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

Request

REQUEST TITLE:

Architectural Services Panel 2018

REQUEST NUMBER:

BMW0078318

CLOSING TIME:

22 May 2018 at 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	C.2.7 Claims for Variation of Hourly Rates	New clause added regarding the submitted hourly rates and Panel Members having the option to apply for adjustment of these rates.	7 Nov 2018
	C.3.3 Head Agreement Term	Clause amended to indicate the Principal may extend the Term for up to a further two years in one or more extensions.	
	Schedule 2 to Part C: Buying Rules. 1D.b	Sentence amended to 'When this occurs the process described in section 1A will be followed'.	
	D.3.8 Western Australian Industry Participation Strategy – Reporting Obligations	New clauses added regarding the Western Australian Industry Participation Strategy – Reporting Obligations.	
	Schedule 3 to Part D	New schedule added to include a sample copy of the Panel – WAIPS Reporting template.	
	E.6 Disclosure Requirements	Additional sub-clause f added, 'compliance with terms of the Request'.	
	E.10.3 Qualitative Criteria	The paragraph '*As noted at E.100…'* has been amended to 'As noted at E.10…'	
	E.10.3.A Demonstrated Capability	The following paragraph has been removed: *'The information provided must relate only to the Respondent's direct experience and must not include experience gained outside of the organisation. Experience gained through any Subconsultant or by an employee while employed or contracted to other firms is not to be included. Where any such experience is identified it will be discounted by the evaluation panel.'* Replacement paragraph: 'Respondents can provide examples of their firms experience gained as a subconsultant, joint venture partner or member of a similar commercial arrangement. Where this occurs, the Respondent is to clearly identify in Form 8 and Form 9 that the experience was obtained in this manner.'	

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NUMBER	SECTION	AMENDMENT	EFFECTIVE DATE
	E.10.3.A.a.i List of Project Experience Relevant to Pathway(s)	Clause amended to allow Respondents to list commissions that are in progress or that were completed in the last 10 years.	
	E.10.3.A.c Respondent's Past Performance	Clause amended to allow Respondents to select projects completed within the last 10 years to demonstrate their past performance. The following paragraph has been removed: *In addition to the nominated referees confirmation of past performance may also be supported in the form of recognition by way of architectural awards or written client performance reports. Such evidence will be included within the page limit noted above.* Replaced with the following paragraph: In addition to the nominated referees confirmation of past performance may also be supported in the form of recognition by way of architectural awards or written client performance reports. Such evidence will not be included within the page limit noted above.	
	Form 3	'Compliance with the terms of the Request' has been removed from this Form.	
	Form 4	Part F. Compliance with terms of the Request, has been added to this Form.	
	Form 8	Form has been amended to include a 'Project Value' and 'Term of Commission' column. Form has been amended to replace 'Contract Value' column with 'Commission Value'.	
	Form 11	Form has been amended to require Relevant Employment History be limited to five years.	
1.2	B.3 Submission of Offers in Response to the Request	Removed option to submit Offers by post.	May 2019
1.3	All sections	Change all references to finance.wa.gov.au website to the new wa.gov.au website	1 Dec 2019
	D.3.6 Consultants Attestation	Additional requirement added 'the Consultant and any secondary or sub-consultant(s) has not received any financial incentive to specify any materials, products or components of the Works'.	
1.4	All sections	Remove or replace references to "Building Management and Works" or "BMW" with "Department of Finance" or "Finance"	1 Mar 2020

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NUMBER	SECTION	AMENDMENT	EFFECTIVE DATE
1.5	C.11.	All references to the $250,000 threshold have been increased to $500,000.	13 May 2020
	C.11.6.	The Regional Business Preference and Regional Content Preference have both been increased from $250,000 to a maximum preference of $500,000 respectively.	
	Schedule 2 to Part C: Buying Rules – 1. Consultant Selection and Engagement Process	All references to the $250,000 threshold have been increased to $500,000.	
1.6	Schedule 4 to Part D: 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
	C.1.1. Definitions	Definition of Buy Local Policy amended.	
1.7	C.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
1.8	A.11. Projects in Regional Locations	Contracts involving a site located in regional Western Australia have always had the provision, by the Principal, to determine whether the Panel or an alternative procurement approach will be employed. However, where the Panel is utilised, additional details have been provided in these clauses to outline the process to be undertaken. The following clauses have been amended: ▪ A.11. Projects in Regional Locations; ▪ Schedule 2 to Part C: Buying Rules – 1. Consultant Selection and Engagement Process; and ▪ Schedule 2 to Part C: Buying Rules – 3. Regional Projects. Clause C.11.3. Adjustment of Predetermined Fee for Regionally Based Panel Members has been replaced by the following clause: ▪ C.11.3. Fees for Regionally Based Projects.	16 Dec 2020
	C.11.3. Fees for Regionally Based Projects		
	Schedule 2 to Part C: Buying Rules – 1. Consultant Selection and Engagement Process		
	Schedule 2 to Part C: Buying Rules – 3. Regional Projects		
	All sections	To align to relevant changes in policy, all references to Aboriginal Enterprises throughout this document have been amended to Aboriginal	

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NUMBER	SECTION		AMENDMENT	EFFECTIVE DATE
1.9	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. Various other references updated accordingly.	1 Jul 2025
2.0	All Sections		Amendments across the document to vary the Panel to permit access by additional State Agency Eligible Clients, principally the Department of Health and associated Health Service Providers.	16 Mar 2026
2.1	Schedule 1 to Part B – 11(f) C.28 D.3.9	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
	C.4.4. Head Agreement Term		Updated Panel term to reflect revised expiry date of 6 November 2028.	

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PART A

RESPONDENT TO READ AND KEEP THIS PART

PART A OVERVIEW OF REQUIREMENT

A.1. BACKGROUND

The Department of Housing and Works provides services and advice to government in relation to the design, construction and asset management of major State Government public buildings such as hospitals, schools, police stations, and also for general Government office accommodation.

To support the effective design and delivery of construction projects, the Department of Housing and Works seeks to engage firms to perform a range of architectural services.

The purpose of the Request is to invite Offers from suitably qualified firms (Respondents) seeking to be considered for inclusion in the Architectural Services Panel 2018 (the Panel).

It is important to note that the Department of Housing and Works is taking an innovative approach in this 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 the 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 summarises 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: Head Agreement Conditions

Part C 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 architectural services. Contained in Part C is '*Schedule 1 to Part C: Predetermined Fees Schedule'* and '*Schedule 2 to Part C: Buying Rules'.*

Part D: Conditions of Contract

Part D defines the terms and conditions that apply when the Principal places a Contract under the Head Agreement. Contained in Part D is

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PART A

RESPONDENT TO READ AND KEEP THIS PART

'*Schedule 1 to Part D: WA Government Amendments to AS 4122-2010*' and '*Schedule 2 to Part D: Annexure to General Conditions of Contract*'

Part E: Content Requirements For Respondent's Offer

Part E identifies the information that must be provided by Respondents as part of their Offers. Contained in Part E is '*Schedule 1 to Part E: Forms to be Completed'*. Respondents should ensure that they consider the information provided in Part E and take this into account in completing their Offer.

In addition to the contents of the Request reference is also made to the Architectural Services Brief which must be taken into account by Respondents in preparing an Offer in response to the Request. The Architectural Services Brief outlines the roles and responsibilities associated with the architectural services to be provided under the Panel. Respondents can obtain a copy of the Architectural Services Brief from the WA Government website at: https://www.wa.gov.au/government/publications/architectural-services-brief-non-residential-buildings.

Respondents should also familiarise themselves with the Architectural Consultancy Performance Reporting system and the Supplier Demerit Scheme. Information on both these arrangements can be accessed through the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects.

The following Australian Standards available from Standards Australia at www.standards.org.au are also relevant to the formation of an Offer.

a. AS 4122 - 2010 General Conditions of Contract for Consultants, which should be read in conjunction with the WA Government Amendments to AS4122-2010 contained in *Schedule 1 to Part D* of the Request.
b. AS 4121 - 1994 Code of Ethics and Procedures for the Selection of Consultants
c. AS 2124 - 1992 General Conditions of Contract

A.3. DEFINITIONS AND INTERPRETATIONS

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

A.4. PANEL SCOPE

The Panel is being formed 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). The Department of Housing and Works will represent the Minister for Works for the purpose of the Panel.

The Panel is designed for use by the Department of Housing and Works.

The majority of projects will be managed from Perth, however in some cases projects may be located in regional Western Australia and will require management from a

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nearby regional location. Respondents should note that a majority of the Contracts will be undertaken within an 80 kilometre radius of the Perth metropolitan area.

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 the Department of Housing and Works.

A.5. PANEL STRUCTURE

The Panel is a commercial arrangement defined by the terms and conditions contained in a Head Agreement that constitutes a standing offer for the provision of architectural services involving Contracts up to $1,000,000 (including GST but excluding disbursements). 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 defined Services for an identified Fee.

The term of the Panel will be for three years with an option for the Principal to extend the Panel by up to a further two years (refer to clause C.3.3).

The Principal reserves the right to amend membership of the Panel through application of the Panel's performance management scheme.

A.6. PANEL COMMENCEMENT

The proposed Panel commencement date is 7 November 2018. The Principal reserves the right to amend the commencement and where this occurs any reference to the Panel Commencement Date will be a reference to the revised date of Panel commencement.

A.7. SUMMARY OF SERVICES PROVIDED THROUGH THE PANEL

The Panel will allow the Department of Housing and Works to access a range of architectural services for any work required in the design, delivery and maintenance of Government's non-residential buildings program, in either metropolitan or regional Western Australia.

The Panel is designed primarily for use in traditional 'construct only' projects. Where the Principal adopts a different project delivery method, such as 'design and construct', the Panel may still be used, with the Services and corresponding fees being determined on a case by case basis.

Typical Contracts through the Panel will involve the provision of architectural services within the following project stages

a. Project Definition Plan
b. Brief Preparation to signoff
c. Schematic Design to signoff
d. Design Development
e. Contract Documentation up to tender award
f. Tender

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g. Contract Administration

These services are described in detail in the Architectural Services Brief which can be accessed on the WA Government website at https://www.wa.gov.au/government/publications/architectural-services-brief-non-residential-buildings.

From time to time, the Principal may require architectural services or other professional services that are different to or beyond the normal requirements listed here or as described in the Architectural Services Brief. By way of example, the Principal may require assistance with the development of business cases or seek the provision of ad-hoc advice. Where this occurs the work may be contracted using agreed hourly rates on the basis of an agreed scope of work.

A.8. PATHWAYS TO PANEL MEMBERSHIP

Panel membership is available via the following seven specific pathways which are defined further at B.7.2:

1. Education;
2. Health;
3. Justice;
4. Other Agencies;
5. Regional Projects;
6. Low Value and Minor Works; and
7. Heritage only specialists.

Respondents can apply to join the Panel through one or more pathways.

Once admitted to the Panel all Panel Members will be eligible to be considered for contracts in any of the identified areas of the Panel.

A.9. COMPLETING THE SUBMISSION

Respondent's should familiarise themselves with all parts of the Request and the Architectural Services Brief prior to submitting an Offer.

Respondents should also be aware that in evaluating submissions the Principal:

a. requires Respondents to complete the specific forms provided in *Schedule 1 to Part E: Forms To Be Completed*, and submit them in the 'Volumes' as detailed in the schedule.

b. may not assess any material that exceeds the identified limits for each of the parts that a Respondent is to complete.

c. will only consider content that is directly relevant to the identified criteria or specific pathway to Panel membership.

Respondents are also advised not to include any content that is of a promotional or advertising nature.

The Principal reserves the right to reject any Offer which fails to comply with any requirement of the Request.

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A.10. BUYING RULES

The Principal will consider the Panel's Buying Rules when determining how Panel Member will be engaged under the Panel. The Buying Rules, which the Principal may vary from time to time are included at *Schedule 2 to Part C.*

A.11. PROJECTS IN REGIONAL LOCATIONS

Contracts involving a site located in regional Western Australia will be subject to an analysis by the Principal to determine whether the Panel or an alternative procurement approach will be employed. Where the Panel is utilised, refer to Schedule 2 to Part C: Buying Rules, 3. Regional Projects.

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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. APPLICATIONS FOR MEMBERSHIP OF THE PANEL

While the Principal reserves the right to refresh the Panel at any time, Respondents may only submit applications to become a Member of the Panel in response to this initial release of the Request, in which case Offers must be submitted by the Closing Time.

The Principal also reserves the right to consider applications at any time from suitably qualified Aboriginal Businesses. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful the applicant will be appointed to the Panel in addition to the existing Panel Members.

B.3. 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 with Tenders WA for electronic submission the Respondent may submit their Offer electronically by uploading one complete set of documents to a maximum limit of 100MB per upload request at: www.tenders.wa.gov.au. Respondents are strongly encouraged to 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 Acceptable

By hand:

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

Note - submissions made by hand must include one original and one unbound copy marked “copy” and one copy on a USB/thumb drive. In the event discrepancies exist between the hard copy and electronic versions, the electronic version will take precedence.

By facsimile:

Offers cannot be submitted by facsimile.

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PART B

RESPONDENT TO READ AND KEEP THIS PART

B.4. OFFER VALIDITY PERIOD

The Offer Validity Period is for a period of nine calendar months commencing from the Closing Time.

B.5. BRIEFING

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

Date: 1 May 2018
Time: 16:00
Location: Ground Floor,
Optima Centre
16 Parkland Road
Osborne Park, Western Australia

Potential Respondents are requested to confirm their attendance by no later than 16:00 on 27 April 2018 by registering at:

www.finance.oneit.com.au/dtf/ViewEvent.jsp?Tag=WA_EVENT&ID=748955

The Principal reserves the right to limit the number of the Respondent's representatives that may attend. (Please note: should the link not be accessible by clicking on it, access can be obtained by copying the link into your browser).

B.6. CONTACT PERSONS

Details of the most appropriate contact persons 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.6.1. CONTRACTUAL AND ROUTINE ENQUIRIES

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

B.6.2. TECHNICAL ENQUIRIES

Name: Dean Wood
Title: Principal Architect
Telephone: (08) 6551 1998
E-mail: dean.wood@DoHW.wa.gov.au

B.6.3. ADVICE ON SUBMITTING OFFERS

Name: Tendering Services
Telephone: (08) 6551 2345
Facsimile: (08) 6551 2333

B.6.4. ADVICE ON USING TENDERS WA

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

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PART B

RESPONDENT TO READ AND KEEP THIS PART

B.7. SELECTION PROCESS

Value for Money is a key policy objective in ensuring that the best possible procurement outcome is achieved. Value for money considerations move beyond simply cost impacts and involve a broader assessment of the benefits and risks associated with a contract award. 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;

c. the hourly rates identified in the respondent's Hourly Rates Fee Schedule, and

d. any other factors the Principal considers relevant.

B.7.1. COMPLIANCE WITH THE TERMS OF THE REQUEST

Respondents are required to confirm that they will comply with the terms of the Request by completing the relevant section of *Form 3 - Pre-Qualification Requirements*.

An Offer which fails to:

a. satisfy, comply or meet the requirements of the Request; or

b. include all information that has been requested,

may at the Principal's discretion:

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

d. continue to be assessed taking into account any failure as part of the assessment process.

B.7.2. PANEL SELECTION PROCESS

The Principal intends to appoint approximately 50 Panel Members, selected through a qualitative assessment process. However, the Principal reserves the right to appoint as many or as few Panel Members as it sees fit.

In selecting Panel Members, the Principal will allocate places as outlined at B.7.2.2 to Respondents based on the Principal's need for architectural services in the following seven pathways:

1. Education projects – (approximately 16 Respondents): defined (in this context) as projects involving a construction contract valued at over $1,500,000 that relate to primary, secondary and adult education.
2. Health projects – (approximately 8 Respondents) defined (in this context) as projects involving a construction contract valued at over $1,500,000 that relate to the provision of health or medical care such as hospitals and medical centres.
3. Justice projects – (approximately 4 Respondents) defined (in this context) as projects involving a construction contract valued at over $1,500,000 that relate to areas such as justice, police and fire services;
4. Other Agencies – (approximately 4 Respondents) defined (in this context) as projects involving a construction contract valued at over $1,500,000 that relate

Reference Only

to functions not previously mentioned (by way of example the Principal undertakes projects at Perth Zoo, State Library etc.).

5. Low value and minor works projects - (approximately 5 Respondents) defined (in this context) as projects involving a construction contract valued at less than $1,500,000.
6. Heritage projects - (approximately 3 Respondents) – defined (in this context) as projects that have a significant heritage aspect.
7. Regional Western Australia projects - (approximately 10 Respondents) defined (in this context) as projects where the 'delivery site' is located in regional Western Australia.

The figures provided for each pathway are indicative only and are subject to the evaluation process as outlined in B.7.2.2.

Once appointed to the Panel, Panel Members are not restricted with respect to what opportunities they may be offered.

B.7.2.1. Assessment of Offers

Offers in relation to Panel membership will be assessed against the

a. Pre-Qualification Requirements described in E.5;
b. Disclosure Requirements described in E.6;
c. Qualitative Requirements described in E.10;
d. The Hourly Fee rates as submitted by the Respondent in accordance with E.11.2.

Provided the prequalification requirements have been met, there are no compliance issues that are unacceptable to the Principal and the proposed Hourly Fee rates are acceptable, then Respondents will be ranked based on the assessment of the qualitative requirements. This ranking will be done on a pathway by pathway basis.

B.7.2.2. Allocation of Places

Places on the Panel will be allocated in accordance with the indicative numbers identified in B.7.2.

Respondents will be given a ranking for each pathway that they apply for and will be listed in an order of merit that is specific for each pathway. This order of merit will then be used to determine which Respondents will be recommended for inclusion on the panel.

Once a Respondent is recommended for inclusion through one pathway, it will no longer be considered for other pathways. In effect, it will be removed from the order of merit for those other pathways. This applies for the evaluation process only; it does not restrict the Respondent's ability to undertake Contracts under the Panel.

If insufficient Offers meet the Principal's standard required for admission to a particular pathway then the Principal at its sole discretion may reallocate available places to other pathways or may choose not to reallocate those places.

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

B.8. DEPARTMENTAL AND GOVERNMENT POLICIES

In addition to the application of the Buy Local Policy (which can be obtained on the WA Government website at https://www.wa.gov.au/government/publications/buy-local-policy or by contacting the State Supply Commission on (08) 6551 1500), the following Departmental works procurement policies apply to the Request:

a. Value for Money;

b. Probity and Accountability;

c. Open and Effective Competition; and

d. Aboriginal Business and Employment Tendering Preference Policy.

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

B.9. PERMANENT OPERATIONAL OFFICE

A Permanent Operational Office is a bona fide principal place of business or a bona fide branch office of the Respondent's principal place of business or a similar office of a Subconsultant if one is identified as part of the Offer.

In addition to the Respondent identifying its principal place of business the Respondent must also identify in *Form 1: - Identity and Contact Details* the location of any Permanent Operational Offices that the Respondent is claiming. Note: Information on Subconsultants is not to be included here as this information is requested later.

The Principal may request that the Respondent demonstrate the bona fides of any Permanent Operational 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 or persons that reside within the region, who are a permanent employee(s) of the Respondent (not contract staff) and who have relevant qualifications and experience; and

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

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

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.

Reference Only

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. Where the Respondent is aware that any information provided will change following submission this has been identified in the Offer;

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 unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

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

n. **(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.

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

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 will 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 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 E 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 nominated in the Request, the Principal may:

g. request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying or confirming 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 also 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.

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

5 DISCRETION

Whenever the Principal's consent is required under the Request, that consent may be given or withheld at the Principal's absolute discretion and may be given subject to such conditions as the Principal may determine.

7 CLARIFICATION OF OFFER

The Principal may choose to clarify any aspect of a Respondent's Offer. While the structure of the Respondent's Hourly Rates Fee Schedule may be clarified no opportunity will be provided for any amendment of the values of the submitted hourly rates.

At any time during this clarification process the Principal or the Respondent may terminate the discussions for any reason.

Where the Principal terminates discussions, the Principal may:

a. continue to process the Respondent's Offer based on the original submission; or

b. continue to process the Respondent's Offer including the information that was clarified with the Respondent; or

c. set aside the Respondent's Offer and not consider it any further.

8 OFFER VALIDITY

The Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period as identified at B.4, 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 or awarding a subsequent contract associated with that acceptance, disclose to the Principal any change in the conflict of interest declaration made as part of the Respondent's Offer. This includes disclosing 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 or decline to award a contract to a Panel Member if the Principal considers that there is or could reasonably be considered to be, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the 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.

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

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

The Principal will endeavour to ensure that the Respondent's Offer remains confidential and is not disclosed to unauthorised third parties. However:

a. the Respondent acknowledges and agrees that the nature of the Panel requires its Offer and Offer Information to be available to the Principal's employees as part of their operational role.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

Reference Only

PART C HEAD AGREEMENT CONDITIONS

C.1. DEFINITIONS AND INTERPRETATIONS

C.1.1. DEFINITIONS

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

Aboriginal Employer means a Panel Member that employs any Aboriginal Person, including an apprentice or trainee.

Aboriginal Business refers to registered Aboriginal businesses listed at the Aboriginal Business Directory (http://www.abdwa.com.au) or at Supply Nation (http://supplynation.org.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 Business and Employment Tendering Preference is a preference given in circumstances described in clause C.12.6.3.

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 an Eligible Client that specifies the service requirements and is attached to the Letter of Acceptance.

Architectural Services Brief means the latest version of the Architectural Services Brief available from https://www.wa.gov.au/government/publications/architectural-services-brief-non-residential-buildings

Architectural Services Panel (the Panel) means the arrangement for the supply of architectural services by Panel Members to each Eligible Client pursuant to the terms and conditions of the Head Agreement.

Authorised Body has the meaning given to that term in the *Procurement Act 2020* (WA).

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

Buying Rules means the procurement arrangements outlined in *Schedule 2 to Part C: Buying Rules*, and includes any revision required due to amendments to Department of Housing and Works or government procurement policy.

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

Client means the Client as defined in the General Conditions.

Client Agency means a Government agency that the Department of Housing and Works 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.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

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 or Client 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 Fee has the same meaning as the term 'Fee' has under the General Conditions and is the amount as stated in the Letter of Appointment subject to variation in accordance with the Head Agreement.

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

Eligible Client means:

(a) the Principal; and

(b) each of the following bodies corporate established under section 32 of the *Health Services Act 2016* (WA):

(i) North Metropolitan Health Service;

(ii) South Metropolitan Health Service;

(iii) East Metropolitan Health Service;

(iv) WA Country Health Service;

(v) Child and Adolescent Health Service;

(vi) Health Support Services;

(vii) PathWest Laboratory Medicine WA; and

(viii) Quadriplegic Centre.

Feeable Value means 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.

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 contract entered into between the Principal and the Panel Member in relation to the Panel and which contain the essential terms and conditions of the agreement between the parties in relation to Panel membership.

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

Invitation to Submit Proposal means an invitation issued by an Eligible Client 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 Business and a non-Aboriginal Business if at least 50% of equity in the joint venture is owned by the registered Aboriginal Business.

Reference Only

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

Letter of Appointment means a letter issued by the Principal to a successful Respondent to the Request accepting that Respondent's Offer and appointing that Respondent to the Panel.

Letter of Acceptance means the letter from an Eligible Client awarding a Contract to a Panel Member confirming the services to be provided under that Contract and the Contract Fees.

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

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.4.

Panel means the panel arrangement established through the Request for the supply of architectural services pursuant to the terms and conditions of the Head Agreement in relation to the architectural pathways identified in B.7.2.

Panel Commencement Date means the date specified in clause C.4.4.

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 means a bone fide principal place of business or a bone fide branch office.

Predetermined Fees Schedule means *Schedule 1 to Part C: Predetermined Fees Schedule* as amended from time to time.

Prescribed Distance has the meaning given to this term in the Buy Local Policy.

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 to represent the Principal.

Project means a building or maintenance construction project that requires architectural services or professional consultancy advice.

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

Proposal means a Panel Member's response detailing the Panel Member's proposed approach to undertaking the architectural services as requested in an Invitation to Submit Proposal.

Public Authority means a Western Australian public sector agency.

Reference Only

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.

Regional Business Preference has the meaning given to this term in the Buy Local Policy.

Regional Content Preference has the meaning given to this term in the Buy Local Policy.

Regional Price Preference has the meaning given to this term in the Buy Local Policy.

Request means this document (document 0078318) issued by the Department of Housing and Works on behalf of the Minister for Works inviting Offers for the provision of architectural services under a standing offer arrangement.

Respondent means any party that submits an Offer.

Services means the goods, services and/or works described in the Head Agreement.

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

Specified Personnel means those persons who are engaged in an architectural capacity directly relevant to the provision of the type of architectural services required by the Panel and which are 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.

State Agency has the meaning given to that term in the *Procurement Act 2020* (WA).

Standard Pattern Primary School means a new primary school constructed on a greenfield site following the standard Department of Education buildings profile and includes any other works undertaken at the same time. It does not include additional work to an existing primary school.

Subconsultant has the meaning given in the General Conditions.

Superintendent means the individual appointed in writing by the Client 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 this Panel as described in clause C.4.4 with reference to the operation of the Panel.

C.1.2. DEFINITIONS CONTAINED IN THE GENERAL CONDITIONS

The definitions contained in the General Conditions apply to the Head Agreement where no definition is provided in the Head Agreement, noting that in the Head Agreement:

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

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

C.1.3. DEFINITIONS CONTAINED IN ARCHITECTURAL SERVICES BRIEF

A definition contained in the Architectural Services Brief applies to the Head Agreement where no definition is provided in the Head Agreement.

C.1.4. MONETARY VALUES

All references to monetary values are to be taken as being GST inclusive unless otherwise stated.

C.2. PANEL OPERATION

C.2.1. PANEL ESTABLISHMENT

The Panel is a standing offer through which each Eligible Client can source architectural services on an as-required basis when Contract Fee is expected to be less than $1,000,000 (excluding disbursements).

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

C.2.2. ACCESSING THE PANEL

An Eligible Client 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 2 to Part C: 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.

C.2.3. WITHDRAWAL FROM THE PANEL BY PANEL MEMBERS

A Panel Member may withdraw from the 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 Panel Member's Head Agreement will terminate on the date specified in the Letter of Panel Withdrawal.

C.2.4. PANEL SUSPENSION OR CANCELLATION

Where the Head Agreement provides for a Panel Member's membership to be suspended or cancelled, then:

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

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

C.2.5. ONGOING OBLIGATIONS

Panel closure, withdrawal, suspension or cancellation only applies to the award of future Contracts. 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

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obligation on the Panel Member until those rights, liabilities or obligations are discharged.

C.2.6. ENGAGEMENT OF ABORIGINAL BUSINESSES

The Principal reserves the right to consider applications at any time from suitably qualified Aboriginal Businesses seeking to become members of the Panel. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful the applicant will be appointed to the Panel.

C.2.7. CLAIMS FOR VARIATION OF HOURLY RATES

Tendered hourly rates will be fixed for an initial twelve months.

Panel Members will have the option to apply for these rates to be adjusted in line 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.

C.3. HEAD AGREEMENT ESTABLISHMENT AND EXPIRATION

C.3.1. SCOPE OF HEAD AGREEMENT

(a) The Head Agreement is a standing offer by the Panel Member to Eligible Clients for the Term to enter into one or more Contracts for the supply of the Services in accordance with the Head Agreement. The Eligible Client may accept the Panel Member's Offer at any time during the Term, on the terms and conditions set out in the Head Agreement.

(b) The Panel Member enters into, and is bound by, the Head Agreement in consideration for the Principal making the Head Agreement available to Eligible Clients.

(c) The Principal may from time to time notify that a State Agency or Authorised Body is added or removed as an Eligible Client under the Head Agreement by providing written 20 Business Days notice to the Panel Member.

C.4. ROLE OF PRINCIPAL AND ELIGIBLE CLIENTS

C.4.1. ELIGIBLE CLIENTS AND THE HEAD AGREEMENT

(a) Eligible Clients are not a party to and do not have any obligations to the Panel Member under the Head Agreement.

(b) The Principal administers the Head Agreement on behalf of Eligible Clients. The Panel Member acknowledges that the Head Agreement is intended for

Reference Only

the benefit of Eligible Clients and may be enforced by the Principal on behalf of Eligible Clients.

C.4.2. THE PRINICIPAL AND CONTRACTS

(a) In this clause:

(i) **Claim** includes any claim, demand, action, proceeding, cause of action or suit of any nature, made under, arising out of, or in any way in connection with, the Standing Offer or any Law;

(ii) **Loss** includes any liability of any kind whatsoever, cost (including all legal and other professional costs on a full indemnity basis), expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit.

(b) The Principal is not a party to a Contract and is not liable to the Head Agreement:

(i) to perform any obligation, satisfy any liability or rectify any breach by a Client; or

(ii) in respect of any Claim or Loss which the Panel Member suffers or incurs in connection with a Contract or the Panel Member's dealings with a Client,

unless the Principal has issued a Letter of Acceptance and a Contract has been formed with the Principal in its capacity as an Eligible Client.

C.4.3. FORMATION OF HEAD AGREEMENT

The Head Agreement for the Panel comes into existence when the Principal issues a Letter of Appointment.

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 is to be where possible read down to resolve the inconsistency.

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

C.4.4. HEAD AGREEMENT TERM

The Panel term has been extended to 7 November 2028.

Reference Only

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

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

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

C.4.5. VARIATION TO HEAD AGREEMENT

Subject to the provisions of Part C, 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.

Where the Principal makes a variation to the Head Agreement the Principal may at its sole discretion increase the Predetermined Fees Schedule to reflect the variation to the Head Agreement.

C.5. PROVISION OF SERVICES

Services provided under the Panel are to be provided in accordance with the Architectural Services Brief except as advised in the Letter of Acceptance.

C.6. VARIATION TO ARCHITECTURAL SERVICES BRIEF

Where the Principal varies the Architectural Services Brief 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.

Where the Principal makes a variation to the Architectural Services Brief the Principal may at its sole discretion increase the Predetermined Fees Schedule to reflect the variation to the Architectural Services Brief.

C.7. CONTRACT FORMATION

An Eligible Client may in response to a Proposal received from a Panel Member 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 D: 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.

C.8. EXPIRATION OR TERMINATION OF THE HEAD AGREEMENT OR CONTRACT

The Principal and the Panel Member acknowledge that:

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

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

Reference Only

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

ii. will return any Confidential Records and 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. expiration or termination of a Contract will not affect the Head Agreement.

C.9. 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 is to 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.

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 clause the Panel Members' membership may be cancelled or suspended.

C.10. 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 amendment to Trustee arrangements, 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.

C.11. INSOLVENCY

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

Reference Only

C.12. CONTRACT FEES

The Contract Fee under the Panel will be established by reference to the Buying Rules outlined in *A.10 2 to Part C: Buying Rules* and defined in the Contract. It will generally be calculated as a:

a. a 'not to exceed' figure where the Contract is expected to be valued at less than $500,000 and is based on the Panel Member's hourly rates as confirmed in the Letter of Appointment. The hourly rates will be applied to an agreed estimate of the hours that are required to complete the Services.

b. a fixed fee where the Contract is expected to be valued at less than $500,000 and is based on the Predetermine Fee Schedule included in '*Schedule 1 To Part C: Predetermined Fees Schedule*'.

c. a fixed fee where the Contract is expected to be valued at between $500,000 and $1,000,000, and is based on a Panel Member's Proposal submitted in response to a competitive process.

The Contract Fee shall cover all the Services to be provided by the Consultant, including without limitation all site visits and preparation of deliverables identified in the Architectural Services Brief and the Letter of Acceptance.

In some circumstances the Contract Fee for Contracts over $500,000 will be based on the Predetermined Fees Schedule included in '*Schedule 1 to Part C: Predetermined Fees Schedule*'.

C.12.1. PREDETERMINED FEES SCHEDULE

The Predetermined Fees Schedule shown in '*Schedule 1 to Part C: Predetermined Fees Schedule*' assumes that the Consultant provides a 'full service', with service starting at the schematic design phase and ending after the construction contract reaches final completion. It also assumes the Consultant acts as the Superintendent's Representative and engages the Subconsultant team.

The one exception to this relates to Education projects: for these projects the full service fee includes production of a project definition plan.

When the Consultant will not act as the Superintendent's Representative, the fee will be reduced by reducing the 'contract administration' element of the fee by 25%.

Where the Consultant does not engage the Subconsultant team, the Client will negotiate a reduced rate with the Consultant.

C.12.2. APPORTIONMENT OF CONTRACT FEE BASED ON PREDETERMINED FEE SCALES

The Predetermined Fees Schedule will allow a fee to be calculated for simple, conventional and complex projects, and those involving a standard pattern primary school. The fee will be allocated to specific project phases as shown in the following table.

Reference Only

SERVICE STAGE	COMPONENT OF CONTRACT FEE (%)	STANDARD PATTERN COMPONENT OF CONTRACT FEE (%)
Brief signoff (including site investigation) and Schematic Design	**15%**	**11%**
Design Development signoff	**20%**	**15%**
Contract Documentation up to and including contract award	**30%**	**26%**
Contract Administration up to and including Practical Completion	**30%**	**40%**
Contract Administration from Practical Completion up to and including Final Completion	**5%**	**8%**
SUBTOTALS	**100%**	**100%**

Where a Contract does not involve a particular service stage, the Contract Fee is reduced by the corresponding amount. By way of example, if a Consultant's engagement ends at contract award (i.e. they have no involvement in the project from that stage at all), the Contract Fee would be reduced to 65% of the pre-determined amount and the payment per service stage would be recalculated proportionally.

C.12.3. FEES FOR REGIONALLY BASED PROJECTS

When a project is located in a regional location (as defined in the Buy Local Policy), the Predetermined Fees Schedule will not apply. Refer to Schedule 2 to Part C: Buying Rules, 3. Regional Projects.

C.12.4. DETERMINING PROJECT COMPLEXITY

The Predetermined Fees Schedule provides fees for a range of complexity levels which are set by the Principal. Guidance on how a project's complexity is defined is outlined in the Department of Housing and Works's 'Project Complexity Classification Guide' available on the WA Government website at https://www.wa.gov.au/government/publications/project-complexity-and-classification-guide-department-of-finance (Link to be amended in due course).

C.12.5. DISBURSEMENTS

The Contract will identify the disbursements the Consultant is entitled to under the Contract, and disbursements will be managed in accordance with the General Conditions.

Unless specified otherwise in the Contract, no disbursements will be payable for Contracts involving a Contract delivery point within the Perth metropolitan area.

Reference Only

Disbursements related to travel and accommodation may be payable for Contracts located in regional Western Australia (as defined in the Buy Local Policy) where:

a. the Contract delivery point is located more than 80 kilometres from the Permanent Operational Office from which the Consultant is managing and delivering the Contract; and

b. the Contract Fee has been set with reference to the Predetermined Fees Schedule or hourly rates.

C.12.6. PRICE PREFERENCES

Where a Contract involves construction in a regional zone (as defined in the Buy Local Policy) and Proposals are sought as part of a competitive process, Regional Price Preferences and the Aboriginal Business and Employment Tendering Preference will be applied.

Regional Price Preferences and Aboriginal Business and Employment Tendering Preference will not be applied when a Panel Member located in another state or territory of Australia, or in New Zealand is invited to submit a Proposal.

C.12.6.1. Regional Business Preference

A Regional Business Preference may be afforded to Panel Members that submit Proposals and manage the Contract from a Permanent Operational Office that is within the Prescribed Distance from the Contract delivery point.

When comparing Proposals received from regional Panel Members located within the Prescribed Distance, with bids received from Western Australian Panel Members located outside the Prescribed Distance, including the Perth region, the proposed Contract Fee from the regional Panel Member located within the Prescribed Distance will be reduced, for evaluation purposes only, by 5% of the proposed Contract Fee calculated to a maximum of $500,000.

C.12.6.2. Regional Content Preference

A Regional Content Preference may be available irrespective of a Panel Member's eligibility for a Regional Business Preference, and a Panel Member may be afforded the Regional Content Preference regardless of the location of their Permanent Operational office.

The available Regional Content Preference is at the rate of 5% of the cost (GST inclusive) of materials (supplies) and services (subcontracts, in-house labour and the like) proposed for use in the Contract and that are purchased from businesses within the Prescribed Distance. The Regional Content Preference will reduce the proposed Contract Fee, for evaluation purposes only, up to a maximum preference of $500,000.

For all regional price preferences to be considered when a competitive process is used within the Panel, the Panel Member must claim for the preference using the appropriate claim forms issued by the Project Manager.

C.12.6.3. Aboriginal Business and Employment Tendering Preference

Any Panel Member that is an Aboriginal Business, or an Aboriginal Employer, or a Joint Venture with Aboriginal Participation, or an Aboriginal Person, may be eligible to receive the Aboriginal Business and Employment Tendering Preference. This

Reference Only

preference will reduce the proposed Contract Fee, for evaluation purposes only, at a rate of 10% of the preference amount up to a maximum of $250,000.

The preference amount is:

a. The proposed Contract Fee if the tenderer is an Aboriginal Person, an Aboriginal Business or a Joint Venture with Aboriginal Participation; or

b. That proportion of the proposed Contract Fee attributable to Aboriginal Persons or Aboriginal Businesses that are subconsultants engaged on the work under the Contract; or

c. That proportion of the proposed Contract Fee attributable to the direct employment costs of Aboriginal Persons engaged on the work under the Contract, by either the Panel Member or subconsultants. It is not a requirement that Aboriginal Persons are employed at the close of the tender or award of the Contract; or

d. Any combination of the above.

C.12.6.4. Verification of Claims for Preferences and Sanctions

An Eligible Client reserves the right to request from the Panel Member evidence to the satisfaction of the Eligible Client to verify the validity of the Panel Member's claim for any financial preference. When a Panel Member is unable to provide evidence to the satisfaction of the Eligible Client that verifies the validity of the Panel Member's claim for a preference, then the Panel Member's claim for that preference may be considered invalid and the preference may not be applied to the Proposal.

If, in carrying out the Contract, the Panel Member fails to deliver on any of the undertakings made in order to gain the financial preference, the Client may, at its discretion:

a. Recover from the Panel Member the whole or any part of the difference between the Panel Member's Proposal and the amount of the lowest conforming Proposal (if applicable);

b. Terminate the Contract;

c. Suspend or cancel the Panel Member's membership of the Panel; or

d. Take action under the Supplier Demerit Scheme.

C.13. PERMANENT OPERATIONAL OFFICE

If during the term of the Panel a Panel Member amends or otherwise alters any details in relation to a Permanent Operational Office the Panel Member is to immediately notify the Panel Manager.

The Principal may request that the Panel Member demonstrate the bona fides of any Permanent Operational 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;

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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 or persons that reside within the region, who are a permanent employee(s) of the Panel Member (not contract staff) and who have relevant qualifications and experience; and

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

C.14. ENGAGEMENT OF SUBCONSULTANTS

Where a Panel Member is approached to undertake a Contract and they propose to subcontract any element of the proposed Contract to a Subconsultant, the Panel Member will include that information in the Panel Member's Proposal to inform the Project Manager of that intention.

In proposing a Subconsultant the Panel Member must demonstrate that the selection process used to select the Subconsultant has delivered a value for money outcome. As part of this process the Panel Member must consult with the Project Manager and seek advice on the selection process to ensure that the selection process complies with Government policies such as Buy Local (where the contract involves work outside the Perth metropolitan area and/or otherwise falls within the coverage of the Government's Buy Local Policy).

Where the Department of Housing and Works has an existing professional consultancy panel arrangement in place for Subconsultant appointments (e.g. engineers, building surveyors etc.), the Consultant is strongly encouraged to utilise these panel arrangements to directly engage Subconsultants. The proposed Subconsultant may or may not be another Panel Member.

If a Panel Member elects to engage Subconsultants outside of these the Department of Housing and Works panel arrangements, sufficient quotes must be obtained to demonstrate that a value-for-money outcome has been achieved, with at least one quote obtained directly from the relevant Department of Housing and Works panel arrangement.

The Project Manager will assess any proposal to subcontract 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, then the Subconsultant is to be engaged under terms and conditions consistent with, and complementary to, the Contract under which the Panel Member is engaged, and any conditions that the Client may choose to impose on this engagement.

Once engaged a Panel Member must not change or allow any Subconsultant to change any member of its project team that formed part of the firm's Proposal without prior written approval of the Client.

The Principal may direct the Panel Member to have removed from any activity connected with this Panel and a Client may direct the Consultant to have removed from any activity connected with a Contract, any Subconsultant engaged in connection with the work under the Panel or Contract who, in the opinion of the

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Principal or Client as the case requires, is guilty of misconduct or is incompetent or negligent, or whose involvement in the Panel or Contract is likely to adversely affect the reputation of the Principal, Client 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 Panel or the Client under any Contract. The Consultant is required to inform all Subconsultants that the relationship between the Consultant and the Subconsultant, as evidenced by a contract or otherwise, does not impose on the Client any express or implied legal obligation to the Subconsultant of any nature whatsoever in contract or by any other means.

C.15. SUBCONSULTANT AND SUPPLIER PAYMENTS

Panel Members must comply with all payment obligations under the law and under contract between the Panel Member and its Subconsultants and suppliers in respect of the carrying out of any work awarded under this Panel.

Failure to comply with any such payment obligations may result in the Principal suspending or cancelling the Respondent's membership of the Panel by written notification. The rights given under this clause are in addition to any other right of the Principal.

C.16. COLLABORATION AND JOINT VENTURES

Where a Panel Member is approached to undertake a Contract the Panel Member may wish to collaborate with another firm on the Panel as a joint venture. Such an arrangement would be acceptable to the Eligible Client, provided that:

a. Both parties to the collaboration are Panel Members, and

b. Both Panel Members create an 'incorporated' joint venture

Where a joint venture is proposed the Eligible Client reserves the right to request the joint venture agreement to be made available to the Eligible Client for review prior to the Eligible Client approving the joint venture. The Eligible Client reserves the right to reject a request to form a joint venture where

a. this would delay the commencement of the Contract, or

b. the Eligible Client considers that the proposed joint venture is not beneficial to the completion of the project.

If a joint venture is approved by the Client then any new entity created would not be eligible for Panel membership.

C.17. PERFORMANCE MANAGEMENT

C.17.1. COMPLETION OF ARCHITECTURAL PERFORMANCE REPORTS

Architectural Consultancy Performance Reports (ACPRs) will be completed for all Contracts expected to be valued at $50,000 and over. One ACPR will be completed for each applicable Contract.

ACPRs will generally be completed by the Project Manager at:

a. Contract completion; and

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b. Where applicable, at the time of contract award of the construction contract to which the Services relate (where this occurs the ACPR will be reviewed at Contract completion and may be amended).

The Client reserves the right to complete or update an ACPR at any time during a Contract.

In completing the ACPR 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 where the Panel Member has not undertaken that role.

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

Finalised ACPRs will be made available to all Department of Housing and Works staff and may be distributed to Client Agencies and other Government agencies.

C.17.2. USE OF ARCHITECTURAL CONSULTANCY PERFORMANCE REPORTS

Architectural Consultancy Performance Reports (ACPRs) 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 C.17.1;

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

c. as part of any refresh of the Panel by the Principal; or

d. as part of an assessment of the Panel Member that may be done as part of a procurement process that is undertaken outside the Panel.

C.17.3. SUSPENSION OR REMOVAL FROM THE PANEL ON PERFORMANCE GROUNDS

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

a. has received one or more ACPRs 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 C.19.1 and C.19.2.

Reference Only

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.

l. fails to comply with all payment obligations under the law and under contract between the Panel Member and its Subconsultants or suppliers in respect of the carrying out of any work awarded under this Panel arrangement

For the purposes of this clause performance in relation to the Panel Member is taken to include performance by any of its personnel or Subconsultants.

C.17.4. SUPPLIER DEMERIT SCHEME

Panel Members are subject to DoHW's Supplier Demerit Scheme. Details of the scheme are available on the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects.

The Supplier Demerit Scheme is in addition to any other form of performance management covered in the Request.

C.18. INFORMATION ON PANEL MEMBER CAPABILITIES

In accordance with the Buying Rules the Eligible Client 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 Eligible Client at the time the Contract is being planned.

As such, it is in the Panel Member's interest to ensure the information held by each Eligible Client 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.

C.19. PANEL MEMBER PERSONNEL

C.19.1. SPECIFIED PERSONNEL

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

C.19.2. 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:

Reference Only

a. in the Panel Member no longer meeting the pre-qualification requirements specified in clause E.5, or

b. in the Principal or Client 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 this Panel.

C.19.3. REMOVAL OF SPECIFIED OR KEY PERSONNEL

The Principal or Client 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 this Panel who, in the opinion of the Principal or Client, is guilty of misconduct or is incompetent or negligent, or whose involvement in this Panel is likely to adversely affect the reputation of the Principal, Client or a Client Agency.

In making this direction, the Principal in respect of the Panel, or Client in respect of a Contract 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 this Panel. This direction does not relieve the Panel Member of any of its responsibilities or obligations under the Head Agreement or any Contract.

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

C.19.4. 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 each Eligible Client are robust and of a high standard;

b. ensure that Key Personnel and any Subconsultants undertaking work for the Client 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 Client.

C.19.5. POLICE AND OTHER CLEARANCES FOR PANEL MEMBERS

The Principal or Client 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

Reference Only

or Client may, without prejudice to any other rights under the Panel or Contract, the Principal may request the Panel Member to promptly remove the personnel from involvement in the Services under the Panel and a Client may request the Consultant to promptly remove the personnel from involvement in the Services under 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.

An Eligible Client 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.

C.19.6. 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;
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

Reference Only

Member must screen all employees, Subconsultants, suppliers and other persons entering the building site 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 register of its employees, Subconsultants, suppliers and other persons accessing the school/site. On a weekly basis the Panel Member is to provide to the school principal the following information:

a. A list of persons who have entered the school/site, confirming of those, who:

   i. have a National Police Certificate as above;

   ii. have already provided a "Confidential Declaration" form to the school;

   iii. have completed a "Confidential Declaration" form for the Panel Member; and

b. A copy of all National Police Certificates and Confidential Declaration forms provided to the Panel Member

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

C.20. INSURANCE

C.20.1. OVERVIEW

To streamline the Consultant engagement process, Panel Members must maintain as part of their obligations as Panel Members the minimum level of insurances as set out in C.20.2. However, during the life of the Panel specific contracts may identify a requirement for a higher level of insurances. Where a higher level of insurances is required this will be discussed at the time of engagement.

C.20.2. INSURANCE REQUIREMENTS

The Panel Member must take out and maintain the following 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 2 to Part C: Buying Rules* will make the Panel Member ineligible to be selected for a Contract.

Reference Only

C.20.3. REPUTABLE AND SOLVENT INSURER

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

Reference Only

C.20.4. 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 C.20.2;

b. not vary, reduce or cancel any insurance required under clause C.20.2 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 anything in this clause, promptly reinstate any insurance required under clause C.20.2 if it lapses or if cover is exhausted.

C.20.5. 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 C.20.2. The Panel Manager or Project Manager may at any time request the Panel Member to provide a certificate of currency of insurance or a copy of any policy.

C.20.6. FAILURE TO PROVE INSURANCE

If the Panel Member does not comply with clause C.20.5 then without limiting any other remedy available to a Client, a Client may withhold payment of any money due under a Contract to the Panel Member until the Panel Member has complied.

C.20.7. 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 C.20.2, 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 C.20.7 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Head Agreement or any Contract.

C.20.8. CONTINUING OBLIGATION

All insurances required under clause C.20.2 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 C.20.2 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 C.20 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 C.20.8 continue.

Reference Only

C.20.9. NO LIMITATION OF OTHER LIABILITIES

Nothing in clause C.20 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.

C.21. RECORDS AND ACCESS

C.21.1. 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 each Eligible Client 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

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.

C.21.2. 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 C.21.

Reference Only

C.22. 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 and Client 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.

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 the Panel.

C.23. 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 Panel;

b. capability statement's provided by Panel Members;

c. the Panel's Predetermined Fees Schedule, and

d. summarised performance management information.

Reference Only

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.

C.24. DISPUTE RESOLUTION

Prior to commencing legal proceedings the parties agree to use reasonable commercial efforts to resolve the problem by negotiation. Commercial efforts include the following steps:

a. endeavour to resolve the matter at an operational level;

b. where a matter cannot be resolved at the operational level the party concerned about the problem may notify the other;

c. management representatives of the parties will then endeavour in good faith to agree upon a resolution;

d. where a resolution cannot be agreed by management representatives then either party may serve the other party a notice of dispute in accordance with clause 32 of the General Conditions.

Nothing in this clause prevents a party from seeking an urgent interim determination where this is deemed necessary.

C.25. SURVIVAL OF TERMINATION

In addition to any rights that have unconditionally accrued prior to termination and in addition to clause C.20.8, the following clauses will survive the completion or earlier termination of the Head Agreement:

a. C.8 - Expiration or Termination of the Head Agreement or Contract

b. C.20 - Insurance

c. C.21 - Records and Access

d. C.23 - Disclosure and Publication of Information

e. C.24 - Dispute Resolution.

C.26. PANEL ADMINISTRATION AND MANAGEMENT

C.26.1. 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.

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.

C.26.2. 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.

Reference Only

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 Member's:

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

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

C.26.3. PANEL MEMBER'S REPRESENTATIVE

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.

C.26.4. 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;

subject to clause C.24, 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, 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.

C.27. GENERAL

C.27.1. ACKNOWLEDGEMENTS

The Panel Member acknowledges that:

a. an Eligible Client may request Services from any Panel Member;

b. The Principal does not make any representation that any Eligible Client will procure or seek to procure Services, or any particular volume of Services, from a Panel Member or through the Panel;

Reference Only

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 Eligible Clients;

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.

C.27.2. 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.

C.27.3. NOTICE OF CLAIMS MADE AGAINST THE PANEL MEMBER

Panel Members are required to 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.

C.27.4. 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.

C.27.5. DISCRETION

Where under the Head Agreement the Principal has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Principal will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

C.27.6. 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;

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

Reference Only

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.

C.27.7. WAIVER

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

Any waiver by the Principal or the Panel Member 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 Panel Member 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.

C.27.8. PUBLICITY

Unless:

a. the Principal gives its prior written consent; or;

b. the Consultant is required to do so by law

the Consultant must not:

c. use a Contract or Head Agreement, or the Principal, Client's or the Client Agency's name or logo; or

d. use the name or logo of any Public Authority specified in a Contract or Head Agreement for the purposes of this clause; or

e. refer to the Consultant's association with the State of Western Australia or the Government of Western Australia which results from a Contract or Head Agreement; or

f. make any statement concerning a Contract or Head Agreement, in any publication, advertisement or media release.

The Principal, Client or the Client Agency may use a Contract and the Consultant's name and logo for reasonable promotional or publicity purposes at their discretion, but where this is done then the Consultant's role will be acknowledged to the extent that is reasonable in the circumstances.

The Principal may publish or provide details on Panel membership.

C.27.9. 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.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

C.27.10. 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.

C.27.11. FURTHER ASSURANCE

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

C.27.12. 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.

C.27.13. 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.

C.27.14. 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. Agrees to make the Trust Deed available to the Principal as requested in clause E.6 - *Disclosure Requirements*

Reference Only

C.28. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause C.28.:

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 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 C.28(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 C.28, 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

Reference Only

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 in connection with,

the Head Agreement.

(e) Nothing in this clause C.28 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 C.28 survives the termination or expiry of the Head Agreement.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART C: PREDETERMINED FEES SCHEDULE

Fee Percentages Including PC Administration.

Feeable Value ($) *(up to the amount identified)*	Fee Percentages			
	Simple	Conventional	Complex	Standard Pattern Primary School
Up to 100,000	10.24	12.19	13.12	3.67
300,000	8.26	9.86	11.09	
500,000	7.51	8.94	10.42	
700,000	7.07	8.38	9.85	
900,000	6.76	7.98	9.35	
1,100,000	6.53	7.68	9.03	
1,300,000	6.29	7.43	8.78	
1,500,000	6.10	7.23	8.57	
1,700,000	5.94	7.06	8.38	
1,900,000	5.80	6.91	8.16	
2,000,000	5.73	6.84	8.04	
3,000,000	5.23	6.32	7.34	
4,000,000	5.00	5.98	7.01	
5,000,000	4.79	5.73	6.78	3.57
6,000,000	4.62	5.53	6.57	
7,000,000	4.49	5.37	6.37	3.46
8,000,000	4.38	5.23	6.21	
9,000,000	4.29	5.12	6.06	3.36
10,000,000	4.20	5.01	5.93	3.15
11,000,000	4.14	4.92	5.82	
12,000,000	4.08	4.84	5.72	
13,000,000	4.03	4.77	5.63	
14,000,000	3.97	4.70	5.54	
15,000,000	3.92	4.64	5.46	
16,000,000	3.88	4.58	5.39	
17,000,000	3.84	4.53	5.32	
18,000,000	3.80	4.48	5.26	
19,000,000	3.76	4.43	5.21	
20,000,000	3.72	4.39	5.16	
21,000,000	3.69	4.34	5.11	
22,000,000	3.65	4.31	5.06	
23,000,000	3.62	4.27	5.02	
24,000,000	3.59	4.23	4.98	
25,000,000	3.56	4.20	4.94	
26,000,000	3.54	4.17	4.90	
27,000,000	3.51	4.14	4.87	
28,000,000	3.49	4.11	4.83	
29,000,000	3.46	4.08	4.80	
30,000,000	3.44	4.06	4.77	

- Any Contract Fee derived excludes disbursements.
- Percentages for Feeable Values between those specified shall be calculated by interpolation.
- Regardless of any calculation derived from this schedule, the Panel will not be used for any Contract expected to exceed $1,000,000.

Reference Only

SCHEDULE 2 TO PART C: BUYING RULES

1. CONSULTANT SELECTION AND ENGAGEMENT PROCESS

Each Eligible Client reserves the right to place Contracts with Panel Members in whatever way that the it considers appropriate in the circumstances.

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

a. Consider the scope and nature of services required to enable an estimate of the Perth based project Feeable Value or hours required, and hence the estimated Contract Fee.

b. Determine if the nature of the project requires the engagement of a Panel Member or a consultant from outside the Panel (note comments below on projects in regional locations).

c. When a project is based in a regional location (as defined in the Buy Local Policy), the Predetermined Fees Schedule will not apply. Refer to Schedule 2 to Part C: Buying Rules, 3. Regional Projects.

1A. Contracts expected to have a Contract Fee of less than $500,000 and where the Services align with the Architectural Services Brief

a. Evaluate the information held by the Eligible Client on Panel Members and select the Panel Member that the Project Manager believes best meets the Eligible Client's needs. Information that will be considered includes, but is not limited to:

i. the requirements of the Contract;

ii. the assessment that was undertaken of the Panel Member as part of the formation of the Panel;

iii. the Panel Member's organisational and Key Personnel capabilities and experience, relative to the requirements;

iv. the Panel Member's current work load or commitments;

v. the Panel Member's past performance;

vi. stakeholder requirements;

vii. fees outside of the Predetermined Fees Schedule or the Hourly Rate Fee Schedule, including any requirement for or the impact of any disbursement;

viii. regional considerations (if applicable); and

ix. Aboriginal Business and Employment considerations.

b. Once the preferred Panel Member is identified:

i. The Project Manager will prepare and release to the Panel Member an Invitation to Submit Proposal. Included with the invitation may be a modified and marked up version of the Architectural Services Brief to describe the specific requirements for the Contract and the Contract Fee that has been derived from the Predetermined Fees Schedule.

ii. In response to the Invitation to Submit Proposal the Panel Member will submit a Proposal which will be considered by the Project Manager.

Reference Only

The Proposal will, amongst other things, confirm the Key Personnel available; and

iii. A Letter of Acceptance will be issued by the Project Manager establishing the Contract based on the Proposal.

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

1B. Contracts expected to have a Contract Fee of less than $500,000 and where the Services do not align with the Architectural Services Brief

a. Evaluate the information held by the Eligible Client on Panel Members and select the Panel Member that the Project Manager believes best meets the Eligible Client's needs. Information that will be considered includes, but is not limited to:

i. the requirements of the Contract;

ii. the assessment that was undertaken of the Panel Member as part of the formation of the Panel;

iii. the Panel Member's organisational and Key Personnel capabilities and experience, relative to the requirements;

iv. the Panel Member's current work load or commitments;

v. the Panel Member's past performance;

vi. stakeholder requirements;

vii. fees outside of the Predetermined Fees Schedule or the Hourly Rate Fee Schedule, including any requirement for or the impact of any disbursement;

viii. regional considerations (if applicable); and

ix. Aboriginal Business and Employment considerations.

b. Once the preferred Panel Member is identified:

i. The Project Manager will prepare and release to the Panel Member an Invitation to Submit Proposal. Included with the invitation will be a description of the Services that are required to be provided.

ii. In response to the Invitation to Submit Proposal the Panel Member will submit a Proposal which will be considered by the Project Manager. The Proposal will, amongst other things, confirm the Key Personnel available, their Hourly Rates (based on those included within the Letter of Appointment) and provide an estimate of the hours required to provide the Services.

iii. A Letter of Acceptance will be issued by the Project Manager establishing the Contract based on the Proposal. The Contract Fee will be established as a 'not to exceed' figure, derived from the Hourly Rates and estimated hours.

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

1C. Contracts expected to have a Contract Fee of more than $500,000 but less than $1,000,000

Reference Only

a. Asses the requirements and determine how many Panel Members should be invited to submit a Proposal. The number selected will be sufficient to ensure value for money is achieved. In general between two and five Panel Members would be invited to submit a Proposal.

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

   i. the requirements of the Contract;

   ii. the assessment that was undertaken of the Panel Members as part of the formation of the Panel;

   iii. the Panel Members organisational and Key Personnel capabilities and experience, relative to the requirements;

   iv. the Panel Members current work load or commitments;

   v. the Panel Member's past performance;

   vi. stakeholder requirements;

   vii. fees outside of the Predetermined Fees Schedule or the Hourly Rate Fee Schedule, including any requirement for or the impact of any disbursement;

   viii. regional considerations (if applicable); and

   ix. Aboriginal Business and Employment considerations.

c. Once the preferred Panel Members are identified:

   i. The Project Manager will prepare and release to the Panel Members an Invitation to Submit Proposal. Included with the invitation may be a modified and marked up version of the Architectural Services Brief to describe the specific requirements for the Contract and a description of the competitive process and the evaluation criteria that will be used to select the preferred Panel Member.

   ii. In response to the Invitation to Submit Proposal the Panel Members will submit a Proposal. The Proposal will, amongst other things, confirm the Key Personnel available and provide a proposed Contract Fee.

   iii. The Project Manager will assess the Proposals and identify the Proposal that represents best value for money. When the estimated Contract Fee is expected to exceed $500,000, an evaluation panel will be formed to assess the Proposals.

   iv. A Letter of Acceptance will be issued by the Project Manager establishing the Contract based on the Proposal.

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

1D. Exceptions

a. In some cases Project Managers may conduct a competitive process notwithstanding the estimated Contract Fee is less than $500,000. In these circumstances the process described in section 1C will be followed.

Reference Only

b. When a Contract involves a 'standard pattern' design, there is an urgent need to award the Contract or the Project Manager determines that conducting a competitive process is not appropriate, Project Managers may approach a single Panel Member and apply the Predetermined Fees Schedule, notwithstanding the estimated Contract Fee is more than $500,000 and less than $1,000,000. When this occurs the process described in section 1A will be followed.

2. LETTER OF ACCEPTANCE

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

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

b. Services to be provided;

c. schedule of deliverables;

d. agreed timelines;

e. Contract Fee and disbursement arrangements (if applicable);

f. any special terms and conditions;

g. any allowances in addition those covered within a fees schedule, and

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

3. REGIONAL PROJECTS

When a project involves construction in a regional location (as defined in the W.A. Buy Local Policy) the Eligible Client will undertake a process, outside of the Panel arrangement, to determine whether or not use of the Panel is appropriate.

This will involve consideration of the services required (type, value etc.) and the capabilities of firms to do the work, which may or may not be Panel Members.

Where the Panel is utilised, the following process must apply:

a. suitable firms will be invited to submit a lump sum proposal for commissions of any value (i.e. the pre-determined fee schedule is not used) and to include any price preferences which may apply (see Clause C.11.6.).

b. project manager is to estimate disbursements for all invited panel members.

c. evaluation of proposals must take into consideration the application of any price preferences and the estimate of disbursements.

4. ABORIGINAL BUSINESSES AND PERSONS

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

Reference Only

Where a competitive process is used within the Panel, an Aboriginal Business and Employment Tendering Preference may apply (see C.12.6.3).

5. INVESTIGATIONS

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.

Reference Only

PART D CONDITIONS OF CONTRACT

D.1. CONDITIONS OF CONTRACT

The terms and conditions for Contracts are defined in Item 3 of the General Conditions of Contract Annexure 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 D: 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 D: Annexure to General Conditions of Contract*.

D.2. DEFINITIONS AND INTERPRETATIONS FROM HEAD AGREEMENT

D.3. SPECIAL CONDITIONS OF CONTRACT

D.3.1. ARCHITECTURAL PERFORMANCE REPORTS

Contracts awarded under the Panel that exceed $50,000 in value (as varied), will be subject to a formal performance management scheme.

As part of the scheme an Architectural Consultancy Performance Report (ACPR) will be completed by the Project Manager as outlined in clause C.17 *Performance Management*.

Panel Members are also subject to the Supplier Demerit Scheme. Details of the scheme are available on the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects.

D.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 Client for which the Services may be required, such that should the Client 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:

Reference Only

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

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

The Principal will not accept any Offer that does not comply with the provisions of this sub-clause.

D.3.3. ACCESS TO PREMISES

The Client will provide the Consultant with access to the Client's and Client Agency's 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 Client , at its sole discretion.

Where access to designated premises is temporarily denied by the Client 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 Client 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 Client and the occupier of the premises relating to occupational health, safety, security and confidentiality.

D.3.4. CONFIDENTIALITY

When engaged to provide Services, Consultants must keep confidential all information that the Client 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 Client's Confidential Information except:

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

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.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

D.3.5. CONSULTANT DECLARATIONS

The Panel Member acknowledges that where engaged as a Consultant:

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

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

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

   ii. accountability and professional manner of its conduct;

   iii. actual perceived or potential conflicts of interest;

   iv. treatment of confidential information; and

   v. 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 the Client directly or indirectly related to the Contract and/or the Services.

D.3.6. CONSULTANT'S ATTESTATION

Where the Consultant is required to produce and deliver tender documents to the Client then the Consultant must also include a written attestation by the Consultant confirming that:

a. the tender documents comply with the "*Open and Effective Competition Policy*" (works) and "*Guide Notes to Assist in the Preparation of the Specification Preliminaries And The Specification Generally for Works Contracts Tendered by the Department of Housing and Works in the Name of the Minister for Works*" with respect to specification by example of any materials, products or components of the Works;

b. except for any required shop drawings detailing design development, the tender documents do not include any requirements for the contractor to provide any design performance requirements for any materials, products or components of the Works that the Principal's Representative has not expressly approved in writing;

c. the Consultant and any secondary or sub-consultant(s) has not received any financial incentive to specify any materials, products or components of the Works;

d. the tender documents do not include any nominated subcontractors that the Client has not expressly approved in writing; and

e. the Consultant has checked all documents prepared by any secondary or subconsultant(s) engaged in the preparation of the tender documents and confirms those documents comply with all subclauses above, are coordinated and consistent with the architectural drawings and that there are no conflicts or clashes detected.

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D.3.7. VARIATION OF CONTRACT FEE

When:

a. the Services involve a 'full service' (with Service starting at the schematic design phase (or project definition phase for Education projects) and ending after the construction contract reaches final completion); and

b. the Predetermined Fees Schedule has been used to calculate the Contract Fee; and

c. the Feeable Value has changed between when the Contract Fee was set and when the pre-tender estimate associated with the construction contract is finalised;

the Client may recalculate the Contract Fee based on the latter Feeable Value if the Client believes that the change in Feeable Value has resulted in the Consultant being required to undertake more or less work than was envisaged when the Contract was awarded.

D.3.8. WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY – REPORTING OBLIGATIONS

The State Government's *Western Australian Industry Participation Strategy* (**"WAIPS"**) under the *Western Australian Jobs Act* 2017 (WA) came into full effect on 1 October 2018 and shall apply to this Panel. Panel Members are encouraged to obtain a copy of the WAIPS from the Industry Link Advisory Service ("ILAS") at https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/industry-link-advisory-service.

The Panel Member must comply with WAIPS, which shall be applied to this Panel, in the manner set out below.

The Western Australian Jobs Act 2017 (WA) and the Western Australian Industry Participation Strategy ("WAIPS") made under it contain obligations for agencies to require from prospective suppliers reports in connection with the supply of goods or services to or for agencies or the State. The Client is an "Agency' for the purposes of WAIPS participation plans.

Both the Client and the State may use or disclose the reports required under the Contract for the legitimate purposes of or relating to government or the business of government.

These reports may be subject to an independent audit.

D.3.8.1. Definitions

In this clause, the following term has the following meanings, unless the context otherwise requires;

a. "ILAS" means the Industry Link Advisory Service at the Department of Jobs, Tourism, Science and Innovation. More information on ILAS can be found at https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/industry-link-advisory-service.

D.3.8.2. Contract Reporting

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The Panel Member must submit to the Client a report and must use the form of, and must address the matters outlined in, the appropriate Report Template. These templates are available from the Principal and also ILAS.

The Panel Member must submit:

a. an Annual Report to the Client at the conclusion of each financial year for the duration of this Panel, or on such other date each year as is notified by the Client to the Panel Member; and

b. a Final Report no later than two (2) months after the expiration of the Panel.

Each report required under subclause (b) above must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

D.3.8.3. Use of Information

Both the Client and the State of Western Australia may use or disclose any Annual Report or Final Report, or any information or documentation referred to in the clauses above for the legitimate purposes of or relating to government or the business of government.

D.3.8.4. Clause Survives

This clause survives the termination or expiration of the Panel.

D.3.9. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause D.3.9.:

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 officers, employees or agents to contravene the PRIS Act, to the

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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 D.3.9(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 D.3.9, 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 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.3.9 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 D.3.9 survives the termination or expiry of the Contract.

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SCHEDULE 1 TO PART D: 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;

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

(c) act of God;

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(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 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.*

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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:

> *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.*

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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 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.

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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;

(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.

- 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.

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

(d) The Consultant shall submit reports to the Client 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 Client and at a location specified by the client and shall attend any other meetings which are

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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 Client under clause 15.1 only if the deviation is required for the convenience of the Client 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:

(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.

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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,

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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.

- 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 Client will affect the manner in which or the ability of the Consultant to perform the Contract.

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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 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.

CLAUSE 26 TERMINATION WITHOUT CAUSE

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

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RESPONDENT TO READ AND KEEP THIS PART

- 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

(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

Reference Only

(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;

(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.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

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 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.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

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

> *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.*

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.*

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 2 TO PART D: 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 (clause1.1)	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……

[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, facsimile number 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 Consultant Contract.*

[7] *Specify the fee amount for the Contract. The Contract Fee is inclusive of all fees of the Consultant and necessary Subconsultants*

[8] *Specify whether claims for payment will be on a, percentage, or hourly rates basis or any combination.*

Reference Only

<table>
<tr><td></td><td></td><td>And/or</td></tr>
<tr><td></td><td></td><td><table>
<tr><td>Hourly Rates</td><td>Yes</td><td>~~No~~</td></tr>
<tr><td colspan="3">(Strike through as appropriate)</td></tr>
<tr><td>9GST Inclusive</td><td>Yes</td><td>No</td></tr>
<tr><td colspan="3">(Strike through as appropriate)</td></tr>
<tr><td>10Role / Task:</td><td colspan="2">Rate $/per</td></tr>
<tr><td>-</td><td colspan="2"></td></tr>
<tr><td>11Stage / Task</td><td colspan="2">$ / % of Fee</td></tr>
<tr><td></td><td colspan="2"></td></tr>
</table></td></tr>
<tr><td>Item 9
(clause 10.2)</td><td>Disbursements for which the Consultant may claim payment:</td><td>12</td></tr>
<tr><td>Item 10
(clause 10.3)</td><td>Time to claim payment is not later than:</td><td>13</td></tr>
<tr><td>Item 11
(clause 10.6)</td><td>Time for payment is no later than:</td><td>30 calendar days</td></tr>
<tr><td>Item 12
(clause 10.9)</td><td>The rate of interest for overdue payment is:</td><td>6.00% per annum.</td></tr>
<tr><td>Item 13
(clause 12.1)</td><td>14Alternative 1: The date after commencement of this Contract, by which the Services must be completed is:</td><td>Alternative 1:
Date: As set in the Letter of Acceptance</td></tr>
<tr><td></td><td>15Alternative 2: Under the program attached.</td><td>Alternative 2: see attached program.</td></tr>
</table>

[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 Annexure 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.*

Reference Only

PART D

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

Reference Only

[16] *Insert the Key Personnel to be used for this Contract as per .*

[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.*

PART D

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:	***20***None
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.

PART D

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 3 TO PART D: PANEL – WAIPS REPORTING TEMPLATE

(SAMPLE COPY - REPORTING REQUIREMENTS ARE A CONTRACTUAL OBLIGATION, IN ACCORDANCE WITH CLAUSE D.3.8 'WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY – REPORTING OBLIGATIONS' OF THE ARCHITECTURAL SERVICES 2018 REQUEST)

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

Government of **Western Australia**
Department of **Jobs, Tourism, Science and Innovation**

WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY

REPORTING TEMPLATE

ARCHITECTURAL SERVICES PANEL 2018

Reporting requirements are a contractual obligation, in accordance with Clause D.3.8 '*WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY – REPORTING OBLIGATIONS*' of the Architectural Services 2018 Request.

Please forward this completed report to WorksConsultancyPanels@DoHW.wa.gov.au.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

Panel Member Details

1. **Business Name:** Click here to enter text.
2. **Contract Manager:** Click here to enter text.
3. **Contact phone number:** Click here to enter text.
4. **Contact email:** Click here to enter text.
5. **Business Address:** Click here to enter text.
6. **Report Date:** Click here to enter a date.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

Section A: Panel Member Workforce

Employment is defined by both the Australian Bureau of Statistics and the International Labour Organisation as a minimum of one hour's paid work per week.

Important: All table cells need to be completed. Enter a numerical value or NA for the elements that are Not Applicable.

1. **Please provide your company's actual workforce directly employed in delivering services to date under this Panel arrangement.**

Workforce	WA (Metro)			WA (Regional)			Other Australian States, Territories and New Zealand	Overseas
Gender	M	F	O	M	F	O	All	All
Totals								

Gender - M = Male **F** = Female **O** = All other individuals categorized, either by themselves or by society, as neither male nor female. **All =** all genders combined.

Workforce: Means the total number of workers directly employed on a contract. This encompasses full-time, part-time, casual employees, apprentices and trainees, workers engaged through labour hire arrangements and other employer supported employment initiatives such as cadetships and internships.

Section B: Contract division

Important: All table cells need to be completed. Enter a percentage numerical value or NA for the elements that are Not Applicable. The sum of all jurisdictions need to equal 100%.

2. **Please provide the actual spend by jurisdiction to date in delivering services under this panel arrangement.**

WA (Metro %)	WA (Regional %)	Australian and New Zealand %	Overseas %

Metro: The Metropolitan area is bounded by the City of Wanneroo and the City of Swan in the North, the Shires of Mundaring, Kalamunda and the City of Armadale in the East and the Town of Kwinana and the City of Rockingham in the South.

Regional: The Western Australian regional area is all those parts of Western Australia which are located outside of the Metro area.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

Declaration

I, _____, being an authorised person, declare that the information in this report is, to the best of my knowledge, true, accurate and complete.

Signature: ……

Position: Provide position title

Date: Click here to enter a date.

Reference Only

SCHEDULE 4 TO PART D: 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 D

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.

Reference Only

PART D

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.

Reference Only

[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.*

PART D

RESPONDENT TO READ AND KEEP THIS PART

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.

(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.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

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.

(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.

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 E CONTENT REQUIREMENT FOR RESPONDENT'S OFFER

E.1. COMPLETING THE OFFER

In completing their Offer Respondents are to complete and submit the forms contained in *Schedule 1 to Part E: Forms to be Completed*. The forms to be completed include a reference to the commentary provided in Part E. In particular Respondents are to ensure that in completing the required forms and in the provision of other required information they take account the requirements contained in E.3 to E.12.

Respondents should also note the instructions regarding the submission of the required forms and additional information as "Volumes" as outlined in *Schedule 1 to Part E: Forms to be Completed.*

E.2. USE OF THE OFFER

In submitting its Offer, the Respondent is aware and accepts that the Principal will use the information provided:

a. as part of evaluating the Respondents suitability for Panel membership;

b. in determining a Panel Members suitability for any Contract award under the Panel

E.3. 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.

E.4. PANEL APPLICATION

The Principal will only consider Respondent's for membership under a pathway as nominated by the Respondent in *Form 2 – Architectural Services Panel Application*.

As previously stated admission to the Panel only requires a successful evaluation against any pathway. However, Respondents may apply for Panel membership under a number of pathways.

E.5. PRE-QUALIFICATION REQUIREMENTS

The Respondent must complete *Form 3 - Pre-Qualification Requirements*. The Principal will only consider any Offer from a Respondent who has at least one full time employee who is a registered and practicing member of the Architects Board of Western Australia.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

E.6. DISCLOSURE REQUIREMENTS

The Principal will, as part of the assessment, consider the extent to which the Offer satisfies the following disclosure requirements as provided by the Respondent in *Form 4 – 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 C.19.2.

f. compliance with terms of the Request.

The Respondent acknowledges that the Insurance provisions outlined in C.19 relating to proof of insurance, while detailing requirements for Panel Members once appointed to the Panel, also apply to the evaluation of Respondent's Offers for Panel membership. The Principal reserves the right to request copies of the Respondent's insurance policies and where these are withheld the Principal may decline to appoint a Respondent to the Panel.

Where a Respondent indicates that insurances will be obtained prior to Panel membership the Principal will advise any successful Respondent of their eligibility for Panel membership subject to the provision of proof of insurance. The Respondent will have five Business Days to obtain and provide proof of the required insurances. Where required by the Principal the Respondent is to provide copies of the insurance policies obtained to the Principal within three Business Days. A failure to comply with these requirements may mean that the Principal declines to appoint the Respondent to the Panel.

The Principal reserves the right to reject any Offer that does not properly address any of the disclosure requirements, and/or which contains material departures from the terms of the Request.

E.7. ENGAGEMENT OF SUBCONSULTANTS

The Principal accepts that a Respondent may seek the assistance of a Subconsultant for certain work. The Respondent must clearly identify within their Offer the extent of any potential engagement or where the Respondent has relied on the experience or qualifications of any Subconsultant within the Respondent's Offer. Subconsultants are to be identified in Form 4 – *Disclosures*.

E.8. ABORIGINAL ENGAGEMENT

The Principal will also take into consideration the Respondent's level of Aboriginal Business engagement and level of employment of Aboriginal Persons. The Respondent is to provide details in relation to these areas on *Form 5 - Aboriginal Businesses Engaged as Suppliers or Subconsultants* and *Form 6 - Information on Employment of Aboriginal Persons*.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

E.9. 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). Within five Business Days of being notified of their appointment to the Panel and prior to any Contract being awarded Panel Members are required to lodge with the Principal a completed and signed Recipient Created Tax Invoice Agreement (RCTI). Where required, a copy of the RCTI can be obtained from the Principal.

E.10. QUALITATIVE REQUIREMENTS

Respondents must demonstrate:

a. that they have the capability to undertake Contracts relevant to each pathway they are applying for, with reference to the experience of the Respondent, the experience of their specified personnel and their past performance.

   This criterion will have an overall weighting of 60%, comprising 20% for the Respondent's experience, 30% for personnel experience and 10% for past performance.

b. that they have suitable processes in place to facilitate good quality design, documentation and construction. This criterion will have a weighting of 20%.

c. the extent of their commitment to local content. This criterion will have a weighting of 20%.

Respondents are required to provide detailed responses in line with the requirements contained in E.10.3 for each of these criteria.

E.10.1. ADDRESSING THE QUALITATIVE REQUIREMENTS

It is in the Respondent's best interest to ensure that they fully understand what is required of them in their qualitative response and to ensure that they address those requirements in the manner expressed in the Request.

As Panel membership will be competitive and Panel numbers limited, Respondents should ensure that the evidence provided against the qualitative criteria directly relates to the identified criteria relevant to the specific pathway nominated. Information that is of a generic promotional or advertising nature, or which is not directly related to the specific criteria should not be submitted.

Respondents should also be aware that limitations on the amount of content provided against each criteria have been identified in the relevant criteria section. In evaluating submissions the Principal may not assess any material that exceeds the identified limits or which is considered not to be directly relevant to the identified criteria. The Principal reserves the right to reject any Offer which fails to comply with the limit restrictions applicable to any area.

Note – a reference to a page of content means the equivalent of one side of a sheet of A4 paper typed using a font of similar size and clarity to Arial size 11, with reasonable margins and headers/footers.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

In preparing its Offer, the Respondent is to:

a. Complete the forms provided at the end of this section and in doing so comply with the specified limits in relation to the provision of information - please refer to each section for the maximum amount allowed;

b. Structure its response in accordance with *Schedule 1 to Part E: Forms to be Completed*

c. address the three qualitative criteria (A to C) as outlined in clause E.10, noting that criterion A needs to be addressed for each pathway the Respondent is applying for, while criteria B and C only need to be addressed once;

b. ensure that the content provided is directly relevant to the nominated pathway and to the criteria being responded to;

c. limit the information provided to relevant recent experience – in this instance recent means within the last five years;

d. clearly separate the experience or expertise relating to the engagement of a Subconsultant or other consultant outside of the Respondent's practice from that of the Respondent;

e. not provide resumes for any personnel (all relevant information is to be provided in Form 11);

f. take into account all requirements included in or referred to within the Request;

g. take into account the requirements of and the type of architectural services required by the Architectural Services Brief;

h. 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;

i. recognise that the qualitative criteria are not weighted equally, and

j. nominate any Offer information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions. Note - Respondents are to refer to section 11 of *Schedule 1 to Part B: Request Conditions* in relation to the Principal's position in regard to ongoing use of and access to the Respondent's Offer.

E.10.2. EVALUATING THE QUALITATIVE CRITERIA

Respondents should note that the qualitative criteria will be evaluated in the context of Contracts potentially valued at up to $1,000,000 (GST inclusive).

The qualitative criteria are not weighted equally. Refer to the % weighting for each of the criteria A to C listed in E.10.3.

Where it is identified that an Offer has been submitted 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),

Reference Only

then local content (selection criterion C) will not be evaluated during the qualitative assessment. In this case the 20% local content weighting will be divided proportionately across the remaining two criteria (criteria a and b).

The revised weightings if this were to occur are shown adjacent to the standard weightings (see [xx%]).

When assessing responses against the qualitative criteria, the Principle will assess the claims against the pathways as defined in B.7.2, the scope of the Panel and the role of the Department of Housing and Works.

E.10.3. QUALITATIVE CRITERIA

As noted at E.10 the following three criteria will be assessed for all Respondents:

A. Demonstrated Capability.
(60% WEIGHTING) [75%]

Note - Respondents are required to provide this information for each of the pathways they apply for. Respondents should avoid providing generic material and should ensure that the information provided for each pathway is specific and relevant to that pathway.

The Respondent must demonstrate architectural experience which is comparable to the architectural services that will be sought under the Panel relevant to the identified pathway.

Respondents can provide examples of their firms experience gained as a subconsultant, joint venture partner or member of a similar commercial arrangement. Where this occurs, the Respondent is to clearly identify in Form 8 and Form 9 that the experience was obtained in this manner.

In responding to this criteria the Respondent is to address the following three specified areas:

a. Respondent's Experience with Relevant Projects (20%) [25%]

In demonstrating recent relevant experience respondents will be required to provide details relating to:

i. List of Project Experience Relevant to Pathway(s). Respondents are to list commissions that are in progress or were completed within the past 10 years. The information required here will include client, project identity, respondent's role, project value, commission value and year completed. The Respondent's information is to be presented by completing *Form 8 - List of Project Experience Relevant to a Specific Pathway*. Respondents should not present projects that relate to multiple pathways on the same form. Respondents should be aware that where a listed project does not fall within the specified pathway the project will not be considered by the evaluation panel.

ii. Experience Relevant to Pathway. Respondents are to identify and outline a maximum of FOUR projects selected from those listed for each pathway nominated. Respondents need to clearly and concisely detail the nature of the project and the Respondent's role in that project. A maximum of TWO pages per pathway (covering four projects) can be completed. The information is to be presented by completing *Form 9 -*

Reference Only

Experience Relevant to a Specific Pathway and should include the following details:

1. The project stages (as identified in the Request and detailed in the Architectural Services Brief) against which the area of relevant experience claimed aligns;
2. Details and examples of where the Respondent was able to value add to the architectural services provided in areas such as Building Information Modelling, Modular Buildings or Urban Planning etc.

iii. Referees Relevant to Pathway

Respondents are also required to provide the contact details of two relevant referees who can comment specifically on the role undertaken by the Respondent and potentially on the Respondent's performance in relation to each of the projects identified. The information is to be presented by completing a *Form 10 - Referees Relevant to a Specific Pathway* for each pathway nominated.

Where a Respondent is a recently established legal entity the Respondent may have difficulty in documenting the Respondent's experience. In this situation the Respondent may make a case as to why the experience of a different legal entity should be taken into account, particularly where a Respondent can establish a clear link between the old and new entity. However, the Principal reserves the right to accept or reject any case presented by a Respondent. In making a case the Respondent should ensure that the argument is based on the experience of the 'entity' rather than just that of individuals as this experience is captured by the content submitted in response to (b) *Expertise of Specified Personnel*

b. Expertise of Specified Personnel (30%) [37.5%]

The Respondent must identify the Specified Personnel that the Respondent proposes will be engaged in an architectural capacity for each nominated pathway by completing a *Form 11 – Specified Personnel Relevant to a Specific Pathway* for up to TEN people for each pathway. The information provided will identify the individual's qualification, employment status, role within the company and any area of specialisation relevant to the nominated pathway.

In completing Form 11 Respondents are to ensure that:

i. the information provided must clearly relate to and demonstrate the skills, knowledge and experience directly relevant to the type of architectural services identified by the Request and to the pathway being applied for;

ii. in addition to being directly relevant, the information should be both succinct and clear.

iii. details of past experience is to be limited to the past FIVE years only. Any information provided beyond this period will be discounted by the evaluation panel.

iv. any experience gained while employed or contracted to other firms is to be clearly identified as such.

Reference Only

v. where the Respondent is proposing to use Subconsultants, then Subconsultant personnel are to be clearly differentiated from the Respondent's personnel.

c. Respondent's Past Performance (10%) [12.5%]

The Respondent must in no more than TWO pages demonstrate evidence of successful outcomes in terms of functionality, sustainability, timeliness, adherence to budgets, stakeholder satisfaction and maintainability with respect to up to FOUR projects relevant to the pathway(s) the Respondent is applying for, and which have been completed within the past TEN years. This information must be provided for each pathway the Respondent is applying for and must be submitted using *Form 12 – Respondent's Past Performance*.

Within this information Respondents must identify a relevant referee for each of the identified projects who that can speak to the Respondent's achievements on that particular project. Referees will typically be the client/principal or the head contractor.

In addition to the nominated referees confirmation of past performance may also be supported in the form of recognition by way of architectural awards or written client performance reports. Such evidence will not be included within the page limit noted above.

The Principal may also assess past performance using information on performance relating to a Respondent held by or known to the Principal including but not limited to consultant performance reports. Where the Respondent wishes to address any issues that might have be highlighted in information held by the Principal, it may do so in no more than ONE page.

The Principal may also contact referees identified in the project list provided under the 'Respondent's experience' criterion.

B. Processes in Place
(20% WEIGHTING) [25%]

Respondents are only required to provide a response to this criteria once, regardless of how many pathways they apply for

The Respondent must in no more than THREE pages describe the existing processes that it has in place to facilitate good quality design, documentation and contract administration.

In addressing this requirement the Respondent must complete *Form 13 – Processes in Place*, and:

a. Describe the methodology or approach that was adopted for achieving budget control, buildability and innovation.

b. Demonstrate its commitment to minimising environmental impact.

c. State the quality assurance processes and standards that will be adopted and the approach that the Respondent will take to ensure that the design and documentation achieve the required quality in services undertaken on the Panel.

Reference Only

d. Outline how these processes and standards will specifically target the key issues for the initial construction, whole-of-life operations and on-going maintenance.

e. Identify the critical management personnel who are responsible for developing and maintaining the respondent's quality assurance and business process systems, and for providing quality assurance and oversight of individual Contracts. Relevant personnel information can be provided in *Form 11 – Specified Personnel Relevant to a Specific Pathway*.

The Respondent should avoid simply referring to the existence of any Quality Assurance accreditation held by the Respondent.

C. Local Content
(20% WEIGHTING) [0%]

Respondents are only required to provide a response to this criteria once, regardless of how many pathways they apply for.

The Respondent must, in no more than TWO pages demonstrate how it promotes and will continue to promote local business, Western Australian business and Aboriginal Businesses or Aboriginal people. Respondents should demonstrate how they support the development of the Architectural profession in Western Australia.

In addressing this requirement the Respondent must complete *Form 14 – Promotion of Local Content* and provide responses which:

a. detail where the Respondent operates any offices and what Services are provided from these offices.

b. specify the location where the majority of the Services will be undertaken.

c. detail how the Respondent supports the development of the Architectural 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. identify any opportunities for Aboriginal Businesses or Aboriginal people that the Respondent has previously provided, and what opportunities it will provide if it is appointed to the Panel.

f. identify any employment creation or retention opportunities which would arise if the Respondent is appointed to the Panel.

Relevant information provided by Respondents in response to the Pre-qualification and Disclosure Requirements will also be used to assess a Respondent's claims against this criterion.

As noted in E.10.2 where it is identified that an Offer has been submitted from a Respondent in a state or country identified as being a member or signatory with Australia to a Free Trade Agreement, Government Procurement Agreement or Economic Partnership Agreement then the local content selection criteria will not be evaluated during the qualitative assessment.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

E.10.4. GENERATION OF RESPONDENT SCORES AND RANKING

As summarised in B.7.2.2, Respondents will be ranked on a pathway by pathway basis, based on the assessment of their claims against the criteria (subject to the Respondent meeting the Prequalification and Compliance Requirements, and the Hourly Fee rates being acceptable). The example of the methodology that will be used to score and rank each Respondent is included below solely to assist Respondent's understand how the process will operate.

Example Methodology

AA Architects applies for the Health, Education and Regional Projects Pathway.

Note the evaluation for criterion 'B' and criterion 'C' will be common to all pathways that AA Architects applies for

Health pathway assessment

Criterion A: Demonstrated capability:	50 (out of 60)
Criterion B: Process in Place:	15 (out of 20)
Criterion C: Local Content:	16 (out of 20)
Overall score for Health pathway:	**81**

Education pathway assessment

Criterion A: Demonstrated capability:	35
Criterion B: Process in Place:	15
Criterion C: Local Content:	16
Overall score for Education pathway:	**66**

Regional projects pathway assessment

Criterion A: Demonstrated capability:	40
Criterion B: Process in Place:	15
Criterion C: Local Content:	16
Overall score for Regional pathway:	**71**

Similar assessments are then done for BB Architects, CC Architects and DD Architects, and a ranking is then developed.

Respondent	Health pathway score	Health pathway ranking	Education pathway score	Education pathway ranking	Regional projects pathway score	Regional projects pathway ranking
AA Architects	81	1	66	4	71	2
BB Architects	76	2	75	2	80	1

Reference Only

CC Architects	70	3	80	1	65	3
DD Architects	65	4	70	3	60	4

E.11. FEES

In submitting an Offer Respondents are to fully consider the details provided in relation to fees at C.11.

E.11.1. PREDETERMINED FEES

The fees identified by the Principal in '*Schedule 1 To Part C: Predetermined Fees Schedule*' are for a standard range of services and will be used to establish a fixed Contract Fee forming the basis of any Contract. The fee derived from the schedule is GST inclusive but is exclusive of disbursements (if applicable). Respondents are not required to complete any *Form* in relation to the predetermined fees but in submitting an Offer the Respondent agrees to those rates.

E.11.2. HOURLY RATES

Where services fall outside the standard range, such as in relation to site investigations, reports and other small projects for which the Predetermined Fees Schedule is deemed inappropriate, Contracts may be awarded using hourly rates. The hourly rates are determined on the basis of an agreed scope of work, in accordance with this Subclause and the rates included in the Letter of Appointment, and as amended from time to time in accordance with the Head Agreement.

The hourly rates submitted by the Respondent will be taken into account in the evaluation of the Respondent's Offer. The Principal reserves the right to set aside an Offer where the Respondent's hourly rates are assessed as being either too high or two low when compared to the assessed quality of the Offer and to other Respondents.

In completing *Form 7 – Hourly Rates Fee Schedule* Respondents are to insert the appropriate hourly rate in each cell in the schedule that they propose will be used to calculate non-standard Contract Fees. The rate identified by the Respondent must incorporate all costs of providing the services as detailed in the Architectural Services Brief.

Note - where no rate 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.

E.12. RESPONDENT'S REPRESENTATION

In making an Offer in reply to the Request the Respondent offers to provide the Services under this Panel as described in the Request.

The completed forms contained in *Schedule 1 to Part E: Forms to be Completed* and any other information provided will comprise the Respondent's Offer. The Respondent warrants that the

a. information included in the Offer is true and accurate, and

Reference Only

b. that the Offer is signed by a person authorised to do so on behalf of the Respondent.

Reference Only

SCHEDULE 1 TO PART E: 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.7.

The competed forms should be submitted as the following separate parts or 'Volumes'

Volume 1 – The forms to be bound as Volume 1 are Forms 1 through to 7 and Forms 13 through to 14. This signature page must be included at the beginning of Volume 1. These forms only have to be completed and submitted once.

Volume 2 – The forms to be bound as Volume 2 are Forms 8 through to 12 which must be completed for the specific Panel Membership pathway applied for. These completed forms are to only include content relevant to that specific pathway.

Volume 3 onwards – Where a Respondent wishes to submit applications under multiple pathways then separate Forms 8 through to 12 are to be completed for each pathway applied for and these are to be bound as separate Volumes. These Volumes are to only include content relevant to that specific pathway.

Where the Respondent submits electronic Volumes each Volume is to be stored as a separate file and not combined into one file.

Respondents must include within the title of each volume (other than Volume 1) a reference to the pathway that is covered by that volume. By way of an example, if a Respondent is applying for the Education, Justice and Heritage pathways, its Offer would comprise Volume 1, Volume 2 (Education pathway), Volume 3 (Justice pathway) and Volume 4 (Heritage pathway).

Respondents are to note that it is not acceptable to submit applications for multiple pathways in one Volume.

CONFIRMATION OF OFFER

The Respondent confirms that 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

FORMS TO BE COMPLETED BY RESPONDENT

RESPONDENT TO COMPLETE

***FORM 1* – IDENTITY AND CONTACT DETAILS** **(REFER TO E.3)**

(a) Name of Legal Entity: .....

(b) ACN (if a company): .....

(c) Principal Permanent Operational Office: .....

.....

.....

(d) Other Permanent Operational Office(s): .....

.....

.....

(e) Registered Business 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 .....

.....

.....

Reference Only

RESPONDENT TO COMPLETE ***FORM 2* – ARCHITECTURAL SERVICES PANEL APPLICATION**	**(REFER TO E.4)**

The Respondent applies for membership of the Panel under the pathways as ticked below:

1. Health ❑
2. Education ❑
3. Justice ❑
4. Other Agencies ❑
5. Regional Projects ❑
6. Low Value and Minor Works ❑
7. Heritage Specialisation ❑

For each pathway nominated, the Respondent is to complete separate Forms 8 to 12 to ensure that the information requested in each Form is directly relevant to that pathway, and is not of a general or generic nature.

Note: Panel Members are only required to be admitted to the Panel through one of the pathways.

RESPONDENT TO COMPLETE ***FORM 3* – PRE-QUALIFICATION REQUIREMENTS**	**(REFER TO E.5)**
The Respondent confirms that it has at least one practitioner registered with the Architects Board of Western Australia	Yes ❑ No q

Reference Only

RESPONDENT TO COMPLETE

***FORM 4* – DISCLOSURES** **(REFER TO E.6)**

Respondents are to Complete Disclosure Forms A to E

RESPONDENT TO COMPLETE

A. Legal Entity

Please nominate the structure of the legal entity submitting this Offer, by ticking one of the boxes below.)

- ❑ Sole trader
- ❑ Partnership (Attach, on a separate sheet, the full names of all Partners).
- ❑ 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).
- ❑ Incorporated Joint Venture (Attach a copy of the ASIC registration details including the full names of directors and shareholders).
- ❑ Unincorporated Joint Venture (i.e. Consortium) (Attach details of each member of the consortium as appropriate to the corporate structure of the member).
- ❑ Trading Trust (Attach a copy of the Trust deed).
- ❑ Other (Attach details)

RESPONDENT TO COMPLETE

B. Subconsultants

Does the Respondent intend to engage, another person or entity as a Subconsultant in connection with the supply of the Services?

Yes ❑	No ❑

If yes, Respondents are to complete the following table.

Legal Entity Name	ACN / ABN	Type of Services to be provided	Location where the Services will be performed

Reference Only

RESPONDENT TO COMPLETE			
C. Criminal Convictions Has the Respondent or any person proposed in the Offer (including any person associated with a proposed Subconsultant) been convicted of a criminal offence that is punishable by imprisonment or detention?			
Yes	❑	No	❑
If yes, provide details:			

RESPONDENT TO COMPLETE			
D. Conflict of Interest Does the Respondent or any identified Subconsultant have any actual, potential or perceived conflict of interest in relation to the Panel?			
Yes	❑	No	❑
If yes, provide details:			

Reference Only

RESPONDENT TO COMPLETE

E. Insurance requirements

The Respondent acknowledges that the Insurance provisions outlined in C.19 relating to proof of insurance, while detailing requirements for Panel Members, also apply to the evaluation process for Panel membership. The Principal reserves the right to request copies of the Respondent's insurance policies and where these are withheld the Principal may decline to appoint a Respondent to the Panel.

Does the Respondent meet the insurance requirements as set out in the Request?

Yes	q	No	q

If Yes provide the following insurance details

	Public Liability	Professional Indemnity	Workers' Compensation
Insurer			
ACN			
Policy No			
Insured Amount			
Expiry Date			
Exclusions, if any			

If no, does the Respondent confirm that within five Business Days of being notified of their eligibility for Panel membership and prior to admission to the Panel obtain and provide proof of the required insurances, as set out in the Request?

Yes	q	No	q

RESPONDENT TO COMPLETE

Reference Only

F. Compliance with terms of the Request	
The Respondent confirms that its Offer complies with the terms of the Request	Yes ❑ No ❑

Reference Only

FORM 5 – ABORIGINAL BUSINESSES ENGAGED AS SUPPLIERS OR SUBCONSULTANTS (REFER TO E.8)		
	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

FORM 6 – INFORMATION ON EMPLOYMENT OF ABORIGINAL PERSONS			(REFER TO E.8)
Note: All costs used and shown in this document must 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 Respondent	1) ..... 2) ..... 3) ..... 4) ..... 5) ..... 6) ..... 7)	1) ..... 2) ..... 3) ..... 4) ..... 5) ..... 6) ..... 7)	1) $..... 2) $..... 3) $..... 4) $..... 5) $..... 6) $..... 7) $.....
		SUB-TOTAL 1	$ .....
	Name of Subconsultant or Supplier	Details of Aboriginal Person Employed	Employment Costs (GST inclusive)
SECTION B Subconsultants or Suppliers	1) ..... 2) ..... 3) ..... 4) ..... 5) ..... 6) ..... 7)	1) ..... 2) ..... 3) ..... 4) ..... 5) ..... 6) ..... 7)	1) $..... 2) $..... 3) $..... 4) $..... 5) $..... 6) $..... 7) $.....
		SUB-TOTAL 2	$ .....
		TOTAL VALUE (SUB-TOTAL 1 + SUBTOTAL 2)	$ .....

RESPONDENT TO COMPLETE

Reference Only

***FORM 7* – HOURLY RATES FEE SCHEDULE**			**(REFER TO E.11.2)**
The Respondent identifies the following hourly rates in line with the terms of the Request, and describes the experience etc associated with each level (e.g. Architect: less than ten years' experience)			
Position within Practice	**$/Hour (GST Exclusive)**	**GST (@ 10%)**	**$/Hour (GST Inclusive)**
Partner / Director			
Associate/Senior Architect			
Architect			
Architectural Graduates (unregistered Architect).			
Senior Building Designer			
Building Designer			
Draftsperson			

Reference Only

RESPONDENT TO COMPLETE

***FORM 8* – LIST OF PROJECT EXPERIENCE RELEVANT TO A SPECIFIC PATHWAY** **(REFER TO E.10.3)**

PATHWAY _____

The Respondent identifies the following list of projects which are directly relevant to a nominated pathway.
Note – if the Respondent is applying for membership through multiple pathways then complete a separate form for each pathway.

Project Name and Client	**Description of Services Provided**	**Commission Value (GST inclusive)**	**Project Value (GST inclusive)**	**Term of Commission (start and end/month and year)**

Reference Only

RESPONDENT TO COMPLETE

***FORM 9* – EXPERIENCE RELEVANT TO A SPECIFIC PATHWAY** **(REFER TO E.10.3)**

PATHWAY _____

Provide brief details of a maximum of four projects per pathway (Max two pages). Do not cover more than one pathway on a form

Relevant Project	
Relevant Project	

Reference Only

RESPONDENT TO COMPLETE

***FORM 10* – REFEREES RELEVANT TO A SPECIFIC PATHWAY** **(REFER TO E.10.3)**

PATHWAY _____

The Respondent identifies the following referees who can comment specifically on the Respondent's past performance in relation to the works nominated for a specified pathway.

Project Name and Client	**Referee**		**Contact Details**
	Name	Role	

Reference Only

RESPONDENT TO COMPLETE

FORM 11 – SPECIFIED PERSONNEL RELEVANT TO A SPECIFIC PATHWAY **(REFER TO E.10.3)**

PATHWAY _____

The Respondent provides the following information on specified personnel. No more than one page per person.

Employee Name:	Currently Registered Architect	Registration Number	Date of Initial Registration
	Yes No		

Qualifications	University / Institution	Year Completed

Area of Expertise	

Relevant Employment History (no more than FIVE years)

Project *(Brief description)*	Client *(Include contact name and phone number)*	Project budget	Firm Fee	Period of involvement	Individual's Role	Employer

Reference Only

RESPONDENT TO COMPLETE

***FORM 12* – RESPONDENT'S PAST PERFORMANCE RELEVANT TO A SPECIFIC PATHWAY** **(REFER TO E.10.3)**

PATHWAY _____

The Respondent is to provide evidence of successful outcomes in terms of functionality, sustainability, timeliness, adherence to budgets, stakeholder satisfaction and maintainability in relation to a maximum of FOUR projects in the pathway stated above.

Project Name _____ Completion Date _____

Project Name _____ Completion Date _____

Reference Only

RESPONDENT TO COMPLETE	
***FORM 13* – PROCESSES IN PLACE**	**(REFER TO E.10.3)**
The Respondent is to describe the existing processes that it has in place to facilitate good quality design, documentation and contract administration.	

Reference Only

RESPONDENT TO COMPLETE	
***FORM 14* – PROMOTION OF LOCAL CONTENT**	**(REFER TO E.10.3)**
The Respondent is to demonstrate how it promotes and will continue to promote local business, Western Australian business and Aboriginal Businesses or Aboriginal people. Respondents should demonstrate how they support the development of the Architectural profession in Western Australia.	

Reference Only