Contract, if requested in writing by the Principal the Contractor must also execute three copies of the Contract on terms no different than those contained in the Contract Documents by signing the Formal Instrument of Agreement and return them to the Principal within 14 days. The Principal will return an executed copy to the Contractor for its records.

Unless the Principal instructs otherwise execution may be by electronic means using an appropriate electronic platform and in that case the parties hereby agree to execute electronically and intend to be bound by the terms or agreement in writing.

3. Design and Construction

3.1 The Contractor is to complete the Principal's design to the extent stated in Contract Information - **Item 7**.

3.2 The Contractor is not to depart from the Principal's design unless instructed by the Principal. The Principal retains responsibility for the design carried out by the Principal.

3.3 The Contractor has sole responsibility for the Contractor's design. The Principal relies on the Contractor's care, knowledge and skill in carrying out this responsibility.

3.4 The completed design is to conform with the Contract and be fit for the purpose of the Works stated in Contract Information - **Item 2**.

3.5 The Contractor is to progressively submit the completed design, comprising drawings, specifications, calculations and any statutory certificates required, to the Principal in accordance with Contract Information - **Item 8**.

3.6 The Principal is not bound to check the completed design for errors, omissions or conformance with the Contract. No comment made by the Principal relieves the Contractor of the Contractor's obligations and liabilities under the Contract.

The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the completed design.

3.7 All intellectual property and moral rights in any design created specifically for the Contract shall vest in the Principal upon their creation.

The Contractor grants to the Principal an unconditional and irrevocable licence to use any other design provided by or for the Contractor, to the extent necessary for the Works, including any subsequent repairs, maintenance or servicing (including the supply of replacement parts) or additions or alterations to the Works.

3.8 The Contractor is to construct the Works in accordance with the completed design, the program submitted under **clause 3.19** and Scheduled Progress, and make good the Site and surroundings.

Whenever requested the Contractor must demonstrate to the Principal that it is achieving Scheduled Progress.

If the Contractor is not achieving Scheduled Progress, the Principal may instruct the Contractor to take all reasonable steps to achieve Scheduled Progress at the Contractor's cost.

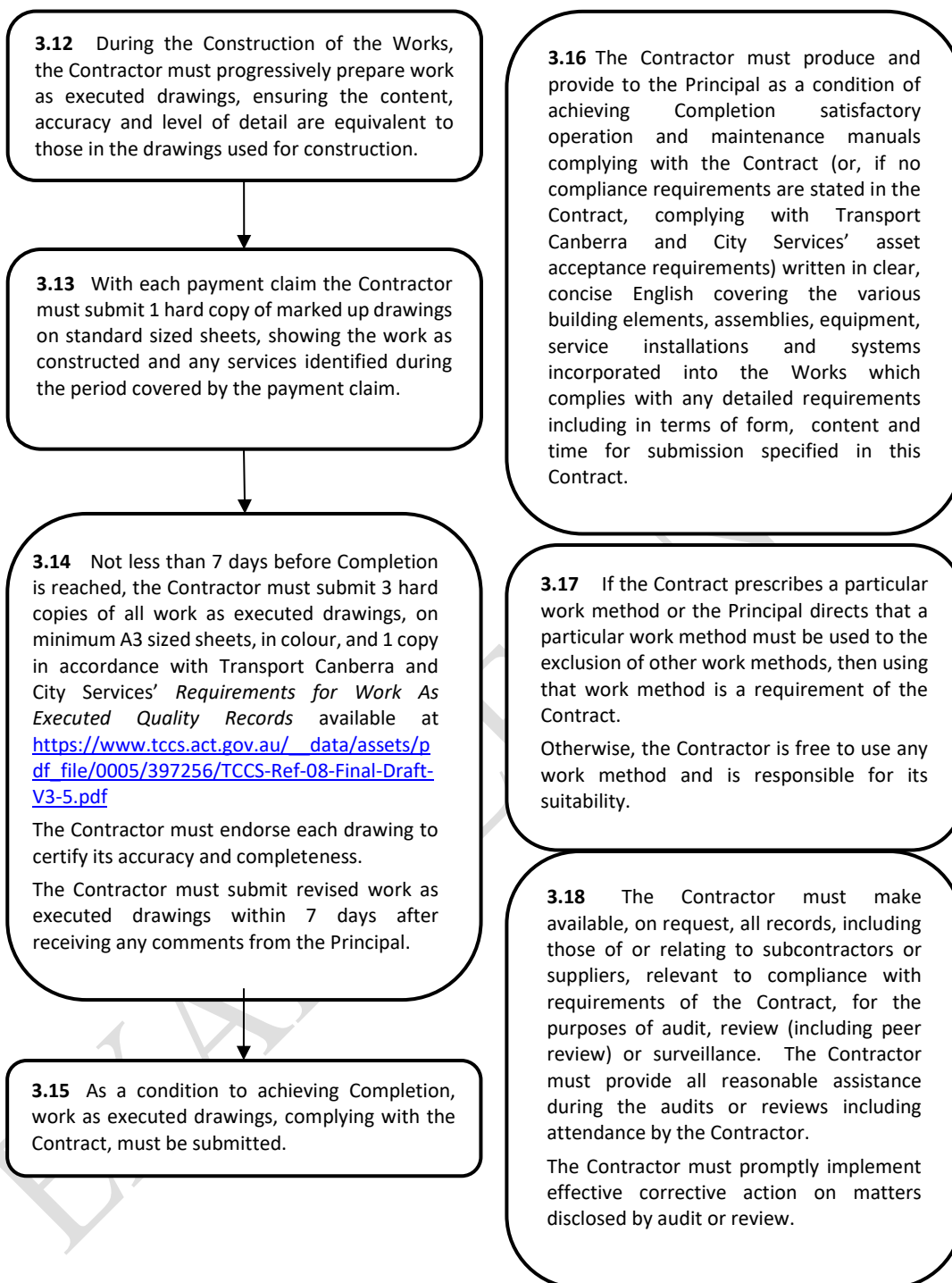
3.9 The Contractor is to provide minor items not included in the design that are needed to satisfactorily complete the Works.

3.10 The Contractor is to carry out work that is the subject of a Provisional Allowance only as instructed by the Principal and under the terms specified in the instruction.

If the Principal requests the Contractor to submit a price for work that is the subject of a Provisional Sum, then the Contractor is to comply within 14 days after the request.

3.11 The Contractor must use persons professionally qualified in the relevant disciplines to carry out all design and documentation. The use of such persons does not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

3. Design and Construction (Continued)



3. Design and Construction (Continued)

3.19 Prior to commencing the design or construction of the Works, and otherwise within the time required under Contract Information – **Item 18**, the Contractor must submit to the Principal a program for the design and construction of the Works which at a minimum complies with the form and content requirements set out in that item.

When requested by the Principal, the Contractor must provide the program in electronic form, and the software used by the Contractor must be acceptable to the Principal.

3.20 The Principal need not respond to the Contractor about the program submitted. If the Principal raises no objection and the program submitted by the Contractor complies with this **clause 3**, it becomes the program for the purposes of **clause 3.8**. If the program does not comply with this **clause 3**, the Contractor must promptly and in any event within 14 days of being notified by the Principal of the non-conformance, submit to the Principal a further program complying with this **clause 3**.

3.21 The Contractor must update and resubmit the program on a monthly basis and when otherwise directed by the Principal acting reasonably, taking into account actual progress, any changed circumstances and the effects of delays and approved extensions of time.

3.22 All extension of time claims by the Contractor must show how the Contractor has or will be delayed in reaching Completion by specific reference to an activity or activities on the then current critical path or paths of the program.

The Contractor will not be entitled to claim an extension of time under this Contract until the Contractor has submitted to the Principal a program in conformance with this **clause 3**.

4. Care of People, Property and the Environment

4.1 From the time access to any part of the Site is given to the Contractor until the date of Completion of the Works, the Contractor is responsible for the care of, and is to make good, at the Contractor's expense, any loss or damage which occurs to:

- (a) the Works;
- (b) construction plant; and
- (c) things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract.

In carrying out the work under the Contract, the Contractor is to minimise inconvenience to others.

The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.

4.2 The Contractor indemnifies the Principal against any:

- (a) legal liability for injury, death or harm to the environment;
- (b) breach of intellectual property rights in relation to material provided by or for the Contractor; and
- (c) loss of, or damage to, property of the Principal, or others,

arising out of the carrying out of the work under the Contract.

The Contractor's liability to indemnify the Principal is reduced to the extent that an act or omission of the Principal has contributed to the injury, loss or damage.

Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) does not apply to this Contract.

4.3 The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the work under the Contract.

4.4 The Principal may instruct the Contractor to remove a person from the Site and surroundings for failing to meet reasonable standards of conduct.

4.5 Nothing in this clause relieves the Principal of liability for acts and omissions of the Principal.

4.6 If:

- (a) action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when instructed by the Principal; or
- (b) urgent action is required,

then the Principal may take the action, without relieving the Contractor of its obligations or liabilities.

The Principal's costs in relation to any such action, as certified by the Principal, are a debt due and payable by the Contractor to the Principal.

5. Insurance

5.1 Before commencing any work in connection with the Contract, the Contractor is to hold workers compensation insurance as required by law, Works insurance if required under Contract Particulars - **Item 9**, and any other insurance as required by Contract Information – **Item 10**, in the minimum of the amounts and on the terms set out in those Items. The Contractor is also to ensure that every subcontractor, before commencing any work in connection with the Contract, holds equivalent insurance where applicable.

Is the insurance of the Works to be arranged by the Contractor or the Principal?

Principal

Contractor

5.2 If stated in Contract Information - **Item 9**, the Principal has arranged a policy of insurance for the material damage to the Works and liabilities to third parties arising from the Works ("**Policy**") the details of which are set out in Contract Information – **Item 9**.

The Contractor represents and warrants that it has read the terms of the Policy prior to entering into this Contract.

The Contractor acknowledges that:

- (a) the Policy has been obtained at the Principal's cost;
- (b) the Contractor is not entitled to the payment of any allowance for the cost of obtaining such insurances or additional insurance cover it considers necessary in relation to the subject matter of that insurance; and
- (c) the obtaining of the Policy by the Principal does not:
 - (i) limit the obligations of the Contractor to obtain and hold other insurance policies required by law or this clause; or
 - (ii) prevent the Contractor from effecting any additional insurances if the Contractor deems it necessary or prudent to obtain them at its own cost.

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

5.3 The obtaining of insurance by the Principal does not reduce, vary or otherwise affect the Contractor's liabilities and obligations pursuant to **clause 4**, warranties given or otherwise under the Contract or in connection with the Works.

5.4 If there is a claim for significant damage or destruction under the Policy (as determined by the Principal, acting reasonably):

- (a) all settlement amounts must be paid by the insurer directly to the Principal;
- (b) the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
- (c) the Contractor must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Contract may only make a claim for payment for reinstatement of the Works up to the amount of any insurance settlement.

5. Insurance (Continued)

5.5 The Contractor must give all such information and assistance to the Principal as may be reasonably practicable to assist the Principal or the insurer in respect of any claim or potential claim on the Policy.

5.6 If Contract Information - **Item 9** states that the Contractor is to arrange a policy of insurance for the material damage to the Works and liabilities to third parties arising from the Works then, before commencing work on the Site, the Contractor is to hold the policy of insurance.

The policy is to include cross liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The required policy is to be with insurers and in terms approved by the Principal. Approvals will not be unreasonably withheld.

5.7 The Contractor, and, if applicable, any relevant subcontractor, is to hold the following additional insurance policies:

- (a) public liability insurance as specified in Contract Information – **Item 9**;
- (b) professional indemnity insurance, if stated in Contract Information - **Item 10**; and
- (c) such other insurance as stated in the Contract Information – **Item 10**.

The policies are to be in place before commencing the relevant work.

5.8 The Contractor must provide evidence satisfactory to the Principal that all insurances required under the Contract are current.

5.9 If the Contractor fails, within 7 days after a written request from the Principal, to provide satisfactory evidence in accordance with **clause 5.8**, then the Principal may effect or maintain the insurance and pay any premiums. The Contractor is to pay the Principal the amount of any premiums or deductibles paid by the Principal plus, in each and every case, \$500 to cover the Principal's costs. These amounts, once notified, are a debt due and payable by the Contractor to the Principal.

5.10 The Contractor is responsible for making and managing any claims and meeting the costs of any deductibles in relation to the insurances it is required to hold under this Contract.

6. Site Access

6.1 The Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start the work under the Contract, by the time(s) stated in Contract Information - **Item 11**.

6.2 The Principal is to act reasonably for the purposes of the above but is not required to give the Contractor sole or uninterrupted possession of, or access, to the Site.

6.3 The Contractor is to start work on the Site as soon as practicable after being given access to sufficient of the Site, but not before satisfying all necessary requirements.

6.4 Site access is subject to the conditions and requirements set out in Contract Information – **Item 16**.

6.5 The Contractor is to give the Principal, and any third party authorised by the Principal, reasonable access to the Site for any purpose.

6.6 The Site is available to the Contractor to carry out the Works between the hours and on the days specified in Contract Information - **Item 17**.

The Principal's Authorised Person may approve additional working hours or working days subject to conditions which may include, but will not be limited to:

- (a) restrictions on the performance of work requiring surveillance; and
- (b) a requirement that the Contractor meet the costs of surveillance, by and on behalf of the Principal, of work performed during any approved additional working hours and days;
- (c) any other conditions specified in Contract Information - **Item 17**.

7. Site Conditions

7.1 If the Contractor encounters Site Conditions that differ materially and adversely from what should reasonably have been expected at close of tenders, then the Contractor is to notify the Principal forthwith in writing and in any event within 7 days after encountering them.

The notification is to include details of the materially adverse Site Conditions and the additional time and cost the Contractor estimates will be required to deal with them.

7.2 The Contractor is solely responsible for dealing with Site Conditions and is to minimise any additional time and cost.

7.3 From the time the Principal receives notification complying with **Clause 7.1**, the Contractor is entitled to:

- (a) payment of the Contractor's reasonable additional Direct Costs plus a margin of 15%; and
- (b) an extension of time for delays in reaching Completion,

where the additional cost or delay are necessarily incurred as a result of the materially adverse Site Conditions.

This entitlement is reduced to the extent that the Contractor has not minimised additional time and costs.

The Contractor has no entitlement to additional payment or an extension of time in relation to the period prior to the date of receipt of notification under **Clause 7.1**.

The Contractor has no other entitlements due to materially adverse site conditions except under **Clause 7.5**.

7.4 The Contractor is to claim any additional Direct Costs and extensions of time to which it is entitled under **Clause 7.3** within 28 days after completing the relevant work.

The claim is to be made in accordance with **Clause 15.2**.

7.5 If a Variation is instructed as a result of materially adverse Site Conditions, the Contractor's entitlements under **Clause 7.3** cease from the time of the instruction and **Clause 9** applies to the Variation.

8. Materials, Work and Subcontractors

8.1 The Contractor is to:

- (a) supply materials which are new (unless otherwise specified), free from encumbrances, free from defects and fit for purpose; and
- (b) use standards of workmanship (including design) and work methods, which conform with the Contract, the National Construction Code, relevant Australian Standards and codes of practice, and the lawful requirements of any authority.

8.2 When instructed by the Principal, the Contractor is to:

- (a) uncover and re-cover work; and/or
- (b) carry out additional testing.

8.3 The Contractor is not entitled to additional payment or an extension of time in respect of an instruction under **Clause 8.2** unless the work uncovered or tested conforms with the Contract, in which case the instruction will be dealt with as an instruction under **Clause 9**.

8.4 The Contractor is to make good any Defect when it becomes apparent. The Principal may, in its absolute discretion, propose to accept work under the Contract with any specified Defect not made good, on specified terms. If the Contractor does not accept the Principal's proposal, then the Contractor is to make good the Defect.

8.5 The Contractor must use qualified tradespersons to carry out the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

8.6 In accordance with **clause 2.4**, the Contractor must not subcontract the whole of the Works, but it may subcontract parts of the Works in accordance with **clauses 8.7 - 8.9**.

8.7 Before engaging any subcontractors for the provision of works, services or goods (including professional services and plan hire) with a value of \$25,000 or more, the Contractor must provide to the Principal the names and addresses of those proposed subcontractors and, if requested, an unpriced copy of any subcontract.

8.8 For each trade or area of work for which the Principal has provided a list of Preferred Subcontractors before the Date of Contract, the Contractor may only engage a subcontractor from that list. If no Preferred Subcontractor on the list will subcontract to perform the work, the Contractor must provide a separate list and **clause 8.7** will then apply.

8.9 The Principal may object to the appointment of any subcontractor on reasonable grounds, in which case the Contractor must at its own cost propose another subcontractor.

8.10 Nothing in **Clause 8** relieves the Contractor of any obligations or liabilities under the Contract.

9. Variations

9.1 The Contractor is not to change the Works without an instruction from the Principal or written acceptance by the Principal of a proposal from the Contractor.

9.2 The Contractor is to take all reasonable steps to carry out any Variation concurrently with other work and to otherwise minimise any delays.

9.3 If the Contractor proposes a Variation for the Contractor's convenience the Principal may, in its absolute discretion, accept the proposal on specified terms.

9.4 If, in respect of a possible Variation, the Principal requests the Contractor to submit a proposal, including the effect on the Contract Price, the time required to reach Completion (including any delay) and any other implications for the Contract, the Contractor is to comply with the request within 14 days. If the Variation will involve additional work, the proposal may include a margin which must be not more than 15% on Direct Costs. If the Variation will involve less work, the proposal must include a margin which must be at least 5% on the reduction in Direct Costs.

Does the Principal accept the Contractor's proposal?

Yes

No

9.5 If the Principal accepts a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is accepted as a Variation.

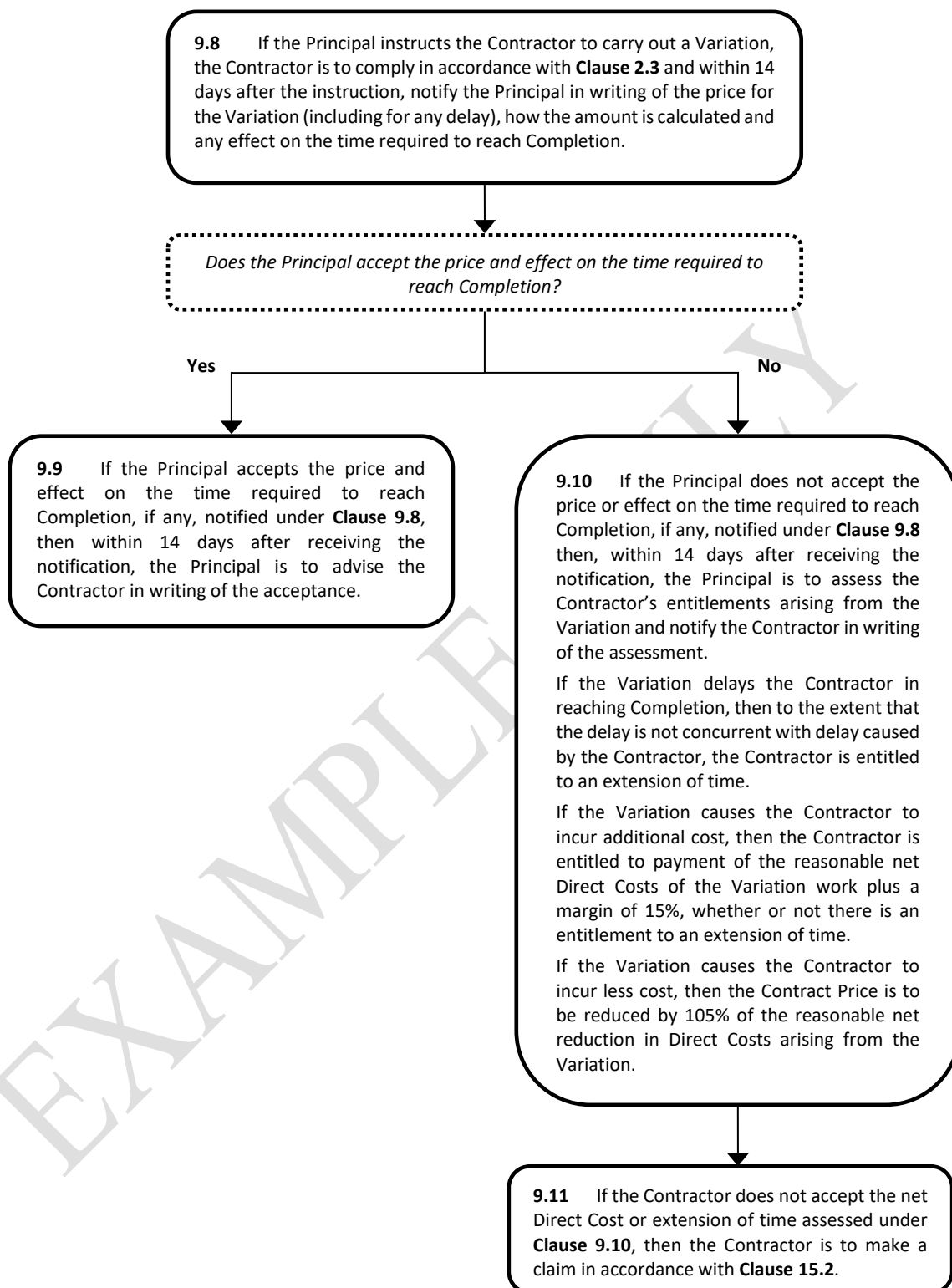
9.6 If the Principal does not accept a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is not accepted.

9.7 (a) Nothing in **Clause 9.4** or **Clause 9.6** prevents the Principal from instructing a Variation under **Clause 9.8**.

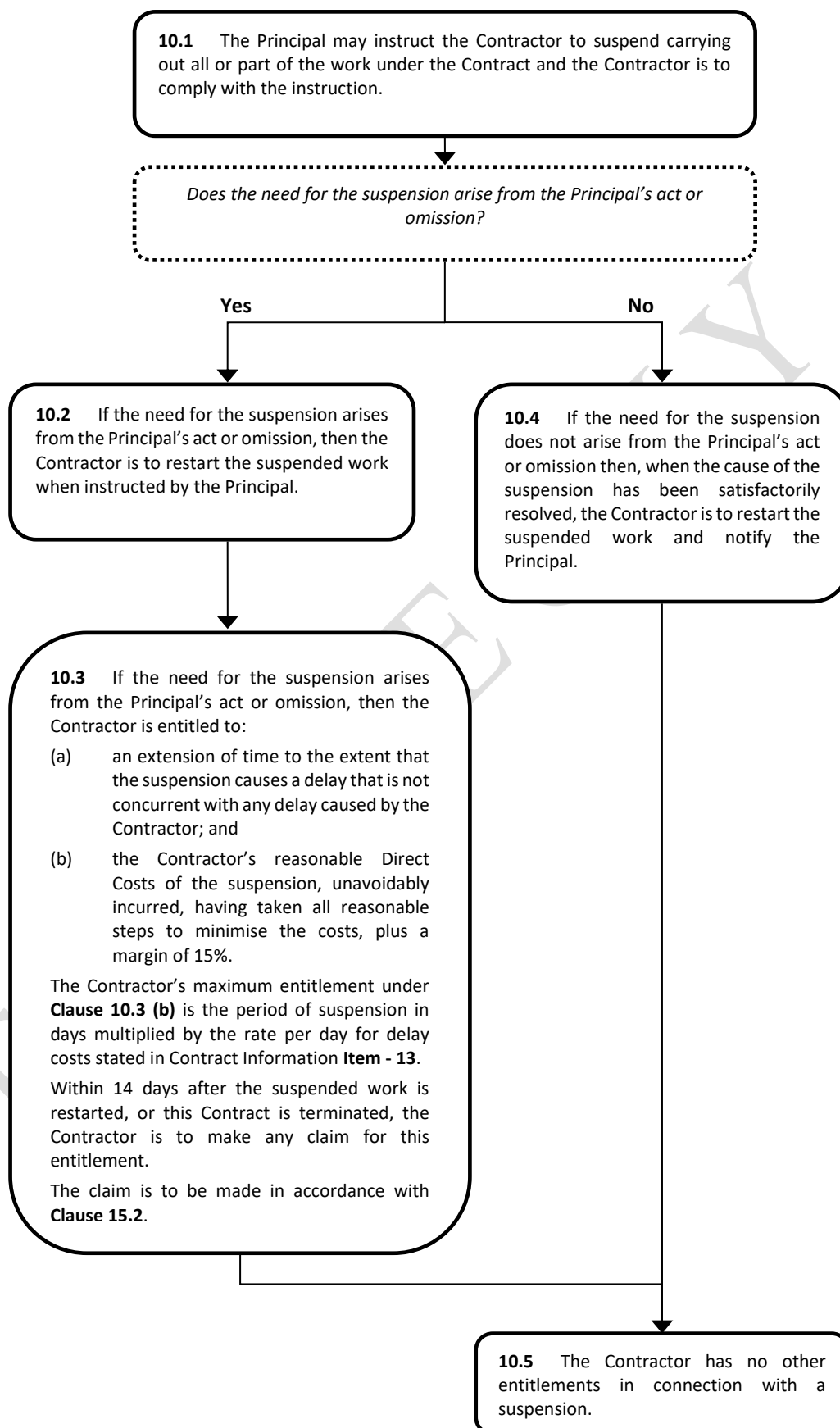
(b) The parties agree that the price and affect on time accepted by the Principal under **Clause 9.5** or **Clause 9.9** or determined in accordance with **clause 9.10** fully compensate the parties for all costs and losses arising from supervision, overheads, delay, disruption and interference resulting from the Variation.

The Contractor has no other entitlements in relation to the Variation.

9. Variations (Continued)



10. Suspension



11. Completion

11.1 The Contractor is to bring the work under the Contract and any Milestones to Completion within the time(s) stated in Contract Information - **Item 12**, as extended under the Contract.

11.2 The Contractor is to notify the Principal when, in the Contractor's opinion, the work under the Contract or any Milestone has reached Completion. When the Contract includes Milestones, the work under the Contract will have reached Completion when all Milestones have reached Completion.

11.3 Upon receipt of notification under **Clause 11.2**, the Principal is to:

- (a) determine if the work under the Contract or Milestone has reached Completion and, if so, the date Completion was reached; and
- (b) promptly give the Contractor written notice of the determination.

11.4 Before Completion, the Principal may use or occupy any part of the Works which is sufficiently complete, and then:

- (a) the Contractor's responsibilities are not affected, except to the extent that the Principal causes the Contractor's work to be hindered; and
- (b) the Principal becomes responsible for any additional insurance required.

The Principal is to give the Contractor not less than 7 days notice in writing that the Principal (or a third party authorised by the Principal) will be using or occupying a part of the Works and is to specify the part(s) to be used or occupied.

The Contractor is to provide to the Principal, no more than 14 days after receiving the Principal's notice, all documents and other things relevant to the part(s) of the Works specified in the notice. The Contractor is to provide full assistance and cooperation to the Principal in the use and occupation of the parts specified in the notice.

11.5 The Principal may, in its absolute discretion, notify the Contractor that the work under the Contract or any Milestone has reached Completion.

12. Delay to Completion

12.1 If the Contractor anticipates being delayed in reaching Completion, the Contractor is to promptly notify the Principal.

12.2 If the Contractor is delayed in reaching Completion, the Contractor is to immediately notify the Principal and, within 7 days after the delay starts, advise the Principal in writing of the cause, relevant facts and actual or expected delay.

12.3 If a delay in reaching Completion is not concurrent with delay caused by the Contractor, and is caused by:

- (a) an instruction given by the Principal, except under **Clauses 8, 9 or 10**;
- (b) a breach of the Contract by the Principal; or
- (c) any event beyond the control of the Contractor to the extent the Contractor has not contributed to the delay,

then the Contractor is entitled to an extension of the time for Completion, under this **Clause 12.3**, to the extent that the instruction, breach or event caused delay.

The Contractor may also have an entitlement to an extension of the time for Completion under **Clauses 8, 9 or 10**.

If an entitlement to an extension of the time for Completion arises under **Clause 12.3 (a)** or **(b)** and the Contractor is delayed in reaching Completion of the work under the Contract then the Contractor is entitled to delay costs at the rate per day stated in Contract Information - **Item 13**.

The Contractor has no entitlement to costs arising from delays due to causes that are beyond the control of the Principal.

The Contractor has no other entitlement for costs in relation to delays.

12.4 Within 14 days after a delay ends, the Contractor is to make a claim in accordance with **Clause 15.2**.

The Principal is to assess the Contractor's entitlements and notify the Contractor in writing of the assessment.

If the Principal does not notify the Contractor of the assessed entitlements within 28 days after the claim is received, then the assessed entitlements will be nil.

12.5 If the Contractor does not accept the assessed entitlements, the Contractor is to proceed in accordance with **Clause 15.3**.

12.6 If the Contractor does not complete a Milestone or the work under the Contract in accordance with **Clause 11.1**, then:

- (a) if a rate is stated in Contract Information - **Item 14**, the Contractor is to pay to the Principal liquidated damages at that rate from the date immediately after the date for Completion to, and including, the date Completion is reached; or
- (b) if no rate is stated in Contract Information - **Item 14**, then common law damages will apply.

The damages, once notified, are a debt due and payable by the Contractor to the Principal.

12.7 The Principal may for any reason and at any time extend any time for Completion by written notice.

13. Payment and Retention

13.1 The Contractor is to give a written payment claim to the Principal at the times specified in Contract Information - **Item 15**, by way of email to the email address for payment claims specified in Contract Information - **Item 1**, marked to the attention of the Principal's Authorised Person. The claim is to identify the work carried out, the amount claimed and how the amount is calculated.

The amount the Contractor is entitled to claim is the sum of:

- (a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the relevant quantities of work carried out;
- (b) for work for which the Principal accepted a lump sum, the percentage of the lump sum that reflects the value of the work carried out;
- (c) for completed work for which the Contract Price includes a Provisional Allowance, the amount calculated in accordance with **Clause 13.7**; and
- (d) for any extra entitlement claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under **Clause 16**, the percentage of that amount which reflects the value of the entitlement,

at the date of the payment claim, less amounts previously paid, amounts payable by the Contractor to the Principal and any amounts the Principal is entitled to deduct, including retentions, set-offs and liquidated damages.

With each payment claim, the Contractor is to give to the Principal the conformance records and other information required under the Contract. The Contractor must not include a sum in a payment claim in respect of any unfixed plant and materials.

13.2 Within 10 Business Days after receipt of the Contractor's payment claim, the Principal is to give to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. If the payment is to be less than the amount claimed, the payment schedule is to state the reasons why it is less.

13.3 Payment by the Principal is to be made within 15 Business Days after receipt of the Contractor's payment claim.

13.4 Unless otherwise stated, all payments by the Principal to the Contractor are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Contractor. No payment is due to the Contractor until sufficient details of the nominated account are notified in writing to the Principal. The Contractor is to give the Principal a minimum of 7 days written notice of any changes to the nominated account. The Principal is otherwise not responsible for any payments made into a previously nominated account.

13.5 Payment is not evidence of the value of work or that the work is satisfactory or an admission of liability, but is payment on account only.

13. Payment and Retention (Continued)

13.6 The Principal is entitled to withhold, deduct or set-off from any payment due to the Contractor, under or arising out of the Contract or any other contract between the parties a sum equivalent to any sum claimed by the Principal under or arising out of Contract or any other contract between the Contractor and the Principal or between the Contractor and any other Territory entity as defined in section 3(1) of the *Government Procurement Act 2001* (ACT).

13.7 If the Principal instructs the Contractor to carry out work that is the subject of a Provisional Allowance, then the Contract Price is to be adjusted as follows:

- (a) the amount of the Provisional Allowance is to be deducted from the Contract Price; and
- (b) where the Provisional Allowance is a Provisional Sum, the reasonable Direct Costs to the Contractor of work carried out in relation to the Provisional Sum plus 10%, is to be added to the Contract Price; or
- (c) where the Provisional Allowance is a Provisional Rate Amount, the amount calculated by applying the tendered rate to the measured quantity of work carried out, up to the specified limit, is to be added to the Contract Price.

If the Principal does not instruct the Contractor to carry out work which is subject to any Provisional Allowance, then the Provisional Allowance is to be deducted from the Contract Price.

13.8 When the amount the Contractor is entitled to be paid exceeds 50% of the Contract Price, where the Contract Price is:

- (a) \$500,000 (GST inclusive) or more, the Contractor must provide to the Principal an undertaking in an amount equal to 4% of the Contract Price in the form detailed in Schedule 1 – **Unconditional Undertaking**; or
- (b) less than \$500,000 (GST inclusive) the Principal is to retain 4% of the Contract Price.

The Contractor may, instead of the retention under (b), elect to provide an undertaking in the amount of the retention in the form detailed in Schedule 1 – **Unconditional Undertaking**.

All undertakings are to be provided by a bank, building society, credit union or insurance company acceptable to the Principal.

The Principal may make a demand against an undertaking or use/apply the retention money, at any time.

13. Payment and Retention (Continued)

- 13.9** Within 60 Business Days after:
- (a) the work under the Contract reaches Completion; or
 - (b) the rectification or resolution of all Defects identified prior to the end of the final Post Completion Period (if any); or
 - (c) the resolution of all claims made under **Clause 15**,

whichever is the later, the Principal is to issue a final payment schedule accounting for the payment of any retention held under **Clause 13.8** and any amounts the Principal demands from the Contractor, and stating the amount payable by one party to the other.

If payment is due to the Contractor then, within the later of 20 Business Days after the date of issue of the final payment schedule, the Principal is to pay the Contractor any money due in accordance with the final payment schedule and release the balance of any undertakings.

If payment is due to the Principal from the Contractor then the payment is a debt due and payable by the Contractor to the Principal. Within 20 Business Days after the date of issue of the final payment schedule, the Contractor is to pay the Principal any money due in accordance with the final payment schedule. The Principal is to release the balance of any undertakings within 5 Business Days after receiving payment from the Contractor.

If no payment is due from either party to the other then, within 20 Business Days after the date of issue of the final payment schedule, the Principal is to release the balance of any undertakings.

13.10 The Contract price, any associated amount and other amounts specified in the Contract are GST inclusive unless otherwise specifically stated.

GST Law has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Words or expressions used in this clause which are defined in the GST Law have that defined meaning unless otherwise provided.

14. After Completion

14.1 At any time after Completion is reached, the Principal may instruct the Contractor to make good a Defect within a specified time and at a time convenient to the Principal.
All costs associated with making good a Defect are payable by the Contractor.

14.2 If the Contractor does not make good the Defect within the time specified, then the Principal may have the Defect made good by others. The Contractor remains responsible for the work under the Contract.

14.3 The Principal is to assess the reasonable cost of having the Defect made good by others and the assessed cost, once notified, is a debt due and payable by the Contractor to the Principal.

15. Claims

15.1 Any claim, other than a claim made under **Clause 13**, is to be made in accordance with this **Clause 15**.

15.2 A claim by the Contractor on the Principal is to be in writing and contain sufficient information for the Principal to assess the claim, including:

- (a) the legal and factual basis of the claim;
- (b) how the quantum of the claim is calculated; and
- (c) evidence supporting the claim, including applicable subcontractor documentation.

15.3 Within 14 days after receiving a claim that meets the requirements of **Clause 15.2**, the Principal's Authorised Person is to assess the Contractor's entitlement and notify the Contractor.

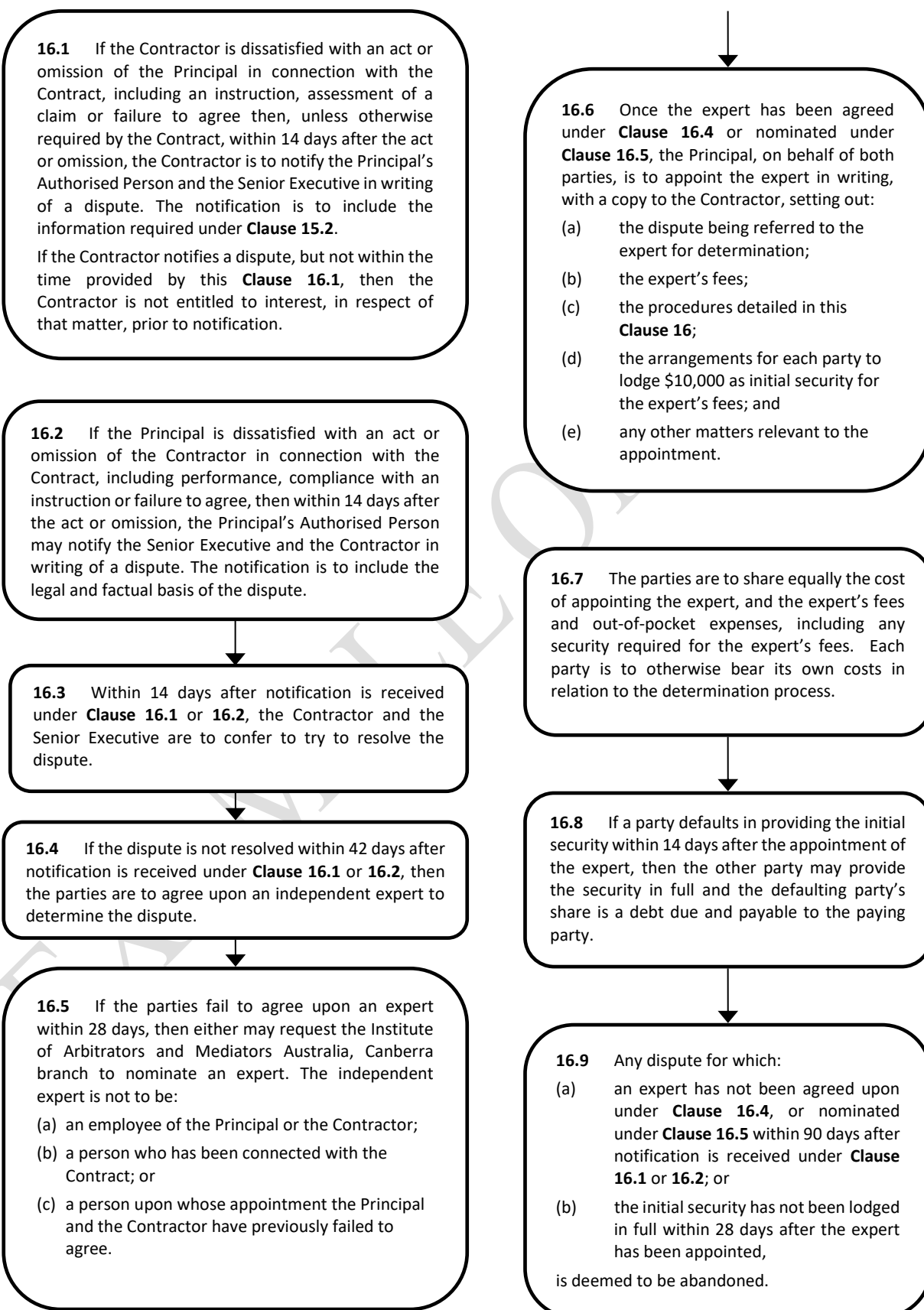
If the Contractor does not accept the Principal's Authorised Person's assessment, then the Contractor and Principal's Authorised Person are to confer to try to reach agreement.

If agreement is not reached within 28 days after the Contractor receives the Principal's Authorised Person's assessment, **Clause 16** will apply.

15.4 Unless otherwise provided for in the Contract, any claim by the Contractor on the Principal, in relation to events that occurred before the work under the Contract reached Completion, is to be received by the Principal within 28 days after the Contractor receives the Principal's written notice of Completion of the work under the Contract under **Clause 11.3**. Otherwise the claim is barred.

If the Contract includes a Post Completion Period, then any claim by the Contractor on the Principal, in relation to events that occurred during a Post Completion Period, is to be made within 28 days after the end of the final Post Completion Period. Otherwise the claim is barred.

16. Disputes



16. Disputes (Continued)

16.10 Each party is to make written submissions to the expert and provide a copy to the other party as follows:

- (a) Within 21 days after the appointment of the expert, the notifying party is to make its submission on the matter in dispute.
- (b) Within 14 days after receiving a copy of that submission, the other party is to make its submission in response, if any, which may include cross-claims.
- (c) If a cross-claim is made, the notifying party is to make its submission on the cross claim within 14 days after receiving a copy of the submission from the other party.
- (d) The expert may request further information from either party and that party must respond within 14 days after receiving the request.
- (e) The expert must ignore any submission not made within the times given in this **Clause 16.10** and make a determination on the submissions or information provided within time, unless the parties agree otherwise in writing.

16.11 The expert must determine whether the claimed event, act or omission did occur and, if so:

- (a) when it occurred;
- (b) what term of the Contract or other obligation in law, if any, requires one party to pay the other money or otherwise act in respect of it; and
- (c) the merits in law of any defence or cross-claim raised by the other party.

The expert is then to determine the amount, if any, which one party is legally bound to pay the other on account of the event, act or omission.

The expert must also determine any other question(s) referred by the parties under **Clause 16.6**.

16.12 In making the determination, the expert acts as an expert and not as an arbitrator and is:

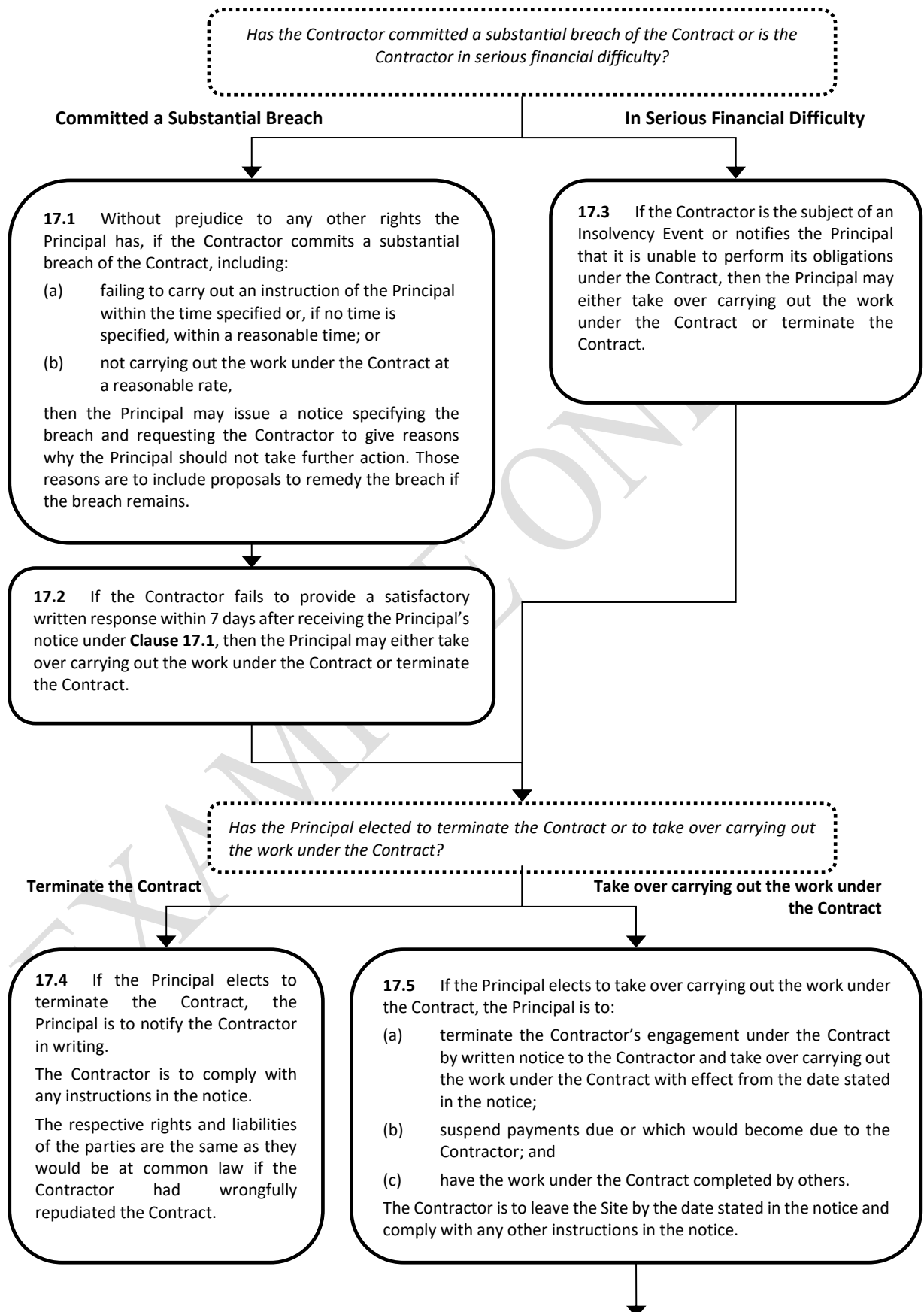
- (a) not liable for acts, omissions or negligence;
- (b) to make the determination on the basis of the Contract and written submissions from the parties without formalities such as a hearing;
- (c) not to incur costs until the initial security has been lodged in full; and
- (d) required to give the determination in writing, with brief reasons, to each party within 28 days after the submissions from the parties have been received or the initial security has been lodged in full, whichever is the later.

16.13 If the expert determines that one party is to pay the other an amount exceeding \$500,000 (excluding interest) and within 10 Business Days after receiving the determination, either party gives written notice to the other that it is dissatisfied, then the determination is of no effect and either party may commence litigation.

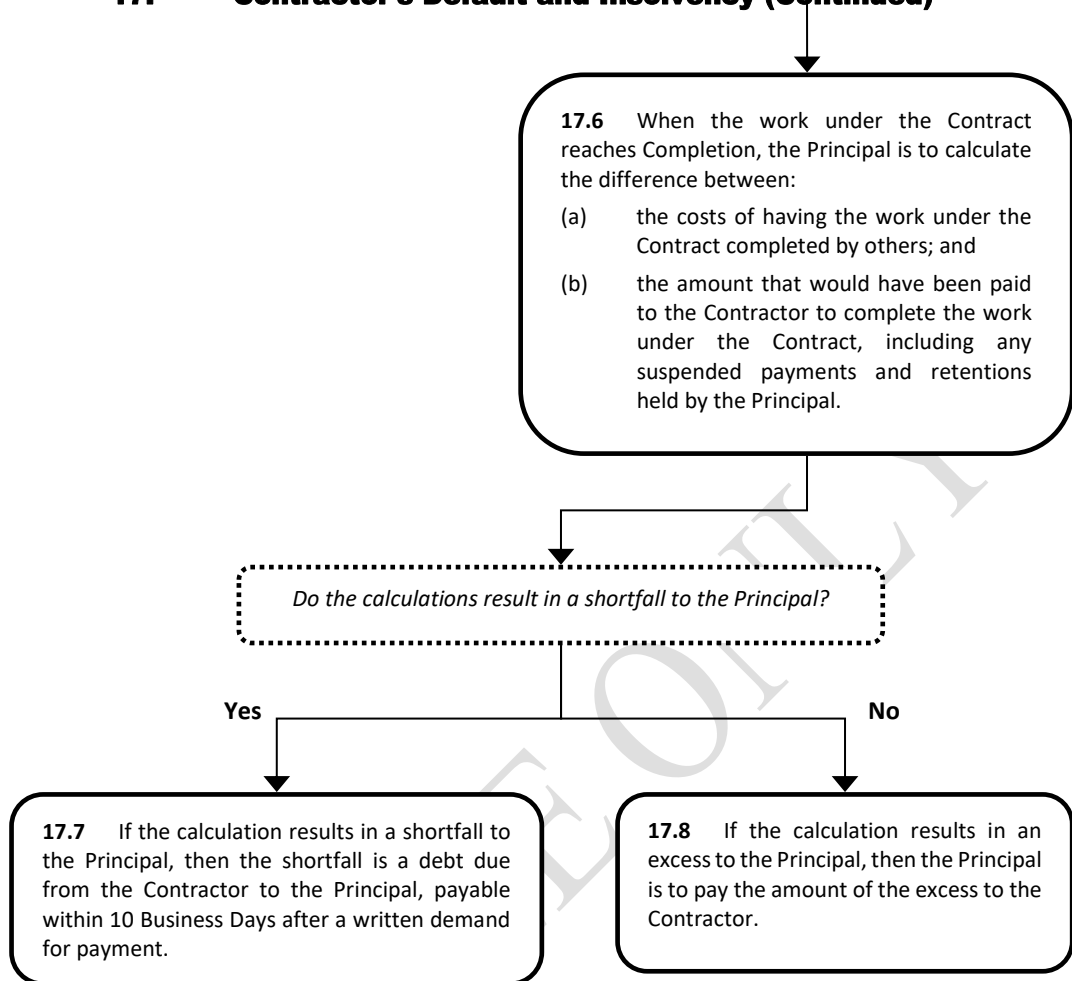
16.14 Unless a party has a right to commence litigation under **Clause 16.13**:

- (a) the parties are to treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that the Contractor owes money to the Principal, the amount determined is a debt due and payable by the Contractor to the Principal and the Contractor is to pay the money within 20 Business Days after receiving the determination; or
- (c) if the expert determines that the Principal owes money to the Contractor, the Principal is to pay the money within 20 Business Days after receiving the expert determination.

17. Contractor's Default and Insolvency



17. Contractor's Default and Insolvency (Continued)



18. Termination for the Principal's Convenience

18.1 The Principal may terminate the Contract for convenience at any time and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice (or, if no date is stated, the date of the notice) (**Termination Date**). The Contractor is to leave the Site by the date stated in the notice (or, if no date is stated, within 7 calendar days of the date of the notice) and comply with any other instructions in the notice.

If the Contract is terminated for the Principal's convenience, then the Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the Termination Date, determined in accordance with **Clauses 13 and 16**; plus
- (b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 18** are full compensation for termination under this **Clause 18**, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

18.2 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 18** in all subcontracts, including supply agreements.

19. Termination for the Principal's Default

19.1 If the Principal fails to pay the Contractor any amount that is in accordance with the Contract, and not in dispute, or commits a fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 28 days after receiving the notice.

19.2 If, within 28 days after receiving the Contractor's notice under **Clause 19.1**, the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract.

19.3 The Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date of the termination notice, determined in accordance with **Clauses 13** and **16**; plus
- (b) 4% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 19** are full compensation for termination under this **Clause 19**, and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.

19.4 The Contractor has no other right to terminate the Contract, under common law or otherwise.

19.5 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 19** in all subcontracts, including supply agreements.

20. Work Health and Safety

20.1 The obligations set out in this Contract do not detract from the Contractor's obligations under the WHS Legislation. If there is an inconsistency between this Contract and the WHS Legislation, the Contractor must comply with the WHS Legislation and inform the Principal of the inconsistency.

20.2 The Contractor must comply with the WHS Legislation and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk.

20.3 The Contractor must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.

20.4 The Contractor must institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform work on a Site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.

20.5 The Contractor must provide the written assurances obtained under **clause 20.4**, together with written assurances from the Contractor about the Contractor's ongoing compliance with WHS Legislation, to the Principal when requested.

20.6 The Contractor must exercise a duty of utmost good faith to the Principal in carrying out the work under this Contract to enable the Principal to discharge the Principal's duties under the WHS Legislation.

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

20.8 The Contractor must ensure that if any law requires that a person:

- (a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
- (b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.

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

20.10 The Contractor must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and **clauses 20.8** and **20.9** are met.

20. Work Health and Safety (Continued)

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

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

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

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

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

20.16 The Contractor must take all reasonable actions and comply with all reasonable requests of the Principal regarding any safety audits in respect of the Site.

20.17 Without limiting the above, the Contractor must, at all reasonable times, allow the Principal or any person authorised by the Principal:

- (a) to enter upon a Site to conduct a safety audit;
- (b) to enter upon a Site or any premises occupied by the Contractor to inspect and copy any records relevant to a safety audit; and
- (c) to enter upon a Site or any premises occupied by the Contractor to interview any person as part of a safety audit.

The Contractor is deemed to have allowed in its Contract Price for its attendance, supervision and related costs associated with the conduct of audits.

20.18 The Contractor must immediately notify the Principal upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to a Site and provide the Principal with a copy of the relevant notice if the Contractor has it.

20.19 The Contractor must promptly notify the Principal upon becoming aware of the issue of any provisional improvement notice referable to a Site and provide the Principal with a copy of the notice if the Contractor has the same.

20. Work Health and Safety (Continued)

20.20 The Contractor must provide reports on work health and safety matters to the Principal in such form and at such times as reasonably required by the Principal and advised to the Contractor.

20.21 In addition to any obligations under WHS Legislation, the Contractor must:

- (a) notify the Principal of any notifiable incident occurring at a Site immediately after it notifies the regulator; and
- (b) provide the Principal with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing them to the regulator.

20.22 The Contractor must promptly notify the occurrence and furnish a written report to the Principal of:

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

21. OHS Management System

21.1 The Contractor must implement and maintain an OHS Management System and provide the Principal with access at all times to the Contractor's and each of its subcontractor's OHS Management Systems to enable monitoring and quality auditing.

21.2 The implementation of the OHS Management System will not relieve the Contractor of the Contractor's obligations under this Contract.

22. Engagement as Principal Contractor

22.1 This clause applies unless otherwise provided in Contract Information - **Item 21** or as otherwise directed by the Principal.

22.2 The Principal:

- (a) engages the Contractor as principal contractor in respect of the Site;
- (b) authorises the Contractor to have management or control of the Site; and
- (c) engages the Contractor to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011* (ACT) in respect of the Site.

22.3 The Contractor must in respect of the Site:

- (a) prepare and supply to the Principal a WHS Management Plan; and
- (b) provide the WHS Management Plan(s) before beginning work under this Contract at the Site, and any updated WHS Management Plan upon request by the Principal.

22.4 The Principal will notify the Contractor as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 5 Business Day of receipt of the WHS Management Plan.

22.5 Notification by the Principal of the suitability of the Contractor's WHS Management Plan will not relieve the Contractor of its obligations to comply with and demonstrate compliance with this Contract and the WHS Legislation.

22.6 The Contractor must regularly review its WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Contract and WHS Legislation.

22.7 For the purposes of this clause, "WHS Management Plan" means a work health and safety management plan that addresses:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under this Contract;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under this Contract is 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 Principal 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 monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Principal.

23. If not engaged as Principal Contractor

23.1 If the Site is the subject of a “Construction Project” as defined in the WHS Legislation but:

- (a) Contract Information - **Item 21** specifies the Contractor is not appointed principal contractor; or
- (b) the Contractor is otherwise notified by the Principal that the Contractor is not appointed principal contractor,

the Contractor is not appointed as the principal contractor but it must ensure that it and all its employees, subcontractors and suppliers, comply with:

- (c) the WHS Management Plan of the appointed principal contractor; and
- (d) directions, notices and any other notifications issued for or on behalf of the principal contractor referable to work health and safety matters.

23.2 Where the Contractor is not appointed as the principal contractor it must comply with the duty to consult, co-operate and coordinate activities with all other persons conducting a business or undertaking at the Site.

24. WHS Active Certification

24.1 Unless otherwise stated, capitalised words and phrases used in this clause have the same meaning as in the Australian Capital Territory's WHS Active Certification Policy.

24.2 Without limiting any other part of this Contract where the Contractor:

- (a) is prequalified under a Prequalification Scheme at the Date of Contract;
- (b) becomes prequalified under a Prequalification Scheme during the term of this Contract; or
- (c) has its prequalification status under a Prequalification Scheme cancelled, suspended or downgraded during the Term of this Contract,

the WHS Active Certification Policy will apply.

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

24.3 The Contractor will pay to the Principal by way of reimbursement the Auditor's costs associated with the conduct of any Follow Up Audit (required as a result of the action or inaction of the Contractor) and any Close Out Audit conducted under the WHS Active Certification Policy.

24.4 Unless otherwise agreed by the parties, the costs of the Auditor will be paid by the Contractor to the Principal by way of a deduction from an amount or amounts claimed by the Contractor in a payment claim or claims made under this Contract, at the absolute discretion of the Principal.

24.4 Where all or part of the costs of the Auditor are not paid to the Principal any amount outstanding will be a debt due and payable by the Contractor to Principal.

25. Industrial relations requirements

25.1 In this **Clause 25** the following definitions apply.

- (a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Contractor or one of its Associated Entities has contravened an Industrial Law;
- (b) **Applicable Subcontractor Work** means works or services that would, if provided to a Territory Entity, be Territory-Funded Work;
- (c) **Approved Auditor** has the meaning as set out in the Procurement Act;
- (d) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
- (e) **Code** means the Secure Local Jobs Code;
- (f) **Full Details** means:
 - (i) the nature of the Adverse Ruling;
 - (ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
 - (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
 - (iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
 - (v) the name of the entity against which the Adverse Ruling was made; and
 - (vi) any other relevant information that the Contractor may rely on as grounds for not terminating this Contract as a result of the Adverse Ruling;
- (g) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
- (h) **Registrar** has the meaning as set out in the Procurement Act;
- (i) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;
- (j) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;
- (k) **Territory Entity** has the meaning as set out in the Procurement Act;
- (l) **Territory-Funded Work** has the meaning as set out in the Procurement Act.

25.2 For the purposes of **clause 25.4** and **clause 25.11** the form set out in **Schedule 2** is approved unless otherwise advised by the Principal.

25. Industrial Relations Requirements (Continued)

25.3 The Contractor must, in relation to any subcontractors engaged to perform Applicable Subcontractor Work:

- (a) ensure terms are included in the agreement with the subcontractor:
 - (i) requiring the subcontractor to comply with the Code; and
 - (ii) imposing obligations on the subcontractor in the same form as those set out in **clause 25** and imposed on the Contractor (subject to any necessary variation to reflect the different parties);
- (b) ensure:
 - (i) the subcontractor holds a Secure Local Jobs Code Certificate;
 - (ii) the subcontractor maintains a Secure Local Jobs Code Certificate during the term of their agreement; and
 - (iii) the obligations in **clause 25.3(b)(i)** and **clause 25.3(b)(ii)** are included in the relevant subcontract with the

25.4 The Principal 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 Principal within 15 Business Days of the date of the written notice. The Contractor must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Contractor to comply with this **clause 25.4**.

25.5 Without limiting **clause 3.18**, the Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by subcontractors engaged to perform Applicable Subcontractor Work and conduct audits and other reviews and checks, to monitor compliance with this clause and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

25.6 **Clause 25** applies if **Contract Information** - Item 27 states that it applies.

25.7 The Contractor must comply with all of its obligations under the Code.

25.8 The Contractor must maintain a valid Secure Local Jobs Code Certificate during the term of the Contract.

25.9 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 Principal to terminate the Contract on written notice to the Contractor.

25.10 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.

25.11 The Contractor must provide the Principal with a statutory declaration in a form approved by the Principal regarding its compliance with the Code:

- (a) within 5 working days of a written request by the Principal; and
- (b) if requested in writing by the Principal, at the time the Contractor provides a payment claim.

25. Industrial Relations Requirements (Continued)

25.12 Failure of the Contractor to provide a statutory declaration in accordance with **clause 25.11** or the making of a false statement in a statutory declaration by the Contractor or its representative will constitute a breach of this Contract.

25.13 If the Contractor fails to provide a statutory declaration in accordance with **clause 25.1(b)** the Principal may withhold payment of monies otherwise due to the Contractor in respect of the relevant payment claim until the statutory declaration is received.

25.14 The Principal may require that the 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.

25.15 The Principal 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.

25.16 The Contractor must, at all reasonable times, allow the Principal, Registrar or person nominated by the Principal 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 Principal or Registrar under this **clause 25.16** in circumstances where entry would result in a conflict with Commonwealth laws.

25.17 Without limiting **clause 3.18**, the Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by the Contractor and conduct audits and other reviews and checks, to monitor compliance with this **clause 25** and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

25.18 If the Contractor was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) as part of its tender for the Works:

- (a) the Contractor must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
- (b) the Labour Relations, Training and Workplace Equity Plan forms terms of this Contract;
- (c) the Contractor must report to the Principal on its compliance with **clause 25.18(a)** quarterly during the term of this Contract;
- (d) the Contractor must attend any meetings scheduled by the Principal to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
- (e) without limiting any rights or remedies available to the Principal under this Contract, 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.

26. Territory Information

26.1 The Contractor must:

- (a) use Territory Information held in connection with this Contract only for the purposes of fulfilling its obligations under this Contract;
- (b) comply with the TPPs set out in the Information Privacy Act and not (and procure that any subcontractor engaged by the Contractor does not) act or engage in a practice that breaches a TPP;
- (c) not transfer Territory Information held in connection with this Contract outside the Territory, or allow any person (other than its authorised personnel) outside the Territory to have access to it, without the prior approval of the Principal;
- (d) in respect of Personal Information:
 - (1) comply with any applicable TPP Code and not (and procure that any subcontractor engaged by the Contractor does not) act or engage in a practice that breaches a TPP Code;
 - (2) cooperate with any reasonable requests or directions of the Principal arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act; and
- (e) notify the Principal immediately if the Contractor becomes aware that a disclosure of Territory Information is required by law, or an unauthorised disclosure of Territory Information has occurred.

26.2 Except as provided in this Contract, the Contractor must not disclose Territory Information to any person without the prior written consent of the Principal except to the extent that the Territory Information is:

- (a) required or authorised to be disclosed by law,
- (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers,
- (c) generally available to the public, or
- (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Principal.

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

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

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

27. Confidential Text under the Procurement Act

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

27.2 If Contract Information – **Item 19** states that this Contract is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in Contract Information - **Item 19**, and **clause 27.3** applies.

27.3 Except as provided in this Contract, the Principal 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:

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

28. Local Industry Participation

28.1 This clause does not apply unless Contract Information - **Item 26** states that it applies.

28.2 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 Principal). The parties agree the LIP Plan forms terms of this Contract.

28.3 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 Principal within 6 months of the date of this Contract and on or before the first, and each subsequent, anniversary of this Contract.

28.4 Before or concurrently with the Contractor's submission to the Principal of its final claim for payment under this Contract, the Contractor must provide to the Principal 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.

28.5 The Principal may withhold payment of the final claim for payment until submission of a satisfactory Final LIP Report by the Contractor.

28.6 The Contractor must attend any meeting scheduled by the Principal 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.

28.7 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 Principal.

29. Service of notices

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

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

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

Formal Instrument of Agreement

Refer to clause 2.11 of the MW21 General Conditions of Contract

The Contract is formed by the Principal issuing a *Letter of Award* to the Contractor, unless the Principal requires the Contract to be formed by formal execution of the Contract. Pursuant to clause 2.11 of the General Conditions of Contract, even where a *Letter of Award* has been used to form the Contract, the Principal may require the Contractor to execute a formal agreement on terms no different from those contained in the *Contract Documents*.

The template formal instrument of agreement below has been drafted for execution by the parties using the 'without a common seal' option in accordance with s127 & s110A of the Corporations Act 2001 (Cth).

Where signing by electronic means (i.e. not on a physical hard copy document) is to be used, the identification, reliability and consent requirements under s9 of the *Electronic Transactions Act 2001* apply. The formal instrument of agreement has been drafted to provide compliance with the:

- **identification requirements** – signature & name of person signing and indication the person intends to be bound by the terms of the agreement; and
- **reliability requirement** – an appropriate method being used to link the person signing to his/ her signature. Three options are provided to satisfy the reliability requirement. The appropriate option should be selected by the Principal.

For information:

- a. an electronic signature platform such as DocuSign, SecureSign or similar can be used, as an advanced signer identification method, to provide the necessary interface to satisfy reliability and identification requirements and produce the necessary records; and
- b. the certified digital signature signing option to satisfy the reliability requirement verifies the identity of the signer and provides assurance that no document alteration has occurred after signing.

[Note: a *Letter of Award* cannot be used to form the Contract if you intend the Contract to be in the form of a deed. A deed may be preferred if you wish to secure the benefit of the 12 year limitation period which attaches to deeds, for bringing an action for breach. Deeds cannot be signed electronically by the Territory. The limitation period for a contract is 6 years from the date on which the action accrued. Seek legal advice if required.]

[There are two options for clause (a). Use the first option if the Territory is issuing a *Letter of Award* to form the Contract, otherwise use the second option if the Contract is to be formed by execution of the formal contract. Include clauses (b) to (d) in all cases.]

[OPTION 1 – LETTER OF AWARD ISSUED]

- (a) Notwithstanding a Contract has been formed by the issue of a *Letter of Award*, the Principal requires the Contractor to execute this formal instrument of agreement on terms no different from those contained in the *Contract Documents* as at the Date of Contract.

[OPTION 2 – NO LETTER OF AWARD ISSUED, PARTIES TO BE BOUND BY SIGNING THE FORMAL INSTRUMENT. Note: If a deed is preferred seek legal advice regarding appropriate drafting (and note the above information regarding Deeds)].

- (a) The Principal requires the Contract to be formed by execution of this formal instrument of agreement.

[clauses (b) to (d) – include in all cases:].

- (b) The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract, including all *Contract Documents*.

(c) This formal instrument of agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

(d) The parties:

- (i) accept that this formal instrument of agreement may be signed by electronic means by counterpart using an electronic signing platform or other agreed process that provides a suitable record identifying the person signing;
- (ii) state that they may make use of the option to sign electronically and will be bound by their electronic signatures;

(select one of the 3 methods of signing electronically in sub-clause (d)(iii) below and then delete the other 2 methods & check the numbering)

Method 1 – use of personal email address

- (iii) agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically.

Method 2 – use of an advanced signer identification (e.g. DocuSign, SecureSign etc)

- (iii) agree that an advanced signer identification method is to be used by the persons signing electronically, utilising password access to the document to be signed.

Method 3 – use of certified digital signature

- (iii) agree that a certified digital signature is to be used by the persons signing electronically, utilising a digital certificate from a Certificate Authority.

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

Signature of Witness

Name of Witness in full

Date

Executed by **[NAME & ACN of Contractor]**

Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

Signature of Delegate

Full name of Delegate

Date

Signature of director / authorised officer *

*DELETE whichever is not applicable (see note below)

TERRITORY MODIFIED VERSION OF MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT
INFORMATION

Print full name

Print full name

Date

Date

Note:

***Authorised Signatories:**

For a Company: This form must be signed in accordance with either section 126 or section 127 of the *Corporations Act 2001* (Cwlth), 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.

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

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

Schedule 1 – Unconditional Undertaking

Refer to Clause 13.8 of the MW21 General Conditions of Contract.

Name of Financial Institution:

The Principal: »

The Contractor:

ABN

Security Amount \$

The Contract: The Contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Other words and phrases in this Undertaking have the meaning given in the MW21 General Conditions of Contract.

Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This Undertaking continues until one of the following occurs:
 - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - .2 this Undertaking is returned to the Financial Institution; or
 - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated at

Execution by the Financial Institution:

Schedule 2 – Ethical Supplier’s Declaration

Refer to Clause 25 of the MW21 General Conditions of Contract.

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).

"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–

Overwrite with **CONTRACT NAME**

Overwrite with **CONTRACT NO. Revision Date:**

File:

**TERRITORY MODIFIED VERSION OF MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT
INFORMATION**

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:
- | | | |
|----------------------|----------------------|--------------------|
| Chiropractor | Dentist | Legal practitioner |
| Medical practitioner | Nurse | Optometrist |
| Patent attorney | Pharmacist | Physiotherapist |
| Psychologist | Trade marks attorney | Veterinary surgeon |
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
Bailiff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service
Employee of the Australian Trade Commission who is:
- (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that place
- Employee of the Commonwealth who is:
- (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that place
- Fellow of the National Tax Accountants' Association
Finance company officer with 5 or more years of continuous service
Holder of a statutory office not specified in another item in this list
Judge of a court
Justice of the Peace
Magistrate
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961
Master of a court
Member of Chartered Secretaries Australia
Member of Engineers Australia, other than at the grade of student
Member of the Association of Taxation and Management Accountants
Member of the Australasian Institute of Mining and Metallurgy
Member of the Australian Defence Force who is:
- (a) an officer; or
 - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
 - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
Member of:
- (a) the Parliament of the Commonwealth; or
 - (b) the Parliament of a State; or
 - (c) a Territory legislature; or
 - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961
Notary public
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
Permanent employee of:
- (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority; or
 - (c) a local government authority;
- with 5 or more years of continuous service who is not specified in another item in this list
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
Police officer
Registrar, or Deputy Registrar, of a court
Senior Executive Service employee of:
- (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority
- Sheriff

Sheriff's officer
Teacher employed on a full-time basis at a school or tertiary education institution

Schedule 3 – Schedule of Rates

Refer to Clause 1.10 of the MW21 General Conditions of Contract.

[Write "Not used" if this Contract is on a lump sum basis only. Otherwise, include the schedule of rates]

EXAMPLE ONLY

MW21 Contract Information

[NOTE TO DRAFTER: do not delete any item number as it will destroy the integrity of the whole of the contract

Guide notes in the contract information are for drafters.

- carefully read and follow all guide notes.
- when indicated, obtain advice and/or approval from the appropriate senior manager; and
- delete all guide notes from the document prior to execution.

In completing the contract information you should retain the cross referencing to other parts of the contract and references to a default position, for example retain the words "the date of contract if not filled in", even where the item has been filled in.

The "»" symbol and/or "[insert]" has been used to indicate where input is required by the drafter.

Some contract information items will be completed after the close of tenders.

Any changes to the general conditions of contract should be made in the special conditions of contract. Do not attempt to overwrite the general conditions of contract.]

1. Authorised Person

Mentioned in Clause 1.1, 2.9 and 2.10

insert the name, title and contact details of each party's Authorised Person.

FOR THE PRINCIPAL:	
The Authorised Person is:	» [insert]
Title:	» [insert]
Office address: (for delivery by hand)	» [insert] » » »
Postal address: (for delivery by post)	» [insert] » » »
Telephone number:	» [insert]
Payment claims address:	Payment claims to be submitted to CAMPS
General e-mail address:	» [insert]

If no name is stated, then the Principal is to name the person in writing within seven days after the Date of Contract. The Principal may for any reason and at any time change its Authorised Person by giving notice in writing.

FOR THE CONTRACTOR:	
The Authorised Person is:	» [insert from the preferred Tenderer's Tenderer Declaration]
Title:	» [insert from the preferred Tenderer's Tenderer Declaration]
Office address: (for delivery by hand)	» [insert from the preferred Tenderer's Tenderer Declaration] » » »
Postal address: (for delivery by post)	» [insert from the preferred Tenderer's Tenderer Declaration] »

Overwrite with CONTRACT NAME

Overwrite with CONTRACT NO. Revision Date:

File:

	» »
Telephone number:	»[insert from the preferred Tenderer's Tenderer Declaration]
e-mail address:	»[insert from the preferred Tenderer's Tenderer Declaration]

2. Purpose of the Works

Mentioned in Clause 3.4

The Contract requires the works to be 'fit for purpose'. It is necessary for the 'purpose' to be clear so both parties understand what that requirement means.

the purpose is to be accurately described below. If the purpose is stated in the contract documents, that statement should be reproduced here. For example:

"The purpose of the Works is to modify specific portions of existing buildings to allow ease of use by disabled students."

The purpose of the Works is: »[insert]

[DO NOT ALTER OR REMOVE THE TEXT BELOW.]

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

3. Milestones

Mentioned in Clause 1.18

Include either option 1 or option 2 and delete the option that does not apply.

Use Option 1 where the work under the Contract is not divided into milestones.

Otherwise, use Option 2 and insert a description of the work included in each milestone.

Milestones are separate parts of the work under the contract that need to be started or completed at particular times. They need to be clearly defined to avoid confusion. Note that each extra milestone will increase the complexity of the Contract and reduce flexibility in dealing with changed circumstances.

If the work under the Contract includes operational maintenance, eg specified regular maintenance for mechanical services, use milestones.

Include in the description of the most appropriate milestone, the phrase "and all of the work and obligations under the contract not included in any other milestone." Usually, this will be one of the last construction milestones to be completed.

FOR EXAMPLE:

"Milestone 1: Completion of the design and construction of Block A.

Milestone 2: Completion of the design and construction of Block B and all of the work and obligations under the Contract not included in any other milestone.

Milestone 3: Completion of operational maintenance, as specified."

OPTION 1

There are no Milestones.

Description	Time to give access to the Site	Time Period for Completion
The whole of the Works:	» days after the Date of Contract (7 days after the Date of Contract applies if item not filled in)	» weeks after the Date of Contract

If no time is stated, then a reasonable time is to apply.

OPTION 2

If Milestones are used, you must obtain drafting approval from your Manager prior to issue of the RFT.

TERRITORY MODIFIED VERSION OF MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT INFORMATION

If Milestones are required, describe them and add times to suit each Milestone. Milestones should only be used where there are discrete separable portions or stages of work involved, for example if there are numbers of separate buildings which are capable of reaching Completion independently of each other. If you require an order of work, rather than separable portions of work it is preferable to include a special condition to specify the required order. Seek assistance from your manager, the Senior Director, Contracts, Infrastructure Canberra or the ACT Government Solicitor.

The time period for Completion of each Milestone should generally be described in weeks. The weeks may be from the date of contract, or weeks from the Completion of another Milestone if there is a need to link Milestones.

For example:

Milestone number	Description	Time Period to give Site Access	Time Period for Completion
1	Completion of Pumphouse A and all other work in connection with the Contract that is not included in Milestones 2, 3, 4 or 5.	14 days from Date of Contract	100 weeks from Date of Contract
2	Completion of all 900 diameter Pipelines.	4 weeks from Date of Contract	50 weeks after the Date of Contract
3	Completion of Pumphouses B & C.	5 days after Completion of Milestone 2	10 weeks after Completion of Milestone 2
4	Completion of all pump testing.	1 day after Completion of Milestone 3	4 weeks after Completion of Milestone 3
5	Completion of operation and maintenance manuals and as-built drawings.		2 weeks after Completion of Milestone 4

The Milestones are:

Milestone number	Description	Time Period for giving access to Site	Time Period for Completion
1	»		»
2	»		»
3	»		»
4	»		»
5	»		»

If no time is stated for a Milestone, then a reasonable time is to apply for that Milestone.

[Carefully consider when drafting Milestones how the time period for Completion are drafted. For example, if a Milestone is drafted as follows:

Milestone number	Description	Time Period for giving Site access	Time Period for Completion
2	Completion of Pumphouse A	14 days from Date of Contract	4 weeks from the Contractual Completion Date of Milestone 1

then any extension of time for *Milestone 1* will also give rise to a right to an extension of time for *Milestone 2*. However, this also means that a failure by the Contractor to complete *Milestone 1* in time, where it is not entitled to an extension of time, will not entitle the Contractor to an extension of time for *Milestone 2* –

effectively reducing the total period for completion of the later *Milestone*. This can be used as a strategy to incentivise the Contractor to complete all *Milestones* on time. However, it is more administratively complicated and is not recommended if it is likely the Principal may cause delay.

A simpler method, is to describe the date of Completion of each *Milestone* as being either a particular number of weeks from the Date of Contract, or from actual Completion of a particular *Milestone*.]

4. Post Completion Period

Mentioned in Clause 1.22

The post completion period is the period after completion is reached, during which the principal continues to hold the retention amount or undertaking.

A post completion period may apply from the date of completion of the work under the contract or when an individual milestone is complete.

No post completion period is required for demolition work or operational maintenance milestones. For construction work, a post completion period of 52 or 26 calendar weeks is to be included in the contract depending on the risks identified, eg 52 weeks would be reasonable for ensuring that air conditioning plant is operational under all seasonal conditions.

Include option 1 or option 2 or option 3. Delete the options that do not apply.

Use option 1 where no post completion period applies. Do not alter the text or insert a period of time.

Also use option 1 if there are no milestones and a post completion period applies. Insert the number of weeks.

Use option 2 where there is one post completion period and it will start when completion of a milestone is reached. Insert the relevant milestone number and the number of weeks of the post completion period.

Use option 3 where separate post completion periods start when specific milestones have been completed. Insert the relevant milestone numbers and the number of weeks against each milestone.

Note that the contractor still has obligations to rectify defects after the post completion period has ended. However, after retentions or undertakings have been released, the principal no longer has the option of rectifying the defect and recovering the cost from the undertaking or retention.

In order to have a retention or undertakings available for defect rectification, ensure that the last post completion period will end after all milestones are completed.]

OPTION 1

The Post Completion Period, which starts when the work under the Contract reaches Completion, is: » [insert] calendar weeks.

If no time is stated, then the Post Completion Period is 52 calendar weeks.

OPTION 2

The Post Completion Period, which starts when Milestone » reaches Completion, is: » [insert] calendar weeks.

If no time is stated, then the Post Completion Period is 52 calendar weeks from the Completion of the final Milestone.

OPTION 3

The Post Completion Periods for the Milestones are:

Milestone 1:	» [insert] weeks commencing when Milestone 1 reaches Completion.
Milestone 2:	» [insert] weeks commencing when Milestone 2 reaches Completion.
Milestone » [insert no. (last)]:	» [insert] weeks commencing when Milestone » [insert (last)] reaches Completion.

If no time is stated, then the Post Completion Period for each Milestone is 52 calendar weeks from the Completion of the relevant Milestone.

5. Principal

Mentioned in Clause 1.24

The Principal is: The Australian Capital Territory, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) represented by Infrastructure Canberra.

[Instructional note: The Principal must be an entity that is legally capable of entering the contract. As a general rule the Principal will be the Australian Capital Territory. However, in some circumstances the Principal could be a Territory statutory body, for example the Suburban Land Agency or the Commissioner for Social Housing. If you are unsure how to describe the appropriate legal entity seek advice from your manager in the first instance.

A Directorate is not a legal entity and should not be noted as the Principal. It is however appropriate to note the Territory as being represented by a Directorate – for example the default position references Infrastructure Canberra. The Directorate noted as representing the Territory will need to be varied on a case by case basis depending on which Directorate is to manage the Contract. In the unlikely event that the agency responsible for the work is a Territory owned corporation then the corporation may elect to be named as the Principal.

The choice of the entity to be named as Principal is a matter for the agency and the decision should be based on legal advice.

FOR FURTHER INFORMATION, CONTACT THE SENIOR DIRECTOR, CONTRACTS, INFRASTRUCTURE CANBERRA]

All correspondence to the Principal is to go to the address of the Principal's Authorised Person.

6. Senior Executive

Mentioned in Clause 1.31

[Note to drafter: Insert the title (But not the name) and contact details of the Senior Executive.

This will be an appropriate senior manager. The Senior Executive must be an experienced negotiator, familiar with the form and terms of the contract and with appropriate authority. The person named as the Principal's Authorised Person in Item 1 must not be the same person as the Principal's Senior Executive.

The Senior Executive is: » [insert]

Where specified, documents must be copied to the Principal's senior executive at the address or number shown here.

Insert the office street and postal addresses (including postcodes), Facsimile Number and e-Mail address for the senior executive.

Office address: (for delivery by hand)	» [insert] » » »
Postal address: (for delivery by post)	» [insert] » » »
Telephone number:	» [insert]
Facsimile number:	» [insert]
e-mail address:	» [insert]

If no name is stated, then the Principal is to name the person in writing within 7 days after the Date of Contract. The Principal may for any reason and at any time change the Senior Executive by giving notice in writing.

7. Extent of Design

Mentioned in Clause 3.1

Include option 1 or option 2 or option 3. Delete the options that do not apply.

To comply with the contract and achieve fitness for purpose, there will always be an element of design by the contractor, even if it is only to implement good trade practice.

Use option 1 where the principal's design includes for all elements of the works. Do not alter the text.

Use option 2 where there are specific elements of the works that are to be designed by the contractor - eg a ramp for disabled access or an air-conditioning system.

use option 3 where the contractor is to design virtually all of the works.]

OPTION 1

The Contractor is to complete the Principal's design to the extent of:

design that is necessary to comply with Clause 3.4 including the design of minor items and shop detailing.

OPTION 2

Insert descriptions of the specific elements of the works to be designed by the Contractor. Ensure the Contract specification details the relevant design criteria and compliance requirements.

For example:

- the air conditioning system for building B;
- disabled access to all levels of building A.

The Contractor is to complete the Principal's design to the extent of:

1. design development, documentation, integration with the Principal's design and coordination of engineering and architectural design disciplines for the following elements of the Works:

- » [insert];
- » [insert];
- » [insert]; and

2. for all other elements of the Works, design that is necessary to comply with Clause 3.4 including the design of minor items and shop detailing.

OPTION 3

The Contractor is to complete the Principal's design to the extent of:

full design of the Works including all design development, documentation, including shop detailing, integration with the Principal's design and coordination of engineering and architectural design disciplines.

8. Design Documents

Mentioned in Clause 3.5

Include either Option 1 or Option 2 and delete the option that does not apply.

Use OPTION 1 where the Contractor is not required to submit any design documents (including workshop drawings).

Otherwise use OPTION 2 and insert a suitable period between 7 and 21 days. If no period is stated, the default is 14 days, to allow a reasonable time for Principal review of documents]

OPTION 1

The time to submit the completed design is:

not applicable. The Contractor need not submit the completed design

OPTION 2

The time to submit the completed design is: » **[insert]** days before it is to be used for construction.

If no time is stated, then it is 14 days before the completed design is to be used for construction.

9. Works and Public Liability Insurance

Mentioned in Clause 5.2

[Instructional note: Both Principal arranged and Contractor arranged public liability insurance is required. The Agency should conduct a risk assessment to determine the appropriate minimum level of coverage to be sought from Contractors. Given the size/value and complexity of works for which MW21 is used, \$10million will often be appropriate. This insurance should be maintained through the post-completion period of defect correction, and for any period where maintenance services are provided. After these periods, should the Contractor be required to come back onto site (such as to correct a latent defect), officers should always ask the Contractor for evidence of insurance at that time]

Contractor’s arranged Public Liability Insurance

The Contractor is to arrange public liability insurance in the minimum amount of: \$**[insert, eg \$10 million]** in respect of any one occurrence and \$**[insert, eg \$10 million]** in the annual aggregate.

(If not filled in, \$10 million in respect of any one occurrence and \$10 million in the annual aggregate applies)

Period of cover: Until the end of the Post Completion Period.

Principal’s arranged Public Liability Insurance

Minimum cover:	See <i>Policy</i> for details
Insurer:	[Contact the Senior Director, Contracts at Infrastructure Canberra for details of the current policy]
Policy number:	[Contact the Senior Director, Contracts at Infrastructure Canberra for details of the current policy]
Period of cover:	Until <i>Completion</i>

Note: Works undertaken by the Contractor to make good *Defects* after *Completion* will not be covered by any Principal’s Arranged public liability insurance.

Include option 1 or option 2 below. Delete the option that does not apply.

Use option 1 where the Territory will arrange works insurance.

Use option 2 where insurance of the works is to be arranged by the Contractor.]

OPTION 1 – Principal arranged insurance

Mentioned in Clause 5.2

Insurance of the Works is to be arranged by:	the Principal
Minimum Cover	See the policy for details

Insurer:	[Contact the Senior Director, Contracts at Infrastructure Canberra for details of the current policy]
Policy Number:	[Contact the Senior Director, Contracts at Infrastructure Canberra for details of the current policy]
Period of cover:	Until Completion.

OPTION 2 – CONTRACTOR ARRANGED WORKS INSURANCE

Mentioned in Clause 5.6

Insurance of the Works is to be arranged
by: the Contractor.
Minimum cover: \$[insert, eg \$10 million]

10. Professional Indemnity and other insurance

Mentioned in Clause 5.7

[**Instructional note:** If the work involves only a minimum design responsibility by the Contractor delete the default position above and insert “No”. A default minimum cover would normally be expressed as an amount “in respect of each claim and in the annual aggregate”. You should seek the advice of your manager if you are uncertain as to the amount to be inserted. A default of \$20 million has been included but can be varied according to the project. At a minimum \$5 million should be requested]

Is a professional indemnity insurance policy to be held by the Contractor and/or relevant subcontractors? Yes/no	» Yes (“Yes” applies if not filled in)
Minimum cover:	\$20 million in respect of each claim and in the annual aggregate.

Asbestos liability insurance

Is the Contractor required to hold Asbestos liability insurance?: Only as required by law.
Minimum cover: As required by law.

Marine liability insurance

Is the Contractor required to hold marine liability insurance? Yes/No » No [or yes]
(“No” applies if not filled in)

Minimum cover: » N/A [or insert amount]
Period of cover: For the duration of the Works

Vehicle and mobile plant equipment insurance

Is the Contractor required to hold vehicle and mobile plant equipment insurance? Yes/No » Yes [or no]
(“Yes” applies if not filled in)

Minimum cover: For registered vehicles and machinery, third party property damage insurance for not less than \$20 million per occurrence.
Unregistered vehicles, machinery or mobile plan and equipment must be covered by a public liability policy with coverage of not less than \$20 million per occurrence.

11. Site Access

Mentioned in Clause 6.1

As set out in Item 3.

12. Time for Completion

Mentioned in Clause 11.1

As set out in Item 3.

13. Delay Costs

Mentioned in Clause 12.3

Include either option 1 or option 2 and delete the option that does not apply.

Use option 1 where the work under the contract does not include operational maintenance milestones.

Use option 2 if there are operational maintenance milestones.]

OPTION 1

The rate per day for delay costs is: \$» nil

If no rate or "Nil" or "0" or "N/A" is stated, then no delay costs are payable.

OPTION 2

[The rate per day must be inserted.

If the last milestone is for operational maintenance, do not include this period in determining the contract duration.

The rate per day for delay costs for *Milestones** is:

Milestone 1 - \$ [INSERT]

Milestone 2 - \$ [INSERT]

Milestone 3 - \$ [INSERT]

For delay occurring after Completion of Milestone 3 - \$10

[or, insert rate e.g. \$» [insert] except for delay that occurs after Completion of Milestone » [insert no.] when the rate per day is \$10.]

* NB: The rates for each are separate and distinct from each other.

If no rate or "Nil" or "0" or "N/A" is stated, then no delay costs are payable.

14. Liquidated Damages

Mentioned in Clause 12.6

Include either option 1 or option 2 and delete the option that does not apply.

Use option 1 where the work under the contract is not divided into milestones.

Use option 2 if there are milestones.

Overwrite with CONTRACT NAME

Overwrite with CONTRACT NO. Revision Date:

File:

Liquidated damages may be appropriate if time is critical and a delay will result in damages (cost and losses) to the Principal/Client Agency. Liquidated damages are not to be used for milestones for operational maintenance.

To determine the rate for liquidated damages, assess the costs and losses that the Principal/Client Agency is likely to suffer if completion is delayed. This may include recurrent administration costs, costs of capital invested, delay in realising savings in operating and maintenance costs, delay in obtaining revenue from the works and the cost of using alternative facilities.

If different costs for Contractor's delay apply, specify different amounts for each relevant milestone.

Seek approval from your senior manager for the amount(s) used.]

OPTION 1

Liquidated damages are payable only if the date for Completion of the whole of the Works is delayed. The rate per day for liquidated damages is: \$» [insert]

If no rate or "Nil" or "0" or "N/A" is stated, then common law damages apply.

OPTION 2

Insert an amount for each milestone as required. Leave blank for milestones where no specific liquidated damages apply.

The rate per day for liquidated damages for Milestones is:

Milestone 1: \$» [insert]

Milestone 2: \$» [insert]

Milestone »[insert]: \$» [insert]

If no rate or 'Nil' or '0' or 'N/A' is stated for a Milestone, then common law damages apply for that Milestone.

15. Payment Claims

Mentioned in Clause 13.1

Include Option 1 or Option 2 Or Option 3 or Option 4. delete the options that do not apply.

Use OPTION 1 For monthly payments.

Use OPTION 2 if the overall completion time is less than 8 weeks and a single payment can be made when completion is reached.

Use OPTION 3 for milestone payments.

Use OPTION 4 if there are operational maintenance milestones and it is appropriate to pay for the operational maintenance work at intervals greater than 8 weeks. monthly payments are used for all construction milestones.

For construction work, to ensure adequate cashflow for the contractor, milestone payments are only suitable where all milestones are less than 8 weeks. where any of the milestones is longer than 8 weeks, use monthly payments rather than attempting to pay on part-completion of milestones.

where milestone payments are used, include milestones in the Schedule of prices.]

OPTION 1

Payment claims are to be made: monthly, on the last calendar day of each calendar month.

OPTION 2

A payment claim is to be made: when Completion is reached.

OPTION 3

Payment claims are to be made: when Completion of each Milestone is reached.

OPTION 4

Insert the relevant milestone numbers

Payment claims are to be made:

Overwrite with CONTRACT NAME

Overwrite with CONTRACT NO. Revision Date:

File:

For Milestones »[insert] , »[insert] , »[insert] :	monthly, on the last calendar day of each calendar month.
For Milestones »[insert] , »[insert] , »[insert] :	»[insert] % Complete; »[insert] % Complete; »[insert] % Complete; and when Completion is reached.

16. Conditions of Site Access

Mentioned In Clause 6.4

[If there are conditions which it is known will apply to Site access, include those here. For example, there may be:

- a particular person who provides and maintains access to the site if it is away from a public thoroughfare
- weight/height limits
- movement restrictions within the site, eg easements, covenants and restrictions from actions of adjoining owners, environmental protections, noise reduction requirements etc
- conditions applicable to an operating/occupied site]

17. Working Days and Hours

Mentioned In Clause 6.6

Specify working days and hours, eg:

The Contractor is to carry out the Works between 7am and 5pm, Monday to Friday inclusive, but excluding public holidays in the Australian Capital Territory.

[If there are other conditions which it is known will apply to any approval of additional working days or working hours not already covered by clause 6.6, include those here]

18. Program

Mentioned In Clause 3.19

- (1) A program is required.
- (2) The program must be submitted within 10 Business Days of the Date of Contract, and otherwise prior to commencing any work under this Contract. [A different number of days or timing for submission of the Program may be specified depending on the nature and complexity of the works (for example, "5 Business Days after the Date of Contract"). If a Program is not required, DELETE the above, and text below and write "A Program is not required"]
- (3) The program must at a minimum address or conform to the following: [insert list of matters that must at a minimum be included in the Program – some examples included]
 - (a) show the dates of, or, in the case of future activities and events, the dates for commencement and completion of design and construction activities, other significant events, Milestones and the Works and also include contractual Completion dates;
 - (b) reflect Scheduled Progress and be consistent with all constraints on access, performance and co-ordination;
 - (c) show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
 - (d) show the dates when the Contractor will require information, documents, materials or instructions from the Principal and the dates when the Contractor will provide information or documents to the Principal. These dates are to be consistent with

dates which the Principal could reasonably have anticipated at the Date of Contract that this information, documents, materials and instructions would be required and provided;

- (e) be in such form and include such detail as the Principal reasonably requires and include such detail as the Principal reasonably requires and be accurate, comprehensive and complete in all respects;
- (f) show the dates when the Contractor proposes to seek any approvals for statutory requirements and the expected response times for those approvals; and
- (g) [INSERT];
- (h) any other matters relevant to the programming of the Works; and
- (i) any other matters notified by the Principal to the Contractor from time to time.

19. Confidential Text

Mentioned In Clause 27

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

The following is Confidential Text:

Clause No.
<p>If there is no personal information in the Contract and no other Confidential Text, write “There is no Confidential Text”.</p> <p>Otherwise, INSERT <u>specific clause or item number</u> in the Contract that is personal information or that a party to the Contract requires be kept confidential.</p> <p>eg. “Item 1 and 3 of the Labour Relations, Training and Workplace Equity Plan” or “Names of persons where they appear in Contract Information - Item 1 and Contract Information Item 6”</p> <p><u>DO NOT</u> include general statements such as “contractor pricing” “all personal information” or “contractor methodology”, as it will not be clear to either party which specific clauses are agreed to be redacted from the public text version.</p> <p>Note that from 1 July 2024:</p> <ul style="list-style-type: none">(1) all personal information contained in notifiable contract is considered Confidential Text. Personal Information is information about an identified individual, or an individual who is reasonably identifiable; and(2) the Territory can only propose text be Confidential Text if the conditions in section 18(2) and (3) of the Procurement Act are met. <p>All documents that make up the Contract Documents are part of the Contract, whether or not attached/bound in. Accordingly, consideration must be given to each of those documents and whether they contain any Confidential Text.</p> <p>This includes the Contractor’s Labour Relations, Training and Workplace Equity (LWERTY) plan and Local Industry Participation plan (LIP) submitted by the Contractor with its tender for the Works.</p> <p>As a default the Contractor’s tender for the Works is specified as Confidential Text as this is information that has a commercial value that would be, or could</p>

reasonably be expected to be, destroyed or diminished by the disclosure.
The Contractor's tender for the Works.

If the Contract is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Contract if the text is personal information, there is a requirement imposed by law that has the effect of requiring a party to keep the text confidential, or the Territory is otherwise permitted to not disclose the text on the basis of one or more of the grounds set out in section 18 of the Procurement Act. The relevant grounds should be specified below.

(2) The Procurement Act, part 3 (Notifiable Contracts) applies to this Contract. The Confidential Text is "Confidential Text" for the purposes of that Act because:

EXAMPLE ONLY

- (a) it is Personal Information about a person; or
- (b) the Territory is satisfied that disclosure of the text would:
 - (i) be an unreasonable disclosure of information about internal costings or profit margins; or
 - (ii) disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished by the disclosure.

If this is NOT a notifiable contract, DELETE the above and write "Item 19 not used – as at the date of this Agreement it is not a notifiable contract"]

20. Territory Information

Mentioned In Clause 26

Item 20 Not used.

[OR, INSERT details of any information (other than Confidential Text) that the Territory requires the Contractor to keep confidential in addition to what is already set out in the definition of Territory Information. If details in the definition of Territory Information are sufficient, and there is no other known specific items of Territory Information, RETAIN the above]

21. Appointment as Principal Contractor

Mentioned In Clauses 22.1 and 23.1

Clause 23 applies – the Contractor is appointed as Principal Contractor.

[OR, if the Contractor is not appointed as Principal Contractor for the purposes of WHS, delete the above and write "Clause 23 does not apply – the contractor is not appointed as Principal Contractor".]

22. Preferred Subcontractors

Mentioned In Clause 8.8

[NOTE TO DRAFTER: Include details of each trade or area of work for which the Principal has provided a list of Preferred Subcontractors together with the names of the Preferred Subcontractors, for example air-conditioning supplier – XYZ Pty Ltd and ABC Pty Ltd.]

Preferred Subcontractors referred to in clause 8.9 together with the specified trade or area of work:

»

("Not applicable" applies if not filled in).

23. Contract Price

Mentioned In Clause 1.9

[NOTE TO DRAFTER: Include the lump sum Contract Price in this item. If a schedule of rates is used, or a combination of a schedule of rates and some lump sum items, write “See Schedule of Rates”, and complete the Schedule of Rates. Seek advice from your manager or the ACT Government Solicitor as required]

Contract Price at the date of Contract » (including GST)
is:

24. Contractor

The Contractor is:

.....
.....
ACN.....
ABN

25. Date of Contract

This is the date the Principal signs the Contract after the Contractor has signed, or the date of the Principal’s Letter of Award to the Contractor (as applicable).

THIS ITEM IS COMPLETED AFTER THE CLOSE OF TENDERS USING INFORMATION SUPPLIED BY THE SUCCESSFUL TENDERER.

Date of Contract is:
 (“The date of the Letter of Award, or is no date is specified, the date of the Letter of Award” applies if not filled in).

26. Local Industry Participation

IF THE CONTRACTOR WAS REQUIRED TO SUBMIT A LOCAL INDUSTRY PARTICIPATION PLAN IN ITS TENDER, CLAUSE 28 APPLIES. COMPLETE THE BELOW ACCORDINGLY.

Clause 28 applies? » [INSERT either “yes – clause 28 applies” OR “no, clause 28 does not apply”].
 (“No, clause 28 does not apply” applies if not filled in).

27. Industrial Relations Requirements

IF THIS CONTRACT IS FOR ‘TERRITORY-FUNDED WORK’ AS DEFINED IN THE GOVERNMENT PROCUREMENT ACT 2001, CLAUSE 25 APPLIES. COMPLETE THE BELOW ACCORDINGLY.

Clause 25 applies? » [INSERT either “yes – clause 25 applies” OR “no, clause 25 does not apply”].
 (“Yes, clause 25 applies” applies if not filled in).

END OF SECTION – MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT INFORMATION

MW21 Special Conditions of Contract

In these Special Conditions the following definitions apply unless the context otherwise requires: **[Instructional note: Insert any other definitions that apply]**

Commissioning and Handover Plan	[Instructional note: include this definition if Special Condition “Commissioning and Handover Plan” is included] if required under these Special Conditions, means the commissioning and handover plan prepared by the Contractor and finalised under these Special Conditions 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: <ul style="list-style-type: none">(a) the timely, efficient and comprehensive commissioning of the Works (including the inspection and testing process);(b) the smooth handover of the Works to the Principal; and(c) that all required planned and unplanned maintenance is provided during the Post-Completion Period (if required under these Special Conditions), in accordance with the Contract.
Other Contractor	[Instructional note: include this definition if Special Condition “Other Contractors” and/or “Commissioning and Handover Plan” is included] any contractor, consultant, artist, tradesperson or other person engaged or permitted to do work at the Site other than the Contractor and its subcontractors.

[Note to drafter: Insert, delete or amend Conditions of Contract. Some potential examples are included below. Delete or include as required for the project. In the unlikely event that there are no Special Conditions of Contract, delete the below and write “There are no Special Conditions of Contract”]

Item 1. Audit and review

[Instructional note: This Item will generally be applicable to all projects]

The Contractor must make available, on request, all records, including those of or relating to subcontractors or suppliers, relevant to compliance with requirements of the Contract, for the purposes of audit, review (including peer review) or surveillance. The Contractor must provide all reasonable assistance during the audits or reviews including attendance by the Contractor.

The Contractor must promptly implement effective corrective action on matters disclosed by audit or review.

Item 2. Development/Building consent/Approvals

[Instructional note: Include this special condition if the contractor is required to lodge a Development Application (i.e. Development Consent has not or will not be obtained by the Territory), and/or an application for building approval, and/or obtain consent with respect to the use of public unleased land]

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

OR

The Contractor is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. However, if, as a result of the acceptance of an Alternative Tender, through design development or due to conditions placed on the Development Consent a new, revised or amended Development Application is required the Contractor is responsible for preparation and submission of new, revised or amended documentation including all associated fees.

AND/OR:

The Contractor must obtain Building Approval from the ACT Planning and Land Authority.

AND/OR:

To the extent the Site includes any public unleased land the Contractor must obtain approval from Transport Canberra and City Services.

Item 3. Contractor's tender concept/design

[Note to drafter: Include this Special Condition if the Contractor is required to design and construct the Works and Tenderers are required to submit a concept/design in their Tenders. This should correspond with the scope of design activities set out in Item 7 - Contract Information]

In preparing the Contractor's Documents, the Contractor must not alter the Contractor's accepted tender concept / design without the Principal's agreement.

In these Special Conditions, "Contractor's Documents" means all drawings, specifications, calculations and other documents and information which the Contractor must produce to design and construct the Works in accordance with the Contract, meeting the following requirements of the Contract, the Principal's directions, any statutory requirements, the National Construction Code (if applicable), relevant Australian Standards and, if no other standard is specified in the Contract, then good industry standards applicable to the Works.

Item 4. Inclusions in the Contractor's documents

The Contractor's Documents must include, without limitation:

» [insert]

Item 5. Work as executed drawings

[Instructional note: Drafters should ensure that the 'technical' sections of the specification include details of the information that is required to be shown on work as executed drawings. Include this Special Condition if work as executed drawings are to be submitted within 28 days of the work being completed]

The Contractor must progressively produce work as executed drawings and submit work as executed drawings showing work which has been completed within 28 days of completion of that work. The Contractor must endorse each drawing certifying accuracy and correctness.

The Contractor is required to submit work as executed drawings in accordance with the Transport Canberra and City Services policy "[Requirements for Works as Executed Quality Records](https://www.cityservices.act.gov.au/plan-and-build/standards-codes-and-guidelines/page/tccs_reference_documents)" located at: https://www.cityservices.act.gov.au/plan-and-build/standards-codes-and-guidelines/page/tccs_reference_documents

Item 6. Priced Builder's Bill of Quantities

[Instructional note: Include this Special Condition if the contractor is required to submit a priced builder's bill of quantities. The Prices in the builder's bill of quantities do not form part of the

contract. Rather, the purpose is to assist in making valuations of works carried out. The principal is not bound to use them.

The Contractor must lodge with the Principal a priced Builder's Bill of Quantities within [insert time, eg 10 Business Days after the Date of Contract].

Prices in the Builder's Bill of Quantities do not form part of the Contract. Their purpose is to assist in making valuations of works carried out but the Principal is not bound to use them.

Notwithstanding any other provision of the Contract, the Contractor is not entitled to any payment until the priced Builder's Bill of Quantities has been lodged.

Item 7. Order of work

[Instructional note: Include this special condition if it is necessary to direct the contractor to perform the works in a particular order or complete stages or parts of the work in a particular sequence or at stated times. If it is required, include the order of work below. Note that an order of work is not a Milestone, but sits within a Milestone (i.e. the order of steps to be undertaken to achieve the Milestone)].

[insert]

Item 8. Existing services

[Note to drafter: Include this Special Condition if the Contractor is locating and dealing with existing services]

Locating Existing Services

The Contractor is responsible for locating all services.

Dial Before You Dig

[Note to drafter: Include the following paragraph if the contractor is required to use dial before you dig]

Before commencing excavation the Contractor must obtain, from the Dial Before You Dig information service or relevant public authorities or owners of underground services, written confirmation of the exact positions of all underground services at and around the Site, and verify and prominently mark the locations of the underground services on the Site.

Dealing with Existing Services

Existing services (such as drains, watercourses, public utilities, telecommunications and other services) obstructing the Works or if damaged in the course of the Contract, must be dealt with by the Contractor as follows:

- (a) if the service is to be continued: repair, divert, relocate as required;
- (b) if the service is to be abandoned: cut and seal or disconnect and make safe as required.

Cost and Delay

Where an existing service obstructs the Works and requires diversion or relocation, the Contractor must bear all resulting costs and delays except to the extent that the Contractor is entitled to an adjustment of the Contract Price or payment for a Variation in accordance with General Conditions of Contract clause 6 - **Site Conditions**.

Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor shall bear all costs and any delays for repairing or disconnecting the service.

Notification

The Contractor must notify the Principal immediately upon the discovery of services obstructing the Works not shown in the Principal's documents.

Item 9. Dangerous substances on Site

[Instructional note: Include if the presence of dangerous substances (including asbestos) may be of issue at the Site]

- (a) If at any time the Contractor discovers the presence on the Site of any material suspected of containing or likely to contain a “dangerous substance” as defined in the *Dangerous Substances Act 2004* (ACT) it must:
 - (i) not disturb the material under any circumstances;
 - (ii) contact the Principal and inform the Principal of the existence of the material on Site; and
 - (iii) ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- (b) The Principal will inspect the Site and issue directions to the Contractor in respect of further action to be taken.
- (c) All such materials upon the Site must, if so directed by the Principal, be treated or removed in accordance with the requirements for the safe removal of such materials and any other statutory requirements in the Australian Capital Territory relating to the removal of such materials.

[Instructional note: If the Contractor's activities include the surveying and removal of such substances (eg asbestos products or mineral fibre material), insert the following Item 1(d), otherwise delete]

- (d) The Contractor's activities include the removal of all material defined or listed in the *Dangerous Substances Act 2004* (ACT) as “dangerous substances” on the Site, including, without limitation, conducting any surveys necessary to determine the full extent of such material and any required monitoring during the removal of any such material.

Item 10. Use of dangerous substances

[Note to drafter: Include this Special Condition if relevant to the project]

- (a) The Principal considers the substances so defined or listed in the *Dangerous Substances Act 2004* (ACT) as “dangerous substances” in all forms, to be dangerous substances. Such substances must not be used in the Works without the prior written consent of the Principal.
- (b) Where such consent is given the Contractor must ensure that:
 - (i) full details of any dangerous substances as identified in accordance with paragraph (a), and included in the Works, are provided to the Principal in the format of a material safety data sheet;
 - (ii) all documentation, including that related to operation, maintenance, assembly, shipping and handling, is clearly endorsed to identify the presence and nature of the hazard; and
 - (iii) all goods containing dangerous substances are to bear appropriate labels which clearly identify the nature of the substances, the associated hazards, dangers and appropriate safeguards.
- (c) The Contractor is responsible for all materials used by its subcontractors under this clause.
- (d) The Contractor undertakes to advise the Principal, at any time during the Works, within 14 days of becoming aware of a non-dangerous substance which could be substituted for the dangerous substance without significant detriment to the performance of the Works.

- (e) The Contractor must ensure that all goods for incorporation in the Works conform to all statutory requirements and other laws relating to any dangerous substances included therein which apply in the country of manufacture, on the high seas and within the Commonwealth of Australia. In no circumstances must the goods emit fumes, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to persons, the environment or the operation of other equipment, except where this is consistent with the end-use and nature of the goods.

Item 11. Standards

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

- (a) Where the Contract requires compliance with a standard or Code, unless otherwise specified that Standard or Code shall be the one current at the closing date for tenders, except for the National Construction Code, which shall be the one current at the issuing of the Building Approval.
- (b) Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.
- (c) Without limiting the above, the Principal requires the following materials, fixtures or fittings (as the case may be) to comply with the specified standard, rating or certification, and the Contractor must produce evidence satisfactory to the Principal of compliance with this Item upon request:

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

- (i) aluminium composite facade panels : all external applications (whether as part of an external wall, or as an attachment to an external wall) – “Non-Combustible” as determined by testing to AS 1530.1 – Methods for fire tests on building materials, components and structures;
- (ii)
- (iii) etc]
- (c)
- (d) For the purposes of paragraph (c), the Principal may, at its discretion and without limitation:
- (i) accept as evidence a sample test result or certificate of compliance or similar document provided with the relevant materials, fixtures or fittings; or
- (ii) require the Contractor to test the material, fixture or fitting in accordance with clause 49, at the Contractor’s cost.

Item 12. Cleaning up

[Note to drafter: this Special Condition will generally be relevant to all projects that involve building construction]

The Contractor must ensure that all visible external and internal surfaces, including fittings, fixtures and equipment, must be free of marks, dirt, dust, vermin and unwanted materials, at Completion.

Item 13. Samples

[Instructional note: Include this special condition if samples are required]

The Contractor must:

- (a) match any approved samples throughout the Works;

- (b) give notice before commencing work affected by samples unless the samples have been approved; and
- (c) keep approved samples in good condition on the Site until Completion.

Samples required for approval are listed [INSERT where samples are listed, for example if there is a list in the Principal's documents. OR, alternatively, samples can be listed here if they are not included elsewhere by using the following text:

Samples are required for the following items:

- (d) » [Include a list of items for which samples are required. These may include materials listed in Item 16 (Standards) in order to check compliance of the material with the specified standard prior to the Contractor ordering the material in bulk]

Item 14. Testing

[Note to drafter: Include this Special Condition if relevant to the project]

Any testing required to be by an independent authority shall be carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

Item 15. Proprietary items

[Instructional note: This Special Condition will generally be relevant to all projects, particularly if proprietary items are known to have been listed in the specifications. Acceptance of an alternative proprietary item could require testing at the contractors cost as per Item 16].

Identification by the Principal of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

The Contractor may offer an alternative to any proprietary item. Apply in writing for approval to use the alternative. The request must be accompanied by all available technical information and describe how, if at all, the alternative differs from the proprietary item and how it will affect other parts of the Works and performance of the Works. Approval of an alternative is at the Principal's discretion.

Except to the extent that the approval, if any, of the Principal includes a contrary provision, the approval is deemed to include the conditions that:

- (a) use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- (b) the alternative product must comply with any applicable standard, rating or certification specified in the Contract, and the Contractor must provide evidence satisfactory to the Principal of compliance with this Item upon request;
- (c) the Contractor must indemnify the Principal against any increase in costs;
- (d) use of the alternative must not directly or indirectly cause any delay to the Works and if it does, the Contractor will compensate the Principal for any loss which the delay causes.

The Contractor must include a provision equivalent to this Item 15 in all subcontracts (subject to any necessary variation to reflect the different parties).

Item 16. Items supplied by the Principal

[Note to drafter: Use this Special condition if the Principal is to supply items to be incorporated into the works]

Generally

The following items will be supplied free to the Contractor for use in the execution of the Works.

- (e) » [Insert a list of relevant items, delivery dates and storage details]

The Contractor must:

- (d) take delivery, unload and inspect for defects;

- (e) notify the Principal if the items are defective or unsuitable for the proposed use;
- (f) store the items in suitable storage so as to maintain the condition of the items until incorporated into the works;
- (g) record the storage location on the delivery documents and submit copies of the delivery documents to the Principal;
- (h) notify the Principal if items are not delivered 5 days before they are due to be incorporated into the works or if items are lost from storage; and
- (i) return unused items to the Principal.

Responsibility

If in the opinion of the Principal any damage to items supplied was due to defects existing at the time of receipt, but not discoverable upon reasonable inspection thereof the Contractor shall not be held responsible for such damage.

Item 17. Plant and equipment details

[Note to drafter: Use this Special Condition if plant and equipment of a unique nature is to be supplied under the Contract]

Submit the following details of Plant and Equipment listed prior to ordering:

» [Insert description of the details sought]

Item 18. Environmental Management

[Note to drafter: Use this Special Condition if environmental management requirements are relevant. For example, if there is potential uncertainty about the underground conditions of the site, rubbish, Asbestos contamination etc]

In this Item the following definitions apply.

Contamination

the presence in, on or under land, air or water of a substance (whether solid, liquid, odour, heat, sound, vibration or radiation) at a concentration at which the substance is normally present in the same locality, that presents a risk of actual or threatened adverse impact on, or damage to, the environment, including harm to human health or any other aspect of the environment, or could otherwise give rise to a risk of non-compliance with any statutory requirement for the protection of the environment.

Environmental Incident

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

Environmental Management Plan

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

- (1) the Environmental Objectives;
- (2) Special Condition – “Dangerous Substances On Site” (if included); and
- (3) any matter notified by the Principal to the Contractor or specified in this Contract, relevant to the environment.

Environmental

to:

- Objectives**
- (1) encourage best practice environmental management through planning, commitment and continuous improvement;
 - (2) prevent and minimise adverse impacts on the environment;
 - (3) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
 - (4) identify and control possible environmental hazards associated with the Works;
 - (5) establish procedures to ensure that no hazardous substance is stored on Territory land without approval;
 - (6) recognise and protect any special environmental characteristics of a Site (including cultural heritage significance);
 - (7) define roles and responsibilities for personnel;
 - (8) ensure environmental training and awareness programmes are provided to employees and subcontractors;
 - (9) ensure subcontractors implement the Environmental Management Plan (if required);
 - (10) define how the management of the environment during the Works is reported and performance evaluated;
 - (11) describe all monitoring procedures required to identify impacts on the environment as a result of the Works;
 - (12) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
 - (13) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.
- (a) The Contractor must design and construct the Works under this Contract in accordance with the Environmental Management Plan.
- (b) The Contractor must:
- (1) ensure that in carrying out the Works:
 - (i) other than to the extent identified in writing by the Principal, it complies with all statutory requirements and other requirements of this Contract for the protection of the environment;
 - (ii) it does not cause any Environmental Incident;
 - (iii) without limiting paragraph (ii), it does not cause or contribute to Contamination of a Site or other land, air or water, or cause or contribute to any Contamination emanating from a Site;
 - (iv) it immediately notifies the Principal of:
 - (A) any non-compliance with this clause;
 - (B) a breach of any statutory requirement for the protection of the environment;

- (C) any Environmental Incident; or
 - (D) the receipt of any notice, order or communication received from an authority for the protection of the environment; and
 - (E) its subcontractors comply with the requirements referred to in this clause; and
- (2) clean up and restore the environment, including any Contamination or the actual or threatened adverse impact on, or damage to, the environment, arising out of, or in any way in connection with, the Works, whether or not it has complied with all statutory requirements or other requirements of this Contract for the protection of the environment.
- (c) The Contractor must carry out the Works in accordance with, and otherwise implement an Environmental Management Plan in a form approved by the Principal and for that purpose must prepare a draft Environmental Management Plan and submit it to the Principal for direction as to suitability within [Insert time frame, e.g. 10 Business Days from the Date of the Contract] and:
- (1) if the draft Environmental Management Plan is rejected, submit an amended Environmental Management Plan to the Principal and in any event, finalise the Environmental Management Plan so as to ensure there is no disruption to the Works;
 - (2) after the Environmental Management Plan has been finalised, continue to correct any defects or omissions in the Environmental Management Plan and submit amended versions to the Principal; and
 - (3) document and maintain records of any inspections or audits undertaken as part of an Environmental Management Plan.
- (d) The Contractor will not be relieved from compliance with any of its obligations under this Contract or from any of its liabilities whether under this Contract or otherwise according to law as a result of:
- (1) the implementation of, and compliance with, the requirements of an accepted Program, or Environmental Management Plan;
 - (2) any direction by the Principal concerning the Program, or Environmental Management Plan;
 - (3) any audit or other monitoring by the Principal of the Contractor's compliance with a Program, or Environmental Management Plan; or
 - (4) any failure by the Principal, or anyone else acting on behalf of the Principal, to detect any defect in or omission from the Program, or Environmental Management Plan.

Item 19. Principal's Site Office

[Note to drafter: Use this Item if the Contractor is required to supply a site office]

General Requirements

The Contractor must:

- (a) provide a site office for the use of the Principal and nominees, in a position agreed with the Principal;

Overwrite with CONTRACT NAME

Overwrite with CONTRACT NO. Revision Date:

File:

- (b) make the office ready for occupation before any major site activities start;
- (c) if it becomes necessary to move the office during the progress of the Works, do so without charge;
- (d) service, clean and maintain the office for the duration of the Works;
- (e) provide safe access to the office at all times;
- (f) remove the office at Completion, but not until the Principal's permission is obtained.

Site Office Accommodation

» [Note to drafter: Include requirements, details and drawings showing the location and construction of the Principal's site office]

A pre-fabricated modular building system may be substituted subject to the approval of the Principal. In this event the dimensions and standards shown and specified are the minimum required.

Item 20. Temporary Services Provided by the Principal

» [Note to drafter: Use this item if the Principal is providing temporary services. Insert details of any temporary services the Principal will provide. Consult with the client agency and Identify who will pay for the consumables, eg the electricity and/or water used]

Item 21. Guarantees

The Contractor must obtain, and ensure that the Principal will have the benefit of, all warranties or guarantees specified in the Contract or offered by suppliers, including warranties or guarantees that are offered to, or obtained by, subcontractors of the Contractor.

Item 22. Maintenance during post-completion period

[Instructional note: USE this Special Condition if the Contractor is required to provide maintenance services (which may include maintenance of landscaping or establishment activities) for a period after Completion.

If these services are required, the default provided below is that the services will be provided during the *Post-Completion Period*.

If the Contractor is not required to provide maintenance services during the Post-Completion Period it may not be clear whether particular unplanned/unscheduled maintenance work should properly be characterised as a *Defect* (and therefore the responsibility of the Contractor) or general maintenance work (and therefore the responsibility of the Territory or its other engaged maintenance provider). mw21 does not by default require the Contractor to provide maintenance services post-completion, only to correct *Defects*. Accordingly, if the Contractor is to be responsible for carrying out such planned and/or unplanned work, then it is critical that it is clearly set out in this Item (or cross-referenced to another document or annexure) the extent to which the Contractor is required to carry out maintenance work]

To the extent set out below, the Contractor must ensure that during the Post-Completion Period such planned and unplanned maintenance is carried out as is necessary to ensure that the Works are, or each Milestone is, throughout and at the end of the Post-Completion Period in a condition fit for their intended purpose [AND, if the Contractor is required to produce a *Commissioning and Handover Plan* in accordance with Item 24 below, also include the words: and otherwise in accordance with the *Commissioning and Handover Plan* (as defined in these Special Conditions)].

[Instructional note: INSERT below a description of the level of planned and/or unplanned maintenance that the Contractor is required to carry out during the Post-Completion Period. If the description is too lengthy to include below, or is included in the Principals Documents or other document, it can be cross-referenced to the appropriate Annexure or location in the Principal's documents

For landscaping works requiring a 52 week consolidation period consider:

The duration of the consolidation period is 52 weeks from the date of the Notice of Completion of the Works or the applicable Milestone.

This will require an amendment to TCCS Technical Clauses where 52 weeks is required in lieu of the previous standard 13 weeks. Note that if the RMS landscape specification forms part of the Principal's documents the term consolidation is not defined. The specification will require inclusion of a definition of consolidation or maintenance services to be provided by the Contractor for the nominated period.

Also consider how Maintenance is addressed in the Program and Payment sections of Contract Information. Payments could be made on a monthly basis determined by a rate item included in the tender.]

Planned:

Unplanned:

Item 23. Commissioning and Handover Plan

[Instructional note: Use this Special Condition if the Contractor is required to provide a Commissioning and Handover Plan]

The Contractor must prepare a draft Commissioning and Handover Plan and submit it to the Principal's Authorised Person so as to ensure there is no delay or disruption to the Works or Completion and in any event no later than **[INSERT days]** (30 days applies if prompt not filled in) days after the Date of Contract. If any draft Commissioning and Handover Plan is rejected, the Contractor must submit an amended draft to the Principal's Authorised Person and in any event finalise the Commissioning and Handover Plan so as to ensure there is no delay or disruption to the Works or Completion and in accordance with the requirements of the Contract to the satisfaction of the Principal's Authorised Person.

After the Commissioning and Handover Plan has been finalised, the Contractor must continue to correct any defects or omissions in it (whether identified by the Contractor or the Principal's Authorised Person) and submit an amended draft to the Principal's Authorised Person. The Contractor must maintain records of inspections or audits undertaken in accordance with the Commissioning and Handover Plan.

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 Principal;
- (b) without limiting paragraph (a):
 - (i) comply with its Commissioning and Handover Plan; and
 - (ii) in consultation with the Principal's Authorised Person, provide the Principal with such other specific assistance as may be required by the Principal's Authorised Person to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Principal;
- (c) as a condition precedent to Completion, hand to the Principal's Authorised Person or any other Contractor or other person nominated by the Principal's Authorised Person all

Contractor's Documents which are required for the use, operation and maintenance of the Works or the relevant *Milestone*; and

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

Item 24. Cooperation with other contractors

[Instructional note: USE this Special Condition if the Contractor is required to interface with other contractors on site – for example if SSICT will be carrying out some of the Works]

- (a) The Contractor must:
- (i) permit other Contractors to carry out their work;
 - (ii) fully co-operate with Other Contractors;
 - (iii) carefully co-ordinate and interface the Contractor's activities with the work carried out or to be carried out by Other Contractors; and
 - (iv) carry out the Works and other Contractor's activities so as to avoid interfering with, disrupting, or delaying the work of Other Contractors.

»

Item 25. Prequalification

[Instructional note: Include this special condition if Tenderers were required to be prequalified under the RFT]

The Contractor must maintain its prequalification to **[INSERT LEVEL]** with the Territory or a suitable corresponding prequalification under the National Prequalification Scheme for the duration of the project, until the end of the final Post Completion Period.

ATTACHMENT A – CONTRACT DOCUMENTS

[Insert list of Contractors Documents]

EXAMPLE ONLY

ATTACHMENT B– Labour Relations, Training and Workplace Equity Plan

[If required, INSERT version of LRTWE from tender or as negotiated. If LRTWE is part of the Contract Documents, whether attached or not, consideration may be given to any confidential text requirements]

EXAMPLE ONLY

ATTACHMENT C – Local Industry Participation Plan

[If required, INSERT version of LIP plan from tender or as negotiated. If LIP plan is part of the Contract Documents, whether attached or not, consideration may be given to any confidential text requirements]

EXAMPLE ONLY