Government of **Western Australia**
Department of **Housing and Works**

Request

REQUEST TITLE:

Cost Management Services Panel 2017

REQUEST NUMBER:

2016/01416

CLOSING TIME:

Friday 12 May 2017, 2:30 PM, Australian Western Standard Time

ISSUED BY:

Department of Housing and Works on behalf of the Minister for Works

Reference Only

AMENDMENTS LOG

THIS PAGE IS FOR INFORMATION PURPOSES ONLY

NUMBER	SECTION	AMENDMENT	EFFECTIVE DATE
1.1	A.5 - Panel Structure	Term of Service Panel A aligned with Term of Service Panel B.	12 Jul 2017
	B.3.1(b) – Service Panel A	Clarifying when an Offer for Service Panel A can be submitted.	
	C.1 – General Standards	Replace reference to 'Technical Instructions' with 'Technical Guidelines'	
	D.1.1 - Definitions	'Letter of Panel Closure' is deleted.	
	D.2.6 – Closing of Service Panel A	Clause 'Closing of Service Panel A by the Principal' is deleted. Addition of paragraph at the end of the clause 'Withdrawal from Service Panel by Panel	
	D.3.3 – Head Agreement Term	Head Agreement Term is amended to reflect change in term for Panel A.	
	Various F.4 – Prequalification requirements	Correction of minor typographical errors Amendment to clarify meaning of 'relevant higher professional qualification'	
	Form 5 - Disclosures	Clarification that the Form 5 documents to be completed are A – F.	
1.2	D.12.4 - Supplier Demerit Scheme	Supplier Demerit Scheme – Clause added to make consultants subject to the demerits scheme	30 Sep 2017
1.3	B.7.1 Contractual, Technical and Routine Enquiries	Updated contact person and details.	1 Apr 2018
	Schedule 1 to Part B: Request Conditions	Added additional clause; Clause 12 Consultant Declarations.	
	Schedule 1 to Part C: Service Categories and Key Deliverables	Added note to specify probity declaration must be completed and signed prior to commencing work under the commission.	

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NUMBER	SECTION	AMENDMENT	EFFECTIVE DATE
1.4	All sections B.4	Replace "BMW" with "Department of Finance" or "the Department". Removed option of submitting Offers to Request via mail	18 Apr 2019
1.5	All sections	Replace all references to 'www.finance.wa.gov.au' with 'wa.gov.au'	1 Dec 2019
1.6	All sections	Replaced references to "Building Management and Works" with "Department of Finance or "the Department"	1 Mar 2020
1.7	A.4 Panel Scope A.5 Panel Structure F.7 Qualitative Requirements	All references to the respective thresholds of Service Panel A and B have been updated to the following: a. Service Panel A – Low Value – for contracts where the Contract Fee is expected to amount to less than $100,000 (GST inclusive). b. Service Panel B – High Value – for contracts where the Contract Fee is expected to amount to between $100,000 and $500,000 (GST inclusive). Contracts expected to exceed $500,000 will be advertised on tenders WA as an open tender process outside of the Panel arrangement. Respondents should note that qualitative criteria will be assessed in the context of Contracts valued at between $100,000 and $500,000	20 May 2020
1.8	Schedule 3 to Part E: COVID-19	In response to the COVID-19 pandemic, the Principal wishes to incorporate COVID-19 specific relief provisions into the Contract.	31 Jul 2020
	D.1.1. Definitions	Definition of Buy Local Policy amended.	
1.9	D.1.1. Definitions	In accordance with the direction that the Buy Local Policy 2002 be phased out during a planned 6-month transition to the WA Buy Local Policy 2020, please be advised that the definition of Buy Local Policy has been amended.	22 Sep 2020
2.0	All Sections	Remove or replace references to "Department of Finance" or "Finance" with "Department of Housing and Works", "Housing and Works, or "DoHW" where appropriate. Remove or replace references to "PACMan" with "ReadyContracts". Various other references updated accordingly.	1 Jul 2025

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NUMBER	SECTION		AMENDMENT	EFFECTIVE DATE
2.1	Schedule 1 to Part B – 11(e) D.21.13 E.3.5	Application of Privacy Laws and PRIS Act	**New clause added**: Reference to the Privacy and Responsible Information Sharing Act 2024 (WA) (PRIS Act) to address privacy obligations and responsible information-sharing requirements applicable from 1 July 2026.	28 Oct 2026
	D.3.3. Head Agreement Term		Updated Panel term to reflect the previously approved revised expiry date of 1 August 2028 and the inclusion of one two-year extension option, exercisable at the Principal's discretion.	

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PART A

RESPONDENT TO READ AND KEEP THIS PART

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PART A OVERVIEW OF REQUIREMENT

A.1. BACKGROUND

The Department of Housing and Works (Department of Housing and Works) leads the planning, delivery and management of a property portfolio that supports the delivery of government services to the community. This includes the delivery of new construction projects, management of maintenance programs for existing buildings, and the provision of office accommodation for government employees.

To support the effective planning for, and delivery of, construction projects, Department of Housing and Works seeks to engage professional cost managers to perform a range of cost planning and cost management services

The purpose of this Request is to invite Offers from suitably qualified cost managers (Respondents) seeking to be considered for inclusion in the Cost Management Services Panel 2017 (the Panel).

It is important to note that the Department of Housing and Works is taking an innovative approach in the Panel in order to deliver improved value for money. As such Respondents are encouraged not to rely on any previous experience they may have with past arrangements, and to thoroughly familiarise themselves with Department of Housing and Works requirements as defined in the Request.

A.2. STRUCTURE OF THE REQUEST AND SUPPORTING DOCUMENTATION

The Request is structured as follows:

Part A: Overview of Requirement (this section)

Part A summarise the Principal's requirements. In the event of an inconsistency between Part A and other parts of the Request, the other parts take precedence.

Part B: Conditions of Request

Part B defines the process by which the Principal is inviting Offers and how those Offers will be assessed. Contained in Part B is '*Schedule 1 to Part B: Request Conditions*'.

Part C: Specification

Part C describes the scope of the Services that Panel Members may be asked to undertake under the Head Agreement, as defined in individual Contracts.

Part D: Head Agreement Conditions

Part D defines the formation and operation of the Panel, and the terms and conditions of the Head Agreement. The Head Agreement creates the standing offer arrangement through which the Principal may engage Panel Members to undertake cost management services. Contained in Part D is '*Schedule 1 to Part D: Buying Rules*'

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Part E: Conditions of Contract

Part E defines the terms and conditions that apply when the Principal places a Contract under the Head Agreement. Contained in Part E is '*Schedule 1 to Part E: WA Government Amendments to AS 4122-2010*' and '*Schedule 2 to Part E: Annexure to General Conditions of Contract*'

Part F: Content Requirements and Respondent's Offer

Part F identifies the information that must be provided by Respondents as part of their Offers. Contained in Part F is '*Schedule 1 to Part F: Forms to be Completed'* and '*Schedule 2 to Part F: Fee Schedules to be Completed'.*

The following documents are referenced in the Request and are available through the Department of Housing and Works website:

Project Cost Planning and Management Guideline

https://www.wa.gov.au/government/publications/cost-planning-guidelines-consultants

Cost Plan Template (excel format)

https://www.wa.gov.au/government/publications/cost-planning-guidelines-consultants

The following documents are referenced in the Request.

AS 4122 - 2010 General Conditions of Contract for Consultants Available from Standards Australia (http://www.standards.org.au/)

Australian Standard Method of Measurement

Available from the Master Builders Association (WA) and the Australian Institute of Quantity Surveyors.

A.3. SUMMARY OF SERVICES PROVIDED THROUGH THE PANEL

The Panel will allow Department of Housing and Works to access a range of cost management and cost planning services for projects. The Services to be provided through the Panel, broadly align to Department of Housing and Works standard project life cycle for a 'construct only' procurement method and Respondents are to complete the Fees Schedules based on a construct only project.

Where the Principal adopts a different procurement method, such as 'managing contractor' or 'design and construct', the services and corresponding fees will be determined on a case by case basis.

Service Category 1.0: Project evaluation

This typically involves assisting with initial planning activities, generally associated with determining project need and development of documents such as feasibility studies, master plans and business cases, etc.

Service Category 2.0: Project definition

This typically involves refining project cost estimates previously developed as the design is further defined including advising on the cost implications of alternative

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planning and/or procurement options considered. For projects over $5 million the outcome of this process is generally captured in documents such as Project Definition Plans.

Service Category 3.0: Schematic design

This typically involves cost/value management of design options and developing a project preliminary estimate once schematic design is complete.

Service Category 4.0: Design development

This typically involves cost/value management of the design as it is developed and developing a project limit of cost estimate once design development is complete.

Service Category 5.0: Contract documentation

This typically involves reviewing the tender documents for conformity with approved cost limits, contributing to the tender documents and developing a pre-tender estimate once the contract documents are complete. It also involves participation in tender evaluation activities.

In some cases a Bills of Quantities may be produced as part of this service. Where a Bills of Quantities is produced, the Consultant will be responsible for additional services as part of Service Category 6.0 (Contract administration).

Service Category 6.0: Contract administration

This typically involves advising on the cost implications of proposed variations, reviewing monthly payment and variation claims submitted by contractors, and reviewing monthly project costs status reports.

Service Category 7.0: Contract finalisation

This typically involves advising on the financial implications of any outstanding contractual matters and conducting a financial reconciliation to support project closure.

Service Category 8.0: Advisory services

This involves providing ad-hoc advisory services on cost planning, procurement and cost/value management matters.

A.4. PANEL SCOPE

The Panel is being established under the works procurement framework established by the *Public Works Act 1902* (WA), with the Minister for Works identified as the Principal (also referred to as the Client in the Australian Standard (AS) General Conditions of Contract for Consultants, AS4122: 2010). Department of Housing and Works will represent the Minister for Works for the purpose of the Panel.

The Panel is designed for use by Department of Housing and Works in the construction of the State's non-residential building program. While the majority pf projects will be managed from Perth, in some cases projects may be located in regional Western Australia and will require management from a nearby regional location.

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While the primary focus is on supporting construction projects, Panel Members may be engaged to provide assistance in related contracts (such as civil works contracts), where these contracts are entered into by Department of Housing and Works or SPAS.

The Panel will be accessed where Contracts are expected to be valued at less than $500,000 (GST inclusive). Contracts expected to exceed $500,000 will be advertised on tenders WA as an open tender process outside of the Panel arrangement.

A.5. PANEL STRUCTURE

The Panel covers two specific areas of engagement:

a. Service Panel A - Low Value – for contracts where the Contract Fee is expected to amount to less than $100,000 (GST inclusive). The Panel will have an initial Term of three years, with options to extend the Term for up to a further two years. There is no limitation on the number of Respondents appointed to Service Panel A.

b. Service Panel B - High Value – for contracts where the Contract Fee is expected to amount to between $100,000 and $500,000 (GST inclusive). The Panel will have an initial Term of three years, with options to extend the Term for up to a further two years. Service Panel B is expected to be limited to between three and five members and requests for membership outside of the Request process will not be received.

The Principal reserves the right to amend membership of Service Panel B through either a formal refresh process or through application of the Panel's performance management scheme.

Both Service Panel A and Service Panel B are separate commercial arrangements defined by the terms and conditions contained in a Head Agreement that constitutes a standing offer for the provision of Services under the particular Service Panel.

The terms and conditions that apply to an individual contract award will be defined in that contract and will constitute a binding agreement to deliver the defined services for the agreed Fee.

A.6. FEE

Respondents are required to complete the Fee Schedules contained in *Schedule 2 to Part F: Fee Schedules to be Completed* and submit these completed schedules as part of their Offer. In addition to using these Fee schedules to evaluate Respondents' Offers (Refer to F.8.3) the Fee Schedules will be used by the Principal to develop the Contract Fee.

The Contract Fee will be established either by:

a. Reference to fee-scales based on the submitted Fee Schedules. Adjustment to the fee schedule may be required to take account of project-specific requirements. The fee set in this manner is a fixed fee.

Or

b. Reference to hourly rates based on information included within the Fee Schedules applied to an agreed estimate of the hours that are required to

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complete the Service (Flexible Services). The fee set in this manner is a flexible fee and will be based on a 'not to exceed' figure.

Panel Members may apply to revise their Fee Schedule on an annual basis.

A.7. BUYING RULES

Department of Housing and Works Project Managers will use a 'pick and buy' approach to request the required Services.

A competitive process involving two or more Panel Members may be used where the Project Manager believes that doing so will deliver an improved outcome for the Principal.

A.8. PERFORMANCE MANAGEMENT

All Contracts valued at $20,000 and over (at the time of Contract completion) will be subject to a formal performance assessment using the Cost Manager Performance Reporting (CMPR) system. Under the CMPR system the Project Manager will assess the Panel Members performance against defined criterion. Panel Members will have the opportunity to provide a response to the assessment.

Completed assessments will be considered by Project Managers when selecting which Panel Member(s) will be approached for particular Contracts, and may also be used to remove Panel Members from one or both Service Panels. These assessments may also be used to add Panel Members to Service Panel B from Service Panel A.

A.9. EXTENT OF PREVIOUS PANEL USAGE

The existing Panel arrangement ceases on 30 June 2017. During its operation from January 2012 to August 2016, approximately 560 individual Contracts totalling $26.6 million was directed through the Panel.

Schedule 1 to Part A: Past Transaction Data contains an overview of the existing Panel usage and contract award statistics since the start of 2012. The data has been included to assist Respondents in preparing their Offer.

However, it should be noted that demand has, and will continue to fluctuate year to year. Consequently Respondents should be aware that future demand may not correspond to historical demand and no guarantee is given in relation to the number or value of Contracts offered to Panel Members.

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SCHEDULE 1 TO PART A: PAST TRANSACTION DATA

Overview of the Existing Panel Usage and Spend Statistics (Approximate/Rounded).							
	Number of Panel Contracts Awarded	Total Value of Panel Contracts	Average Spend per Panel Contract	Number of Panel Contracts Over $50k	Value of Panel Contracts Over $50k	Number of Panel Contracts Below $50k	Value of Contracts Below $50k
2012	170	$9,100,000	$53,000	54	$7,800,000	116	$1,300,000
2013	160	$5,500,500	$34,000	29	$3,700,500	131	$1,800,000
2014	80	$3,700,000	$46,000	23	$3,050,000	57	$650,000
2015	80	$5,200,000	$65,000	26	$4,370,000	54	$830,000
2016	70	$3,100,000	$44,000	14	$2,320,000	56	$780,000

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RESPONDENT TO READ AND KEEP THIS PART

PART B CONDITIONS OF REQUEST

B.1. REQUEST CONDITIONS

The Request Conditions associated with the Request are included in *Schedule 1 to Part B: Request Conditions*.

B.2. DEFINITIONS AND INTERPRETATIONS

The definitions and interpretations included in Part D apply throughout the Request.

B.3. APPLICATIONS FOR MEMBERSHIP OF SERVICE PANELS A AND B

B.3.1. SERVICE PANEL A

Respondents may submit an Offer to become a member of Service Panel A:

a. in response to this initial release of the Request, in which case Offers must be submitted by the Closing Time;

b. at any time after 2 January 2018 but prior to the end of the Term.

Applications made under (b) of this sub-clause will be assessed by the Principal applying fundamentally the same process, and the same requirements, as detailed in this Request document, The Principal reserves the right to adjust the process and requirements as necessary.

Respondents interested in applying for membership of Service Panel A under (b) of this sub-clause must in the first instance contact the Panel Manager to discuss their intended application, and should also refer to the Cost Panel Management webpage on the Department of Housing and Works website.

B.3.2. SERVICE PANEL B

Respondents may submit an Offer to become a member of Service Panel B:

a. In response to this initial release of the Request, in which case Offers must be submitted by the Closing Time as stated in this Request.

b. By responding to a request from the Principal to refresh Service Panel B as outlined in clause D.2.3.

Respondents may also be promoted from Service Panel A to Service Panel B in accordance with the process outlined in clause D.2.4.

B.4. SUBMISSION OF OFFERS IN RESPONSE TO THE REQUEST

Conditions regarding the submission of Offers (including late lodgement and mishandling) are outlined within *Schedule 1 to Part B: Request Conditions.*

Respondents may submit their Offer:

Electronically: Provided that the Respondent is registered to submit an offer electronically the Respondent may submit the Offer electronically by uploading one

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complete set of documents to a maximum limit of 100MB per upload request at: www.tenders.wa.gov.au. Respondents may register on Tenders WA website for free to ensure that they receive any amendments to the Request.

All electronic submissions must be in one or more of the following file formats:

.doc*	.pub*	.pdf#	.txt	.rtf	.ppt	.xls*

* Microsoft Compatible
# Adobe Compatible
NB: Zipped Files are Acceptable

By hand: at Tendering Services, Ground Floor, Optima Centre, 16 Parkland Road, Osborne Park WA 6017

By Facsimile: Offers cannot be submitted by facsimile.

B.5. OFFER VALIDITY PERIOD

The Offer Validity Period is for a period of six months from the Closing Time of this Request.

B.6. BRIEFING

A non-mandatory briefing for potential Respondents will be conducted on:

Date: 19 April 2017
Time: 10:00am Perth, Western Australia
Location: Ground Floor,
Optima Centre
16 Parkland Road
Osborne Park, Western Australia

Respondents are requested to confirm their attendance by contacting the officer identified at clause B.7.1 no later than 12:00 noon 13 April 2017. The Principal reserves the right to limit the number of Respondent's representatives that may attend.

B.7. CONTACT PERSONS

Details of the most appropriate contact person are provided below. Respondents must not contact any other person within Government or any consultant engaged in relation to the Request to discuss the Request.

B.7.1. CONTRACTUAL, TECHNICAL AND ROUTINE ENQUIRIES

Name: Adam Gale
Title: Senior Procurement Manager
E-mail: WorksConsultancyPanels@DoHW.wa.gov.au.

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PART B

RESPONDENT TO READ AND KEEP THIS PART

B.7.2. ADVICE ON SUBMITTING OFFERS

Name: Tendering Services
Telephone: (08) 6551 2345

B.7.3. ADVICE ON USING TENDERS WA

Name: Procurement Systems Support
Telephone: (08) 6551 2020

B.8. SELECTION PROCESS

Value for Money is a key policy objective in ensuring that the best possible procurement outcome is achieved. Value for money involves assessing the benefits and risks within an Offer against the cost rather than simply selecting the lowest offered price. In determining Value for Money in the assessment, the Principal will consider:

a. the application of relevant Departmental and Government policies;
b. the requirements and criteria identified in the Request; and
c. any other factors the Principal considers relevant.

An Offer which fails to:

d. satisfy, comply or meet the requirements of the Request; or
e. include all information that has been requested,

may be set aside at any point during the process and not considered any further.

B.8.1. SELECTION PROCESS FOR SERVICE PANEL A

Offers in relation to membership of Service Panel A will be assessed against the:

a. Pre-Qualification Requirements described in clause F.4;
b. Compliance and Disclosure Requirements described in F.5.

Respondents assessed as meeting these requirements, and who have submitted the required Fee Schedules for Service Panel A as part of their Offer, will, subject to the terms of the Request, be invited to become members of Service Panel A.

While Respondents are required to submit Fee Schedules and a Capability Statement, the schedules and statement will not be assessed for the purposes of Panel Membership.

B.8.2. SELECTION PROCESS FOR SERVICE PANEL B

Offers in relation to membership of Service Panel B will be assessed against the

a. Pre-Qualification Requirements described in F.4;
b. Compliance and Disclosure Requirements described in F.5;
c. Qualitative Requirements described in F.7.

As part of the selection process: the Offered Prices will be used to calculate a hypothetical annual price by applying the Offered Price to a set of pre-defined Contracts that are reflective of historical demand;

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Respondents will be ranked based on a value for money assessment that takes into account the assessment of the offer and the hypothetical annual price calculation.

It is expected that between three and five Respondents will be appointed to Service Panel B, however the Principal reserves the right to appoint as many Panel Members as it sees fit.

In the event that a Respondent is appointed to both Service Panel A and B, it will enter into two Head Agreements, one for each Service Panel.

B.9. TIMING OF APPOINTMENT

The Principal may progressively appoint Respondents to Service Panel A and Service Panel B.

This may occur, for example, where the finalisation of an assessment of a particular Offer has been delayed.

B.10. DEPARTMENTAL AND GOVERNMENT POLICIES

In addition to the application of the Buy Local Policy (which can be obtained by contacting the State Supply Commission at https://www.wa.gov.au/government/publications/buy-local-policy or on (08) 6551 1500.

The following Departmental works procurement policies apply to the Request:

a. Value for Money;
b. Probity and Accountability; and
c. Open and Effective Competition.

These policies can be viewed https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/policies-government-non-residential-building-projects/works-procurement-policies

Reference Only

SCHEDULE 1 TO PART B: REQUEST CONDITIONS

1 SUBMISSION OF OFFER

Any Offer which:

a. is not fully submitted before the Closing Time;

b. is incomplete at the Closing Time; or

c. is not submitted in accordance with the Request,

may be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer by the Principal.

The Offer must be received in full by the Principal prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

d. receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Principal's computer records that the Offer was received;

e. if the electronic copy of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Principal all costs incurred by the Principal arising from, or in connection with, the virus;

f. lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;

g. the Principal will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;

h. if the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, or as the result of the presence of a virus, then the Principal may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;

i. if the Principal requests the provision of another copy of the Offer, then the Respondent must;

i. provide the copy in the form or forms requested within the period specified by the Principal;

ii. provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and

iii. provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

2 AGREEMENT BY RESPONDENT

In submitting an Offer, the Respondent agrees that:

a. **(assignment)** The Offer may not be assigned without the prior written consent of the Principal.

b. **(liability)** where an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.

c. **(property rights)** once submitted an Offer becomes the absolute property of the Principal and will not be returned to the Respondent. Nothing in this clause affects the Respondent's intellectual property rights in the Offer, except that the Principal may make such copies of the Offer as the Principal requires for the proper evaluation of the Offer.

d. **(agrees to the Request and Request Conditions)** it has read and understood the Request and these Request Conditions and agrees to abide by the requirements of those documents

e. **(information true and correct)** all information in its Offer and all Offer Information is true and correct at the time of its submission;

f. **(relies on own enquiries)** other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request;

g. **(understood Request)** it has examined and understood the Request, each addendum issued under the Request and any other information available to the Respondent in respect of the Request;

h. **(made reasonable enquiries)** it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;

i. **(does not rely on warranties)** other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal;

j. **(no secret commission)** it has not paid or received and will not pay or receive any secret commission in respect of the Request;

k. **(no collusion)** it has not colluded and will not collude with any other person in respect of the Request;

l. **(no inflation or deflation of Fee)** its Fee is not inflated or deflated to advantage another Respondent;

m. **(no unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

n. **(no improper influence)** it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

o. **(own cost and expenses)** it will pay its own costs and expenses; irrespective of whether its Offer is accepted or not, in connection with:

   i. the preparation and submission of its Offer; and

   ii. any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Principal, whether before or after the submission of any Offer,

3 CANCELLATION AND VARIATION OF THE REQUEST

The Principal reserves the right at any time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request. Where the Principal exercises that right then:

a. the Principal will advise each Respondent that the right has been exercised; and

b. the Respondent shall not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the right was exercised.

4 PRINCIPAL'S RIGHTS

The Principal is under no obligation to accept the lowest or any Offer, and at the Principal's sole and absolute discretion may reject any Offer or all Offers for any reason including:

a. **(failure to comply with Request Conditions)** if an Offer fails to comply with these Request Conditions;

b. **(failure to comply with requirements)** if an Offer fails to comply with any of the requirements set out in PART F of the Request;

c. **(false or misleading)** if an Offer contains information or representations that are false or misleading;

d. **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the *Corporations Act 2001* (Cth);

e. (**change of consortium membership**) in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or

f. (**change of policy or commercial reasons**) if the Principal decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Principal may:

g. request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and

h. request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Principal.

In evaluating an Offer, the Principal may take into account any information regarding the Respondent that the Principal has in its possession or receives from any source, including information about the Respondent's past or current performance in any other contract, arrangement or dealing between the Respondent and a Public Authority.

The Principal reserves the right to conduct site visits as it deems appropriate.

5 DISCRETION

Where under the Request or under the Head Agreement the Principal has a right, power, discretion or other function (including to accept, agree, approve, comment on, consent to or reject any matter), the Principal will be entitled to:

a. exercise that right, power, discretion or other function in its absolute discretion; and

b. exercise that right, power, discretion or other function subject to the application of such conditions as the Principal may determine,

unless the content expressly provides otherwise.

6 SELECTION OF PREFERRED RESPONDENTS

The Principal may select, but is not obliged to select, one or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Conditions continue to apply until such time as a Head Agreement is entered into or the Request is terminated.

7 NEGOTIATION

The Principal may choose to negotiate any aspect of the Offer with any preferred Respondent.

At any time during the negotiations either the Principal or a preferred Respondent may terminate the negotiations for any reason.

Where the Principal terminates negotiations, the Principal may:

a. accept the Respondent's original Offer; or

b. select and then negotiate with any other Respondents as a preferred Respondent in accordance with this clause 7; or

c. terminate the Request.

8 OFFER VALIDITY

The Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period, unless the Respondent withdraws its Offer by notifying the Principal in writing at any time prior to acceptance of its Offer.

The Offer Validity Period may be extended or further extended by the Principal by advising each Respondent in writing at any time or times.

9 CONFLICT OF INTEREST

The Respondent must, prior to the Principal accepting its Offer disclose to the Principal any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

The Principal may, in its discretion, accept or reject the Respondent's Offer if the Principal considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the Head Agreement or any Contract (if awarded) by the Respondent.

10 NO BRIBE, INDUCEMENT OR OFFER OF EMPLOYMENT

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Principal in connection with the Request.

The Respondent must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request, with respect to:

a. availability of employment; or

b. an offer of employment,

with the Respondent or any related entity.

11 DISCLOSURE OF OFFER INFORMATION

a. The Respondent acknowledges and agrees that its Offer and Offer Information are subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Principal or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

b. By submitting an Offer, the Respondent releases the Principal and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Offer and Offer Information under this clause by the Principal or the State.

c. The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* (WA) *and* the *Auditor General's Act 2006* (WA) are not affected in any way by the Request.

d. Subject to this clause and to the provisions of the *Financial Management Act 2006* (WA) and the *Auditor General's Act 2006* (WA), the Principal will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

e. The Department of Housing and Works may collect Personal Information to assess Respondents' suitability in the evaluation of Responses and to administer and manage contractual arrangements with the successful Respondent. Personal Information may be used by authorised officers, evaluation panel members, disclosed to third-party service providers and other government agencies where required or permitted by law. Information is managed in accordance with the Privacy and Responsible Information Sharing Act 2024 (WA). For more information, please refer to the Privacy Statement at Department of Housing and Works - Privacy Statement.

12 CONSULTANT DECLARATIONS

At the time of engagement from the Panel and prior to the commencement of their work under the commission, the Consultant shall be required to complete and sign a Consultant Probity Declaration.

Without limiting the Consultant's obligations under the contract, where the Principal directs the Consultant to do so at any stage, the Consultant must make in writing any additional declarations required by the Principal in relation to confirming the Consultant's:

a. understanding and commitment to adhere to any government and departmental policies, practices and procedures;

b. accountability and professional manner of its conduct;

c. actual perceived or potential conflicts of interest;

d. treatment of confidential information; and

e. any other matter the Principal reasonably requires;

with regard to the Consultant's performance of the Contract, and if applicable, the conduct of any relevant tender processes managed by Department of Housing and Works directly or indirectly related to the Contract and/or the Services.

RESPONDENT TO READ AND KEEP THIS PART

PART C SPECIFICATION

C.1. GENERAL STANDARDS

All Services provided under the Panel must comply with:

a. the latest version of the Australian Standard Method of Measurement

b. the latest version of Department of Housing and Works 'Project Cost Planning Guideline'

c. Department of Housing and Works Cost Management Technical Guidelines.

d. Department of Housing and Works Consultancy Technical Guidelines.

In supplying the Services, Panel Members must (where applicable to the specific Service being provided):

e. undertake initial budget estimating to assess the feasibility of design proposals;

f. provide comparative cost advice on alternative designs, materials, systems and methods;

g. undertake detailed cost planning and monitoring to ensure that designs are developed within the approved budget;

h. complete value engineering of design options to maximise value for money;

i. provide cash flow predictions and updates for each procurement item, throughout all stages of the project works;

j. provide advice on appropriate contract packaging, tendering procedures and procurement options;

k. support the insertion and updating of all cost information (including cash flow projections) for all procurement items into the Department of Housing and Works online Project and Contract Management (ReadyContracts) System;

l. assist in the preparation of tender documentation and completion of tender evaluation to select a suitable building contractor;

m. undertake financial post contract management, including the completion of financial reports and progress payment valuations,

n. provide regular reporting on forecast of expenditure and final cost, and agreement of the final account.

o. ensure adequate contingency provisions are calculated and allowed in all cost plans and state basis of contingency allowed;

p. provide confirmation or suggest remedial action where estimates exceed budgets;

q. attend meetings as specified in the Head Agreement Contract and Letter of Acceptance or where additional meetings are required, as directed by the Principal;

r. assist with project time planning;

s. provide advice and assess project design or schematic options where required;

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t. provide financial advice at construction contract completion including valuing outstanding defects and other contractual shortcomings;
u. prepare Elemental Cost Analysis of the completed project and submit to the Project Manager;
v. provide risk and expected level of accuracy statement (e.g. +/- XX%) with all cost plans;
w. when preparing 'cost plans' identify the Estimated Total Cost (ETC) and shall include and allow for ALL costs related to the project in all instances.

C.2. SERVICE CATEGORIES AND KEY DELIVERABLES

The Services provided under the Panel, and the related Deliverables, are as detailed in *Schedule 1 to Part C: Service Categories and Key Deliverables*.

All Deliverables must be provided to the Project Manager unless directed otherwise, and must be in the format defined in the Project Cost Planning Template or as approved by the Project Manager.

Two hard copies, and one electronic copy, of each Deliverable must be provided, unless directed otherwise.

C.3. CONTRACT SERVICES

The Contract Services will be defined in the Letter of Acceptance with reference to the Service Categories referenced in clause *C.2.*

C.4. SCHEDULE OF DELIVERABLES

The Consultant shall maintain a Schedule of Deliverables throughout the period of the Contract and where appropriate and with prior written approval of the Principal's Representative, amend the Schedule of Deliverables to reflect the Principal's required outcomes.

The initial Schedule of Deliverables for any Contract will be prepared by the Project Manager and provided to the Consultant. A sample Schedule of Deliverables is included below.

The deliverables that appear within the Schedule of Deliverables for each phase of the project shall be provided by the Panel Member to the nominated entity prior to the completion of each phase.

Note: In addition to the deliverables that appear within the Schedule of Deliverables, Panel Members are required to:

a. review design and procurement information as they become progressively available, and report on any deviations from the approved project plan and suggest remedial action.
b. provide confirmation of project budget at the completion of each of the following project stages:
    i. Project definition;
    ii. Schematic design; and

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iii. Design development.

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PART C

RESPONDENT TO READ AND KEEP THIS PART

Sample Schedule of Deliverables

Panel Member Deliverables	Qty	To Be Submitted To:
General – Provide:		
Evidence of Panel Member Insurances	As req.	Principal's Representative.
Project Evaluation – Provide:		
Cost Plan Business Case (preferred and reserve options)	As req.	Principal's Representative
Brief Finalisation – Provide**:**		
Cost Plan Stage A "Indicative Cost" estimate(s)	As req.	Principal's Representative.
Schematic Design – Provide:		
Cost Plan Stage B "Preliminary Cost" estimate	As req.	Principal's Representative.
Design Development – Provide:		
Cost Plan Stage C "Limit of Cost" estimate	As req.	Principal's Representative.
Contract Documentation – Provide:		
Cost Plan Stage D "Tender Estimate"	As req.	Principal's Representative.
Electronic Copy of Tender Documents	1 Set	Tendering Services. (In correct format on CDROM)
Bills of Quantities (generally for projects with a construction value estimated at over $6 million)	5 hard copies	Principal's Representative.
Required data for elemental analysis of tender (from priced Bills of Quantities where applicable) for analysis by a third party	1 Set	Principal's Representative.
Contract Administration - Provide**:**		
Cost Control Financial Reports including recommendations for: Progress payments Variations Provisional Sum adjustments Claims or adjustments Final payment recommendation Final Financial Report	1 Set	Principal's Representative.

SAMPLE ONLY

SAMPLE ONLY

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PART C

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C.5. SITE VISITS

Site visits are defined as visits to the site of the project for the purpose of inspecting the site, understanding the Client Agency requirements or monitoring progress. They do not include meetings at the Principal's premises which are required as part of the administration of the Head Agreement or the Contract, the cost of which is covered in the Service Fee.

For Contracts related to projects within the Perth Metropolitan area, the Consultant will be required to attend site visits as reasonably required by the Project Manager and the cost of these visits (including costs related to any travel time and time at site) shall be included within the Panel and Contract Fees. No disbursements will be paid.

Where a Contract relates to a project outside the Perth Metropolitan area and the Contract is being performed by a Consultant with a Permanent Operational Office within 80 kilometres of the project location, the Consultant will be required to attend site visits as reasonably required by the Project Manager and the cost of these visits (including costs related to any travel time and time at site) shall be included within the Panel and Contract Fees. No disbursements will be paid.

For Contracts related to projects located outside the Perth Metropolitan area where the Consultant does not have a Permanent Operational Office within 80 kilometres of the project location, the Consultant may, where specified in the Letter of Acceptance, be entitled to claim:

a. reasonable direct costs for travel, meals and accommodation where incurred (no administration or 'on cost' is allowed); and

b. a pre-agreed amount (based on the Panel Fees and agreed in the Letter of Acceptance) to reflect Consultant travel time.

C.6. USE OF DEPARTMENT OF HOUSING AND WORKS PROJECT AND CONTRACT MANAGEMENT SYSTEM

Panel Members shall use Department of Housing and Works online Project and Contract Management (ReadyContracts) System for all fees and charges claims related to Contracts Access to the system will be provided by the Principal upon successful appointment to the Panel, where a user name and password will be released.

The information to be provided online shall include, but not necessarily be limited to: project details, project status reports, any fee variations, fee and disbursement records, progress fee claim details, certificates for currency of insurances, recipient created tax invoice agreements, variations, payment certificates in accordance with the standard Consultant and construction contract documentation.

The Principal will provide training at the Principal's office in the use of the ReadyContracts system for all Panel Members on request. The cost of attending ReadyContracts training is to be borne by the Panel Member.

C.7. PROVISION OF BILLS OF QUANTITIES

Where a Contract involves the preparation of a Bills of Quantities, this will be specified by the Principal in the Letter of Acceptance. Bills of Quantities will be prepared in

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accordance with the latest version of the Australian Standard Method of Measurement unless directed otherwise by the Principal's Representative.

Bills of Quantities shall be provided in a Microsoft Excel format. The file, or files, shall be 'zipped' using an archiving tool such as "WinZip" or "PKZip" into a single file named "<*Project Title*> - Quantities.

Description and quantities cells within the spreadsheet shall be protected to ensure that no manipulation of the supplied data can take place.

In general Bills of Quantities will exclude the pricing and measurement of mechanical and electrical work. Where the Bills of Quantities is to include this work, this will be specified by the Principal in the Letter of Acceptance.

C.8. SUSTAINABILITY INITIATIVES

Consultants need to be aware that Department of Housing and Works projects target a 4 Star Green Star GBCA (Green Building Council of Australia) "Best Practice" rating and Consultants must take this into account when providing the Services.

C.9. BUILDING ACT REQUIREMENTS

The *Building Act 2011* (WA) requires the WA State Government to demonstrate that all of its building projects are designed and constructed in accordance with relevant standards, including the National Construction Code and referenced standards.

Building designs must comply with all relevant codes and standards and are to be certified by a registered and independent certifier.

Compliance is required by the Consultant, the Principal and all other relevant employees, agents, contractors or subconsultants or other third parties related in any way to the Contract and any work carried out, with the requirements of the following Acts and any subsidiary legislation made under them:-

a. *Building Act 2011* (WA);
b. *Building Services (Complaint Resolution and Administration) Act 2011* (WA);
c. *Building and Construction Industry Training Levy Act 1990* (WA);
d. *Building Services (Registration) Act 2011* (WA);
e. *Building Services Levy Act 2011* (WA).

Consultants must ensure that project budgets and cost estimates include all costs associated with compliance with the *Building Act 2011* (WA) including certification, the Building Services Levy and the cost of issuing permits including Building Permits.

C.10. WORK AT AN EXISTING PREMISES

If an awarded Contract involves work at an existing premises, the Consultant and any Subconsultant may be exposed to safety and/or health risks arising from the existing condition of the premise and its surrounds during any visit to the site. Therefore prior to visiting any site the Consultant and any Subconsultant must take all necessary precautions appropriate for the site conditions including discussing the condition of

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the site with the Principal's Representative. The cost of providing for all necessary precautions should be taken into account when calculating the cost of fees for Services under the Panel.

C.11. INTRODUCTION OF BUILDING INFORMATION MODELLING

Department of Housing and Works acknowledges the progressive introduction and adoption of Building Information Modelling (BIM) for the purposes of cost planning and the production and administration of Bills of Quantities. While at this time there is no identifiable timeline for this adoption it is something that the industry may implement over the Panel's Term. Department of Housing and Works therefore encourages the adoption of BIM technologies and BIM is identified as an evaluation criteria for membership of Service Panel B (Refer F.7.4).

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SCHEDULE 1 TO PART C: SERVICE CATEGORIES AND KEY DELIVERABLES

Services to be Provided under the Panel, and the related Deliverables

Note 1: The Project Manger shall, at the time of issuing an 'Invitation to Submit Proposal', state whether the Consultant's scope of services includes the project's mechanical and electrical components.

Note 2: At the time of engagement from the Panel and prior to the commencement of their work under the commission, the Consultant shall be required to complete and sign a Consultant Probity Declaration.

	SERVICE CATEGORY	TASKS OR DELIVERABLES
1.0	**PROJECT EVALUATION (Business Case)**	
1.1	**Business Case Cost Plan** *To provide preliminary project cost for feasible options – Estimated Total Cost (ETC)*	Provide **'initial cost'** estimate reports to assist Department of Finance Project Control Group deliberations.
		Provide Business Case **"Indicative Cost"** estimate and compile a 'Business Case Capital Cost Plan (Buildings) in accordance with the approved Department of Finance format.
1.2	**Economic/Financial Analysis** *To ascertain viability*	Prepare a report to advise on costs, methods, contracts, options and alternatives
2.0	**PROJECT DEFINITION PLAN/BRIEF FINALISATION**	
2.1	**Cost Plan "Indicative Cost"** *To provide preliminary project cost – Estimated Total Cost*	Provide PDP Stage "**Indicative Cost**" estimate and compile a 'Project Cost Plan (Buildings), in accordance with the approved Department of Finance format.

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	SERVICE CATEGORY	TASKS OR DELIVERABLES
2.2	**Risk Management** *To minimise/expose risks and opportunities*	Identify, analyse and record risks related to project cost estimates including causes, solutions, opportunities, and attend and contribute to any risk and/or procurement options workshops undertaken by the Project Manager and compile a report.
2.3	**Economic/Financial Analysis** *To ascertain viability*	Prepare a report to advise on costs, methods, contracts, options and alternatives.
2.4	**Value Management/Asset Life Cycle Costing** *To achieve best value for money*	Attend workshops, provide value management analysis and advice, provide life-cycle cost analysis and compile a report.
2.5	**Review** *To ensure project definition is in line with budget, benchmarks, Client requirements*	Provide confirmation of project budget after Project Definition, or if a problem arises, provide advice on suggested alternatives and compile a report.
3.0	**SCHEMATIC DESIGN**	
3.1	**Cost Plan "Preliminary Estimate"** *To provide outline proposal cost – Estimated Total Cost*	Provide Schematic Design "**Preliminary Estimate**" and compile a 'Project Cost Plan' in accordance with the approved Department of Finance format.
3.2	**Review** *To ensure the developing design is on budget and in compliance with benchmarks and Client requirements*	Provide confirmation of project budget after Schematic Design or if a problem arises, provide advice on suggested alternatives and compile a report.
4.0	**DESIGN DEVELOPMENT**	

Reference Only

	SERVICE CATEGORY	TASKS OR DELIVERABLES
4.1	**Cost Plan "Limit of Cost Estimate"** *To provide final sketch design project cost – Estimated Total Cost*	Provide Cost Plan "**Limit of Cost**" on approved Sketch Design and compile a 'Project Cost Plan at Design Development' in accordance with the approved Department of Finance format.
4.2	**Review** *To ensure design development documentation is on budget*	Provide confirmation of project budget after Design or if a problem arises, provide advice on suggested alternatives and compile a report.
5.0	**CONTRACT DOCUMENTATION**	
5.1	**Cost Plan "Pre-Tender Estimate" (with no Bills of Quantities)** *To confirm tender documentation is within budget – Estimated Total Cost*	Provide Tender Document Cost "**Pre-Tender Estimate**", and compile a 'Pre-Tender Cost Plan at Contract Documentation' in accordance with the approved Department of Finance format. The Pre-Tender Estimate shall be provided at least one week prior to the date of release of the request document unless otherwise agreed with the Principal. Report on any non-conformities with the project's approved Estimated Total Cost (ETC).
5.2	**Cost Plan "Pre-Tender Estimate"(with Bills of Quantities)** *To confirm tender documentation is within budget – Estimated Total Cost*	Provide Tender Document Cost "**Pre-Tender Estimate**" by pricing Bills of Quantities in accordance with the approved Department of Finance format. The Pre-Tender Estimate shall be provided at least one week prior to the date of release of the request document unless otherwise agreed with the Principal. Report on any non-conformities with the project's approved Estimated Total Cost (ETC).
5.3	**Bills Of Quantities (**generally for projects with a construction value estimated at **over $6 million (GST inclusive)** *To obtain competitive tenders*	Provide Bills of Quantities, excluding the measuring and pricing of Mechanical and Electrical components (unless directed otherwise by the Principal) in accordance with the current Australian Standard Method of Measurement (ASMM) with AIQS elemental *(two letter)* coding. On completion of the measurement of the Bills of Quantities (and no later than the date that the Tender documents are issued) the Consultant is to deliver to the Project Manager, in a form acceptable to the Project Manager, a written report evidencing the quality assurance measures undertaken to ensure the accuracy and completeness of the Bills of Quantities.

Reference Only

	SERVICE CATEGORY	TASKS OR DELIVERABLES
5.4	**Tender Report** *To review tenders and provide tender recommendation*	Review and evaluate submitted pricing components of Department of Housing and Works project related tenders and prepare a recommendation report in the format approved or provided by the Principal. Provide summary and elemental cost plan detailing the Main Contract Award cost breakdown in Department's Cost Plan template.
6.0	**CONTRACT ADMINISTRATION - TO PRACTICAL COMPLETION**	
6.1	**Priced Bills of Quantities (where applicable)** *To ensure competitively priced contract documentation*	Undertake mathematical checks of the contractor's priced Bill of Quantities to ensure that unit prices reasonably reflect market prices, and that in aggregate the Bills of Quantities equates to the accepted Tender value.
6.2	**Elemental Analysis** *Provide required data for elemental analysis of tender (from priced Bills of Quantities where applicable) for analysis by a third party*	Provide summary and elemental cost plan detailing the Practical Completion cost breakdown in Department of Finance Cost Plan template format in accordance with the current Standard Method of Measurement with AIQS elemental *(two letter)* coding. The data is required to be provided in Comma Separated Values (CSV) and in Microsoft Excel format as per Department of Housing and Works Cost Plan Template to enable the data to be loaded into Department of Housing and Works Building Cost Information System.
6.3	**Cost Control** *To provide cost control during construction*	Prepare monthly financial reports including recommendations in respect of monthly payment claims submitted by the head contractor. Investigate, evaluate and assist the Project Manager as necessary. Adjust provisional sums (PS) including PS for connection to site services and prepare a report. Re-measure provisional quantities and prepare a report. Investigate, estimate, measure and price contract variations and negotiate agreements on variations as required
7.0	**CONTRACT RECONCILIATION AT FINAL CERTIFICATE**	

Reference Only

	SERVICE CATEGORY	TASKS OR DELIVERABLES
7.1	**Cost Plan "Final Account"** *To negotiate and confirm the final account*	Assist to negotiate, agree the final account with the building contractor and obtain their sign-off and prepare a report. Prepare final payment recommendation and complete a reconciliation of the final financial report. The data is required to be provided in Comma Separated Values (CSV) and in Microsoft Excel format as per the Department's Cost Plan Template to enable the data to be loaded into the Department's Building Cost Information System. Provide summary and elemental cost plan detailing the Final Account cost breakdown in Department of Finance Cost Plan Template, in accordance with the approved Department of Finance format and in accordance with the current Standard Method of Measurement with AIQS elemental *(two letter)* coding Update elemental analysis, prepared by a third party, to match final account (if required) and prepare a report.
8.0	**ADVISORY SERVICES**	
8.1	**Advisory Services**	Provide cost management services as required by an Invitation to Submit Proposal and / or as called upon to provide by the Project Manager as an additional service.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

PART D HEAD AGREEMENT CONDITIONS

D.1. DEFINITIONS AND INTERPRETATIONS

D.1.1. DEFINITIONS

In the Head Agreement and any Contract, unless the context otherwise requires:

Aboriginal Enterprise refers to registered Aboriginal businesses listed at http://www.abdwa.com.au and may be:

a. a sole trader, where the person is an Aboriginal Person; or

b. a partnership or firm, where at least 50% of the partners are Aboriginal Persons; or

c. a corporation, where Aboriginal Persons own at least 50% of the legal entity submitting the tender.

Aboriginal Person means a person who is of Aboriginal descent who identifies as such and is accepted as such by the community in which he or she lives or has lived

Annexure means the Contract specific annexure prepared on behalf of the Principal that specifies the service requirements and is attached to the Letter of Acceptance.

Department of Finance means the area of Department of Finance that manages the government's non-residential buildings program.

Business Days has the meaning given in clause 1 of the General Conditions.

Buy Local Policy means the 2020 policy produced by the WA State Government including all applicable Addenda.

Client Agency means a Government agency that Department of Finance is assisting with the planning or delivery of a specific construction project.

Closing Time means the time and date specified on the front of the Request as the closing time for the submission of Offers, unless amended by the Principal.

Confidential Information means information in respect of the Head Agreement or a Contract that:

a. is by its nature confidential; or

b. is specified by the Principal to be confidential; or

c. the Panel Member knows or ought to know is confidential.

Contract has the meaning given in clause 1 of the General Conditions in relation to an award made under the Head Agreement.

Contract Delivery Point means the point nominated in the Letter of Acceptance.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

Contract Fee has the same meaning as the term 'Fee' has under the General Conditions.

Contract Services means those services as outlined in the Letter of Acceptance

Consultant means a Panel Member that has been awarded a Contract.

Cost Plan Template means the template contained in Department of Housing and Works Project Cost Planning Guideline for Consultants.

Estimated Total Cost (**ETC)** means the sum of all the budget values established for the work to be performed on a project or a work breakdown structure component or a schedule activity. It is the total planned value for the project and includes all fees, all disbursements and regional loading/allowances.

Extended Full Service means a Contract Service that includes Service Categories 2.0 through 7.0 inclusive.

Fee means the Contract Fee and/or Panel Fee as the context requires.

Feeable Value has the meaning given in clause D.10.2.

Full Service means a Contract Service that includes Service Categories 3.0 through 7.0 inclusive.

General Conditions means AS 4122-2010 "General Conditions for Consultants (incorporating Amendment No. 1)" as amended by the WA Government Amendments to AS 4122-2010.

Head Agreement means the standing offer agreement entered into between the Principal and the Panel Member in relation to either Service Panel A or Service Panel B and which contains the essential terms and conditions of the agreement between the parties in relation to Service Panel membership.

Insolvency Event has the meaning given in clause 31 of the General Conditions.

Invitation to Submit Proposal means an invitation issued by the Principal to a Panel Member inviting it to submit a Proposal to undertake a Contract.

Joint Venture with Aboriginal Participation means a joint venture between any registered Aboriginal Enterprise and a non-enterprise if at least 50% of equity in the joint venture is owned by the registered Aboriginal enterprise.

Key Personnel means personnel identified pursuant to clause 18 of the General Conditions who will be undertaking individual Contracts.

Letter of Appointment means a letter of acceptance issued by the Principal to a successful Respondent accepting that Respondent's Offer and appointing that Respondent to Service Panel A or Service Panel B as indicated.

Letter of Acceptance means the letter from the Principal awarding a Contract to a Panel Member confirming the Contract Services and the Contract Fee.

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Letter of Panel Withdrawal means the letter issued by a Panel Member advising the Principal that it wishes to terminate the Head Agreement for Service Panel A or B.

Offer means the offer submitted by the Respondent in response to the Request.

Offer Information means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request

Offer Validity Period means the period specified in clause B.5.

Panel means the arrangement for the supply of cost management services by Panel Members to the Principal pursuant to the terms and conditions of the Head Agreement.

Panel Fee means the fees agreed in the Letter of Appointment and as varied in accordance with the Head Agreement.

Panel Manager means the individual appointed as the Principal's Representative for the purpose of managing the Panel.

Panel Member means a successful Respondent who has been appointed by the Principal to the Panel.

Panel Member's Representative means the individual appointed as the Panel Member's Representative for the purpose of managing the Panel.

Permanent Operational Office has the meaning given in D.11.

Project means a building or maintenance construction project that requires cost planning and management professional consultancy advice.

Principal means the Minister for Works being the body corporate created under Section 5 of the *Public Works Act* 1902 (WA).

Principal's Representative means the individual authorised in writing by the Principal to represent the Principal.

Project Manager means the individual appointed as Principal's Representative for the purpose of arranging and managing a Contract.

Proposal means a Panel Member's proposal to undertake a Contract.

Public Authority means a Western Australian public sector agency.

Records means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

Request means document 2016/01416 issued by the Department of Finance on behalf of the Minister for Works inviting Offers for the provision of cost management and planning services under a standing offer arrangement.

Reference Only

PART D

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Respondent means any person that submits an Offer.

Services means the services to be provided under the Panel or under a Contract as the context requires.

Service Categories means the Service categories defined in Part C.

Service Panel means the two Service Panels, Service Panel A and Service Panel B, established through the Request.

Special Conditions of Contract means the conditions referred to in clause E.3.

Specified Personnel means the personnel nominated by the Respondent in their Offer as being available for Contracts. The personnel so nominated may be amended from time to time by the Panel Member notifying the Principal.

Subconsultants has the meaning given in the General Conditions.

Superintendent means the individual appointed in writing by the Principal to perform the role of the Superintendent in a construction contract.

Superintendent's Representative means the individual appointed in writing by the Superintendent to act in the capacity of, and undertake specified duties for and on behalf of, the Superintendent.

Term means the Term of the Panel as described in clause D.3.3 with reference to the operation of either Service Panel A or Service Panel B.

D.1.2. DEFINITIONS CONTAINED IN THE GENERAL CONDITIONS

The definitions contained in the General Conditions apply to the Head Agreement, noting that in the Head Agreement:

a. the Head Agreement term 'Contract Fee' equates to the General Conditions term 'Fee'.

b. the Head Agreement term 'Principal' equates to the General Conditions term 'Client'.

D.2. PANEL OPERATION

D.2.1. PANEL AND SERVICE PANEL ESTABLISHMENT

The Panel comprises two Service Panels that are related, but separate, standing offer arrangements through which the Principal can source Services on an as-required basis

Appointment to the Service Panels will occur through the issuance of a Letter of Appointment, and a Head Agreement will define the terms and conditions of Service Panel membership.

If a Respondent is appointed to both Service Panels:

a. it will receive two Letters of Appointment;

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b. it will be a party to two Head Agreements.

D.2.2. APPLYING FOR MEMBERSHIP OF SERVICE PANEL A AND SERVICE PANEL B.

Applications for membership of Service Panel A and for Service Panel B may be made in accordance with the provisions outlined in clause B.3.

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D.2.3. REFRESH OF SERVICE PANEL B

The Principal reserves the right to conduct a refresh of Service Panel B at any time.

The purpose of conducting a panel refresh will be to increase, decrease or change the membership of Service Panel B. The refresh process may also be used to amend any element of the Panel's operation, scope or commercial terms.

The Principal will provide no less than six months' notice of its intention to conduct such a refresh. The refresh process will be subject of a separate request document.

Through this process, the Principal may:

a. provide non Panel Members with the opportunity to become members of the Panel. In this case, Panel Members may or may not be required to respond to the Request document in order to be considered for inclusion on the refreshed Panel; or

b. restrict the refresh to only members of Service Panel B.

When an existing member of Service Panel B is not recommended for inclusion in the refreshed Service Panel B, the member's Head Agreement will be cancelled on the date specified in the notice advising the Panel Member that it has not been recommended for continued membership of Service Panel B.

D.2.4. SUPPLEMENTATION OF SERVICE PANEL B MEMBERSHIP

The Principal reserves the right to supplement the membership of Service Panel B at any time.

Supplementation will generally occur by appointing one or more members of Service Panel A that:

a. meet the requirements defined in the Request that were originally used to select Respondent's for appointment to Service Panel B;

b. have demonstrated superior performance; and

c. represents the Panel Member(s) that are best placed to address the issue that led to the need for membership supplementation.

In supplementing the membership of Service Panel B the Principal Reserves the right to:

d. enter into negotiation with any prospective Service Panel B Member;

e. appoint a Panel Member to Service Panel B for a period determined by the Principal; and

f. appoint a cost manager to Service Panel B outside of this process.

The supplementation process may include a comparative assessment process and the Principal may request the prospective Service Panel B Member to provide additional information, including but not limited to, Panel Fees. .

Reference Only

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D.2.5. ACCESSING THE PANEL

The Principal will access the Panel in accordance with the Buying Rules from time to time. The Buying Rules, as at the date of the Head Agreement, are set out in *Schedule 1 to Part D: Buying Rules*.

The Principal may change the Buying Rules from time to time during the Term. Where such a change occurs the Principal will notify the Panel Member in writing.

D.2.6. WITHDRAWAL FROM A SERVICE PANEL BY PANEL MEMBERS

A Panel Member may withdraw from a Service Panel at any time by issuing a Letter of Panel Withdrawal nominating the date for withdrawal. The date nominated will not be less than 60 Business Days from the date of the Letter of Panel Withdrawal.

The Head Agreement for the Service Panel that is the subject of the Letter of Panel Withdrawal will terminate on the date specified in the letter.

Where a Panel Member withdraws from a Panel any rights, liabilities or obligations that a Panel Member may have incurred as a consequence of a previously awarded contract will remain a right, liability or obligation on the Panel Member until those rights, liabilities or obligations are discharged.

Unless otherwise approved by the Principal, a Panel Member that has withdrawn from a Service Panel will be ineligible to be appointed to the Service Panel from which it has withdrawn for a period of 12 months from the date for withdrawal.

D.2.7. PANEL SUSPENSION OR CANCELLATION

Where the Head Agreement provides for a Panel Member's membership of a Service Panel to be suspended or cancelled, including the suspension or the cancellation of the entire Service Panel:

a. a suspended Panel Member will be ineligible to be awarded a Contract until the Principal advises that the suspension has been lifted; or

b. the cancellation will be given effect by the Head Agreement being terminated on the date specified in the notice advising of the cancellation.

Where a Panel Member's membership of a Service Panel is suspended or cancelled any rights, liabilities or obligations that a Panel Member may have incurred as a consequence of a previously awarded contract will remain a right, liability or obligation on the Panel Member until those rights, liabilities or obligations are discharged.

D.3. HEAD AGREEMENT ESTABLISHMENT AND EXPIRATION

D.3.1. SCOPE OF HEAD AGREEMENT

The Head Agreement constitutes a standing offer whereby the Principal may acquire Services specified in PART C from a Panel Member.

The Panel Member must maintain their offer to supply the Services to the Principal throughout the Term. The Principal may accept the Panel Member's offer at any time during the Term, on the terms and conditions set out in the Head Agreement.

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D.3.2. FORMATION OF HEAD AGREEMENT

The Head Agreement for a Service Panel comes into existence when the Principal issues a Letter appointing the Panel Member to either Service Panel A or to Service Panel B.

The terms of the Head Agreement are defined by (in descending order of precedence):

a. the Letter of Appointment;

b. the Offer; and

c. the Request.

Where any inconsistency occurs between the provisions contained in two or more of the documents that make up the Head Agreement, the document lower in the order of precedence shall where possible be read down to resolve the inconsistency.

If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

D.3.3. HEAD AGREEMENT TERM

The Term of the Head Agreement covering Service Panel A will commence on the date specified in the Letter of Appointment and end on the date specified by the Principal in a Letter of Panel Closure issued to the Panel Member.

The Term of the Head Agreement for Service Panel B will commence on the date specified in the Letter of Appointment and end on 30 June 2020, unless the Term is extended by the Principal.

The current Panel term expires on 1 August 2028, with one additional two-year extension option available for exercise at the Principal's discretion.

The Principal has the option to extend the Head Agreement for Service Panel A and/or B one or more times.

If the Principal wishes to exercise the extension option under this clause:

a. the Principal will provide notice to Panel Members at least 20 Business Days before the expiry of the Term stating that the Head Agreement is to be extended, and the period of the extension.

b. references to the Term are to be read as including the period of extension of the Term.

D.3.4. VARIATION TO HEAD AGREEMENT

Subject to the provisions of Part D, where the Principal seeks to vary the Head Agreement the Principal will advise Panel Members in writing of the proposed variation and the Panel Members may either agree to the variation or withdraw from the Panel.

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Where the Principal makes a variation to the Head Agreement the Principal may at its sole discretion agree to a variation of the Panel Fees based on the change due to the variation to the Head Agreement.

D.4. CONTRACT FORMATION

The Principal may issue a Letter of Acceptance to the Panel Member at any time during the Term. A Contract is formed when a Panel Member receives a Letter of Acceptance. The terms of the Contract are defined in *Part E: Conditions of Contract.*

Where a Panel Member receives a Contract the Panel Member agrees to provide the Services defined in the Letter of Acceptance in accordance with the Contract and the Head Agreement.

D.5. EFFECT OF EXPIRATION OR TERMINATION OF THE HEAD AGREEMENT AND CONTRACTS

The Principal and the Panel Member acknowledges that:

a. if the Head Agreement is terminated or expires, any rights, liabilities or obligations of the Principal or the Consultant as a result of any existing Contracts remain.

b. if the Head Agreement expires or is terminated, then the Panel Member:

   i. may not enter into any new Contracts after the date of expiration or termination; and

   ii. will return any Records and Confidential Information it may have

c. the Panel Member will not be entitled to any compensation for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Head Agreement;

d. where a Panel Member is a member of both Service Panels, the expiry or termination of one of the Head Agreements will not, unless the Principal directs otherwise, affect the other Head Agreement;

e. expiration or termination of a Contract will not affect the Head Agreement.

D.6. ASSIGNMENT AND NOVATION

Unless the Panel Member obtains the Principal's prior written consent, the Panel Member must not sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Head Agreement.

For the purpose of this clause, transfer or assignment shall be taken to include any material changes to the Panel Member where the Panel Member, being a partnership, company, consortium or other composite body, undergoes a material change in its structure, shareholding, membership or control which in the opinion of the Principal will affect the manner in which or the ability of the Panel Member to perform the Head Agreement or any Contract.

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If the Principal agrees to assign or novate the Head Agreement from the Panel Member to a third party, then, assignment or novation of any active Contracts will be managed in accordance with the terms of the Contract.

Where a Panel Member engages in any activity that contravenes or is likely to contravene this section the Panel Members' membership may be cancelled or suspended.

Where a Panel Member's membership of a Panel is suspended or cancelled any rights, liabilities or obligations that a Panel Member may have incurred as a consequence of a previously awarded contract will remain a right, liability or obligation on the Panel Member until those rights, liabilities or obligations are discharged.

D.7. CHANGES TO CORPORATE CIRCUMSTANCES

Unless otherwise determined by the Principal:

a. significant changes to corporate circumstances will result in the Panel Member's membership being suspended or cancelled. Significant changes include but are not limited to corporate restructures, takeovers/mergers, changes in ABN/ACN or any other changes to the controlling interests or governance of the legal entity that was detailed in the Panel Member's Offer.

b. a failure to provide the Principal with at least two months advance notice of a significant change or to provide complete information in relation to that change will result in the Panel Member's membership being suspended or cancelled.

Where a Panel Member's membership of a Panel is suspended or cancelled any rights, liabilities or obligations that a Panel Member may have incurred as a consequence of a previously awarded contract will remain a right, liability or obligation on the Panel Member until those rights, liabilities or obligations are discharged.

D.8. INSOLVENCY

The Principal may suspend or terminate the Head Agreement in the event that the Panel Member is subject to an Insolvency Event.

D.9. ENGAGEMENT OF SUBCONSULTANTS

Where a Panel Member is approached pursuant to clause 1 of *Schedule 1 to Part D: Buying Rules* and the Panel Member proposes to subcontract any element of the proposed Contract to a Subconsultant, it will inform the Project Manager as part of the engagement process.

The Project Manager will assess any proposal on its merits, and may request additional information from the Panel Member as part of the assessment.

If the Project Manager does not object to the engagement of a Subconsultant, Subconsultants shall be engaged under terms and conditions consistent with, and complementary to, the Contract under which the Panel Member is engaged, and the Principal may impose conditions on this engagement.

The Principal may direct the Panel Member to have removed from any activity connected with the Panel, including the completion of a Contract, any Subconsultant

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engaged in connection with the work under the Panel who, in the opinion of the Principal, is guilty of misconduct or is incompetent or negligent, or whose involvement in the Panel is likely to adversely affect the reputation of the Principal or a Client Agency.

Engagement of a Subconsultant, or the giving of a direction with respect to the removal of a Subconsultant does not affect the Panel Member's obligations to the Principal under the Head Agreement or any Contract.

D.10. PANEL AND CONTRACT FEES

D.10.1. PANEL FEE BASIS

The Project Manager will use the Panel Fees to determine the Contract Fee for individual Contracts.

The Panel Fees will be specified in the Letter of Appointment and are fixed for the first year of the Term.

D.10.2. CALCULATION OF FEEABLE VALUE

When Feeable Value is used pursuant to clause D.10.4 to establish the Contract Fee, Feeable Value is calculated in one of two ways:

a. for Contracts awarded prior to award of the construction contract to which the Contract relates, the Feeable Value is the Perth based, Estimated Total Cost (ETC), GST exclusive, less all fees and disbursements and specific items of equipment or works that are not the direct responsibility of the Consultant or any Subconsultant.

b. for Contracts awarded after the award of the construction contract to which the Contract relates, the Feeable Value is the price of the construction contract (as awarded), planning contingency, design contingency, escalation to tender and such other works for which the Consultant is directly responsible to render the full scope of services as defined in the Invitation for proposal.

D.10.3. CLAIMS FOR VARIATION OF PANEL FEES

Panel Members may apply to vary their Panel Fees in accordance with the Consumer Price Index, Australia, Cat No 6401.0: 1 All Groups, Index Numbers, Perth on an annual basis, commencing on the first anniversary of their being appointed to the Panel.

The fee variation will take effect from the date specified in the application approval notice provided by the Panel Manager to the Panel Member.

Any fee variation agreed pursuant to this clause shall not effect Contract Fees.

D.10.4. CALCULATION OF CONTRACT FEE USING FEE PERCENTAGES

For Contracts that involve a Full Service, Extended Full Service or a Service including any combination of Service Categories 2.0 through 7.0 inclusive, the Contract Fee will generally be based on:

a. the Service Categories that comprise the Contract;

b. the Feeable Value;

Reference Only

c. the Project Complexity;

d. the Panel Fee;

e. any Contract-specific fee adjustments as agreed between the Project Manager and the Panel Member;

f. any site visitation requirements as agreed between the Project Manager and the Panel Member; and

g. any disbursements as agreed between the Project Manager and the Panel Member.

Where deemed appropriate by the Principal the Contract Fee for Category 2.0 may be based on an hourly rate determined in accordance with the process detailed in D.10.6.

The Contract Fee will be identified in the Letter of Acceptance. Subject to clause D.10.5, or unless specified otherwise in the Letter of Acceptance, the Contract Fee set in the manner described in this clause will be fixed for the Contract, subject to clause 9 of the General Conditions.

D.10.5. ADJUSTMENT OF CONTRACT FEES FOR FULL SERVICES AND EXTENDED FULL SERVICES

The Contract Fee for Contracts that involve a Full Service or Extended Full Service will be subject to adjustment by the Principal after construction contract award.

The adjusted Contract Fee will be calculated by applying the definition of Feeable Value included in clause D.10.2.b. This may result in an adjustment up or down of the original Contract Fee.

D.10.6. CALCULATION OF CONTRACT FEE USING HOURLY RATES

For Contracts that involve a Service including Service Category 1.0 or 8.0, the Contract Fee will generally be based on hourly rates taking into account:

a. the scope of the Services;

b. the hourly rates submitted in the Panel Member's Offer ;

c. an agreed estimate of the hours required to complete the Contract

d. any Contract-specific fee adjustments as agreed between the Project Manager and the Panel Member.

e. any site visitation requirements as agreed between the Project Manager and the Panel Member; and

f. any disbursements as agreed between the Project Manager and the Panel Member

The Contract Fee will be identified in the Letter of Acceptance. Unless specified otherwise in the Letter of Acceptance, the Contract Fee set in the manner described in this clause will be established as a 'not to exceed' sum. The Consultant will not be entitled to claim for amounts in excess of that sum without prior written approval of the Project Manager.

Reference Only

The Principal reserves the right to use the process described in this clause to set the Contract Fee for a Contract described in D.10.4 in lieu of the process described in that clause.

D.11. PERMANENT OPERATIONAL OFFICE

A Permanent Operational Office is a bona fide principal place of business or may be a bona fide branch office of the Panel Member, or a Subconsultant, as the case may be.

The Principal may request that the Panel Member demonstrate the bona fides of any office. In doing so the Principal may, and without limiting itself to the following, take into consideration whether the office:

a. is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);

b. has been operational and active in the local building and construction industry for a period of not less than six months;

c. will continue to remain operational and active in the local building and construction industry after the expiration of Panel;

d. has established communication facilities such as telephones, fax machines etc. (not only mobile phones);

e. is resourced by a person(s) that reside within the region, who is a permanent employee(s) of the Panel Member (not contract staff) and who has relevant qualifications and experience in Quantity Surveying; and

f. is marketed by the Panel Member by way of corporate publications (letterheads), telephone directory listings, etc.

D.12. PERFORMANCE MANAGEMENT

D.12.1. USE OF COST MANAGEMENT PERFORMANCE REPORTS

Cost Management Performance Reports (CMPRs) may be used:

a. as part of the Principal's on-going performance management of Panel Members, including but not limited to the purpose described in clause D.12.2

b. as part of the Panel Member selection process described in the Buying Rules.

c. when considering supplementation of Service Panel B as described in clause D.2.3.

D.12.2. COMPLETION OF COST MANAGEMENT PERFORMANCE REPORTS

Cost Management Performance Reports (CMPRs) will be completed by the Project Manager.

The Principal reserves the right to complete a CMPR at any time during a Contract, however, in general CMPRs will be completed for;

a. at construction contract award and contract completion for Full Service and Extended Full Service Contracts;

b. at Contract completion for Contracts involving the provision of other Services.

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PART D

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In completing the CMPR the Project Manager will obtain input from other stakeholders impacted by the Contract, including but not limited to, the Client Agency and the Superintendent's Representative.

Following notification from the Principal the Consultant will have ten Business Days taken from the date of the notification, to comment on the CMPR prior to its finalisation. The Principal reserves the right to finalise the CMPR following consideration of the Consultant's comments (if any).

Finalised CMPRs will be made available to all Department of Finance staff and may be distributed to Client Agencies and other Government agencies.

D.12.3. SUSPENSION OR REMOVAL FROM THE PANEL ON PERFORMANCE GROUNDS

The Principal may suspend or cancel a Panel Member's membership of a Service Panel, if in the Principal's sole opinion, the Panel Member, or any of its personnel:

a. has received one or more CMPRs that demonstrate there has been unsatisfactory performance.
b. fails to perform satisfactorily or breaches the requirements of the Head Agreement.
c. exposes government to significant financial loss.
d. engages in unprofessional conduct or unconscionable dealings.
e. makes negative comments about the Principal or its agents to other parties.
f. fails to keep the Principal informed in accordance with the requirements of the Head Agreement.
g. proposes people as Key Personnel who are not Specified Personnel, or fails to offer Specified Personnel as part of the team proposed to enter into Contracts.
h. fails to provide the personnel promised for a Contract as required by D.14.1 and D.14.2.
i. fails to meet the agreed timelines as established for the Contract.
j. unreasonably declines Contracts for work.
k. is the subject of unsatisfactory performance reports issued by other Public Authorities.

Where a Panel Member's membership of a particular Service Panel is suspended or cancelled, and it is a member of the other Service Panel, the membership of the latter Service Panel may also be suspended or cancelled.

D.12.4. SUPPLIER DEMERIT SCHEME

Panel Members are subject to Department of Housing and Works Supplier Demerit Scheme. Details of the scheme are available on the WA Government website which can be accessed through https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects

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PART D

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D.13. INFORMATION ON PANEL MEMBER CAPABILITIES

In accordance with the Buying Rules the Principal will generally make its initial selection of the Panel Member best suited to meet the contractual requirements on the basis of information held by the Principal at the time the Contract is being planned.

As such, it is in the Panel Member's interest to ensure the information held by the Principal on the Panel Member is accurate and up to date. This includes, but is not limited to, Capability Statements, Specified Personnel lists, insurances and locations of Permanent Operational Offices.

D.14. PANEL MEMBER PERSONNEL

D.14.1. SPECIFIED PERSONNEL

The Panel Member must ensure that all Specified Personnel are available to be nominated as Key Personnel to undertake individual Contracts.

D.14.2. CHANGES IN SPECIFIED PERSONNEL

Panel Members must notify the Panel Manager within 10 Business Days of a change in status of its Specified Personnel.

Where Panel Members propose new individuals as Specified Personnel, Panel Members must provide the same level of information as required in the Request.

If a change in Specified Personnel (whether notified in accordance with this clause or not) results:

a. in the Panel Member no longer meeting the pre-qualification requirements specified in clause F.4, or

b. in the Project Manager forming a view, in its sole and absolute discretion, that the Panel Member will not have sufficient capacity to discharge its obligations under the Head Agreement or any Contract;

then the Principal may suspend or cancel the Panel Member's membership of the Panel.

D.14.3. REMOVAL OF SPECIFIED OR KEY PERSONNEL

The Principal may direct the Panel Member to have removed from any activity connected with the Panel, including the completion of a Contract, any Specified or Key Personnel including any Subconsultants employed in connection with the work under the Panel who, in the opinion of the Principal, is guilty of misconduct or is incompetent or negligent, or whose involvement in the Panel is likely to adversely affect the reputation of the Principal or a Client Agency.

In making this direction the Principal will determine the date on which the removal is to take place, and whether the person removed is also to be removed from the list of Specified Personnel under the Panel.

The person removed is not to be employed on any activities connected with the Panel without the prior written approval of the Principal.

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RESPONDENT TO READ AND KEEP THIS PART

D.14.4. QUALITY OF SERVICES AND COMPETENCY OF SPECIFIED PERSONNEL

Panel Members are to:

a. ensure that its systems, processes and procedures used to source, screen, test and hire personnel that will undertake work for the Principal are robust and of a high standard;

b. ensure that Key Personnel including any Subconsultants undertaking work for the Principal are appropriately qualified, skilled and experienced for the work and the relevant Service; and

c. manage the performance of Key Personnel including any Subconsultants undertaking work for the Principal.

D.14.5. POLICE AND OTHER CLEARANCES FOR PANEL MEMBERS

The Principal may request Panel Members, at any time to obtain and provide to the Principal a National Police Clearance or Western Australian Police Integrity Check in respect of any Specified or Key Personnel including approved Subconsultants.

The Panel Member and any approved Subconsultant must comply with a request, under this clause, within twenty Business Days of the request.

If any police clearance shows that any of the Specified or Key Personnel have committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to any other rights under the contract, request the Panel Member to promptly remove the personnel from involvement in the Services under the Panel, or a Contract.

If the Panel Member is required to remove any personnel under this clause, the Panel Member must, at its own cost, promptly comply with the request and arrange for a suitable replacement of the personnel.

The Principal may require Panel Members to meet other requirements, and complete other declarations or be subject to other checks, as a conditions of being considered for certain Contracts.

Failure to comply with the requirements of this clause may result in the Panel Member's Panel membership being cancelled or suspended.

D.14.6. EDUCATION PROJECTS

Direction of School Principal

When a Contract involves accessing school premises, the Consultant will comply with the directions of the school principal.

In determining access to the school premises, the school principal is guided by the School Education Regulations 2000 (WA) and other Department of Education policies. Persons admitted onto school premises must be of good character and conduct. The following conduct is prohibited on school premises and any offending person may be directed to leave the premises:

a. causing disruption to or likely to cause disruption to the good order on the school premises;

b. using threatening or insulting language;

Reference Only

c. using threatening or violent behaviour;
d. engaging in any act or gesture of an inappropriate or sexual nature;
e. adversely affecting the safety and welfare of persons on the school premises;
f. causing damage to property that comprises or is located at the school premise;
g. smoking;
h. defacing school premises;
i. lighting fires or bringing explosives onto school premises;
j. bringing animals onto school premises;
k. having intoxicating liquor;
l. driving vehicles off roadways and parking areas;
m. exceeding speed limits or driving in a dangerous or inconsiderate manner, or;
n. disobeying traffic signs.

Screening

Department of Education policy requires that all persons working on occupied school premises be screened for previous convictions for certain types of offences. The Panel Member shall screen all employees, Subconsultants, suppliers and other persons entering the occupied school premises for previous criminal convictions by ensuring that they:

a. are the holder of a National Police Certificate that is no more than 2 years old, obtained through the WA Police and not through a third party or commercial provider; and
b. have completed the relevant Department of Education "Confidential Declaration" form. A person need only complete a "Confidential Declaration" form once for entry to a particular school in relation to a specific contract. A copy of this form can be obtained from the school principal and the Department of Education website.

The Panel Member must maintain a record of those employees and Subconsultants who hold a National Police Certificate and include the details of that Certificate in that record.

All Panel Member's employees or Subconsultants attending a construction site must register their attendance with the Contractor.

Where construction activity reaches the stage where the nature of the work requires all access to the occupied school premises to be through the school office the Panel Member shall cooperate with the school principal in relation to accessing the site.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

D.15. INSURANCE

D.15.1. OVERVIEW

Contracts will specify the particular insurances that are required to be held for that Contract. Therefore insurance requirements may differ from the minimum levels of insurance as set out in D.15.2.

D.15.2. INSURANCE REQUIREMENTS

Panel Members must as part of their obligations as Panel Members maintain the following minimum level of insurances:

a. public liability insurance for a minimum $5,000,000;

b. professional indemnity insurance for a minimum $5,000,000; and

c. workers compensation insurance as required by law.

A failure to hold valid insurances at the time that a Panel Member is being considered under clause 1 of *Schedule 1 to Part D: Buying Rules* will make the Panel Member ineligible to be selected for a Contract.

Specific contracts may identify a requirement for a higher level of insurances.

D.15.3. REPUTABLE AND SOLVENT INSURER

Any policy of insurance taken out by the Panel Member must be taken out with a reputable and solvent insurer acceptable to the Panel Manager which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

D.15.4. MAINTENANCE OF INSURANCE

The Panel Member must:

a. punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause D.15.2;

b. not vary, reduce or cancel any insurance required under clause D.15.2 or as otherwise required under the Head Agreement or allow it to lapse during the Term or the conduct of a Contract;

c. not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and

d. without limiting clause anything in this clause, promptly reinstate any insurance required under clause D.15.2 if it lapses or if cover is exhausted.

D.15.5. EVIDENCE OF INSURANCE

The Panel Member must provide the Panel Manager with sufficient evidence that the Panel Member holds the insurances as required under clause D.15.2. The Panel Manager or Project Manager may at any time request the Panel Member to provide a certificate of currency of insurance or if requested, a copy of any policy.

Reference Only

D.15.6. FAILURE TO PROVE INSURANCE

If the Panel Member does not comply with clause D.15.5 then without limiting any other remedy available to the Principal, the Principal may withhold payment of any money due under a Contract to the Panel Member until the Panel Member has complied.

D.15.7. INCIDENTS AND CLAIMS

If the Principal or the Panel Member becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause D.15.2, it must as soon as reasonably practicable notify the Principal and the Panel Member (as applicable) in writing of that event or incident.

Failure to comply with this clause D.15.7 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Head Agreement or any Contract.

D.15.8. CONTINUING OBLIGATION

All insurances required under clause D.15.2 are to be maintained throughout the Term, and until all Contracts placed under the Head Agreement are expired or terminated.

In addition the professional indemnity insurance required under clause D.15.2 is also to be maintained for a period of 6 years after the expiration or termination of the last Contract to expire or terminate.

The Panel Member's obligations under clause D.15 are continuing obligations and survive expiration or termination of the Head Agreement and any Contract for so long as the obligations of the Panel Member under this clause D.15.8 continue.

D.15.9. NO LIMITATION OF OTHER LIABILITIES

Nothing in clause D.15 limits the Panel Member's other liabilities under the Head Agreement or any Contract, or restricts the Panel Member from insuring for sums or risks greater than those required under the Head Agreement or any Contract.

D.16. RECORDS AND ACCESS

D.16.1. RECORDS

The Panel Member must keep accurate, complete and current written Records in respect of the Contracts including without limitation:

a. the type of Services, including the separate Contracts, supplied to the Principal during the Term;

b. the time that the Panel Member spent providing the Services during the Term; and

c. the name and title of all Key Personnel and Subconsultants who provided the Services and were responsible for supervising the provision of the Services.

The Panel Member must comply with the directions of the Principal in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term

Reference Only

The Panel Manager must retain all original documents and Contract records (including physical and electronic records) directly or indirectly connected with the Head Agreement or Contract for a period of seven years after the expiry or termination of the Head Agreement and any Contract.

D.16.2. ACCESS

Subject to the Principal:

a. giving reasonable prior notice to the Panel Member; and

b. complying with all reasonable directions and procedures of the Panel Member relating to occupational health, safety, security and confidentiality in connection with the Panel Member's premises,

the Panel Member must allow the Principal in connection with the Services, to:

c. have reasonable access to any premises used or occupied by the Panel Member;

d. have reasonable access to all Records in the custody or control of the Panel Member;

e. examine, audit, copy and use any Records in the custody or control of the Panel Member; and

f. photograph, film or otherwise record anything done by the Panel Member in supplying the Services, if reasonably required by the Principal.

The Panel Member must do everything necessary to obtain any third party consent which may be required to enable the Principal to have access to records under this clause D.16.

D.17. CONFLICT OF INTEREST OF PANEL MEMBERS

Panel Members must not place themselves in a position which will or may give rise to an actual, potential or perceived conflict of interest during the Term or during a Contract.

Panel Members must notify the Principal promptly in writing upon becoming aware of any actual, potential or perceived circumstances, arrangements or understandings which constitute, or which may reasonably be considered to constitute, an actual, potential or perceived conflict of interest with the Panel Member's obligations under the Head Agreement or a Contract.

The Principal will assess any actual, potential or perceived conflict of interest and may:

a. suspend or cancel the Panel Member's membership of the Panel;

b. direct the Panel Member to take a particular action to address the actual, potential or perceived conflict of interest; or

c. determine no further action is necessary.

The Principal may request further information from the Panel Member, including details of any proposed strategy for managing any actual, potential or perceived conflicts of interest, as part of the assessment process.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

In the event that a Panel Member fails to disclose an actual, potential or perceived conflict of interest, or if the Panel Member is unable or unwilling to comply with the Principal's direction with respect to addressing a conflict of interest, the Principal may suspend or cancel the Panel Member membership of a Service Panel.

D.18. DISCLOSURE AND PUBLICATION OF INFORMATION

The Panel Member agrees and acknowledges that any information or further information submitted as part of the Head Agreement or any Contract, is subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Principal under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

The Panel Member agrees and acknowledges that the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* (WA) are not limited or affected in any way by the Head Agreement or Contract.

The Panel Member also agrees to allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning the Head Agreement and any Contract.

The Principal reserves the right to publish, or provide directly to third parties:

a. information on which suppliers are members of the Service Panels;

b. capability statement's provided by Panel Members;

c. Panel Fees, and

d. summarised performance management information.

The contract award information for all Contracts valued at $50,000 (GST inclusive) and above will be published on the Tenders WA website after the Contract is awarded.

D.19. SURVIVAL ON TERMINATION

In addition to any rights that have unconditionally accrued prior to termination and in addition to clause D.15.8, the following clauses will survive the completion or earlier termination of the Head Agreement:

a. D.5 – Effect of Expiration or Termination of the Head Agreement and Contracts

b. D.15 - Insurance

c. D.16 - Records and Access

d. D.18 - Disclosure and Publication of Information

D.20. PANEL ADMINISTRATION AND MANAGEMENT

D.20.1. PANEL MEMBER SUPPORT TO PANEL MANAGEMENT

The Principal may at any time, require the Panel Member to provide reports on Contracts awarded, underway or complete, or attend meetings, information sessions or workshops to address matters related to the Panel and the Services.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

The Panel Member must comply with any reasonable requirement of the Principal under this clause. A failure to do so may result in the Panel Member's membership of the Panel being suspended or cancelled.

D.20.2. PRINCIPAL'S REPRESENTATIVE

The Letter of Appointment will identify the Panel Manager who will act as the Principal's Representative in relation to the Head Agreement.

The Panel Member agrees and acknowledges that the Panel Manager may administer the Head Agreement on behalf of the Principal.

The Principal may by notice to Panel Members:

a. vary or terminate the appointment of the Panel Manager; and

b. appoint any other person to act as the Panel Manager.

D.20.3. PANEL MEMBER'S REPRESENTATIVE

Respondents are to identify in their Offer the individual who will act as the Panel Member's Representative in relation to the Head Agreement.

The Principal agrees and acknowledges that the Panel Member's Representative may administer the Head Agreement on behalf of the Panel Member.

The Panel Member may by notice to Principal:

a. vary or terminate the appointment of the Panel Member's Representative; and

b. appoint any other person to act as the Panel Member's Representative.

D.20.4. NOTICES

Each notice or other communication given under the Head Agreement:

a. must be in writing;

b. may be given by an authorised officer or solicitor of the Principal, or the Panel Member or the Panel Member's Representative (as applicable); and

c. must be:

i. hand delivered or sent by prepaid post to the address of the recipient specified in the Letter of Appointment;

ii. sent by email to the email address of the recipient specified in the Letter of Appointment;

Notice is taken to be received:

d. in the case of hand delivery, on the date of delivery;

e. in the case of post, on the third business day after posting; and

f. in the case of email or other electronic means, when it becomes capable of being retrieved by the addressee at the relevant email address; and

g. on the next business day if the notice is received after 5.00 pm or on a day other than a business day.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

D.21. GENERAL

D.21.1. ACKNOWLEDGEMENTS

The Panel Member acknowledges that:

a. the Principal may request Services from any Panel Member;

b. the Principal does not makes any representation that it will procure or seek to procure Services, or any particular volume of Services, from a Panel Member;

c. a Panel Member may not receive any Contracts during the Term;

d. appointment to the Panel does not give a Panel Member an exclusive right to provide the Services to the Principal;

e. the Principal may cancel, vary, supplement, supersede or replace the Panel or any member of the Panel at any time and from time to time; and.

f. the Principal may make unilateral changes to Head Agreements to give effect to changes in Panel arrangements.

D.21.2. GOVERNING LAW

The Head Agreement is governed by the laws of the State of Western Australia. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

D.21.3. NOTICE OF CLAIMS MADE AGAINST THE PANEL MEMBER

Panel Members shall notify the Panel Manager, in writing, within five Business Days of receipt of any claim or potential claim made against the Panel Member, including but not limited to insurance and legal claims, which arise wholly or in part as a result of the Panel Member's membership of the Panel, or which have the potential to affect the Panel Member's ability to perform the obligations of the Head Agreement or any contract.

D.21.4. NO CLAIM

To the extent permitted by law, Panel Members will have no claim against the Principal arising from or in connection with the exercise or failure to exercise the Principal's rights under the Head Agreement.

D.21.5. CONSENT

Whenever the consent of the Principal is required under the Head Agreement or any Contract:

a. that consent may be given or withheld by the Principal in the Principal's absolute discretion and may be given subject to such conditions as the Principal may determine;

Reference Only

b. the Principal is not required to provide a reason or reasons for giving or refusing its consent; and

c. the Panel Member agrees that any failure by it to comply with or perform a condition imposed by Principal under this clause may lead to the Panel Member's membership of the Panel being suspended or cancelled.

D.21.6. WAIVER

Any waiver by the Principal or the Contractor must be in writing and signed by the party waiving the right.

Any waiver by the Principal or the Contractor does not affect its rights in respect of any other breach of the Head Agreement as the case may be by another party.

Subject to this clause, any failure by the Principal or the Contractor to enforce any right under the Head Agreement as the case may be will not be construed as a waiver of their respective rights under the Head Agreement.

D.21.7. ENTIRE AGREEMENT

The Head Agreement supersedes all prior negotiations, understandings and agreements between the Principal and the Panel Member relating to the matters covered by the Head Agreement and constitute the full and complete agreement between the Principal and the Panel Member relating to the matters covered by the Head Agreement.

D.21.8. RIGHTS ARE CUMULATIVE

Unless otherwise stated the rights, powers and remedies in the Head Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

D.21.9. FURTHER ASSURANCE

The Principal and the Contractor must do everything reasonably necessary, including signing further documents, to give full effect to the Head Agreement and any Contract.

D.21.10.RIGHT OF SET OFF

The Principal may set off or deduct any amount claimed by the Principal from any amount owing by the Principal to the Panel Member on any account under the Head Agreement or on any Contract or on any other contract between the Panel Member and the Principal.

D.21.11.COSTS

Unless otherwise stated, the Panel Member must comply with all obligations of the Panel Member at the Panel Member's cost.

The Principal and the Panel Member must pay their own legal and other costs in connection with the preparation and signing of the Head Agreement and any Contract.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

D.21.12.TRUSTS

If the Panel Member has entered, or will enter the Head Agreement or Contract, in the capacity of trustee whether or not the Principal has any notice of the trust, the Panel Member:

a. is taken to enter into the Head Agreement and the Contract and both as trustee and in the Panel Member's personal capacity and acknowledges that the Panel Member is personally liable for the performance of the Panel Member's obligations under Head Agreement and the Contract;

b. will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Principal for any default by the Panel Member;

c. warrants that:

i. the Panel Member has a right to be fully indemnified out of the asset of the trust in respect of obligations incurred under the Head Agreement and the Contract and

ii. the assets of the trust are sufficient to satisfy the right of indemnity referred to above and all other obligations in respect of which the Panel Member has a right to be indemnified out of those assets; and

iii. the Panel Member has the power and authority under the terms of the trust to enter into the Head Agreement and the Contract.

D.21.13. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause D.21.13.:

Government Agency means any Australian government or any governmental, semi-governmental, administrative, regulatory, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament**.**

Personal Information has the meaning given to it in the PRIS Act.

PRIS Act means the *Privacy and Responsible Sharing of Information Act* 2024 (WA).

Privacy Act means the *Privacy Act* 1988 (Cth).

Privacy Commissioner means the Australian Information Commissioner, the Information Commissioner and the Privacy Deputy Commissioner (as each of those terms is defined in the PRIS Act), and (upon commencement of the relevant provision) any other authority to whom a privacy complaint is referred in accordance with section 93 of the PRIS Act.

(a) The Consultant must:

i. comply with its obligations (if any) under or arising pursuant to the Privacy Act;

ii. whether or not the Consultant is an organisation which is bound by the Privacy Act or other privacy laws, comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation;

iii. facilitate the Principal's compliance with their obligations under the PRIS Act, including providing assistance as requested by the Principal; and

iv. not do or omit to do anything that is likely to cause the Principal or their respective

Reference Only

officers, employees or agents to contravene the PRIS Act,

to the extent relevant to the Head Agreement.

v. The Consultant also agrees to comply with:

(A) such other Commonwealth, State or Territory legislation related to privacy;

(B) any directions made by a Privacy Commissioner;

(C) any reasonable policies, procedures and guidelines of the Principal relating to privacy; and

(D) any other reasonable direction relating to privacy which is given by the Principal.

(b) Without limiting the Consultant's obligations under clause D.21.13(a), the Consultant must, in relation to any Personal Information which it collects, holds, uses, has access to, or otherwise deals with in the course of performing its obligations under, or otherwise in connection with the Head Agreement:

i. take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and

ii. where any breach of privacy occurs due to the Consultant's failure to comply with any obligation under this clause D.21.13, do all things necessary to mitigate the consequences of that breach;

iii. not modify or disclose the Personal Information except with the Principal's prior written approval; and

iv. ensure that the Personal Information is returned to the Principal (or is permanently destroyed if the Principal so elects) when it is no longer required for the performance of the Consultant's obligations under the Head Agreement.

(c) The Consultant must immediately notify the Principal (providing full details) if it:

i. becomes aware of any suspected or actual misuse of, or any unauthorised access to or disclosure of, Personal Information held by the Consultant or the Consultant Personnel;

ii. receives, or otherwise becomes aware of, any complaints concerning its or the Principal's compliance with privacy obligations, including full details of how the Consultant intends to resolve the complaint;

iii. becomes aware that a disclosure of Personal Information may be required by law; or

iv. is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.

(d) The Consultant must co-operate fully with the Principal to resolve:

i. any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or

ii. any complaint alleging a breach by any party of their respective privacy obligations

Reference Only

in connection with,

the Head Agreement.

(e) Nothing in this clause D.21.13is intended to limit any obligation of the Consultant under the PRIS Act or the Privacy Act (if applicable) with respect to Personal Information.

(f) This clause D.21.13 survives the termination or expiry of the Head Agreement.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART D: BUYING RULES

1. CONSULTANT SELECTION AND ENGAGEMENT PROCESS

The Principal reserves the right to place Contracts with Panel Members in whatever way that the Principal considers appropriate in the circumstances.

Project Managers will use the following general approach when arranging Contracts.

a. The Project Manager will calculate the expected Contract Fee based on the Feeable Value and the nature of the project, and determine whether Service Panel A or B will be used for the Contract.

b. The Project Manager will review information held by the Principal on Panel Members and select the Panel Member or Panel Members that the Project Manager believes best meets the Principal's needs. Information that will be considered includes, but is not limited to:

   i. the requirements of the Contract;

   ii. Panel Member and proposed Key Personnel capabilities and experience, relative to the requirements;

   iii. Past performance;

   iv. Fees (including impact of disbursement if any);

   v. Regional considerations (if applicable); and

   vi. Aboriginal Enterprise and Employment considerations.

c. Once the preferred Panel Member is identified:

   i. The Project Manager will prepare and release to the Panel Member an Invitation to Submit Proposal;

   ii. The Panel Member will submit a Proposal; and

   iii. A Letter of Acceptance will be issued by the Project Manager establishing the Contract if the Proposal is acceptable.

The Project Manager may liaise and negotiate with the Panel Members as necessary during this process.

2. INVITATION TO SUBMIT PROPOSAL

A Project Manager may choose to run a competitive process involving approaching two or more Panel Members to provide Proposals. Where this is done, the Project Manager will issue the Panel Member(s) with an 'Invitation to Submit Proposal' which will detail the process that will be followed, and the basis on which the decision will be made.

In responding to an Invitation to Submit Proposal the Panel Member will be required to develop and provide a Proposal containing the information sought by the Invitation to Submit Proposal.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

3. LETTER OF ACCEPTANCE

The Letter of Acceptance will be a template form that the Principal may amend from time to time. It will contain information related to the Contract awarded to the Panel Member and will include the following:

a. Key Personnel (confirmation of nomination, availability and contact information);

b. scope of Services;

c. schedule of deliverables;

d. agreed timelines;

e. Contract Fee;

f. any special terms and conditions; and

g. a completed Annexure to the General Conditions (see *Schedule 1 to Part E: W.A. Government Amendments to AS 4122-2010*).

4. REGIONAL PROJECTS

When a project involves construction in a regional location (zones two and three as defined in the W.A. Buy Local Policy) the Project Manager will consider whether there is benefit in having a local Panel Member on the Contract.

If there is such a benefit, the Project Manager will identify any Panel Member with a Permanent Operational Office within the prescribed distance of the Contract Delivery Point and assess whether, based on information held by the Principal, the local Panel Member(s) meet the Principal's needs and represents value for money. The prescribed distance is:

a. 200km for Zone two, and

b. 400km for Zone three

If the assessment reveals there is more than one suitable local Panel Member, the Panel Member that best meets the Principal's need will be invited to submit a Proposal. If the assessment indicates no local Panel Member's meet the Principal's need, then the Project Manager will approach another Panel Member.

The process outlined above will not be applied when a Panel Member is located in another state or territory of Australia, or in New Zealand in accordance with the Australia New Zealand – Government Procurement Agreement (ANZGPA).

5. ABORIGINAL ENTERPRISES AND PEOPLE

Panel Members that are an Aboriginal Enterprise, subcontract with an Aboriginal Enterprise or employs one or more Aboriginal people will be given a non-price preference when the Project Manager is identifying the preferred Panel Member pursuant to clause 1 of this Schedule.

This preference will not be applied when a Panel Member is located in another state or territory of Australia, or in New Zealand in accordance with the Australia New Zealand – Government Procurement Agreement (ANZGPA).

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

6. INVESTIGATORY WORK

For Contracts lacking project scope definition, the Project Manager may select a Panel Member to undertake investigative work, on an hourly rates basis to determine the scope of a Contract.

Services required for such investigative work will be considered as a separate Contract (undertaken as part of Service Category 8.0).

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

PART E CONDITIONS OF CONTRACT

E.1. CONDITIONS OF CONTRACT

The terms and conditions for Contracts are defined in Item 3 of the Annexure to the General Conditions of Contract that will be included in the Letter of Acceptance.

All references to the General Conditions include reference to the amendments made to the General Conditions by the Principal and which are included in *Schedule 1 to Part E: W.A. Government Amendments to AS 4122–2010*.

A copy of the proforma General Conditions of Contract Annexure that will be completed for each Contract and included in the Letter of Acceptance is provided in *Schedule 2 to Part E: Annexure to General Conditions of Contract*.

E.2. DEFINITIONS AND INTERPRETATIONS FROM HEAD AGREEMENT

Any definitions appearing in clause D.1 of the Head Agreement shall have the corresponding meaning in the Contract unless the intention is clearly and unambiguously to the contrary.

E.3. SPECIAL CONDITIONS OF CONTRACT

E.3.1. COST MANAGEMENT PERFORMANCE REPORTS

Contracts awarded under Service Panel A that exceed $20,000 in value (as varied), will be subject to a formal performance management scheme. All Contracts awarded under Service Panel B will subject to the scheme.

As part of the scheme a Cost Management Performance Report (CMPR) will be completed by the Project Manager as outlined in clause D.12.

E.3.2. CIVIL LIABILITY ACT 2002 (WA)

a. Subject to sub-clause (b), and notwithstanding any other provision of this contract, the operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities (including negligence) arising out of or in connection with the Contract or the performance of the Services.

b. Sub-clause (a) only applies in relation to the Services performed or subcontracted by the Consultant under the Contract (as may be amended from time to time), and does not extend to other contracts entered into by the Principal for which the Services may be required, such that should the Principal engage a builder (or other third party) to construct a building or provide goods or services in addition to the Services the subject of this contract, then as between the Consultant and any such builder (or third party), then Part 1F of the *Civil Liability Act 2002* (WA) is not excluded.

The Consultant must ensure that all insurance policies required by the Head Agreement and the Contract which cover third party liability:

c. cover the Consultant for potential liability to the Principal assumed by reason of the exclusion of Part 1F; and

Reference Only

d. do not exclude cover for any potential liability the Consultant may have to the Principal under or by reason of the Head Agreement or Contract.

E.3.3. ACCESS TO PREMISES

The Principal will provide the Consultant with access to the Principal's and Client Agency premises as specified in the Contract to enable the Consultant to fulfil its obligations under the Contract.

Access to designated premises may be temporarily denied by the Principal, at its sole discretion.

Where access to designated premises is temporarily denied by the Principal and not related to poor performance or misconduct of the Consultant, the Consultant will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access.

Without limiting the foregoing, the Principal will, following a temporary denial of access, permit a resumption of access as soon as practicable.

The Consultant must comply with all reasonable directions and procedures of the Principal and the occupier of the premises relating to occupational health, safety, security and confidentiality.

E.3.4. CONFIDENTIALITY

When engaged to provide services, Consultants must keep confidential all information that the Principal has provided. In addition to the Confidentiality requirements stated in clause 23 of the General Conditions, Consultants must also not use or disclose to any person the Principal's Confidential Information except:

a. where necessary to co-operate with other consultants engaged by the Principal;

b. as required by any judicial or parliamentary body or governmental agency; and

c. when required (and only to the extent required) to the firm's professional advisers. Consultants must ensure that such professional advisers are bound by the confidentiality obligations imposed on Consultants under the Contract and the Panel.

E.3.5. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause E.3.5.:

Government Agency means any Australian government or any governmental, semi-governmental, administrative, regulatory, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament**.**

Personal Information has the meaning given to it in the PRIS Act.

PRIS Act means the *Privacy and Responsible Sharing of Information Act* 2024 (WA).

Privacy Act means the *Privacy Act* 1988 (Cth).

Privacy Commissioner means the Australian Information Commissioner, the Information Commissioner and the Privacy Deputy Commissioner (as each of those terms is defined

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in the PRIS Act), and (upon commencement of the relevant provision) any other authority to whom a privacy complaint is referred in accordance with section 93 of the PRIS Act.

(a) The Consultant must:

i. comply with its obligations (if any) under or arising pursuant to the Privacy Act;

ii. whether or not the Consultant is an organisation which is bound by the Privacy Act or other privacy laws, comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation;

iii. facilitate the Principal's compliance with their obligations under the PRIS Act, including providing assistance as requested by the Principal; and

iv. not do or omit to do anything that is likely to cause the Principal or their respective officers, employees or agents to contravene the PRIS Act,

to the extent relevant to the Contract.

v. The Consultant also agrees to comply with:

(A) such other Commonwealth, State or Territory legislation related to privacy;

(B) any directions made by a Privacy Commissioner;

(C) any reasonable policies, procedures and guidelines of the Principal relating to privacy; and

(D) any other reasonable direction relating to privacy which is given by the Principal.

(b) Without limiting the Consultant's obligations under clause E.3.5(a), the Consultant must, in relation to any Personal Information which it collects, holds, uses, has access to, or otherwise deals with in the course of performing its obligations under, or otherwise in connection with the Contract:

i. take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and

ii. where any breach of privacy occurs due to the Consultant's failure to comply with any obligation under this clause E.3.5, do all things necessary to mitigate the consequences of that breach;

iii. not modify or disclose the Personal Information except with the Principal's prior written approval; and

iv. ensure that the Personal Information is returned to the Principal (or is permanently destroyed if the Principal so elects) when it is no longer required for the performance of the Consultant's obligations under the Contract.

(c) The Consultant must immediately notify the Principal (providing full details) if it:

i. becomes aware of any suspected or actual misuse of, or any unauthorised access to or disclosure of, Personal Information held by the Consultant or the Consultant Personnel;

ii. receives, or otherwise becomes aware of, any complaints concerning its or the Principal's compliance with privacy obligations, including full details of how the Consultant intends to resolve the complaint;

iii. becomes aware that a disclosure of Personal Information may be required by law; or

iv. is approached with respect to privacy by any Government Agency or by any

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individual to whom any Personal Information relates.

(d) The Consultant must co-operate fully with the Principal to resolve:

i. any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or

ii. any complaint alleging a breach by any party of their respective privacy obligations in connection with, the Contract.

(e) Nothing in this clause D.2.12 is intended to limit any obligation of the Consultant under the PRIS Act or the Privacy Act (if applicable) with respect to Personal Information.

(f) This clause E.3.5 survives the termination or expiry of the Contract.

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SCHEDULE 1 TO PART E: W.A. GOVERNMENT AMENDMENTS TO AS 4122–2010

The following clauses have been amended and differ from the corresponding clauses in AS 4122-2010

CLAUSE 1 DEFINITIONS AND INTERPRETATION

- SUBCLAUSE 1.1 – DEFINITIONS

Immediately after the words "means the Documents listed in Item 3" insert the following:

, which have the order of precedence in accordance with the numbered list contained in Item 3 (which is shown in descending order);

- SUBCLAUSE 1.1 – DEFINITIONS

Insert the following new definition:

Consultant's Personnel *means all employees, agents and Subconsultants of the Consultant.*

Insert the following new definition:

Default *includes, but is not limited to:*

(a) an Insolvency Event;

(b) wrongful suspension of work;

(c) failing to provide evidence of insurance;

(d) failing to exercise the standard of care required by clause 4;

(e) failing to comply with a direction of the Client pursuant to clause 8;

(f) in respect of clause 10.4(c), knowingly providing documentary evidence containing an untrue statement;

(g) subject to clause 12.2:

(i) failing to complete the Services by the time stated in Item 13 without reasonable cause or the Client's approval; or

(ii) if a program is attached, substantial departure from the program without reasonable cause or the Client's approval; or

(iii) where there is no time stated in Item 13 or construction program, failing to proceed with due expedition and without delay without reasonable cause or the Client's approval; and

(h) failing to comply with Clauses 13.1 and 13.2.

Delete the definition of Force Majeure and in lieu thereof insert the following:

Force Majeure Event *means an event that makes it impossible for a party to perform its obligations in whole or part under this Contract and which is beyond the reasonable control of the affected party including:*

(a) fire (other than fire caused by the affected party), flood, a category 3 or above tropical cyclone (as defined by the Australian Bureau of Meteorology) affecting the area where the Services are being performed, earthquake, tsunami or explosion;

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(b) war, insurrection, civil disturbance or acts of terrorism; or

(c) act of God;

(d) impact of vehicles or aircraft; or

(e) epidemic or pandemic,

but does not include:

(f) lack of or inability to use funds for any reason;

(g) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with clause 4;

(h) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent contractor;

(i) breakdown of any equipment used by the Consultant or any Subconsultant to the Consultant;

(j) strikes or Industrial Action by the Consultant's Personnel in any way directed at the Consultant or any Subconsultant or directed at the Site;

(k) weather conditions or any effects of weather conditions, other than as described in sub-paragraph (a) above;

(l) act or omission of any Subconsultants (including if a Subconsultant suffers an Insolvency Event);

(m) a failure by a third party to fulfil a contract commitment to an affected party other than as a result of an event in paragraph (a) to (c) above; or

(n) *lack of resources, including local materials or personnel*

Insert the following new definition:

Industrial Action *means any strike, lockout or failure to attend for work, the imposition of any ban, limitation or delay in the performance of work, any refusal by an employee to work in accordance with that employee's contract of employment or the provisions of any Industrial Award, Agreement or Order, or the performance of work in a manner different from that in which it is customarily performed.*

Insert the following new definition:

Industrial Award *means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission or Australian Industrial Relations Commission and includes Preserved State*

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Agreements and Notional Agreements Preserving State Awards, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and the Consultant or a Subconsultant to the Consultant that is lodged, registered or certified in accordance with any law applying in Western Australia.

Insert the following new definition:

***Subcontract** means a contract or agreement between the Consultant and a third party under which the third party agrees to perform any part of the Services under this Contract*.

Insert the following new definition:

***Subconsultant** means a person engaged by the Consultant under a subcontract.*

CLAUSE 4 STANDARD OF CARE

After the first paragraph, insert the following two (2) paragraphs:

The Consultant must ensure that, when delivered to the Client, the Deliverables are suitable, appropriate and adequate for the purpose stated in the Scope and are in accordance with all industry standards that are reasonably applicable to the Deliverables.

The Consultant must engage personnel, employees, sub-consultants and Subconsultants with appropriate qualifications and experience to perform the Services.

CLAUSE 5 SCOPE

- SUBCLAUSE 5.4

Immediately after the words “The Consultant is entitled to an adjustment to the Fee and/or” insert the following:

an extension of

- SUBCLAUSE 5.5

Insert the following new subclause 5.5

(a) If the Consultant does not notify the Client under clause 5.2 within fourteen (14) days of receiving the Client Information from the Client, the Client Information shall be deemed to be accepted by the Consultant. Where the Client Information has been deemed to be accepted by the Consultant pursuant to this clause then the Consultant shall not be entitled to an adjustment to the Fee and/or an extension of time for providing the Services under clause 5.4 or any other clause of this Contract.

CLAUSE 7 INFORMATION

In the clause heading, immediately after the word *INFORMATION*, insert the words *AND DELIVERABLES*

Insert new subclause number 7.1 and delete the first word of subclause 7.1 (“The”) and in lieu thereof, insert the following:

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When requested by the Consultant, the

Insert the following new subclause 7.2

7.2 Other than as set out in clause 26.4 the Consultant must deliver to the Client all Deliverables as reasonably requested by the Client from time to time.

CLAUSE 8 DIRECTIONS

Insert the following new subclause 8.6

8.6 The Client may direct the Consultant to have removed from any activity connected with the Services, within such time as the Client directs, any person employed in connection with the Services who, in the opinion of the Client (acting reasonably), is not acting in the best interests of the project (which includes being, in the Client's opinion, guilty of misconduct or any criminal activity) or is incompetent or negligent.

A person removed under this clause 8.6 must not thereafter be employed or engaged on the project or on activities connected with the Services by the Consultant without the prior written approval of the Client.

CLAUSE 9 VARIATIONS

- SUBCLAUSE 9.2

Delete subclause 9.2 and in lieu thereof insert the following:

9.2 If the Consultant considers that a Direction constitutes a Variation but the Direction is not in writing or does not specify that it constitutes a Variation, then prior to commencing the work the subject of the Direction, the Consultant must notify the Client in writing that it considers that the Direction constitutes a Variation. The notice required to be given by the Consultant under this clause 9.2 must set out the grounds why the Consultant considers that the Direction constitutes a Variation.

If the Client agrees that the Direction constitutes a Variation, then it must notify the Consultant in writing and clause 9.3 will apply as if the Direction was given by the Client under clause 9.1. If the Client does not agree that the Direction constitutes a Variation, then it must notify the Consultant in writing and clause 32 will apply to resolve the Dispute. If the Consultant does not give the notice referred to in this clause 9.2 prior to commencing the work the subject of the Direction, then notwithstanding the remainder of this clause 9, the Consultant will be bound to implement and complete the required work and is not entitled to have the work valued as a Variation under clause 9.3 or to make any claim, whether for payment, adjustment to the Fee or the time for completing the Services or otherwise, in respect of that work.

- SUBCLAUSE 9.4

Immediately after the words "outside the general Scope of the Services." Insert the following:

If the Consultant considers that compliance with a Direction under clause 9.1 would vary the Services beyond the general Scope of the Services, it must notify the Client

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within 10 Business Days of the date of the Direction. Failure of the Consultant to notify the Client within 10 Business Days of the date of the Direction will constitute acceptance that the Direction is not outside the general Scope of the Services and, in that regard, the Consultant will be bound to comply with that Direction.

CLAUSE 10 PAYMENT

- SUBCLAUSE 10.4

Delete subclause 10.4 and in lieu thereof insert the following:

10.4 The payment claim must:

(a) in respect of the Services:

(i) identify the Services to which the payment claim relates;

(ii) separately identify each Variation;

(iii) separately identify any other claim for payment under this Contract including a payment stated in Item 20; and

(iv) set out the amount of the Fee claimed, and how that amount was determined;

(b) in respect of disbursements:

(i) identify each disbursement claimed;

(ii) state the amount of the disbursement claimed;

(iii) be accompanied by relevant invoices and receipts for payment;

(c) be accompanied by a statement from the Consultant confirming that:

(i) all amounts which are then due and payable by the Consultant to its subconsultants and subconsultants have been duly paid by the Consultant;

(ii) the claim does not contain any amount for costs under the Contract which are expressly referred to as being at the Consultant's own cost;

(iii) no fees or wages are due and owing by the Consultant in respect of its obligations under the Contract for the period to which the payment claim relates; and

(iv) no subconsultant, subconsultant or any other person engaged by the Consultant arising out of or in connection with this Contract has a lien or similar entitlement to any of the Deliverables or any item in respect of the Deliverables;

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(d) be accompanied by any other information and documentation reasonably required by the Client;

(e) be in the form of a valid tax invoice unless a Recipient Created Tax Invoice Agreement has been entered into by the parties; and

(f) include details of any matters which have arisen to the date of the claim which may affect the total fees payable under this clause and, where practicable, an estimate of the amount thereof.

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- SUBCLAUSE 10.11

Insert the following new subclause 10.11:

> *10.11 The Client shall make payments to the Consultant only. The Consultant is responsible for making any payment that is due to its contractors, subconsultants, consultants and sub-consultants.*

CLAUSE 12 TIME

- SUBCLAUSE 12.1

Immediately after the words "time stated in Item 13" insert the following:

> *, or if a program is attached, the Consultant must complete the Services in accordance with the program attached to this Contract. Where there is an inconsistency between any date appearing in the Contract and a program attached to this Contract then the date appearing in the Contract shall be deemed to prevail.*

- SUBCLAUSE 12.1A

Insert the following new subclause 12.1A after subclause 12.1:

> *12.1A As soon as the Consultant reasonably considers that anything, including an act or omission of the Client or its employees, agents, sub-consultants or subconsultants, may delay the performance of the Services, the Consultant must promptly notify the Client in writing with details of the possible delay and proposals for mitigating the potential for delay of completion of the Services.*

- SUBCLAUSE 12.2

Delete subclause 12.2(b) "a *Force Majeure"*

- SUBCLAUSE 12.2

Delete the following:

> *Consultant notifies the Client of the delay and its cause promptly after the Consultant becomes aware of the delay or its cause, and provides reasonable evidence of the cause and duration of the delay.*
>
> And in lieu thereof, insert the following:
>
> *(e) the Consultant must submit a written claim for an extension of time to the Client within 10 Business Days of the cause of the delay commencing, which claim must set out the facts on which the claim is based and the period of time for which an extension of time is claimed (or is expected to be claimed if the cause is ongoing);*
>
> *(f) the completion of the Services has actually been delayed due to one of the causes of delay set out in this Clause 12.2 and*
>
> *(g) the Consultant has taken all reasonable steps to minimize the delay and no reprogramming or alteration of the sequence of activities or other method could avoid the delay*.

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SUBCLAUSE 12.3

Immediately after the words “must pay the Consultant’s reasonable” insert the following:

and necessary

- SUBCLAUSE 12.4

Insert the following new subclause 12.4:

12.4 The Consultant’s entitlement to an extension of time under clause 12.2 will be reduced to the extent that the delay has been caused or contributed to by:

(a) an act or omission of the Consultant or its employees, agents, sub-consultants or subconsultants; or

(b) any cause of delay which is not set out in clause 12.2.

- SUBCLAUSE 12.5

Insert the following new subclause 12.5:

12.5 Where Item 13 provides for a program to be provided by the Consultant for the purposes of clause 12.1, then:

(a) The program shall be in a form appropriate to the project and acceptable to the Client and should:

(i) set out a program for the delivery of the Services to meet the completion date or dates stated in the Annexure;

(ii) indicate the interdependencies of each component part of the Services;

(iii) allow appropriate periods for the review by the Client of Documents to be produced by the Consultant;

(iv) clearly indicate any allowances made in the program for delays to the provision of the Services or any component parts of the Services outside the Consultant’s control; and

(v) include a separate time line for each discrete component of the Services and a completion date for each of those components.

(b) During the Contract, the Consultant shall progressively make the necessary adjustments to the program to ensure each stated completion date is achieved. If the Consultant at any time believes that the Consultant may be unable to meet a completion date for any reason, the Consultant shall notify the Client in writing and state the remedial action necessary to achieve the completion date.

(c) If the Client considers that the Consultant may not meet a completion date, it may notify the Consultant and require the Consultant to notify within a reasonable time specified in the notice what remedial action

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(if any) the Consultant proposes to take to ensure that the relevant completion date is met.

(d) The Consultant shall submit reports to the Principal in an agreed format and at agreed intervals as to the progress of the Services. The Consultant shall attend progress review and co-ordination meetings in accordance with the requirements of the Principal and at a location specified by the client and shall attend any other meetings which are desirable to ensure the proper and effective provision of the Services by the Consultant.

(e) The Client may direct the Consultant to deviate from the current program provided by the Consultant. The Consultant shall be entitled to recover any extra costs and expenses incurred by it as a consequence of any deviation directed by the Principal under clause 15.1 only if the deviation is required for the convenience of the Principal or the deviation is due to a cause outside the reasonable control of the Consultant.

CLAUSE 13 LAW AND APPROVALS

- SUBCLAUSE 13.3

Delete subclause 13.3 and in lieu thereof insert the following:

13.3 If there is a new Legislative Requirement or Approval, or a change in a Legislative Requirement or Approval which:

(a) occurs after agreement of the Fee;

(b) the Consultant is bound to comply with or obtain;

(c) causes the Consultant to incur more or less cost or time than otherwise would have been incurred or expended (other than the costs of any fines or penalties); and

(d) could not have been reasonably anticipated by the Consultant prior to the date of the Contract,

then, provided the Consultant has taken all reasonable steps to mitigate and minimise all costs and expenses, or any delay in the delivery of the Services, the difference in cost will be valued as a Variation and an extension of time may be granted in accordance with clause 12.

CLAUSE 15 REVIEW AND ACCEPTANCE

- SUBCLAUSE 15.2

Delete the entire subclause and in lieu thereof insert the following:

15.2 The Consultant remains responsible for the Services despite any:

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(a) *review or acceptance of any of the Services or the Deliverables by the Client;*

(b) *Directions (other than any Directions which are either wrongful or negligent) given by the Client in respect of the Services, the Deliverables or the performance of the Consultant's obligations under the Contract; or*

(c) *failure by the Client to review or accept any of the Services or Deliverables.*

CLAUSE 16 ADVERSE EVENT

After the first paragraph, insert the following paragraph:

The Consultant acknowledges and agrees that, except where expressly provided in the Contract, the Consultant will not be entitled to any extension of time, payment for costs incurred or other relief with respect to any matter or circumstances the subject of clause 16.

CLAUSE 18 KEY PERSONNEL

Delete the words "is not available due to circumstances beyond the reasonable control of the Consultant" and in lieu thereof insert the following:

(a) *resigns from employment or terminates their employment or independent contract with the Consultant;*

(b) *dies;*

(c) *commits a breach of any express or implied term of their employment contract or independent contract and is terminated as a result; or*

(d) *is otherwise incapable of continuing to perform duties in respect of the Services due to illness,*

CLAUSE 20 SUBCONTRACTING AND ASSIGNMENT

- SUBCLAUSE 20.3

Delete the words "(which must not be unreasonably withheld or delayed)" and in lieu thereof insert the following:

which:

(a) *must not be unreasonably withheld or delayed; and*

(b) *may be conditional upon such reasonable conditions as the Client may impose, including that the Consultant obtain from a subconsultant or sub-consultant the corresponding Intellectual Property Rights granted to or vested in the Client pursuant to clause 21 and appropriate professional indemnity insurance.*

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- SUBCLAUSE 20.5

Insert the following new subclause 20.5:

20.5 For the purposes of clause 20, transfer or assignment shall be taken to include any material changes to the Consultant where the Consultant, being a partnership, company, consortium or other composite body, undergoes a material change in its structure, shareholding, membership or control which in the opinion of the Principal will affect the manner in which or the ability of the Consultant to perform the Contract.

CLAUSE 21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- SUBCLAUSE 21.4

Immediately after the words "the amount stated in Item 20" insert the following

(or if no amount is stated, no additional amount is payable to the Consultant).

CLAUSE 24 SUSPENSION BY THE CLIENT

- SUBCLAUSE 24.2

Delete the entire subclause and in lieu thereof insert the following:

Unless the suspension has been directed due to the Consultant's breach of the Contract or breach of any Legislative Requirement or Approval, the Client must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension. The Client will not be liable for payment under this clause 24.2 unless and until:

(a) the Consultant provides evidence, to the reasonable satisfaction of the Client, of the costs and expenses incurred by the Consultant; and

(b) the Consultant can demonstrate that the Consultant took all reasonable steps to mitigate and minimise any costs and expenses incurred by the Consultant by reason of the suspension.

CLAUSE 25 SUSPENSION BY THE CONSULTANT

- SUBCLAUSE 25.3

Delete the entire subclause and in lieu thereof insert the following:

25.3 If the Consultant suspends the performance of the Services under clause 25.1:

(a) the Consultant must recommence the performance of the Services as soon as possible and give prompt notice to the Client of the recommencement of the Services;

(b) except as expressly provided elsewhere in the Contract, the Consultant will not be entitled to claim any additional costs, extension of time or other form of

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relief in respect of the suspension of the performance of the Services by the Consultant; and

(c) *the Client's payment obligations under the Contract will be suspended during the period of the suspension of the performance of the Services, unless the parties otherwise agree in writing or the payment obligation relates to Services performed prior to the time of suspension.*

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CLAUSE 26 TERMINATION WITHOUT CAUSE

In the clause heading, immediately after the word TERMINATION, delete the words WITHOUT CAUSE.

- SUBCLAUSE 26.2

Delete the entire subclause and in lieu thereof insert the following:

26.2 If the Contract is terminated under clause 26.1, the Client must pay to the Consultant:

(a) the applicable portion of the Fee for the Services performed prior to the date of termination;

(b) all disbursements incurred by the Consultant prior to the date of the termination which would have been payable had this Contract not been terminated;

(c) any direct costs reasonably incurred by the Consultant in the expectation of completing the whole of the Services and not included in any payment by the Client; and

(d) all demobilisation costs reasonably incurred by the Consultant (but not including any relocation costs incurred by the Consultant).

The Client is not liable to the Consultant under this clause 26 for any amount greater than the amount that the Client would have paid to the Consultant had this Contract been completely performed.

- SUBCLAUSE 26.4

Delete the entire subclause and in lieu thereof insert the following:

26.4 In the event that this Contract is terminated in accordance with this clause 26, following payment of the amount due to the Consultant under clause 26.2, the Consultant must deliver to the Client all Deliverables and all Documents which, on completion, would be Deliverables.

CLAUSE 27 TERMINATION DUE TO DEFAULT BY EITHER PARTY

Delete the entire clause and in lieu thereof insert the following:

27.1 If either party commits a Default of this Contract, the other party may give to the party who committed the Default a written notice to remedy the Default. A notice given under this clause 27.1 must:

(a) state it is a notice given under this clause;

(b) specify the alleged Default with reasonable details;

(c) require the party who committed the Default to remedy the Default; and

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(d) specify the date (which must not be less than five Business Days after the notice is served) by which the party who committed the Default must remedy the Default.

27.2 If the recipient of a notice given under clause 27.1 fails to:

(a) remedy the Default; or

(b) provide an undertaking in writing to the reasonable satisfaction of the party issuing the notice of the steps it intends to take to remedy the Default,

within the time specified in the notice, the other party may, by further written notice:

(c) terminate this Contract; or

(d) if the Default is a failure of the Client to pay the Consultant under clause 10, the Consultant may suspend performance of the Services until payment is made.

27.3 If the Consultant suspends performance of the Contract pursuant to this clause, the Consultant must promptly lift the suspension after the Client remedies the breach unless the Consultant has terminated the Contract."

CLAUSE 28 INDEMNITY

- SUBCLAUSE 28.1

Immediately after the words "by the Consultant or negligent or" insert the following:

wilful or

CLAUSE 29 LIMITATION OF LIABILITY

- SUBCLAUSE 29.1

Immediately after the words "the amount specified in Item 24" delete the words "if any." And in lieu thereof insert the following:

. If no amount is specified in Item 24, the liability of the Consultant is not limited.

- SUBCLAUSE 29.2

Delete the entire subclause and in lieu thereof insert the following:

29.2 Any limitation of liability granted under clause 29.1 does not apply to liability arising from:

(a) personal injury (including psychological injury) or death;

(b) infringement of Intellectual Property Rights;

(c) any breach by the Consultant of clause 19;

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(d) any claims made by a third party in respect of exemplary and punitive damages;

(e) fraudulent, malicious or criminal conduct;

(f) wilful default;

(g) any act or omission with reckless disregard for the consequences; or

(h) any breach of confidence or privacy in connection with the Contract,

of or by the Consultant or its officers, employees, agents, sub-consultants and subconsultants.

CLAUSE 30 INSURANCE

- SUBCLAUSE 30.8

Insert the following new subclause 30.8 immediately after subclause 30.7:

30.8 The insurances contemplated by this clause 30 are primary and not secondary to the indemnities referred to in this Contract. However, the Client is not obliged to make a claim or institute proceedings against any insurer under the insurance policies before enforcing any of its rights or remedies under the indemnities referred to in the Contract, or generally.

CLAUSE 31A FORCE MAJEURE

Insert the following new clause 31A:

31A.1 If a Force Majeure occurs:

(a) the party affected by the Force Majeure must give notice to the other party, describing the Force Majeure in reasonable detail;

(b) the Client may, by written notice within 5 Business Days of the notice under clause 31A.1(a), in its absolute discretion and without any obligation to act reasonably, grant an extension of time for completion of the Services;

(c) the party affected by the Force Majeure will be excused from performance and will not be construed to be in default for so long as, and to the extent that:

(i) the party's failure to perform an obligation under the Contract is due to the Force Majeure,

(ii) the party continues to perform its obligations under the Contract which are not affected by the Force Majeure; and

(iii) the party makes all reasonable efforts to prevent, reduce to a minimum and mitigate the effect of any delay caused by the Force Majeure.

31A.2 If a Force Majeure prevents either party from performing any of its obligations under the Contract, the Client may elect to terminate the Contract by notice in writing

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to the Consultant and must pay the Consultant for the Deliverables delivered prior to the date of termination, payment for which was not included on a previous claim for payment, the amount which would have been payable in respect of those Deliverables if the Contract had not been terminated and the Consultant had been entitled to and had made a payment claim on the date of termination. A claim for payment under this clause 31A.2 must comply with the requirements of clause 10.

31A.3 The Consultant must take all reasonable steps to mitigate and minimise any costs and expenses incurred, or to be incurred, by the Consultant by reason of the termination.

31A.4 Upon termination and payment of the amount due to the Consultant under clause 31A.2, the Consultant must deliver to the Client any completed Contract Documents and those other documents commenced which when completed would have formed the Deliverables. The Consultant is not liable in respect of the Deliverables which are incomplete by reason only of the termination.

CLAUSE 32 DISPUTE RESOLUTION

- SUBCLAUSE 32.1

Delete the entire subclause and in lieu thereof insert the following:

If a dispute or difference between the Consultant and Client arises out of or in connection with the Contract either party shall within seven (7) days of the dispute or difference arising serve the other party with a notice of dispute in writing by certified mail identifying and providing all details of the dispute or difference.

- SUBCLAUSE 32.4

Delete the entire subclause and in lieu thereof insert the following:

If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence litigation or, if agreed in writing by the parties, commence arbitration or other alternative dispute resolution proceedings.

CLAUSE 33 SERVICE OF NOTICES

- SUBCLAUSE 33.2

After reference to clauses 24, 25, 26, 27 and 31, insert the following:

31A

CLAUSE 35 GOVERNING LAW

Each party irrevocably submits to the exclusive jurisdiction of courts exercising

Delete the words “and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory” and insert the following paragraph in lieu

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jurisdiction in that State or Territory and courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

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CLAUSE 37 WARRANTIES

Insert the following new clause 37:

37 The Consultant warrants that:

(a) it has full power and authority to enter into and perform its obligations under the Contract;

(b) the Consultant and all of the Consultant's personnel, employees, sub-consultants and subconsultants are competent and have all the necessary skills, training and qualifications to perform the Services;

(c) it has taken all necessary action to authorise the execution, delivery and performance of the Contract in accordance with its terms; and

(d) the Contract constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms.

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SCHEDULE 2 TO PART E: ANNEXURE TO GENERAL CONDITIONS OF CONTRACT

(SAMPLE COPY - TO BE COMPLETED FOR EACH CONTRACT ARRANGED THROUGH THE PANEL AS PART OF ENGAGEMENT PROCESS AND ATTACHED TO THE LETTER OF ACCEPTANCE)

Item		
Item 1 (clause 1.1)	The Client is:	The Minister for Works
Item 2 (clause 1.1)	The Consultant is:	[1]
Item 3 (clause 1.1)	The Contract Documents are:	1. The Letter of Acceptance, including attachments; 2. The Special Conditions of Contract; 3. The General Conditions of Contract; 4. Head Agreement; 5. [2]
Item 4 (clause 1.1)	The Scope is described in the following Documents, or the Scope is:	[3]
Item 5 (clause 5.1)	The purpose(s) for which the Services will be suitable is/are:	[4]
Item 6 (clause 6.1)	The Client's representative (Project Manager) is:	[5]
Item 7 (clause 6.2)	The Consultant's representative is:	[6]
Item 8 (clause 10.1)	Claims for payment must be made on the following basis:	[7]Contract Fee: $…….. based on: [8]**Percentage…… %** of……

Reference Only

[1] *Insert the Consultants name.*
[2] *Insert other relevant Documents forming this Contract.*
[3] *The 'Scope', within the context of AS 4122-2010, is intended to describe the Scope of the Services that are required to be performed and their relationship to the project being undertaken by the Client. Either identify the Documents that describe the Scope or include a statement of the Scope in this item.*
[4] *Insert the purpose(s) for which the Consultant's Services have been engaged*
[5] *Insert the name, address, email address and phone number of the person responsible for administering this Consultant Contract. This may or may not be a Department of Finance Officer.*
[6] *Insert the name of the Consultant's representative for this Contract Fee.*
[7] *Specify the fee amount for the Contract. The Contract fee is inclusive of all fees and disbursements of the Consultant and necessary sub-consultants*
[8] *Specify whether claims for payment will be on a, percentage, or hourly rates basis or any combination.*

PART E

RESPONDENT TO READ AND KEEP THIS PART

		And/or
		Hourly Rates | Yes | ~~No~~
		(Strike through as appropriate)
		[9]**GST Inclusive** | Yes | No
		(Strike through as appropriate)
		[10]**Role / Task**: | Rate $/per
		- |
		[11]**Stage / Task** | $ / % of Fee
Item 9 (clause 10.2)	Disbursements for which the Consultant may claim payment:	[12]
Item 10 (clause 10.3)	Time to claim payment is not later than:	[13]
Item 11 (clause 10.6)	Time for payment is no later than:	30 calendar days
Item 12 (clause 10.9)	The rate of interest for overdue payment is:	6.00% per annum.
Item 13 (clause 12.1)	[14]Alternative 1: The date after commencement of this Contract, by which the Services must be completed is:	Alternative 1: Date: As set in the Letter of Acceptance
	[15]Alternative 2: Under the program attached.	Alternative 2: see attached program.

Reference Only

[9] *Specify whether the basis is inclusive or exclusive of GST.*
[10] *If rates apply, specify rates and intervals.*
[11] *Specify whether claims for payment, however calculated, will be paid in a single Contract fee or in stages.*
[12] *Insert any additional disbursement claims related to the Contract.*
[13] *If left blank, the time for making a claim is the last business day of each month. Only one claim may be made each month.*
[14] *Select the appropriate alternative. If alternative 1 is selected insert the date by which the Services are to be completed or the period after the commencement of the Contract by which they are to be completed.*
[15] *If Alternative 2 is to apply, a program must be attached and only after you have consulted with your manager. This still must clearly indicate a date for completion and the various stages/tasks in the program. If you wish for the Consultant to provide a program as part of the tender then this should be specifically provided for in detail in the Invitation to Submit Proposal and must state the date when the Consultant must provide that program by, and also within what parameters of date(s) of completion for the Services or components of the services. This should be set out in detail in this Item. If you are unsure, you should seek advice from you line manager. If nothing is stated or attached then the time for completion will be within a reasonable time which is not acceptable, therefore it is imperative that the requirements for the program as specified in detail.*

PART E

RESPONDENT TO READ AND KEEP THIS PART

Item 14 (clause 12.3(c))	Other causes of delay for which the Consultant may notify an extension of time:	Not Applicable.
Item 15 (clause 13.2)	The Approvals to be obtained by the Consultant are:	As required by the terms of the Contract and by law.
Item 16 (clause 18)	The Key Personnel are:	*16*
Item 17 (clause 19.2)	Existing conflicts of interest:	*17*
Item 18 (clause 21.3)	Copyright and other Intellectual Property Rights, the Alternative is:	Alternative 2
Item 19 (clause 21.3 alternative 2)	List of excluded Intellectual Property Rights:	None
Item 20 (clause 21.4 alternative 2)	The additional amount payable to the Consultant for the granting of Intellectual Property Rights is:	None
Item 21 (clause 22.1)	Does clause 22 (Moral Rights) apply?	*18*Yes / No If Yes, the author is:
Item 22 (clause 23.1)	The following Documents are confidential:	All materials provided to the Consultant by the Client or any other party for the purpose(s) of this Contract.
Item 23 (clause 24.4)	Maximum period for which the Client may suspend the Services at any one time, after which the Consultant may terminate:	The Clients right to suspend the Services is unlimited
Item 24 (clause 29.1)	The Consultant's Liability is limited to:	If no amount is specified, the Consultant's liability is unlimited.
Item 25 (clause 30.2)	The amount of public liability insurance is:	$5 Million

[16] *Insert the Key Personnel to be used for this Contract.*
[17] *Project Manager to insert any conflict of interest that may exist for this Contract.*
[18] *Select Yes if the Principal/Client is to going to be obliged to attribute the physical work to the Consultant or other author.*

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

Item 26 (clause 30.4)	The amount of professional indemnity insurance is:	19$5 Million
Item 27 (clause 30.4)	The professional indemnity insurance must be maintained for the following period	For the duration of the contract plus six (6) years
Item 28 (clause 30.7)	The Client must effect the following insurances and maintain them for the following periods:	20None
Item 29 (clause 33.1)	The address for service of notices is:	The Client 21 The Consultant 22
Item 30 (clause 35)	The law governing this Contract is:	The law of Western Australia.
Item 31	Has this Contract been amended from its original form?	Yes. Refer to the Head Agreement.

Reference Only

[19] *The level of Professional Indemnity Insurance should reflect the risks in the project and sufficiently protect the Principal against possible loss. If unsure, seek advice from your line manager or Riskcover.*
[20] *Insert the type, periods and amounts of any additional insurances that you may require the Client to effect that may be specific to your project, if any. If unsure, seek advice from your line manager or Riskcover.*
[21] *Insert the name, postal address and email address of the Client's representative.*
Insert the name, postal address and email address of the Consultant for this Contract.

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 3 TO PART E: COVID-19

1 COVID-19

1.1 APPLICATION OF THIS CLAUSE

This clause applies to the extent that COVID-19 affects the Works under the Contract and only for relief purposes.

Where a conflict and/or inconsistency exists between this clause and any other provision of the Contract, this clause takes precedence.

1.2 DEFINITIONS

In this clause, the following definitions apply:

(a) **Change in COVID-19 Law** means a COVID-19 Law that:

(i) comes into effect, or ceases to be in effect, after the day being 14 days prior to the date of closing of tenders for the Contract;

(ii) necessitates, or results in, a change in the Works or the Consultant's method of working; and

(iii) directly results in an increase or decrease in the Costs incurred by the Consultant in carrying out the Works.

(b) **Costs** means costs necessarily incurred excluding corporate overhead and profit.

(c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.

(e) **COVID-19 Law** means in relation to Western Australia or the Commonwealth of Australia:

(i) an act of parliament or statute; and

(ii) any subordinate legislation, rules, regulations directions or by-laws,

made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and

(iii) any document or policy issued under such legislation or delegated legislation made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Consultant is legally required to comply.

(f) **COVID-19 Relief Event** means:

(i) a Change in COVID-19 Law;

(ii) a suspension by the Principal under clause 1.4; or

(iii) a delay arising after the day being 14 days prior to the date of closing of tenders for the Contract caused as a direct result of COVID-19 which:

(A) has an adverse effect on the supply of labour, equipment or materials required for the Works; and

(B) is not related to a COVID-19 Law.

(g) **Works** means the works to be carried out under the Contract, including temporary works.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

1.3 COVID-19 EFFECTS

1.3.1 GENERAL

(a) The parties acknowledge and agree:

(i) to the potential for COVID-19 Effects; and

(ii) the Consultant is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known) as at the day being 14 days prior to the date of closing of tenders for the Contract.

(b) The Consultant must:

(i) proactively monitor potential COVID-19 Effects;

(ii) use its reasonable endeavours to mitigate COVID-19 Effects;

(iii) give the Principal fortnightly reports on potential or actual COVID-19 Effects and the Consultant's steps taken to avoid or reduce those effects irrespective of whether the Consultant intends to make a claim;

(iv) where an entitlement to time or Costs arises under clause 1.3, clause 1.4 or clause 1.5, provide all supporting documentation reasonably requested by the Principal (including programming and costing information) on a fully transparent and open basis; and

(v) include in all sub-contracts' relief for COVID-19 Effects that is the same or the equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subconsultants have been duly paid by the Consultant to the relevant subconsultants.

1.3.2 NOTICE

(a) The Consultant must promptly give notice to the Principal if the Consultant becomes aware of any potential or actual COVID-19 Effects that may:

(i) delay or disrupt the Works;

(ii) increase or decrease the costs of carrying out the Works; or

(iii) otherwise have an adverse effect on the Contract,

including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.

(b) To the extent the Consultant is entitled to relief under this clause 1.3 (COVID-19 Effects), relief applies only from the date notice is given by the Consultant under subclause (a) above (other than relief for the period between the day being 14 days prior to the date of closing of tenders for the Contract and the date of the Contract).

1.3.3 CHANGE IN COVID-19 LAW

(a) If there is a Change in COVID-19 Law, the Principal must pay the Consultant, or the Consultant must pay the Principal, as the case may be, the increased or decreased Costs (as applicable) in carrying out the Works that directly resulted from the Change in COVID-19 Law.

(b) The Consultant's entitlement to be paid increased Costs under subclause (a) above is reduced to the extent the Consultant:

(i) could have avoided and/or reduced the Costs by taking reasonable steps under clause 1.3.1(b)(ii); and

(ii) otherwise recovered or could recover the Costs.

(c) The Principal will determine the amount payable under subclause (a) above, acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

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PART E

RESPONDENT TO READ AND KEEP THIS PART

1.3.4 EXTENSION OF TIME[23]

(a) If:

(i) the Consultant is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;

(ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and

(iii) the Consultant gives the Principal a claim for an extension of time within 14 days of when it became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,

the Consultant will be entitled to an extension of time for Practical Completion equal to the period of delay.

(b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under subclause (a)(iii) above, the Consultant may submit further claims every 14 days.

(c) The Consultant's entitlement to an extension of time is reduced to the extent which the Consultant could have avoided or reduced the delay by taking reasonable steps under clause 1.3.1(b)(ii).

(d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.

(e) The Principal will reasonably determine the period of the extension of time under this clause 1.3.4 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this clause.

1.3.5 DELAY COSTS

(a) Subject to subclause (b) below, the Consultant will be entitled to additional Costs it incurred during any extension of time period granted under clause 1.3.4.

(b) The Consultant will only be entitled to Costs incurred for demobilising and remobilising the Consultant's personnel, subcontractors and equipment if there is a suspension under clause 1.4 (Suspension for COVID-19 Effects).

(c) The Consultant's Costs entitlement under subclauses (a) or (b) above is reduced to the extent the Consultant:

(i) could have avoided or reduced the Costs by taking reasonable steps under clause 1.3.1(b)(ii); and

(ii) recovered or can recover the Costs.

(d) The Principal will reasonably determine Costs payable under this clause 1.3.5 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

1.4 SUSPENSION FOR COVID-19 EFFECTS

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion, that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Consultant to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.

(b) As soon as the reason for any suspension no longer exists, the Principal must notify the Consultant in writing.

(c) Upon notice from the Principal, the Consultant must recommence performance of the Works as soon as reasonably possible.

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[23] *NOTE: The clauses are not intended to be exhaustive as to the State's rights, only the Consultant's rights to relief. Therefore, it remains open to the State to give a direction under any other contract provision (eg to accelerate or reprogram works) rather than grant an extension of time.*

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(d) The Consultant must ensure that its subcontracts contain a suspension clause on the same terms as this clause 1.4.

1.5 TERMINATION FOR CONVENIENCE FOR COVID-19 EFFECTS

1.5.1 TERMINATION FOR CONVENIENCE

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion not to continue the Contract due to COVID-19 Effects, by notice in writing to the Consultant (**Termination for Convenience Notice**), terminate the Contract.

(b) The Contract will terminate on the date and time stated in the Termination for Convenience Notice or, if no such date and time is stated, at the date and time the Termination for Convenience Notice is given to the Consultant.

(c) Clause 1.5.2 (Procedure on Termination), clause 1.5.3 (Payments on Termination for Convenience) and clause 1.6 (Limit to Consultant's COVID-19 Rights) survive the termination of the Contract.

1.5.2 PROCEDURE ON TERMINATION

Upon receipt of a Termination for Convenience Notice, the Consultant must:

(a) make safe and cease performance of the Works;

(b) after ensuring the Site is secure and safe, leave the Site;

(c) provide the Principal with any information requested by the Principal relating to the Works or the Contract, including Design Documents and any other drawings;

(d) novate to the Principal any subcontracts relating to the Works that the Principal requires to be novated (and the Consultant must include in its subcontracts a corresponding novation clause);

(e) transfer to the Principal any entitlement to receive unfixed plant or materials that are in transit but have not yet been delivered to Site, free from encumbrances;

(f) do all things and execute all further documents necessary to give full effect to this clause 1.5.2; and

(g) take any other action the Principal reasonably requires relating to the termination of the Contract.

1.5.3 PAYMENTS ON TERMINATION FOR CONVENIENCE

(a) If the Principal terminates the Contract under clause 1.5.1, the Principal must pay the Consultant:

  (i) the amount due under the Contract for the Works performed up to the date of termination;

  (ii) Costs incurred by the Consultant under any subcontract as a direct consequence of the Principal's termination, provided that the Consultant has taken all reasonable steps to mitigate and minimise these costs and expenses, including having a corresponding termination for convenience clause in the subcontract;

  (iii) the Cost of materials reasonably ordered by the Consultant for the Works, which the Consultant is liable to accept (subject to exercise of any termination rights by the Consultant if the Principal so directs), subject to the materials becoming the Principal's property upon payment;

  (iv) the reasonable Costs of demobilisation; and

  (v) the reasonable Costs of complying with any directions given by the Principal upon, or subsequent to, termination.

(b) The Consultant must submit a payment claim for the amount it claims is payable in accordance with clause subclause (a) above within 30 calendar days of the date of termination.

(c) If the Costs are not fully ascertainable at the time of submitting a payment claim under subclause (b) above, the Consultant must identify the Costs that are not yet able to be quantified and the date by which they can be quantified. If the Principal consents to the timing of the provision of the quantified Costs, the Consultant may submit a further payment claim in accordance with the agreed timetable.

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RESPONDENT TO READ AND KEEP THIS PART

(d) The Principal will reasonably determine the amount payable by it under clause 1.5.3(a). The Consultant must provide the Principal, upon reasonable request, all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

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PART E

RESPONDENT TO READ AND KEEP THIS PART

1.6 LIMIT TO CONSULTANT'S COVID-19 RIGHTS

(a) The Consultant's entitlements under clause 1.3 (COVID-19 Effects), clause 1.4 (Suspension for COVID-19 Effects), and clause 1.5 (Termination for Convenience for COVID-19 Effects) are the Consultant's sole remedy in respect of COVID-19 Effects and under no circumstances will the Consultant be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any redundancies or any other economic loss.

(b) Except for the Principal's breach of clause 1.3, clause 1.4 or clause 1.5, the Consultant is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Consultant against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID-19 Effects.

Reference Only

PART F CONTENT REQUIREMENT AND RESPONDENT'S OFFER

F.1. NOTE TO RESPONDENT

The forms provided in *Schedule 1 to Part F: Forms to be Completed* must be completed by the Respondent and returned to the Principal. Commentary in relation to the forms is provided below at F.2. to F.9.

In preparing its Offer, the Respondent must:

a. address each requirement in the form set out in this Part F;

b. take into account all requirements included within the Request;

c. assume that the Principal has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the Principal or any other Public Authority; and

d. nominate any Offer Information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions.

F.2. IDENTITY OF RESPONDENT

The Respondent is required to complete *Form 1 - Identity and Contact Details* to allow the Principal to confirm the Respondent's identity and contact details. If successful in becoming a Panel Member this information will be used to identify the Panel Member if a contract is awarded to that Member.

The Respondent must identify where its Permanent Operational Office (or Offices) are located and the offices from where the Services may be provided. The details are to include address, phone number, contact person and the nature of the office (e.g. head office, regional branch office etc.).

Information on Subconsultants is not to be included here - this information is requested later.

F.3. SERVICE PANEL APPLICATION

Respondents may apply for membership of Service Panel A or Service Panel B, or both. However the Principal will only consider the Respondent for the Panel(s) as nominated by the Respondent in *Form 2 - Service Panel Application*.

Respondents applying only for membership of Service Panel A are to provide a one page Capability Statement summarising the capabilities and experience of the Respondent, its Specified Personnel and any Subconsultants identified as part of the offer. While Respondents are required to provide a Capability Statement, the statement will not be assessed for the purposes of Panel Membership.

Where a Respondent applying for membership of Service Panel B is also applying for membership of Service Panel A the requirement for a Capability Statement will be met by completing the requirements of F.7.2.

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PART F

RESPONDENT TO READ AND KEEP THIS PART

F.4. PRE-QUALIFICATION REQUIREMENTS

The Respondent must complete *Form 3 - Pre-Qualification Requirements*. The Principal will not consider any Offer that does not meet both of the following Pre-Qualification Requirements:

a. the Respondent must employ full time one or more personnel who hold

   i. a qualification in an appropriate tertiary degree course in quantity surveying, however described, or

   ii. a relevant higher professional qualification in the field of quantity surveying that would directly support an application for membership to the Australian Institute of Quantity Surveyors or the QS division of the Royal Institution of Chartered Surveyors.

b. the Respondent must employ full time one or more persons who are a full Member of a recognised professional body, such the Australian Institute of Quantity Surveyors (AIQS), the Royal Institute of Chartered Surveyors (RICS) or equivalent.

F.4.1. BILLS OF QUANTITIES

Respondents applying for membership of Service Panel A are required to identify within *Form 3 - Pre-Qualification Requirements* whether they are capable of producing full Bills of Quantities within their organisation. The capability to produce full Bills of Quantities is not a determining factor as to eligibility for membership of Service Panel A. However, the Principal may use this information in determining an award of a contract within the scope of Service Panel A which requires Bills of Quantities to be produced, or in supplementing the membership of Service Panel B.

Respondents applying for membership of Service Panel B must be capable of producing full Bills of Quantities within their organisational capacity and complete the declaration to this effect within *Form 3 - Pre-Qualification Requirements*. Respondents will not be appointed to Service Panel B without this capability.

The Principal will accept that a Respondent (for Service Panel A or B) may seek the assistance of a Subconsultant for the measurement and pricing of mechanical and electrical work. Where a Respondent proposes to use a Subconsultant for the measurement and pricing of mechanical and electrical work the Respondent:

a. must clearly identify the extent of this engagement in completing Form 5; and

b. remains responsible for any mechanical and electrical trade area measurement and pricing undertaken by a Subconsultant on behalf of the Panel Member.

F.5. COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Principal reserves the right to reject any Offer that

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a. does not properly address any of the Compliance and Disclosure Requirements;

b. which contains material departures from the terms of the Request;

c. contains disclosures that the Principal deems unacceptable.

F.5.1. COMPLIANCE REQUIREMENTS

The Respondent must confirm that it will comply with the terms of the Request by completing *Form 4 - Compliance with the Terms of the Request*. If the Respondent will not comply with any part of the request, the Respondent must set out:

a. the clause or clauses that it will not comply with;

b. the extent of non-compliance – including a description of any changes required to the clause or clauses;

c. the reason for the non-compliance; and

d. the advantage to the Principal if it accepts the Respondent's proposal.

Where a Respondent indicates a noncompliance with a term or terms of the Request, or fails to provide sufficient detail on the non-compliance, the Principal may either:

e. set aside the Offer as described in clause B.8;

f. continue to assess the Offer, taking into account the non-compliance as part of the assessment process.

F.5.2. DISCLOSURE REQUIREMENTS

The Principal will, as part of its value for money assessment, consider the extent to which the Offer satisfies the following Disclosure requirements as provided by the Respondent in *Form 5 - Disclosures*.

a. identification of the Respondent's legal entity structure.

b. proposed engagement of other person or persons as a Subconsultant

c. criminal convictions of any person proposed in the Offer including any Subconsultant

d. actual, potential or perceived conflict of interest.

e. possession or intention to obtain the insurances required under clause D.15.2.

f. identification of any information the Respondent nominates as confidential

The Principal will also take into consideration the Respondent's level of Aboriginal Enterprise engagement and level of employment of Aboriginal Persons. The respondent is to provide details in relation to these areas on *Form 6* - Information on Aboriginal Enterprises Engaged or Intended to be Engaged as Suppliers or Subconsultants and *Form 7* - Information on Employment of Aboriginal Persons.

The Principal reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements, contains material departures from the terms of the Request, or where the Principal determines that the response is unacceptable.

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PART F

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F.6. RECIPIENT CREATED TAX INVOICE AGREEMENT (RCTI)

Respondents must be registered for GST and must have an Australian Business Number (ABN).

The Principal and Panel Members will enter into an agreement in relation to GST in accordance with the Australian Tax Office's (ATO's) Goods and Services Tax Ruling (GSTR) 2000/10 paragraph 13(e). Failure to lodge a completed and signed RCTI (*Form 8* - Recipient Created Tax Invoice Agreement) as required may result in a delay in appointment to the Panel.

F.7. QUALITATIVE REQUIREMENTS

ONLY RESPONDENTS APPLYING TO BECOME MEMBERS OF SERVICE PANEL B ARE REQUIRED TO COMPLETE THIS SECTION.

Offers will be assessed against the following five qualitative criteria:

a. local content;

b. cost management experience;

c. specified personnel;

d. organisational capacity; and

e. demonstrated understanding of requirement

Respondents are required to provide detailed responses in line with the requirements contained in subclauses F.7.1 to F.7.5 and to complete *Form 9 - Qualitative Requirements* to confirm that they have completed and provided the required information.

Respondents should note that the qualitative criteria will be assessed in the context of Contracts valued at between $100,000 and $500,000.

As membership of Service Panel B will be limited Respondents should ensure the evidence of their claims directly relates to experience within this range. Information that is not directly relevant to the requirements of Service Panel B or is of a generic advertising nature should not be submitted.

The qualitative criteria are not weighted equally. Refer to the % weighting for each criteria listed in F.7.1 to F.7.5.

NOTE: Where it is identified that an Offer is received from a Respondent in a state or country identified as being a member or signatory with Australia to a:

a. Free Trade Agreement (such as AUSFTA, ACI-FTA or KAFTA),

b. Government Procurement Agreement (such as ANZGPA) or

c. Economic Partnership Agreement (such as JAEPA),

then the local content selection criteria will not be evaluated during the qualitative assessment. In this case the 20% local content weighting will be divided proportionately across the remaining criteria.

The revised weightings are shown adjacent to the standard weightings (see [xx%]).

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PART F

RESPONDENT TO READ AND KEEP THIS PART

F.7.1. LOCAL CONTENT (20% WEIGHTING) [0%]

The Respondent must, in no more than five pages:

a. detail where the Respondent operates any Permanent Operation Offices and what services are provided from these offices.

b. specify the location where the services will be undertaken

c. detail how it supports the development of the cost management profession in Western Australia. This could include information on initiatives such as scholarships, sponsorships, research and development, professional development programs, knowledge transfer etc.

d. explain how the Respondent supports the Western Australian economy and community more broadly.

e. identity any opportunities it has provided, or will provide if it is appointed to the Panel for Aboriginal Enterprises or Aboriginal people.

f. provide an estimate of any employment creation and retention which may arise if the Respondent is appointed to Service Panel B.

Relevant information provided by Respondents in response to the Pre-qualification and Compliance and Disclosure Requirements may also be used to assess a Respondent's claims against this criterion.

F.7.2. COST MANAGEMENT EXPERIENCE (20% WEIGHTING) [25%]

The Respondent must demonstrate experience in cost management by identifying details of contracts where the Respondent has undertaken cost management services comparable to those that will be provided under Service Panel B.

The Respondent must provide:

c. a Capability Statement (of no more than one page) summarising the capabilities and experience of the Respondent, its Specified Personnel and any Subconsultants identified as part of the offer.

d. a list of contracts (in tabular form and in no more than two pages), completed by the Respondent (and Subconsultants if applicable) in the last five years that demonstrates the Respondent's ability to deliver the Services defined in the Panel. The list is to include:

i. contract description

ii. client;

iii. contract value

iv. date of completion

v. a summary of the similarities between the listed contracts and the requirements of the Panel. This must include reference to the Service Categories that the contract covers.

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c. information on contracts included in the list of Contracts above (in tabular form and in no more than one page) that included the provision of Bills of Quantities. This information is to include:

   i. the nature of the Bills of Quantities (guaranteed, not guaranteed etc.);

   ii. how the Bills of Quantities were generated (with reference to the standard applied etc.); and

   iii. what, if anything, was not included (e.g. mechanical and/or electrical services).

d. information on up to ten of the contracts included in the Contract list above (in tabular form and no more than one page) that involved the development of a pre-tender estimate and how that compared to the value of the contract at contract award and at practical completion.

e. a minimum of two referees per contract in respect of the contracts detailed above in (b) above. Referee details must include:

   i. the referee's name and position;

   ii. Company name;

   iii. a contact telephone number and email address; and

   iv. the contracts that the referee is able to address.

   In addition to the Principal contacting the nominated referees the Principal may also review its own records to assess the Respondent's performance on any contracts with the Principal, regardless of whether these contracts were identified by the Respondent or not.

Where the Respondent is proposing to use Subconsultants, the experience of the Subconsultants is to be clearly differentiated from the Respondent's experience.

F.7.3. SPECIFIED PERSONNEL (20% WEIGHTING) [25%]

The Respondent must provide:

a. a list, in tabular form (of no more than two pages) of the Specified Personnel nominated by the Respondent. The list is to include the individual's:

   i. name;

   ii. employment status and length of service;

   iii. qualification(s), and

   iv. particular areas of expertise.

b. a brief curriculum vitae (of no more than one page) for up to 10 individuals, highlighting the individuals' skills and experience as they relate to the requirements of Service Panel B.

Where the Respondent is proposing to use Subconsultants, Subconsultant personnel are to be clearly differentiated from the Respondent's personnel.

Reference Only

F.7.4. ORGANISATIONAL CAPACITY (15% WEIGHTING) [18.75%]

The Respondent must demonstrate that it has the organisational capacity to meet the requirements of Service Panel B.

The Respondent must provide a summary, in no more than five pages, of the history of the Respondent, the organisational and management structure of the Respondent and a current client list. This summary is to identify the resources (human, business process, information system and otherwise) that the Respondent is able to apply to the requirements of the Panel.

In addition, the Respondent must, in no more than five pages:

a. indicate how many Contracts it is capable of handling at one point in time within the resources nominated in its Offer, and support that indication with evidence of the past workload that the Respondent has been capable of delivering;

b. provide details of the Respondent's building cost database and systems that will enable accurate cost plans and Bills of Quantities to be produced and exchanged in comma separated values (CSV) or in Microsoft Excel format;

c. explain its approach to quality control, and how it will ensure cost estimates, forecasts and cashflows are accurate and realistic;

d. detail its experience with the use of, or its capability to use, Building Information Modelling (BIM) in the provision of cost management services; and

e. identify how it would cope with any surge in demand under the Panel, including if the increase in demand continues indefinitely.

F.7.5. DEMONSTRATED UNDERSTANDING OF REQUIREMENT (25% WEIGHTING) [31.25%]

Respondents must demonstrate they understand the requirements of the scope, as defined in Part C.

Respondents must, in no more than ten pages:

a. with respect to the requirements of, and deliverables related to, each Service Category as identified in C.2:

   i. detail their understanding of the requirements and deliverables;

   ii. summarise their approach to meeting the requirements and developing the deliverables;

   iii. identify any challenges they would have in meeting the requirements and developing the deliverables; and

   iv. identify what value-add the Respondent adds to the delivery of these services.

b. describe their proposed methodology for managing and exchanging building cost information with the Principal, client agencies and other consultants, including any quality control measures applied.

Reference Only

c. describe their knowledge of the Principal's standards and practices as they relate to cost and project management and procurement, and outline their understanding of the State Government's key Strategic Asset Management Framework.

F.8. FEES

Respondents must complete the Fee Schedules (forms 10 to 13) contained in *Schedule 2 to Part F: Fee Schedules*. In completing the Fee Schedules Respondents are to base the fees on a 'construct only' project. Respondents should refer to clause A.3 in relation to other forms of procurement method.

Fees submitted in response to this Fee Schedule are to be inclusive of all costs of complying with the requirements of the Head Agreement, Contract and Services.

When determining the complexity of a project for the purpose of determining the Contract Fee, the Principal will refer to the definitions provided in the *Project Complexity Category Guide* which is available at https://www.wa.gov.au/government/publications/project-complexity-and-classification-guide-department-of-finance. Respondents should familiarise themselves with this guide to assist them in completing the fee schedules (forms 10 to 13).

The Principal reserves the right to modify the definitions provided in the Project Complexity Category Guide at any time. Where the Principal modifies the definitions the Principal will notify Panel members of the change and update the *Project Complexity Category Guide* on the website.

In completing Forms 10 and 11, the following definitions shall apply to the level of consultant experience:

Partner/Principal	Professionally qualified Consultants with 15 - 20 years' experience, doing work requiring that level of experience and knowledge. Generally this person is responsible for a team delivering professional services.
Associate/Senior	Professionally qualified Consultant with 10 - 15 years' experience, doing work of a nature expected of a professional at that level. This person may be responsible for a team delivering professional services.
Professional	Professionally qualified Consultant with 5 - 10 years' experience.
Junior	Professionally qualified Consultant with less than 5 years' experience.

F.8.1. PROJECT FEEABLE VALUE APPLICABLE TO SERVICE PANEL A

Respondents are required to complete *Form 12 - Fee Percentages for Service Categories Applicable to Service Panel A.* In completing the form Respondents are to:

a. insert the percentage (up to two decimal places) in each cell in the Schedule that they propose will be used to calculate Contract Fees for Project Feeable

Reference Only

Values in excess of $250,000. For Feeable Values between $0 and $250,000 respondents are to refer to (c) below. Note - where no percentage is included in a particular cell it will be read as 'Not Applicable', and the Respondent will not be considered for Contracts that require the application of information in that cell to calculate the Contract Fee.

b. base the percentage fees on a project assessed as 'Conventional' (see F.8 for a definition of Project Complexity). Respondents are to include percentages in the cells included in the 'Complexity Multiplier' columns to indicate the percentage by which the calculated Contract Fee will be reduced for Simple projects and increased for Complex projects.

c. insert a fixed dollar figure (GST inclusive) that will apply to any Contract with a Feeable Value between $0 and $250,000 within the row labelled '$0 - $250, 000'.

d. if Respondents do not wish to provide a Bills of Quantities service, with or without the measuring and pricing of mechanical and electrical elements, they should mark the applicable cells as 'NA' (for Not Applicable).

Note - Project Feeable Value is GST exclusive.

F.8.2. PROJECT FEEABLE VALUE APPLICABLE TO SERVICE PANEL B

Respondents are required to complete *Form 13 - Fee Percentages for Service Categories Applicable to Service Panel B.* In completing the form Respondents are to:

a. insert the percentage (up to two decimal places) in each cell in the Schedule that they propose will be used to calculate Contract Fees. Note - where no percentage is included in a particular cell it will be read as 'Not Applicable', and the Respondent.

   i. may have its Proposal rejected on the basis that its Proposal is incomplete;

   ii. will not be considered for Contracts that require the application of information in that cell to calculate the Contract Fee.

b. base the percentage fees on a project assessed as 'Conventional' (see F.8 for a guide to Project Complexity). Respondents are to include percentages in the cells included in the 'Complexity Multiplier' columns to indicate the percentage by which the calculated Contract Fee will be reduced for Simple projects and increased for Complex projects.

c. Respondents must be capable and willing to produce Bills of Quantities. However, Respondents that do not wish to provide a Bills of Quantities service that includes the measurement and pricing of mechanical and electrical elements may mark the applicable cells as 'NA' (for Not Applicable). Note: a Respondent that opts to engage a subconsultant to provide for the measurement and pricing of mechanical and electrical elements of the project will not be considered less favourably than a Respondent that undertakes this measurement and pricing within their own organisation.

Note - Project Feeable Value is GST exclusive.

Reference Only

F.8.3. EVALUATION OF RESPONDENT'S FEES

The Fees identified by the Respondent in *Form 12 - Fee Percentages for Service Categories Applicable to Service Panel A* do not affect a Respondent's admission to Service Panel A, but may affect the Respondent's ability to secure a contract once admitted.

The Fees identified by the Respondent in *Form 13 - Fee Percentages for Service Categories Applicable to Service Panel B* will be evaluated and taken into consideration as part of the selection process for membership of Service Panel B.

In evaluating the Fees submitted for admission to Service Panel B the Principal will apply the values provided by the Respondent against a representative sample of contracts awarded during a year. Each Respondent will then be ranked based on the total of their fees taken collectively across all of the sample contracts.

F.9. REPRESENTATION

In making an Offer in reply to this Request the Respondent offers to perform the work under the Panel as described in the Request.

The completed forms contained in *Schedule 1 to Part F: Forms to be Completed* together with the related schedules contained in *Schedule 2 to Part F: Fee Schedules to be Completed,* and any other information provided will comprise the Respondent's Offer. The Respondent warrants that the information included in the Offer is true and accurate.

This Offer is signed by a person authorised to do so on behalf of the Respondent.

Reference Only

PART F

RESPONDENT TO READ AND KEEP THIS PART

Reference Only

Cost Management Services Panel 2017

SCHEDULE 1 TO PART F: FORMS TO BE COMPLETED

This signature page and all forms included in this Schedule are to be returned and will form part of the Offer. A failure to fully complete and return these forms may lead to the Offer being set aside pursuant to clause B.8.

This Offer is signed by a person authorised to do so on behalf of the Respondent. The Respondent warrants that the information included in the Offer is true and accurate.

Signature: ……

Witness Signature: ……

Name: ……

Name: ……..……..……

Position: ……...……

Position: ……...……

Date: ……..……

Date: ……

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

FORMS TO BE COMPLETED BY RESPONDENT

RESPONDENT TO COMPLETE	
***FORM 1* - IDENTITY AND CONTACT DETAILS**	**(REFER F2)**

(a) Name of Legal Entity: .....

(b) ACN (if a company): .....

(c) Principal Place of Business: .....

.....

(d) Permanent Operational Office: .....

.....

(e) Business / Trading Name: .....

(f) ABN: .....

(g) Contact Person: .....

(h) Contact Person Position Title: .....

(i) Email: .....

(j) Telephone: .....

(k) Website Address .....

(l) Nominated Panel Member Representative .....

(m) Address for service of contractual notices .....

RESPONDENT TO COMPLETE	
***FORM 2* - SERVICE PANEL APPLICATION**	**(REFER F3)**

The Respondent applies for the Services Panel(s) as ticked below:

Service Panel A – Low Value Contracts q

Service Panel B – High Value Contracts q

The Respondent has included a Capability Statement q

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE ***FORM 3* - PRE-QUALIFICATION REQUIREMENTS** **(REFER F4)**			
The Respondent identifies the following personnel in line with the terms of the Request			
Name	Employment status	Qualification or Membership (include status and registration number)	Institution or Professional Organisation
The Respondent confirms that it can produce Bills of Quantities as required by clause F4.			
Yes **q**		No **q**	

RESPONDENT TO COMPLETE ***FORM 4* - COMPLIANCE WITH THE TERMS OF THE REQUEST** **(REFER F5)**	
The Respondent agrees to the terms of the Request	
Yes **q**	No **q**
If no, provide details:	

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

***FORM 5* - DISCLOSURES** **(REFER F5)**

Respondents Are To Complete Disclosure Forms A to F

RESPONDENT TO COMPLETE

A. Legal Entity

Please nominate the structure of the legal entity submitting this Offer, by ticking one of the boxes below.)

q Sole trader

q Partnership (Attach, on a separate sheet, the full names of all Partners).

q Incorporated Company (Attach a copy of the ASIC registration details including the full names of directors and shareholders. If the Company is a Trustee then also provide the names of the Trust beneficiaries and copy of the Trust deed).

q Incorporated Joint Venture (Attach a copy of the ASIC registration details including the full names of directors and shareholders).

q Unincorporated Joint Venture (i.e. Consortium) (Attach details of each member of the consortium as appropriate to the corporate structure of the member).

q Trading Trust (Attach a copy of the Trust deed).

q Other (Attach details)

RESPONDENT TO COMPLETE

B. Subconsultants

Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a Subconsultant in connection with the supply of the Services?

Yes q	No q

If yes, Respondents are to complete the following table.

Legal name	ACN	ABN	Type of services to be provided	Location where Services will be performed by the Subconsultant

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE			
C. Criminal Convictions Has the Respondent or any person proposed in the Offer (including any person associated with proposed Subconsultants) been convicted of a criminal offence that is punishable by imprisonment or detention?			
Yes	q	No	q
If yes, provide details:			

RESPONDENT TO COMPLETE			
D. Conflict of Interest Does the Respondent or any person proposed in the Offer (including any person associated with proposed Subconsultants) have any actual, potential or perceived conflict of interest in relation to the Panel?			
Yes	q	No	q
If yes, provide details:			

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

E. Insurance requirements

Does the Respondent meet the insurance requirements set out in clause D.14.6?

Yes	q	No	q

	Public Liability	Professional Indemnity	Workers' Compensation
Insurer			
ABN			
Policy No			
Insured Amount			
Expiry Date			
Exclusions, if any			

OR

If no, does the Respondent confirm that prior to being awarded a Contract, they will obtain the insurance policies set out in clause D.14.6?

Yes	q	No	q

RESPONDENT TO COMPLETE

F. Confidential Offer Information

Does the Respondent have any information contained within its Offer that it wishes to nominate as confidential?

Yes	q	No	q

If yes, identify the information and the reasons why it is confidential:

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

***FORM 6* - INFORMATION ON ABORIGINAL ENTERPRISES ENGAGED OR INTENDED TO BE ENGAGED AS SUPPLIERS OR SUBCONSULTANTS** **(REFER F5)**

This form can be copied if there is insufficient space on this page to provide all the information.

	Name of Supplier	Materials / Goods Supplied
SECTION A Suppliers	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....
	Name of Subconsultant	**Service**
SECTION B Subconsultants	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

***FORM 7* - INFORMATION ON EMPLOYMENT OF ABORIGINAL PERSONS (REFER F5)**

This form can be copied if there is insufficient space on this page to provide all the information.

Note: All costs used and shown in this document shall include all allowances for the Goods and Services Tax (GST).

	Position with Respondent	Name of Aboriginal Person Employed	Annual Employment Costs (GST inclusive)
SECTION A	1)	1)	1) $ .....
	2)	2)	2) $ .....
	3)	3)	3) $ .....
Respondent	4)	4)	4) $ .....
	5)	5)	5) $ .....
	6)	6)	6) $ .....
	7)	7)	7) $ .....
		SUB-TOTAL 1	$ .....

	Name of Subconsultant or Supplier	Details of Aboriginal Person Employed	Employment Costs (GST inclusive)
SECTION B	1)	1)	1) $ .....
	2)	2)	2) $ .....
	3)	3)	3) $ .....
Subconsultants	4)	4)	4) $ .....
or	5)	5)	5) $ .....
Suppliers	6)	6)	6) $ .....
	7)	7)	7) $ .....
		SUB-TOTAL 2	$ .....
		TOTAL VALUE (SUB-TOTAL 1 + SUBTOTAL 2)	$ .....

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

***FORM 8* - RECIPIENT CREATED TAX INVOICE AGREEMENT** **(REFER F6)**

This Agreement is submitted in relation to Request No: 2016/01416 for the provision of Cost Management Services.

In accordance with the Australian Tax Office's (ATO's) Goods and Services Tax Ruling (GSTR) 2000/10 paragraph 13(e) the following is agreed between the Department of Finance acting for and on behalf of the Principal (the Minister for Works) and

_____

(ENTER THE FULL NAME OF THE RESPONDENT)

1. The Department of Finance will issue tax invoices to the Consultant in respect of the payments by the Principal under a Contract;

2. The Consultant shall not issue tax invoices in respect of claims for payment issued by the Respondent a Contract;

3. The Consultant is registered for the GST at the time of this agreement and will notify the Department of Finance if it ceases to be registered.

4. The Consultant's Australian Business Number (ABN) is:

☐☐ ☐☐☐ ☐☐☐ ☐☐☐ ☐☐☐

(The Consultant is to enter its ABN and if applicable its GST Branch registration number)

5. The Department of Finance is currently registered for the GST and will notify the Consultant if it ceases to be registered.

6. The Department of Finance ABN is **99 593 347 728**

Name of Consultant: _____
(IN BLOCK LETTERS)

This Agreement is signed by a person authorised to do so on behalf of the Consultant.

Signature: _____

Full Name: _____
(IN BLOCK LETTERS)

Position with Consultant: _____
(IN BLOCK LETTERS)

Date: _____

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

***FORM 9* - QUALITATIVE REQUIREMENTS** **(REFER F7)**

Respondents must provide detailed responses to the five qualitative criteria contained in subclauses F.7.1 to F.7.5. Respondents are to complete this form (Form 9) and affix it to the front of the information provided by the Respondent in response to the Qualitative Requirements.

RESPONDENT TO COMPLETE Qualitative Requirements		
Qualitative Criteria	**Details**	**Complete**
F.7.1 Local Content	Respondents are to outline their commitment to local content in line with the requirements of F.7.1	Yes q
F.7.2 Cost Management Experience	Respondents are to demonstrate their experience in cost management in line with the requirements of F.7.2.	Yes q
F.7.3 Specified Personnel	Respondents are to identify the personnel available for Contracts in line with the requirements of F.7.3.	Yes q
F.7.4 Organisational Capacity	Respondents are to summarise their resources and capability in line with the requirements of F.7.4.	Yes q
F.7.5 Demonstrated Understanding of the Requirements	Respondents are to demonstrate their understanding of the requirements and deliverables in line with the requirements of F.7.5.	Yes q

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

SCHEDULE 2 TO PART F: FEE SCHEDULES TO BE COMPLETED (REFER F8)

Respondents must complete the following schedules in relation to Fees

a. Service Panel A - Hourly Rates (Form 10)
b. Service Panel B - Hourly Rate for (Form 11) (only if seeking membership of Service Panel B);
c. *Fee Percentages* for Service Categories Applicable to Service Panel A (Form 12);
d. *Fee Percentages* for Service Categories Applicable to Service Panel B (Form 13) (only if seeking membership of Service Panel B); and

RESPONDENT TO COMPLETE

***FORM 10* - SERVICE PANEL A - HOURLY RATES**

	Years' Experience	$/Hour (GST Exclusive)	GST (@ 10%)	$/Hour GST Inclusive)
Principal / Partner / Director	15 - 20			
Associate / Senior Consultant	10 - 15			
Professional Consultant	5 - 10			
Junior Consultant	< 5 years			

RESPONDENT TO COMPLETE

***FORM 11* - SERVICE PANEL B - HOURLY RATES**

	Years' Experience	$/Hour (GST Exclusive)	GST (@ 10%)	$/Hour (GST Inclusive)
Principal / Partner / Director	15 - 20			
Associate / Senior Consultant	10 - 15			
Professional Consultant	5 - 10			
Junior Consultant	< 5 years			

Reference Only

RESPONDENT TO COMPLETE												
FORM 12 **- FEE PERCENTAGES FOR SERVICE CATEGORIES APPLICABLE TO SERVICE PANEL A**												**(REFER TO F.8.1)**
Project Feeable Value	**Service Categories**								**Bills of Quantities**		**Complexity Multiplier**	
	2.0	**3.0**	**4.0**	**5.0**	**6.0**	**7.0**	**Full Service (FS)**	**Extended Full Service (EFS)**	**OPTION A** Excluding mechanical/ electrical elements	**OPTION B** Including mechanical / electrical elements	**Simple**	**Complex**
$0 - $250,000												
$250,000												
$500,000												
$1,000,000												
$1,500,000												
$2,000,000												
$3,000,000												
$4,000,000												
$5,000,000												
$6,000,000												
$7,000,000												
$8,000,000												

Note - For intermediate values, the fee percentages will be interpolated using a straight-line relationship.

Reference Only

RESPONDENT TO COMPLETE												
FORM 13 **- FEE PERCENTAGES FOR SERVICE CATEGORIES APPLICABLE TO SERVICE PANEL B**												**(REFER TO F.8.2)**
Project Feeable Value	**Service Categories**								**Bills of Quantities**		**Complexity Multiplier**	
	2.0	**3.0**	**4.0**	**5.0**	**6.0**	**7.0**	**Full Service (FS)**	**Extended Full Service (EFS)**	**OPTION A** Excluding mechanical/ electrical elements	**OPTION B** Including mechanical / electrical elements	**Simple**	**Complex**
$5,000,000												
$10,000,000												
$15,000,000												
$20,000,000												
$25,000,000												
$30,000,000												
$35,000,000												
$40,000,000												
$45,000,000												
$50,000,000												

Note - For intermediate values, the fee percentages will be interpolated using a straight-line relationship.

Reference Only