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

Panel Request

REQUEST TITLE:

Occupational Safety & Health Consultancy Services Panel 2014

REQUEST NUMBER:

BMW2014/00189

CLOSING TIME:

2:30 PM on 19 March 2014 Perth, Western Australia

ISSUED BY:

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

Reference Only

AMENDMENTS LOG

THIS LOG IS FOR INFORMATION PURPOSES ONLY AND DOES NOT FORM PART OF THE PROPOSAL BRIEF

DELETE PRIOR TO PRINTING THE FINAL DOCUMENT

NO.	CLAUSE NUMBER	AMENDMENT	EFFECTIVE DATE
1	A.8.1.3 A.8.1.6	Amended clause for Civil Liability Act 2002 (WA) Threshold for public disclosure of contract information increased to $50,000	Mar 2016
2	A.6.8.2	Supplier Demerit Scheme – Clause added to make consultants subject to the demerits scheme	30 Sep 2017
3	A.1.3 A.7.18 Appendix 1 – Schedule of Deliverables	Updated Contact Person details Consultant Declarations – Clause added to require consultant's to complete and sign a probity declaration before commencing work under the commission. Consultant Probity Declaration added to schedule of deliverables.	1 Apr 2018
4	A.1.2 B.1	Submission of Offer – removed mail option Overview – clause strengthened to make clear that a review of Safety Management Plans is required for all construction projects valued over $5 million.	1 Apr 2019
5	All sections	Change all references to finance.wa.gov.au website to the new WA.gov.au website	1 Dec 2019
	A.2.1 Supporting Documentation	Updated reference and link to Western Australian Building and Construction Industry Code of Conduct 2016 Updated link to National Standard for Construction Work	
6	All sections	Replace references to Building Management and Works and BMW with Department of Finance and Finance	1 Mar 2020
	A.1.1 Term	Updated panel term expiry date to 12 March 2021	
7	B.4 Disbursements C.7.3 Approval of Disbursements	Clauses updated to align with the 'Approach to the Management of Disbursements in Works Contracts' Fact Sheet	1 Mar 2020

Reference Only

NO.	CLAUSE NUMBER	AMENDMENT	EFFECTIVE DATE
8	A.1.3. Contact Person	Section removed. Refer to WA.gov.au for contact person details.	31 Jul 2020
	Schedule 1 to Part A: COVID-19	In response to the COVID-19 pandemic, the Principal wishes to incorporate COVID-19 specific relief provisions into the Contract.	
	A.7.1 Definitions	Definition of Buy Local Policy added.	
9	A.7.1 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
10	A.1.1 Term	The Panel term has been extended to 12 September 2022.	23 Feb 2021
11	A.1.1 Term	The Panel term has been extended to 12 September 2023.	12 Sep 2022
12	A.1.1 Term	The Panel term has been extended to 12 March 2024.	27 Jun 2023
13	A.1 Introduction	All references to the *Occupational Safety and Health Act 1984* have been updated.	17 Oct 2023
	A.5.2 Assessment Stage		
	B.1 Overview		
	B.2 Statement of Requirements		
	C.6.1 Suitability of Proposed Methodology		
	A.2.1 Supporting Documentation	Reference to (and location of) the *Occupational Safety and Health Regulations 1996* has been updated.	
	A.7.1 Definitions	Definition of Current Legislation and Current Regulations added.	
14	A.1.1 Term	The Panel term has been extended to 12 June 2025.	11 Mar 2024
15	A.1.1 Term	The Panel has been extended to 12 February 2026.	13 May 2025
16	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

Reference Only

NO.	CLAUSE NUMBER		AMENDMENT	EFFECTIVE DATE
17	A.1.1 Term		The Panel has been extended to 12 August 2027.	19 January 2026
18	A.7.19 A.8.1.7	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 October 2026
	A.1.1 Term		Updated Panel term to reflect the inclusion of two previously approved one-year extension options, exercisable at the Principal's discretion.	

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A. PART A – PANEL REQUEST 000189/14

A.1 INTRODUCTION

The Minister for Works, as Principal for public works, has obligations under the *Current Legislation.* Government is committed to ensuring safe work practices in it's public projects.

The Department of Housing and Works undertakes projects for various State government agencies, constructing schools, police stations and all types of buildings used in the delivery of Government services. The Department of Housing and Works is committed to ensuring occupational safety and health obligations are fully met during the life of all public projects. Safe work practices must be administered firmly to ensure accidents are minimised and the performance of the project is maintained. The Department of Housing and Works is required to maintain a level of monitoring of occupational safety and health requirements in its construction contracts.

The Department of Housing and Works, on behalf of the Principal, is seeking to establish a Panel of suitably qualified Consultants from across the State, to ensure professional input is available for relevant matters and to facilitate Department of Housing and Works's compliance with the *Current Legislation*.

The Services required under this Panel relate to any works managed or initiated by Department of Housing and Works in either metropolitan or regional Western Australia.

Depending on the services required, a consultant firm may be commissioned from the Panel, for a specific service requirement or be awarded a package of work up to a maximum fee of $150,000 GST inclusive.

Commissions greater than $150,000 or with special requirements, will be advertised for open public tender.

This Occupational Safety and Health Consultancy Services Panel 2014 will replace the Occupational Safety and Health Consultancy Services Panel 2008 (Arrangement 2196 008) upon expiry.

This Request asks firms to demonstrate their experience and capacity to provide OSH services to Government construction projects that are led by Department of Housing and Works.

A.1.1 TERM

The current Panel term expires on 12 August 2027, with two one-year extension options available for exercise at the Principal's discretion.

Reference Only

A.1.2 SUBMISSION OF OFFER

The Respondent may submit the Offer through one of the following options:

By hand at:

Tenders Office,

Ground Floor, Optima Centre,

16 Parkland Road,

Osborne Park WA 6017.

The Respondent **must** provide one (1) original and one (1) compact disc or USB thumb drive copy.

OR

Electronically:

by uploading at Tenders WA: www.tenders.wa.gov.au

The Offer can only be submitted to www.tenders.wa.gov.au if the size of the Offer is equal to or less than 20 megabytes.

The Respondent must be registered with Tenders WA to submit an Offer electronically. NOTE: it is recommended to register well before the closing time.

The Respondent is encouraged to utilise the online assistance available on the Tenders WA website.

Please allow sufficient time for the submission of Offers as late Offers will not be accepted.

A.2 STRUCTURE OF THIS REQUEST

Part A of this document describes how the Panel will function, including the evaluation and Panel appointment process, the operation of, and allocation of work through the Panel, and the Panel terms and conditions.

Part B of this document describes the general specification for the scope of services and the General Conditions of Contract for application in specific project commissions.

Part C includes the various forms and declarations that must be submitted in the Respondent's Offer.

A.2.1 SUPPORTING DOCUMENTATION

Supporting documentation and further information is available from:

(i) Standards Australia:

The following Codes can be located at http://www.standards.org.au

AS4121-1994 Code of Ethics and Procedures for the Selection of Consultants;

AS4122-2010 General Conditions of Contract for Consultants which should read in conjunction with the WA Government Amendments to AS4122-2010 in Schedule 1; and

AS4801 – 2001 Occupational Health and Safety Management Systems.

Reference Only

(ii) Department of Housing and Works

The Code of Conduct 2016 for the Western Australian Building and Construction Industry can be downloaded by clicking on the following link:

https://ablis.business.gov.au/service/wa/western-australian-building-and-construction-industry-code-of-conduct-2016/41011

(iii) Department of Mines, Industry Regulation and Safety:

National Standard for Construction Work can be downloaded by clicking on the following link: https://www.commerce.wa.gov.au/publications/national-standard-construction-work-guidance-main-contractors-and-people-control

(iv) Work Health and Safety Regulations

Regulations relating to the National Standard for Construction Work have requirements relating to the provision of information, consultation, planning and documentation to ensure occupational safety and health in the building and construction industry.

The Current Regulations can be viewed by visiting:
https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s53267.html

(v) WorkSafe:

Worksafe's primary objective is for Western Australian workplaces to be free of work related injuries and diseases.

Comprehensive work safety and health information can be found at www.worksafe.wa.gov.au

A.2.2 APPLICABLE LEGISLATIVE PROVISIONS

The main Building Contractor responsibilities identified in the regulations and which impact on the scope of the Occupational Safety and Health Consultancy Services Panel include:

(i) Documentation of information relating to hazard identification, risk assessments and risk control processes for construction projects.

(ii) Safety Management Plans prepared for each construction site where five or more people are working, or are likely to be working, at the same time. This plan must be prepared by the Contractor prior to work commencing at the site, and must be kept up-to-date.

(iii) Preparation of Safe Work Method Statements (Job Safety Analysis) for all 'high risk construction work'.

A.3 OBJECTIVES OF THE PANEL

The Occupational Safety & Health Consultancy Services Panel 2014 has been developed to support the Department of Housing and Works in delivering its services in planning, delivering and maintaining the State Government's non-residential buildings portfolio, in both metropolitan and regional Western Australia.

The objectives of the Panel are to:

(i) Enable the prompt engagement of suitable Consultants;

(ii) Reduce the time, effort and cost in tendering for and establishing contracts;

(iii) Provide a mechanism that allows the optimal safety standard to be achieved;

(iv) Provide flexibility in sourcing OSH Consultants;

(v) Demonstrate good procurement practice;

(vi) Achieve value for money; and

Reference Only

(vii) Reduce the cost to Consultants in tendering for contracts.

A.4 SUMMARY OF SERVICE REQUIREMENTS

The Panel may be used to engage Consultants for any Occupational Safety and Health consultancy work required in the delivery and maintenance of Government's non-residential buildings program, in either metropolitan or regional Western Australia.

Typical Commissions will be within the following scope of services:

(i) Suitability Audit

(ii) Compliance Audit

(iii) Assessment Report

(iv) Specialist Advice

Full details of the scope of services are outlined in Part B of this Request.

A.5 PANEL ESTABLISHMENT PROCESS

A.5.1 ELIGIBILITY REQUIREMENTS

To be eligible for consideration, Respondents will be required to demonstrate that they have recognised Occupational Safety and Health qualifications in accordance with Part C, Clause C.5.1.

Those Respondents that do not meet this qualification requirement will not progress to the assessment stage.

A.5.2 ASSESSMENT STAGE

Department of Housing and Works will assess the suitability of interested firms in relation to their capability to assist Department of Housing and Works to fulfil the statutory OSH obligations of the Minister for Works under the *Occupational Safety & Health Act 1984*.

Responses to this Request will be assessed against the:

(i). Eligibility Requirements in Part C, Clause C.5;

(ii). Compliance and Disclosure Requirements in Part C, Clause C.8;

(iii). Insurance Requirements in Part C, Clause C.9.

A.5.3 EVALUATION OF OFFERS

Department of Housing and Works will establish an Evaluation Panel to assess conforming Offers that meet the requirements in Part C Clause C.5. The Evaluation Panel will:

(i). Include Department of Housing and Works staff with relevant expertise;

(ii). Evaluate the Respondent's suitability for membership of the Panel based on the extent to which they meet the selection criteria described in Part C Clause C.6 and C.7.

(iii). Determine value for money based through addressing the qualitative criteria and price.

Panel membership will be awarded to the Respondents who demonstrate that they have sufficient capability and capacity to provide high quality Services and demonstrate they provide value for money.

The Principal reserves the right to appoint as many or as few Respondents to the Panel, as it so determines. The intention is to limit membership to a sufficient number of capable firms.

Reference Only

A.5.4 SELECTION CRITERIA

Assessment of offers will include evaluation of the criteria below.

Respondents must demonstrate their ability against each criterion as detailed in Part C, Clauses C.6 and C.7 to be considered for inclusion in the Panel.

The criterion will not be point scored. Each submission will be assessed on a basis of "Meet Requirements" or "Did not Meet Requirements".

Offers will be assessed against the following Selection Criteria:

1.	Suitability of Proposed Methodology
2.	Track Record of the Firm
3	Expertise of Specified Personnel
4	Submitted Rates and Costs

A.5.5 PRICE BASIS

Respondents are invited to submit both their commercially based Hourly Rates and Schedule of Service Costs.

A.5.6 PRICE VARIATION

The Hourly Rates and Schedule of Service Costs are set for the first one year of the initial Term.

Thereafter, rates and costs may be adjusted by no more than the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth), should market conditions allow.

A.6 PANEL OPERATION

A.6.1 GOVERNMENT POLICIES

Government Policies may affect selection for the Panel and subsequent selection for contracts derived from membership of the Panel.

These can be viewed and downloaded from the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/policies-government-non-residential-building-projects.

A.6.2 OPERATION

Department of Housing and Works operates a number of arrangements providing professional consultancy services related to building works procurement. These arrangements work successfully in enabling Department of Housing and Works to obtain Consultant services for its clients' varied works and services projects in an expedient and cost effective manner.

(i) This Panel will operate on a state-wide basis and include regional firms.

Reference Only

(ii) Department of Housing and Works does not warrant and / or guarantee that any Panel Member will receive any contract(s) for service derived from membership of the Panel during the term of its operation.

(iii) Contracts for service derived from the Panel membership will be offered for commissions up to a maximum fee value of $150,000.

(iv) Commissions beyond these limits, and those with specialised requirements, will be established through a process outside of this Panel.

(v) Membership of the Panel does not constitute a contract with Department of Housing and Works. A contract will be entered into with the Department of Housing and Works when a Commission associated with a construction project is awarded to a firm selected from the Panel.

(vi) Panel Members will be required to notify Department of Housing and Works if there are changes to their corporate circumstances – refer to Part A, Clause A.6.9.

(vii) Panel Members will be required to notify Department of Housing and Works if there are changes to key personnel of the firm, including Associates and Partners, during the currency of the Panel. Note that in making submissions for this Panel, the firm undertakes to provide the staff nominated in the Offer and in the event of their unavailability, provide personnel of equal skill and experience – refer to Part A, Clauses A.6.10 and A.6.11.

(viii) Department of Housing and Works may assess the performance of the Panel Members every 12 months against performance criteria. Consultant Performance Reports will be used to facilitate performance assessments – refer Part A, Clause A.6.8.

(ix) Consultants are required to provide required information in accordance with Part A, Clause A.6.13.

A.6.3 CONSULTANT SELECTION

Consultants will be selected as follows:

(i) The Department of Housing and Works Project Manager will review the OSH Panel membership and select a firm from the Panel. This may be done in conjunction with the client agency and takes into account the nature of the project and/or client requirements.

(ii) The Department of Housing and Works Project Manager responsible for the project will advise the Consultant of the nature of the contract, the proposed scope of work and confirm the hourly rates, number of hours or fixed rate schedules.

Reference Only

A.6.4 PROJECT ALLOCATION FACTORS

In selecting Panel Members for a Commission, Project Managers will take into consideration the following factors:

(i) Nature of the work, including its risk profile;

(ii) Known expertise, experience and availability of staff of the Panel Members;

(iii) Past performance of the Panel Members;

(iv) Current and previous allocation of work across the Panel;

(v) Stakeholder requirements; and

(vi) Proximity of Panel Member's place of business to the project (regional projects).

A.6.5 BUYING RULES

The following buying rules will guide the selection of a Panel member for a Commission, and are applicable to the engagement of Consultants from the Panel by Department of Housing and Works directly.

Commission Details (Fee is inclusive of GST)	**Selection Method**
Up to $150,000	Direct appointment for selection of a single firm from the Panel for a specific service requirement or package of work. Primary consideration is to be given to Panel Members with a local regional business presence.
Greater than $150,000	Open public tender.

The Principal reserves the right to modify the buying rules at its sole discretion at any time with reasonable written notice to Panel Members.

The Principal may allocate at its discretion more work to Panel Members who demonstrate consistency in performance as set out in Part A, Clause A.6.8.

A.6.6 REGIONAL PROJECTS

For regional projects, the Principal may give preference to Panel Members that are determined to be a *business with a regional presence* where the Principal, at its sole discretion, determines that the Panel Member or Panel Members meet the project specific requirements.

In making this determination, the Principal may take into consideration factors such as; potential for reduced cost of disbursements; local experience and knowledge; and the need for site attendance to be frequent or at short notice. These considerations will be in addition to the overall experience and capacity of the Panel Member.

Refer to Part C Clause C.4 Respondent's Claim for Registration as a Regional Business.

To receive consideration as a regional business, the Respondent must demonstrate that it has a genuine place of business in the region.

Reference Only

A.6.6.1 GENUINE BUSINESS PRESENCE IN A REGION

To receive consideration as a business with a regional presence the Respondent must demonstrate that it has a genuine business presence in the region. A genuine regional business presence may be a permanent office or a branch office that is the Respondent's principal place of business located in the region.

The Respondent must demonstrate that their permanent operational regional office is a genuine place of business. In assessing whether the regional office is bona fides, the Principal may take into consideration, but is not necessarily limited to, the following:

(i) Whether the regional office is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);

(ii) Whether the regional office has been operational and business conducted from that establishment being active in the local building and construction industry for a period of not less than six (6) months;

(iii) Whether the regional place of business will continue to remain operational and active in the local building and construction industry after the completion of the contract;

(iv) Whether the regional place of business is resourced by at least one person who resides within the region, who is a permanent employee of the Respondent (not contract staff) and who has relevant building and construction experience; and

(v) Whether the place of business is marketed by the Respondent's legal entity by way of corporate publications (letterheads), telephone directory listings, website, etc.

A.6.6.2 MANAGE THE CONTRACT FROM THE PERMANENT OPERATIONAL OFFICE

When considering whether the contract will be managed from the Respondent's permanent regional operational office, the Principal may request that the Respondent demonstrate that the permanent employee(s) located in its regional permanent operational office will be actively involved in the day to day technical performance of the works under the contract.

This does not prohibit the Respondent from carrying out some of the works under the contract from another office or by employees from other offices.

A.6.7 ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE POLICY

One of the key objectives in the State Government's Indigenous Economic Development Strategy is to achieve a sustained increase in the level of supply of services to Government by enterprises that employ, or are owned and operated by, Aboriginal residents of Western Australia. Any increased access to service contracts by Aboriginal owned and operated enterprises or by enterprises with a strategy for employing Aboriginal people provides increased employment and economic opportunities for Aboriginal Western Australians.

Respondents selected for the Panel that comply with the requirements of Department of Housing and Works's Aboriginal Enterprise and Employment Tendering Preference Policy may be given priority for suitable projects.

Refer to Part C Clause C.11 on registration for Aboriginal Enterprise and Employment Tendering Preference.

Reference Only

Definitions

The following definitions relate to the Aboriginal Enterprise and Employment Tendering Preference Policy:

The term *Aboriginal Person* means a person who is of Aboriginal or Torres Strait Islander descent who identifies as such and is accepted as such by the community in which he or she lives or has lived.

The term Aboriginal Enterprise means:

(i) A sole trader, where the person is an Aboriginal Person; or

(ii) A partnership or firm, where not less than 50% of the partners are Aboriginal Persons; or

(iii) A corporation that has its registered and head offices in Western Australia, where Aboriginal Persons own not less than 50% of the legal entity submitting the tender.

The term *Aboriginal Employer* means any legal entity that employs an *Aboriginal Person*, including an apprentice or a trainee.

The term *Joint Venture with Aboriginal Participation* means a joint venture between any Aboriginal Enterprise and non-Aboriginal Enterprise where not less than 50% of the equity in the joint venture is owned by the Aboriginal Enterprise.

A.6.8 CONSULTANT PERFORMANCE MONITORING

Appointment to the Panel is not a one-off assessment, but rather an ongoing process of monitoring a Panel member's performance against the qualitative indicators outlined below. The Principal will seek to allocate higher proportions of appropriate work to members that demonstrate consistency in outstanding performance.

Examples of performance indicators may include, but are not limited to the following:

(i) Project design quality outcomes;

(ii) Customer satisfaction;

(iii) Communication;

(iv) Contract administration;

(v) Risk management;

(vi) Time performance; and

(vii) Cost control.

The Principal at its sole discretion may review the status of any Panel member at any time and may temporarily or permanently suspend or remove any Panel member if any of its personnel and it:

(i) Exposes government to significant financial loss;

(ii) Engages in unprofessional conduct or unreasonable dealings with the Principal or its agents;

(iii) Makes negative comments about the Principal or its agents to other parties;

(iv) Fails to keep the Principal informed in accordance with the requirements of the Panel;

(v) Fails to perform satisfactorily or breaches the requirements of the Panel on a repeated basis;

or

(vi) Repeatedly accepts a commission for a project and does not provide the promised personnel for the project without good reason.

Reference Only

Before such action is taken, the Panel member may be given an opportunity to justify why it should not be suspended or removed and may be given details of the matters prompting the Principal's concern.

The Principal will continue to develop its performance monitoring mechanisms as it so determines, and will advise Panel members as required.

A.6.8.1 REPORTING PERIODS

The reporting periods are to be determined by the Project Manager with the Consultant at the initial meeting following engagement of the Consultant.

For projects with a lifespan of twelve (12) months or less, performance reports are recommended to be completed by Project Managers immediately following the completion of the Commission.

For projects progressing longer than twelve (12) months, performance reports are required to be completed by Project Managers at the following key project stages:

(i) After twelve (12) months, and every twelve (12) months thereafter, and

(ii) Immediately following the completion of the Commission.

Alternatively, the Project Manager may initiate a performance review at any stage during the project, as a result of unsatisfactory performance by the Consultant.

A.6.8.2 SUPPLIER DEMERIT SCHEME

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

A.6.9 CHANGES IN CORPORATE CIRCUMSTANCES

Significant changes in corporate circumstances and Specified Personnel may affect the ability of a member to fulfil its obligations under the Panel.

Panel Members must notify the Principal, at least two (2) months before a change is proposed to occur, of any significant changes to the Panel Member's circumstances, such as corporate restructures, takeovers/mergers, changes in ABN/ACN etc. The contact for such notifications is Department of Housing and Works Senior Procurement Manager for this Panel.

Major changes in the Panel Member's corporate circumstances may trigger a re-assessment of its continuing Panel membership. In such circumstances, the Principal will contact the Panel Member to discuss the necessary course of action. Failure to notify Department of Housing and Works Senior Procurement Manager of major changes may result in a re-assessment of the Member's status on the Panel.

Panel Members will be deemed to have purported to transfer, assign or novate their Panel membership if there has been a change of the legal entity or the controlling interests of the legal entity purporting to provide Services under the Panel. Where this has occurred, without the express written consent of the Principal, the Panel Member is in breach of this Panel Arrangement and its Panel membership may be suspended or terminated by the Principal as it so determines.

A.6.10 CHANGES IN SPECIFIED PERSONNEL

Panel Members must notify the Principal within two (2) weeks of changes occurring to its Specified Personnel. The Principal may either accept the change of the Specified Personnel or reassess the Panel Member's capacity to discharge its obligation under the Panel Arrangement and any current or future Commission. If the Principal forms a view in its absolute discretion that the Panel Member will not have sufficient capacity to discharge those obligations as a result of the change to

Reference Only

Specified Personnel, then the Principal may suspend or terminate the Panel Member's membership to the Panel as the Principal so determines.

A.6.11 COMPETENCY AND QUALITY OF SPECIFIED PERSONNEL

Panel Members shall:

(i) Ensure that its systems, processes and procedures used to source, screen (including Police Clearance), test and hire personnel who will undertake work for the Principal are robust and of a high standard;

(ii) Ensure that personnel undertaking work for the Principal are appropriately qualified, skilled and experienced for the work; and

(iii) Manage the performance of personnel undertaking work for the Principal.

A.6.12 PANEL MEMBERSHIP

The Principal reserves the right at any time to increase or decrease the number of Panel Members it wishes to retain on the Panel to meet its capital works' program.

A.6.12.1 NEW MEMBERSHIP

The Principal may, at its sole discretion, invite Offers (through Tenders WA) from new Respondents to be appointed to the Panel on an as required basis during the Term.

New Respondents will need to complete all the requirements of Part C of this Request and will be assessed similarly as previous Respondents to this Panel Request.

A.6.12.2 WITHDRAWAL FROM PANEL

A Panel Member may withdraw, in writing, from the Panel at any time due to personal or business circumstances. If any Commissions cannot be completed prior to withdrawal from the Panel, the Principal will work with the Panel Member to reallocate work accordingly.

A.6.13 PROVISION OF INFORMATION

A.6.13.1 QUARTERLY REPORTING - USAGE STATISTICS

As a condition of remaining on the Panel, Consultants will be requested to report back to the Department of Housing and Works Contract Development Manager, on a quarterly basis (for quarters ending March, June, September and December of each calendar year during the Term), all details of all Commissions awarded through this Panel for the applicable quarter. The information requested must be provided using the sample template shown at Schedule 2 of this Request.

These reports from Consultants will facilitate the analysis of the usage of the Panel and monitoring the allocation of work across the Panel.

The Panel Member is to be aware that should these reports not be submitted as required, the Principal may review the Panel Member's membership to the Panel.

Reference Only

A.6.13.2 INFORMATION PROVISION SCHEDULE

Panel Members are required to comply with various policy, procedural, reporting, record keeping and contractual obligations, in accordance with the summary below:

Information	Clause Reference	Obligation	Due
Usage Statistics	Schedule 2	Submit quarterly reports of commissions awarded	Quarterly – month following the end of reporting quarter
Corporate Circumstances	A.6.9	Notify changes in corporate structures, takeovers/mergers, ABN/ACN, contact details	At least 2 months before the change is proposed to occur
Specified Personnel	A.6.10	Notify changes of Specified Personnel, including registered engineers, associates, directors and partners	Within 2 weeks of changes occurring
Insurances	C.9	Provide insurance Certificates of Currency	With the Offer and/or prior to commencing work
Submitted Hourly Rates	A.6.14.1	Review Submitted Hourly Rates	On the anniversary of the Commencement Date of the Panel
Submitted Service Costs	A.6.14.2	Review Submitted Service Costs	On the anniversary of the Commencement Date of the Panel

The Principal at its sole discretion may review the status of any firm on the Panel at any time and may temporarily or permanently suspend or remove any firm from the Panel should the above provision of information obligations not be fulfilled.

A.6.14 FEES

A.6.14.1 SUBMITTED HOURLY RATES

The submitted hourly rates and any subsequent adjustments, accepted by the Principal, shall form the basis of any Commission.

A.6.14.2 SUBMITTED SERVICE COSTS

The total service costs shall cover all costs for the delivery of the Commission by the Consultant, including:

(i) All Services required to undertake the Commission;

(ii) Site visits (including travel and time requirements);

(iii) Preparation of reports;

(iv) Documents in an electronic format in accordance with the requirements specified in Part B and

(v) Inclusion of supplementary information as applicable to the Commission as specified by the Department of Housing and Works Project Manager.

The reimbursement of disbursements for costs other than those listed above and associated with each Commission will only be provided upon the submission of receipts and/or invoices and should be agreed with the Project Manager BEFORE being incurred. Refer Part c Clause C.7.3.

A.6.14.3 VARIATIONS

Reference Only

Variations will be addressed in accordance with Clause 9 of the amended AS 4122-2010 attached in Schedule 1.

A.6.14.4 CHANGES TO HOURLY RATES AND SERVICE COSTS

The submitted rates and costs are fixed for the first year of the Term.

At each anniversary date of the operation of the Panel, the Principal will invite submission of new rates and costs. If no new rates/costs are submitted, or rates/costs exceeding the increase in CPI are submitted, the previous rates/costs will apply for the following twelve (12) months.

Any new hourly rates/costs will only apply to new commissions, commencing after written acceptance by the Principal.

A.6.15 INVITATION FOR PROPOSAL AND LETTER OF COMMISSION

A.6.15.1 COMMISSION

The Department of Housing and Works Project Manager will invite the Consultant to submit a proposal for the provision of a Service for a specific project requirement. When a proposal is accepted, a Letter of Commission will be issued to the Consultant. It will typically include the following:

(i) Project Brief;

(ii) A project specific Schedule of Deliverables (if required), refer to Appendix 1;

(iii) A project specific Annexure, refer to sample at Appendix 2;

(iv) Project Team Nomination and Availability;

(v) Fee Breakdown – Service Costs and Hourly Rate, where applicable.

A.6.16 PAYMENTS

Department of Housing and Works currently operates two payment systems: the online Project and Contract Management System (ReadyContracts) and Mainsaver System.

ReadyContracts is currently used for processing payment for major capital projects and regional projects, while Mainsaver is used to process payment for minor works and maintenance services in the Perth metropolitan area. The Project Manager will advise Consultants of the applicable system at the time of Commission.

A.6.16.1 PROJECT AND CONTRACT MANAGEMENT SYSTEM (ReadyContracts)

Consultants shall use Department of Housing and Works online Project and Contract Management System for all fee claims relating to major capital works projects and regional projects. Access to the system will be provided by Department of Housing and Works upon successful appointment to the Panel, where a user name and password will be released.

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

Department of Housing and Works will provide on-site system training for all Consultants.

Reference Only

Department of Housing and Works Project and Contract Management System is primarily based on a Microsoft Office and Windows operating environment. For consultancy firms utilising Apple Mac operating systems, Internet Explorer can be run in one of the following ways:

(i) Run a Windows partition – this requires a reboot every time Internet Explorer is required to be run;

(ii) Using applications which intercept Internet Explorer commands and allows them to run on the Mac; or

(iii) Use virtual ware or an emulator.

Firms running Linux or Unix operating systems can also run Internet Explorer by using virtual ware or an emulator.

Some projects are managed outside the on-line Project and Contract Management System. For these consultancies, a manual claims processing, manual payments and manual RCTI option will be used, together with a 'pay on invoice' option. Refer to Part C Clause C.10.

A.6.16.2 MAIN SAVER SYSTEM

Payments for Services procured as minor capital works and maintenance services are invoice based. Claims for payments are processed through the purpose built Main Saver System.

For Consultant payments, a claim/invoice is to be sent to the Project Manager for checking and verification. All relevant project details need to be included on the invoice. The Consultant will be advised when the invoice has been paid.

A.7 TERMS AND CONDITIONS OF THE PANEL

A.7.1 DEFINITIONS

In this Request:

Annexure means the Commission specific General Conditions Annexure prepared on behalf of the Principal, an example of which is contained in Part B Attachment 1 of the Request.

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

Commencement Date of the Panel means the date that the Panel Arrangement commences operation as specified in the first "Letter of Appointment to Panel" to successful Respondents to this Request. In the absence of any such date being so specified, then the date of the first Letter of Appointment to the Panel issued by the Principal under the Panel Arrangement applies.

Commission means an engagement to perform Services for the Principal pursuant to the Panel Arrangement for either a full Commission or part Commission scope of works as set out by the relevant schedule of deliverables (see Part B Clause B.5 and Appendix 1).

Consultant means the Panel Member that has been commissioned to perform the required Service.

Current Legislation means the *Work Health and Safety Act 2020*.

Current Regulations means the *Work Health and Safety (General) Regulations 2022*.

Customer means the Government agency for which the project is being delivered.

Facilities Manager means a contractor who currently has an agreement with the Principal to provide property asset and/or management of maintenance services for Government agencies.

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 shown in Schedule 1 of this Request.

Reference Only

Invitation for Proposal means a letter on behalf of the Principal or Lead Consultant inviting a Panel Member to provide a proposal in relation to a proposed Commission in accordance with the terms and conditions of the Panel Arrangement.

Lead Consultant means the Consultant that the Principal appoints to lead a technical team responsible for delivering a project.

Letter of Appointment to Panel a letter of acceptance issued by the Principal to a successful Respondent to this Request accepting that Respondent's Offer and appointing that Respondent to the Panel, pursuant to the terms of this Panel Arrangement.

Letter of Commission means a letter of acceptance issued by the Principal to a Panel Member that specifies the Services to be performed by the Panel Member under the Commission, the terms of engagement of the Commission and any amendments to the General Conditions.

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

Panel means the collection of Respondents that have submitted to this Request or subsequently applied for Panel membership and been appointed by the Principal to the Occupational Safety and Health Consultancy Services Panel 2014, the subject of this Request.

Panel Arrangement means the arrangement for the provision of Services by the Panel Members to the Principal or the Principal's Lead Consultants pursuant to the terms and conditions of this Request.

Panel Member means a Respondent appointed by the Principal to the Panel.

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

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

Project Brief means the brief developed for a project to define the overall principles, objectives, time and cost budgets for the project.

Project Manager means the individual appointed in writing to represent Department of Housing and Works to manage the Commission.

Request means this Request Number (BMW0018914) Occupational Safety and Health Consultancy Services Panel 2014.

Respondent means the party submitting an Offer under this Request.

Services mean the services to be provided under a Commission and described in or reasonably inferred from the Scope of Services under Part B and described in the Project Brief, including the supply of Deliverables, which is described in the Letter of Commission.

Specified Personnel means experienced personnel, nominated by the Respondent in their Offer, to be available for projects derived from the Panel.

Subconsultant means a secondary consultant that has been appointed by the Lead Consultant, from the Panel or otherwise, to provide certain services to assist in the delivery of a Commission.

Superintendent means the individual appointed in writing by the Principal to administer the building or works contract for a project as the Superintendent.

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 initial Term of the Panel Arrangement and includes any extension of that initial term.

A.7.2 DEPARTMENT OF HOUSING AND WORKS DISCRETION

For the purposes of selection and operation of this Panel, the term 'firm' will be interpreted to include the group of individuals with the appropriate qualifications, facilities and insurances.

Reference Only

Department of Housing and Works reserves the right to remove firms from the Panel in the event of unsatisfactory performance. In such circumstances, Department of Housing and Works may restore Panel numbers by adding other appropriately qualified firms to the Panel.

Department of Housing and Works reserves the right to alter or amend this document at any time throughout the operation of the Panel.

Department of Housing and Works reserves the right, at its absolute discretion, to source services outside this Panel arrangement, as required.

A.7.3 PRINCIPAL'S RIGHTS

The Principal reserves the right, without limiting any other rights which the Principal may have under the Panel Arrangement, and without giving any reason or prior notice to the Respondent, Panel Member or Consultant, as applicable, to:

(i) Reject or refuse to consider or evaluate any Offer;

(ii) Appoint suitably assessed Respondent to the Panel as it sees fit;

(iii) Suspend or cancel the membership of any Panel Member by written notification. The period of suspension shall remain at the sole discretion of the Principal;

(iv) Alter the composition of the Panel at any time during the operation of the Panel;

(v) Allocate work and award contracts based on an assessment of the varying capability and capacity of the Panel Member from time to time;

(vi) Allocate nil, any or all work under this Panel to any particular Panel Member; and

(vii) Where it is apparent to the Principal that a person engaged under the Panel is not sufficiently capable to undertake the required work, to terminate the Commission or require the Panel Member to provide a more capable person.

A.7.4 CANCELLATION AND VARIATION

The Principal reserves the right at any time to cancel, vary, supplement, supersede or replace the Request or Panel Arrangement or any part of the Request or Panel Arrangement by giving Panel Members or Respondents (as the case may be) timely written notification.

A.7.5 NO CLAIM

To the extent permitted by law, the Respondent will have no claim against the Principal arising from or in connection with the exercise or failure to exercise the Principal's rights under this Request.

A.7.6 FURTHER INFORMATION

After the submission of an Offer, the Principal may:

(i) Request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and

(ii) Request information from the Respondent regarding the financial capacity of the Respondent.

If the Principal considers that there are unintentional errors of form in the Offer submitted by the Respondent where the error is clear and not critical to comparative evaluation of Offers, the Principal may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to that Offer. The decision to permit a Respondent to correct such an error is only within the sole and absolute discretion of the Principal only.

Reference Only

If the Principal makes a request for further information, the Respondent or Panel Member (as the case may be) must provide that information within five (5) working days, unless otherwise agreed by the Principal.

A.7.7 SUBMISSION OF OFFER

Offers which have not been submitted strictly in accordance with the requirements described in Part C will not be considered.

A.7.8 AGREEMENT WITH REQUEST CONDITIONS

In submitting an Offer, the Respondent is deemed to have read and agreed to all terms and conditions of the Request.

A.7.9 AGREEMENT BY RESPONDENT

In submitting an Offer, the Respondent warrants and agrees that:

(i) All information in its Offer is true and correct at the time of its submission;

(ii) 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 and the General Conditions;

(iii) It has examined and understood the Request, each addendum issued under the Request, the General Conditions, and any other information available to the Respondent in respect of the Request;

(iv) 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;

(v) 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; and

(vi) Irrespective of whether its Offer is accepted or not, it will pay its own costs and expenses in connection with:

  (a) The preparation and submission of its Offer; and

  (b) 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.

A.7.10 OFFER VALIDITY PERIOD

Offers shall remain binding on the Consultant and in force for a period of 90 days from the date of closing of tenders.

If an Offer is not entire and fully described, with all details and required documents completed in every respect as required by this Request, the Offer may not be considered and in any event the Offer Validity Period shall commence only from the date when the Offer is corrected or completed to the satisfaction of the Department of Housing and Works.

A.7.11 CONFIDENTIALITY

Panel Members must keep confidential all information that the Principal has specified as confidential information. The Panel Member must not use or disclose to any person the Principal's confidential information except:

(i) Where necessary for the purpose of supplying the Services;

(ii) As authorised in writing by the Principal;

Reference Only

(iii) To the extent that the confidential information is public knowledge (other than because of a breach of this clause by the Panel Member);

(iv) As required by any law, judicial or parliamentary body or Government Agency; and

(v) When required (and only to the extent required) to the Panel Member's professional advisers. The Panel Member must ensure that such professional advisers are bound by the confidentiality obligations imposed on it under this clause.

A.7.12 CONFLICT OF INTEREST

The Respondent must disclose in its Offer (under Part C Clause C.10.2) and prior to any Commission under the Panel, any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest in relation to the Request or in the performance of a Commission (see AS 4121-1994).

The Panel Member must not place itself in a position which may, or will give rise to an actual, potential or perceived conflict of interest during the Term or during a Commission.

The Respondent or Panel Member (as the case may be) must otherwise notify the Principal promptly in writing upon becoming aware of any actual, potential or perceived circumstances, arrangements or understandings which constitute, or which may reasonably be considered to constitute, an actual, potential or perceived conflict of interest with the Respondent's or the Panel Member's obligations under this Request or under a Commission.

The Principal may still accept the Respondent's Offer, or award a Commission to a Panel Member, if the Principal considers that the Respondent or Panel Member (as the case may be) has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of a Commission. In making its decision, the Principal may request further information, including details of any proposed strategy for managing any actual, potential or perceived conflicts of interest.

To the extent that the Principal directs the Respondent or Panel Member (as the case may be) to take particular action in respect to a conflict of interest, then:

In the case of a Respondent who is unable or unwilling to comply with such a direction, the Respondent's Offer may not be considered further; and

In the case of a Panel Member who is unable or unwilling to comply with such a direction, the Panel Member may have its membership on the Panel suspended or cancelled as the Principal sees fit.

A.7.13 OWNERSHIP / INTELLECTUAL PROPERTY

All documents, materials, articles and information produced by the Respondent as part of, or in support of an Offer (including subsequent Offers under the Panel) shall become upon submission the absolute property of the Crown in right of the State of Western Australia, and will not be returned to the Respondent.

Documents, materials, articles and information produced by the Consultant resulting from a Commission undertaken from this Panel shall become, upon creation, the absolute property of the Crown in right of the State of Western Australia.

A.7.14 ADDENDA

Written addenda issued by the Principal are the only explanations of, or variations to, this Request that will be accepted by the Principal.

Reference Only

A.7.15 DISCLOSURE OF INFORMATION

The Respondent agrees and acknowledges that any information or further information submitted with its Offer, and any Commission which results from membership of this Panel, 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.

By submitting an Offer, the Respondent releases the Principal from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of any information under this section.

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

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

A.7.16 GST/RECIPIENT CREATED TAX INVOICE AGREEMENT

A.7.16.1 GOODS AND SERVICES TAX

Respondents are deemed to be registered for Goods and Services Tax (GST) and to have an Australian Business Number.

Where the requirements of this Request or any part thereof is a taxable supply under the GST Act, the price, fee or rates shall be inclusive of all applicable GST at the rate in force for the time being.

A.7.16.2 RECIPIENT CREATED TAX INVOICE AGREEMENT

The Respondent shall lodge with its Offer the Recipient Created Tax Invoice Agreement (RCTI) included in Part C Clause C.10, and signed by a person authorised to do so.

Failure to lodge the completed and signed RCTI as required may result in a delay in the payment of claims.

For each contract Commission, the Panel Member may be required to lodge, with its proposal, a contract-specific RCTI.

A.7.17 NO GUARANTEE OF WORK

Panel Members acknowledge that the Principal is under no obligation to provide any work to them through the Panel.

A.7.18 CONSULTANT DECLARATIONS

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

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

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

Reference Only

b. accountability and professional manner of its conduct;

c. actual perceived or potential conflicts of interest;

d. treatment of confidential information; and

e. any other matter the Principal reasonably requires;

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

A.7.19 APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause A.7.19.:

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 A.7.19(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

Reference Only

obligation under this clause A.7.19, do all things necessary to mitigate the consequences of that breach;

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

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

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

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

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

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

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

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

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

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

the Head Agreement.

(e) Nothing in this clause A.7.19 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 A.7.19 survives the termination or expiry of the Head Agreement.

Reference Only

A.8 CONTRACTING

A.8.1 CONTRACTING FRAMEWORK

A.8.1.1 GENERAL CONDITIONS OF CONTRACT

Australian Standard AS 4122-2010 "General Conditions of Contract for Consultants (incorporating Amendment No. 1)" as amended by this Request are the General Conditions and are referred to throughout the Request as the General Conditions.

For the purposes of the Request, the General Conditions are hereby amended in accordance with **Schedule 1** W.A. Government Amendments to AS 4122-2010 contained in this Request.

Any reference in the General Conditions to the "Client" as a party to the General Conditions shall be construed to be a reference to the "Principal" or the "Lead Consultant" where relevant, dependant on who the Consultant has been Commissioned by pursuant to the Panel Arrangement.

Any definitions appearing in Clause 1.1 of the General Conditions shall have the corresponding meaning in this Request unless the intention is clearly and unambiguously to the contrary.

The General Conditions form part of the terms and conditions governing any Commission along with the terms contained in this Request. Also forming part of any Commission is the project specific AS 4122-2010 Annexure appearing in Part B Appendix 2 completed as part of the Invitation for Proposal in respect of any particular Commission.

A.8.1.2 NATURE OF CONTRACT

Depending on the nature of the contract, the Consultant shall be engaged on either a Lump Sum Fee or Hourly Rate basis as stated in the Letter of Commission.

A.8.1.3 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 this 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 this 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.

A.8.1.4 MONETARY VALUES

Monetary values that appear in this Request document and any subsequent document, such as Project Budget, Estimated Construction Budget, Limit of Cost, are net values and do not include GST.

Reference Only

A.8.1.5 INSURANCES

The Respondent shall submit as part of its Offer evidence of the insurances for the minimum cover as outlined below.

For certain Commissions, the Project Manager, after taking into consideration project specific risks, may request additional insurance cover for a Commission and the Panel Member shall provide evidence to the satisfaction and approval in writing of the Principal prior to commencing on the Commission. This is in addition to the minimum insurance requirements of this Request. Refer Part C Clause C.9.

Before commencing specific project work under this Panel contract, the Consultant shall provide evidence of up to date insurance Certificates of Currency to the satisfaction and approval in writing of the Principal, of the following insurances:

A.8.1.5.1 PUBLIC LIABILITY INSURANCE

Pursuant to the Request and in accordance with Clause 30.2 of the General Conditions, Consultants shall maintain Public Liability insurance covering the legal liability of the Consultant and the Consultant's personnel arising out of the services for an amount of not less than **$5 million** for any one occurrence and unlimited in the aggregate.

A.8.1.5.2 PROFESSIONAL INDEMNITY INSURANCE

Pursuant to the Request and in accordance with Clause 30.4 of the General Conditions, Consultants shall maintain Professional Indemnity insurance covering the breach of duty owed in a professional capacity arising out of any act, negligence, error or omission made or done by the Consultant or any consultant or agent engaged by or on behalf of the Consultant in respect of the Services provided in connection with the Panel Arrangement and must be maintained for a period of at least six (6) years after termination or expiration of the Commission or alternatively six (6) year run-off cover must be obtained by the Consultant for an amount not less than **$5 million** for any one claim and in the annual aggregate, with the provision of one automatic reinstatement of the full sum insured in any one period of insurance.

The insurance policy must be extended to include:

Fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trade mark or circuit layout rights;

Loss of or damage to documents and data; and

Breach of Chapters 2 and 3 of the Australian Consumer Law and the Australian Consumer Law (WA).

A.8.1.5.3 WORKERS' COMPENSATION / EMPLOYERS' INDEMNITY INSURANCE

Workers' Compensation/Employers' Indemnity insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **$50 million** for any one event in respect of workers of the Panel Member. The insurance policy must be extended to indemnify the Principal for claims and liability under section 175(2) of the *Workers' Compensation and Injury Management Act 1981.*

Note: - sole traders, who work for themselves and do not have direct employees, are not required to be covered under a workers' compensation insurance policy.

Reference Only

A.8.1.6 PUBLIC DISCLOSURE OF CONTRACT DETAILS

(i) The contract award information for all contracts above $50,000 will be publicly available and published on the Tenders WA website after the contract is legally established.

(ii) Documents and other information relevant to the Contract may be disclosed when required by law under the *Freedom of Information Act 1992*, tabling of documents in Parliament or under a Court Order.

A.8.1.7 APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause A.8.1.7.:

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.

(g) The Consultant must:

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

vii. 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;

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

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

x. The Consultant also agrees to comply with:

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

(F) any directions made by a Privacy Commissioner;

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

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

(h) Without limiting the Consultant's obligations under clause A.8.1.7(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:

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

vi. where any breach of privacy occurs due to the Consultant's failure to comply with any obligation under this clause A.8.1.7, do all things necessary to mitigate the consequences of that breach;

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

viii. 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 Contract.

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

v. 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;

vi. 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;

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

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

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

iii. 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

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

(k) Nothing in this clause A.8.1.7 is intended to limit any obligation of the Consultant under the PRIS Act or the Privacy Act (if applicable) with respect to Personal Information.

(l) This clause A.8.1.7 survives the termination or expiry of the Contract.

A.8.2 ACCESS BY THE AUDITOR GENERAL

The parties acknowledge and agree that, notwithstanding any provisions of this contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* are not limited or affected by the terms of the Panel Arrangement.

A.8.3 NOTICE OF CLAIMS

The Panel Members shall notify the Principal, in writing, within seven (7) days of notification of any claim or potential claim made against the Panel Member, which arises wholly or in part from provisions of this Panel Arrangement.

A.8.4 APPROVALS

The Consultant shall not initiate or proceed with any component of Services as listed in the Commission without prior written approval of the Principal.

Reference Only

SCHEDULE 1 TO PART A: 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

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

1.3.4 EXTENSION OF TIME[1]

(a) If:

(i) the Consultant is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;

(ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and

(iii) the Consultant gives the Principal a claim for an extension of time within 14 days of when it became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,

the Consultant will be entitled to an extension of time for Practical Completion equal to the period of delay.

(b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under subclause (a)(iii) above, the Consultant may submit further claims every 14 days.

(c) The Consultant's entitlement to an extension of time is reduced to the extent which the Consultant could have avoided or reduced the delay by taking reasonable steps under clause 1.3.1(b)(ii).

(d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.

(e) The Principal will reasonably determine the period of the extension of time under this clause 1.3.4 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this clause.

1.3.5 DELAY COSTS

(a) Subject to subclause (b) below, the Consultant will be entitled to additional Costs it incurred during any extension of time period granted under clause 1.3.4.

(b) The Consultant will only be entitled to Costs incurred for demobilising and remobilising the Consultant's personnel, subcontractors and equipment if there is a suspension under clause 1.4 (Suspension for COVID-19 Effects).

(c) The Consultant's Costs entitlement under subclauses (a) or (b) above is reduced to the extent the Consultant:

(i) could have avoided or reduced the Costs by taking reasonable steps under clause 1.3.1(b)(ii); and

(ii) recovered or can recover the Costs.

(d) The Principal will reasonably determine Costs payable under this clause 1.3.5 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

1.4 SUSPENSION FOR COVID-19 EFFECTS

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion, that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Consultant to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.

(b) As soon as the reason for any suspension no longer exists, the Principal must notify the Consultant in writing.

(c) Upon notice from the Principal, the Consultant must recommence performance of the Works as soon as reasonably possible.

(d) The Consultant must ensure that its subcontracts contain a suspension clause on the same terms as this clause 1.4.

GUIDENOTES

[1] *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.*

Reference Only

1.5 TERMINATION FOR CONVENIENCE FOR COVID-19 EFFECTS

1.5.1 TERMINATION FOR CONVENIENCE

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion not to continue the Contract due to COVID-19 Effects, by notice in writing to the Consultant (**Termination for Convenience Notice**), terminate the Contract.

(b) The Contract will terminate on the date and time stated in the Termination for Convenience Notice or, if no such date and time is stated, at the date and time the Termination for Convenience Notice is given to the Consultant.

(c) Clause 1.5.2 (Procedure on Termination), clause 1.5.3 (Payments on Termination for Convenience) and clause 1.6 (Limit to Consultant's COVID-19 Rights) survive the termination of the Contract.

1.5.2 PROCEDURE ON TERMINATION

Upon receipt of a Termination for Convenience Notice, the Consultant must:

(a) make safe and cease performance of the Works;

(b) after ensuring the Site is secure and safe, leave the Site;

(c) provide the Principal with any information requested by the Principal relating to the Works or the Contract, including Design Documents and any other drawings;

(d) novate to the Principal any subcontracts relating to the Works that the Principal requires to be novated (and the Consultant must include in its subcontracts a corresponding novation clause);

(e) transfer to the Principal any entitlement to receive unfixed plant or materials that are in transit but have not yet been delivered to Site, free from encumbrances;

(f) do all things and execute all further documents necessary to give full effect to this clause 1.5.2; and

(g) take any other action the Principal reasonably requires relating to the termination of the Contract.

1.5.3 PAYMENTS ON TERMINATION FOR CONVENIENCE

(a) If the Principal terminates the Contract under clause 1.5.1, the Principal must pay the Consultant:

  (i) the amount due under the Contract for the Works performed up to the date of termination;

  (ii) Costs incurred by the Consultant under any subcontract as a direct consequence of the Principal's termination, provided that the Consultant has taken all reasonable steps to mitigate and minimise these costs and expenses, including having a corresponding termination for convenience clause in the subcontract;

  (iii) the Cost of materials reasonably ordered by the Consultant for the Works, which the Consultant is liable to accept (subject to exercise of any termination rights by the Consultant if the Principal so directs), subject to the materials becoming the Principal's property upon payment;

  (iv) the reasonable Costs of demobilisation; and

  (v) the reasonable Costs of complying with any directions given by the Principal upon, or subsequent to, termination.

(b) The Consultant must submit a payment claim for the amount it claims is payable in accordance with clause subclause (a) above within 30 calendar days of the date of termination.

(c) If the Costs are not fully ascertainable at the time of submitting a payment claim under subclause (b) above, the Consultant must identify the Costs that are not yet able to be quantified and the date by which they can be quantified. If the Principal consents to the timing of the provision of the quantified Costs, the Consultant may submit a further payment claim in accordance with the agreed timetable.

(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.

Reference Only

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

B. PART B - SPECIFICATION

Part B outlines the scope of services in relation to specific project commissions derived from the Panel as stated in the Letter of Commission for occupational safety and health services.

B.1 OVERVIEW

The purpose of the Occupational Safety and Health Consultancy Services Panel is to select suitably qualified consultants for membership to the Panel to ensure professional input is available for relevant matters and compliance with the *Current Legislation*.

The following services are required but not limited to:

(i) The review, audit and assessment of Safety Management Plans for construction projects:

  a. Mandatory for all construction projects over $5m, and

  b. A sample of construction projects under $5m where the Department has determined that the risks and hazards of a particular contract warrants assessment of the building contractor's Safety Management Plan.

(ii) Periodic inspection of sites to ensure requirements under the *Current Legislation* is being met.

(iii) Preparation of Assessment Reports identifying any shortcomings in relation to the occupational safety and health requirements.

(iv) General OSH advice related to Department of Housing and Works operational matters.

The branches, within the works area of Department of Housing and Works, that may require the services of Occupational Safety and Health Consultants from the Panel are as follows:

(i) Building Projects

(ii) Building Management – Maintenance Services,

(iii) Building Management – Regional Services, and

(iv) Building Management – Government Office accommodation.

B.2 STATEMENT OF REQUIREMENTS

The work under this specification consists of the fulfillment of Department of Housing and Works occupational safety and health obligations under the *Current Legislation* and generally in accordance with AS/NZS 4801.

The Consultant will be required to certify compliance of Building Contractors' occupational health and safety obligations within the Contract between Department of Housing and Works and the Building Contractor.

Reference Only

The following services may be undertaken by the Consultant:

B.2.1 SUITABILITY AUDIT

The Consultant is required to conduct a Suitability Audit of the Contractor's Safety Management Plan to ensure safety requirements are being met in accordance with the National Standard for Construction Work and the *Current Legislation*.

A sample of a Safety Management Plan, which forms part of the Master Preliminaries for works contracts, can be viewed in Part B – Appendix 3.

B.2.2 COMPLIANCE AUDITS – SITE INSPECTIONS

The Consultant will be required to initially review the Safety Management Plan and carry out site inspections to confirm the Building Contractor's compliance with the approved Safety Management Plan. The Consultant will liaise with the Department of Housing and Works Project Manager on the number and length of inspections that are required, which will depend on the complexity and location of the project. It is expected that, on average, this will be on a bi-monthly basis.

To ensure there is effective communication in relation to the management of safety and health on Department of Housing and Works Project sites, occupational safety and health consultants:

(i) Must only attend the site when accompanied by the Superintendent's Representative;

(ii) Must only liaise with the Contractor's nominated site representative. All communication must be in the presence of the Superintendent's Representative; and

(iii) Must not give any instruction or directions to sub-contractors or individual workers on site, either verbally or otherwise. Instructions, directions etc must be issued through the Superintendent's Representative and the Department's Project Delivery Manager, in accordance with the terms of the Contract.

B.2.3 ASSESSMENT REPORTS

The Consultant shall produce relevant assessment reports and comments relating to the Contractor's compliance with occupational safety and health requirements for the consideration of the Superintendents Representative and the Department of Housing and Works Project Manager within 14 days of the request for assessment or site visit.

Issues identified in the report must be categorised under the following headings:

(i) Contract Compliance Matters;

(ii) Statutory Compliance Matters; and

(iii) General Suggestions for Improvement.

The Consultant shall also provide the requested number of copies of all reports and associated documentation.

Reference Only

B.2.4 PROVIDE OCCUPATIONAL SAFETY AND HEALTH GENERAL ADVICE

The Consultant may also be invited to provide advice on general operational or policy aspects of occupational safety and health. This may not be related to a specific construction project.

B.3 RESTRICTIONS ON ACCESS TO SCHOOLS AND OTHER GOVERNMENT SITES

B.3.1 EDUCATION PROJECTS

For Education projects, access to the site under this contract is controlled as described hereunder.

The *School Education Regulations 2000* (WA) empower the school principal to regulate persons who enter or are on school premises. Accordingly, overall control of occupied school premises is the responsibility of the school Principal (occupied school premises includes a new school on a green-field site that has achieved partial or total Practical Completion). These Regulations enable the school Principal to direct the Building Contractor (Contractor), its employees, subcontractors, suppliers and the like in respect to school access.

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:

(i) Causing disruption to or likely to cause disruption to the good order on the school premises;

(ii) Using threatening or insulting language;

(iii) Using threatening or violent behaviour;

(iv) Adversely affecting the safety and welfare of persons on the school premises;

(v) Causing damage to property that comprises or is located at the school premise;

(vi) Smoking;

(vii) Defacing school premises;

(viii) Lighting fires or bringing explosives onto school premises;

(ix) Bringing animals onto school premises;

(x) Having intoxicating liquor and illicit substances;

(xi) Driving vehicles off roadways and parking areas;

(xii) Exceeding speed limits or driving in a dangerous or inconsiderate manner; or

(xiii) Disobeying traffic signs.

B.3.2 SCREENING FOR ACCESS

The Department of Education policy requires that all persons working on occupied school premises be screened for previous convictions for certain types of offences. The Consultant shall:

(i) Cooperate with the school Principal to maintain effective control of access to school premises and site throughout the term of the contract.

(ii) Screen all employees, subcontractors, suppliers and other persons entering the building site for previous criminal convictions by ensuring that they:

Are the holder of a national police criminal record check that is no more than 2 years old, issued by police and not through a third party or commercial provider;

Reference Only

or

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.

(iii) Sign in using the Contractor's visitors register.

B.3.3 ACCESS TO OTHER GOVERNMENT SITES

Consultants seeking access to other Government sites (prisons, hospitals, government buildings etc) may be subject to the individual Government agency policy on security clearances.

B.4 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.

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

B.5 DELIVERABLES

The Consultant will be provided with a copy of the initial schedule of deliverables in electronic format upon Commission.

The Consultant is required to maintain a schedule of deliverables throughout the period of the Contract and any amendment to this schedule may only occur after written approval has been obtained from the Project Manager. A schedule sample detailing the typical deliverables is contained in Part B Appendix 1.

The deliverables which appear within the schedule of deliverables for each phase of the project shall be provided by the Consultant to the Department of Housing and Works Project Manager, prior to the completion of each phase.

Reference Only

APPENDIX 1 SCHEDULE OF DELIVERABLES

Project Title: Project No:

Consultant's Name: Schedule Update No: Attached To Progress Fee Claim No:

Notes: 1. Refer to Request Clause _Schedule of Deliverables

2. The Consultant is responsible for maintaining and completing Columns 1 to 7 of this Schedule.

3. Column 8 is for use by the Principal's Representative only.

1 Phase	2 Consultant Deliverables	3 Qty	4 To Be Submitted To:	5 Comments	6 Date Submitted	7 Status Complete (%)	8 Principal's Rep. Confirmation
At commencement of commission	Consultant Probity Declaration	1	Department of Housing and Works Project Manager	Obtain form from Department of Housing and Works Project Manager			
	Principal Identified Hazards (if required)	1 set	Principal's Rep				
	Suitability Audit Report	2 sets	Principal's Rep. and Contractor	Prior to the Contractor commencing work on-site			
	Compliance Inspection Reports	As req.	Principal's Rep. and Contractor	Required only if the OSH Report is updated during the construction phase.			

I certify that the deliverables indicated have been provided and the statuses complete are correct

Consultant's Representative:

Reference Only

(Name) (Signature) (Date) _____

Reference Only

APPENDIX 2 SAMPLE ANNEXURE

(FOR DIRECT ENGAGEMENT BY DEPARTMENT OF HOUSING AND WORKS)

Sample copy of the Annexure to the General Conditions AS 4122-2010

Item		
Item 1 (clause1.1)	The Client is:	The Minister for Works
Item 2 (clause 1.1)	The Consultant is:	
Item 3 (clause 1.1)	The Contract Documents are:	The General Conditions of Contract; The Scope; The Consultant's Proposal; The Code of Practice for the Building and Construction Industry in Western Australia; The Letter of Commission; The Special Conditions of Contract The Annexure to the General Conditions of Contract; The Consultant Brief; The Project Brief; The addenda and any other correspondence issued to the Consultant by the Principal; and 2

SAMPLE

ONLY

Reference Only

GUIDENOTES

2 *Insert other relevant Documents forming this Contract.*

Item		
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 is:	5
Item 7 (clause 6.2)	The Consultant's representative is:	
Item 8 (clause 10.1)	Claims for payment must be made on the following basis:	6 Lump ... $... ... And/or Hourly Rates | Yes | No

Reference Only

SAMPLE

ONLY

GUIDENOTES

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 *Specify whether claims for payment will be on a lump sum or hourly rates or any combination. The lump sum is inclusive of all fees and disbursements of the Consultant and necessary Subconsultants.*

Item				
		(Strike through as appropriate)		
		7GST Inclusive	Yes	No
		(Strike through as appropriate)		
		8Role / Task:	Rate $/per	
		None	N/A	
		9Stage / Task:	$ / % of Fee	
Item 9 (clause 10.2)	Disbursements for which the Consultant may claim payment:	The lump sum amount is inclusive of agreed disbursements. Refer Part A Clause A.6.14.2 and Part C Clause C.7.3.		
Item 10 (clause 10.3)	Time to claim payment is not later than:	10		
Item 11 (clause 10.6)	Time for payment is no later than:	30 calendar days		
Item 12 (clause 10.9)	The rate of interest for overdue payment is:	6.00% per annum.		

Reference Only

GUIDENOTES

7 *Specify whether the basis is inclusive or exclusive of GST.*

8 *If rates apply, specify rates and intervals.*

9 *Specify whether claims for payment, however calculated, will be paid in a single lump sum or in stages.*

10 *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.*

Item		
Item 13 (clause 12.1)	[11]Alternative 1: The date or the period after commencement of this Contract, by which the Services must be completed is:	Alternative 1: Date:
	[12]Alternative 2: Under the program attached.	Alternative 2: see attached program.
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:	SAMPLE ONLY
Item 17 (clause 19.2)	Existing conflicts of interest:	
Item 18 (clause 21.3)	Copyright and other Intellectual Property Rights, the Alternative is:	Alternative 2

Reference Only

GUIDENOTES

[11] *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.*

[12] *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 your 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 are specified in detail.*

Item		
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?	13Yes / 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 project.
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 Client's 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 for any one occurrence
Item 26 (clause 30.4)	The amount of professional indemnity insurance is:	14 $5 Million

Reference Only

GUIDENOTES

13 *Select yes if the Principal/Client is to going to be obliged to attribute the physical work to the Consultant or other author.*

14 *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.*

Item		
Item 27 (clause 30.4)	The professional indemnity insurance must be maintained for the following period after termination or expiration of the Contract	6 years
Item 28 (clause 30.7)	The Client must effect the following insurances and maintain them for the following periods:	15None
Item 29 (clause 33.1)	The address for service of notices is:	The Client All notices, other than notices served under clause 31 or 32 of the General Conditions of Contract: 16 Notices served under clause 31 or 32 of the General Conditions of Contract: The Minister for Works C/- Assistant Director Building Contracting Services Building Management and Works 6th Floor, the Optima Building 16 Parkland Road Osborne Park WA 6017
Item 30 (clause 35)	The law governing this Contract is:	The law of Western Australia.

SAMPLE ONLY

Reference Only

GUIDENOTES

15 *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.*

16 *Insert the name, postal address, email address and facsimile number of the Client's representative.*

Item		
Item 31	Has this Contract been amended from its original form?	Yes. Refer to Schedule 1 of the Request, setting out clauses that have been deleted, amended or added to the standard form of the AS 4122-2010 by this contract.

Reference Only

APPENDIX 3 SAFETY MANAGEMENT PLAN

The Safety Management Plan, located in the master Preliminaries for works contracts, shall contain provision for, but not be limited to, the following elements:

(i) The name and position of each person at the construction site who has specific occupational safety and health responsibility and a description of those specific responsibilities and how they are to be coordinated;

(ii) Occupational safety and health induction for new employees;

(iii) Listing of competencies required for specialist work (eg. rigger, scaffolder);

(iv) The arrangements for managing occupational safety and health incidents on the site, including accident/incident reporting and investigation

(v) Sets out the safety rules at the Site and describes the arrangements for ensuring that all persons working at or visiting the Site are informed of the rules;

(vi) Hazard identification, risk assessment and risk control including routine inspection processes;

(vii) Plant/equipment inspection processes;

(viii) Safe Work Method Statements (also known as Job Safety Analyses or JSA's) for any 'high risk construction work' to be done at the site, including, but not limited to, work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights;

(ix) Emergency response and evacuation procedures;

(x) Methods of communicating and consulting with employees and transmitting new work procedures to employees;

(xi) Hazardous substances exposure management;

(xii) Site security;

(xiii) Purchasing/hiring controls (to avoid unknowingly bringing hazards onto the Site);

(xiv) Quantitative performance measures (application to be determined by contract size and duration); and

(xv) Any other matters that the Superintendent may direct from time to time.

Reference Only

C. PART C - RESPONDENT'S OFFER

C.1 NOTE TO RESPONDENT

Part C should be completed by the Respondent and returned to Department of Housing and Works along with any additional requested information.

In preparing its Offer, the Respondent must:

(i) Address each requirement in the form set out in this Part C;

(ii) Take into account the Terms and Conditions of this Panel and General Conditions of Contract;

(iii) Assume that Department of Housing and Works has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for Department of Housing and Works or any other Public Authority; and

(iv) Identify any information provided in the Offer that the Respondent wishes to be kept as confidential.

C.2 IDENTITY OF RESPONDENT

The Respondent must provide the following details:

Name of Legal Entity	
ACN (if a company) Business Name	
ABN	
Registered address Address of principal place of business	
Website	
Number of years the Respondent has been operating	
Contact Person	
Contact Person Position Title	
Email	
Telephone Facsimile	
Address for service of contractual notices	

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.3 CORPORATE STATUS

The Respondent must provide details of its corporate status by ticking one of the boxes below and providing the necessary supporting information.

❑ 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. Should the Company be a Trustee 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).

C.4 CLAIM FOR REGISTRATION AS A REGIONAL BUSINESS

The Respondent must nominate whether it operates from regional premises by ticking one of the boxes below, and providing the necessary supporting information.

☐ The Respondent operates from regional premises (full details of regional presence and operations must be provided in accordance with Part A Clause A.6.6); or

☐ The Respondent does not operate from regional premises.

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.5 ELIGIBILITY REQUIREMENTS

The Principle will not consider any Offer that does not meet any of the following Requirements:

C.5.1 MINIMUM OCCUPATIONAL SAFETY AND HEALTH QUALIFICATIONS

Respondents must provide with this submission details and evidence of:

(i) Recognised Occupational Safety and Health qualifications in one of the following categories for all nominated personnel:

(a) Diploma

(b) Graduate Diploma

(c) Degree

(d) Masters Degree

OR

(ii) Be registered as a WorkSafe Plan Assessor.

RESPONDENT TO COMPLETE:

Are the Respondent's nominated personnel qualified in one of the above categories?

(Yes / No)

Please provide details of qualifications OR registration.

C.5.2 GENERAL CONDITIONS

Please confirm that the Respondent agrees to the WA Government amendments to Australian Standard AS 4122 – 2010 General Conditions of Contract for Consultants included in Schedule 1 .

RESPONDENT TO COMPLETE:	
Yes	No (Detail reasons)

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.6 SELECTION CRITERIA

The Respondent **must** provide a submission to address the Selection Criteria detailed below.

Department of Housing and Works will, in its Value for Money assessment, consider the extent to which the Offer satisfies each criterion.

Department of Housing and Works reserves the right to reject any Offer that does not properly address and satisfy any of the selection criteria.

Whilst experience with non-residential buildings for government in Western Australia is preferable, Respondents may cite examples of consultancy work they have undertaken that is equivalent in scale, significance and/or complexity. Such examples should be supported by details to demonstrate this equivalency.

Suggested page lengths are a guide only.

C.6.1 SUITABILITY OF PROPOSED METHODOLOGY

The Respondent must demonstrate that its proposed methodology meets the description set out in Part B Specification / Statement of Requirements.

It is to also demonstrate an appreciation and understanding of the key issues surrounding construction industry type audits and explain the methodology it intends to use to address these issues.

In particular, the Respondent must comment on its knowledge and experience in:

(a) The review, assessment and audit of Safety Management Plans;

(b) Hazard identification, risk management and control techniques to ensure a safe worksite and processes;

(c) Interpretation and provision of creative and practical solutions to safety and health issues;

(d) Maintenance of sound record keeping and management of information with respect to workplace assessments;

(e) Investigation and analysis of safety management plans and sites;

(f) Relevant sections of the *Current Legislation* and *Current Regulations; and*

(g) Principles of safety and management systems.

RESPONDENT TO COMPLETE: (Approximately 2 to 3 pages)

Respondent to demonstrate suitability of proposed methodology, addressing (a) – (g) above.

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.6.2 TRACK RECORD OF THE FIRM

The Respondent must provide:

(i) Details of up to 5 contracts for similar services, within the construction industry, provided for other clients within the past five (5) years.

(a) A detailed description and value of the Services provided, and the outcome;

(b) Similarities between the previous contract and this Request;

(c) When the previous contract was performed; and

(d) Key personnel involved, roles and outcomes.

Up to 5 Projects	Similar Services
PROJECT 1 Description, Value, Outcome Similarities Year Key Personnel, Roles, Outcomes	
PROJECT 2 (etc, *expand table as required*) Description, Value, Outcome Similarities Year Key Personnel, Roles, Outcomes	

(ii) A minimum of [2] referees per project/contract detailed above:

Referee Name	Company Name & Position in the company	Contact Phone No and email	Project/Contract Title
Expand table as required			

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.6.3 EXPERTISE OF SPECIFIED PERSONNEL

A. The Respondent must:

(i) Identify any proposed Specified Personnel together with a one-page Resume for each of them, and describe the industry experience of all proposed Specified Personnel.

(ii) Detail the availability of the proposed Specified Personnel for Commissions during the Panel term.

The Respondent must provide details of the Specified Personnel it wishes to nominate as part of its Offer, in the templates below:

RESUME for (INSERT NAME) 1 page for each key personnel NOMINATED ROLE: (e.g. partner/associate, graduate, etc)
PROFESSIONAL HISTORY: (Including project experience gained at other firms)
Include Qualifications, Registrations, Memberships, Accreditations, and other relevant specialised experience etc.
PROJECTS (relevant recent projects only) Project description Year Project value Role fulfilled

Reference Only

B. The Respondent must provide details of the Specified Personnel it wishes to nominate as part of its Offer, in the tables below:

No	Name	Professional qualifications	Professional Membership	Years with the Firm	Years of Experience	Availability
1						
2						
3						
	(Extend table as required)					

Refere

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.7 PRICING SCHEDULES

C.7.1 SUBMITTED SERVICE COSTS

The Respondent is invited to submit its firm's service costs. The table below can be amended to reflect the appropriate breakdown of costs.

	Cost (GST Exclusive)	GST(@ 10%)	Total Cost (GST Inclusive)
Suitability Audit			
Compliance Audit			

The number of site inspections required for the Compliance Audits will be determined by the Department of Housing and Works Project Manager based on the length and complexity of construction projects.

The components of the Schedule of Submitted Service Costs above include the following services:

(i) Suitability Audit

Services to include:

(a) Review Safety Management Plan, including Safe Work Method Statements for 'high risk construction' work.

(b) Audit Report to include checklist with commentary on elements of the Safety Management Plan and any shortfalls that may require addressing.

(ii) Compliance Audit

Services to include:

(a) Site inspection – includes travel time to and from the SiteConsultation with Contractor

(b) Assessment Report identifying compliance with legal obligations and general suggestions for improvement.

(iii) Specialist Advice

Advice on general operational or policy aspects of occupational safety and health will be charged at the submitted Hourly Rates (C.7.2).

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.7.2 SUBMITTED HOURLY RATES

The Respondent is invited to submit its firm's hourly rates for services other than Suitability and/or Compliance Audits.

The table below can be amended/extended to reflect the appropriate breakdown of costs.

	Years of Experience	$/Hour (GST Exclusive)	GST(@ 10%)	$/Hour (GST Inclusive)
Principal Consultant				
Senior Consultant				
Junior Consultant				

C.7.3 APPROVAL OF DISBURSEMENTS

The Department of Housing and Works Project Manager will approve all disbursements before commencement of work.

Disbursements for travel, accommodation and meal costs will only be applicable for works undertaken in regional areas or if the site is greater than 80kms from the Consultant's office.

Disbursements for travel, accommodation and meal costs for projects undertaken in regional areas will be reimbursed at cost to the Consultant upon provision of receipts.

C.8 COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Principle will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. The Principle reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements.

C.8.1 COMPLIANCE

The Respondent must confirm whether it will comply with the General and Special Conditions of Contract. If the Respondent will not comply with any of the General Conditions and Special Conditions of Contract the Respondent must set out:

(i) the General Condition / Special Condition of Contract it will not comply with;

(ii) the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the General Conditions / Special Conditions; and

(iii) the reason for non-compliance.

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE:

Does the Respondent agree to the General Conditions / Special Conditions of Contract?

(Yes / No)

If no, provide details.

C.8.2 DISCLOSURES

(i) Participants (including subcontractors)

RESPONDENT TO COMPLETE:

Is the Respondent acting as an agent or trustee for another person or persons?

(Yes / No)

If yes, provide details.

AND

Is the Respondent acting jointly or in association with another person or persons?

(Yes / No)

If yes, provide details.

AND

Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the supply of the Products and/or Services.

(Yes / No)

If yes, provide details.

(ii) Criminal Convictions

The Respondent must confirm that neither the Respondent nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention.

RESPONDENT TO COMPLETE:

Has the Respondent or any person included in the Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention?

(Yes / No)

If yes, provide details.

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

(iii) Conflict of Interest

In accordance with Clause 11 of the General Conditions, the Respondent must declare and provide details of any actual, potential or perceived conflict of interest.

RESPONDENT TO COMPLETE:

Does the Respondent have any actual, potential or perceived conflict of interest in relation to the performance of the Contract (if awarded) by the Respondent?

(Yes / No)

If yes, the reasons why.

(iv) Professional Standards Scheme

The Respondent is required to disclose whether it is a member of an occupational association for which a scheme has been approved under the *Professional Standards Act 1997* (WA) or equivalent legislation of another State or Territory of Australia.

RESPONDENT TO COMPLETE:

Is the Respondent a member of an occupational association for which a scheme has been approved under the *Professional Standards Act 1997* (WA) or equivalent legislation of another State or Territory of Australia?

(Yes ? No)

If yes, the Respondent must provide details.

(v) Third Party Access and Disclosure to Others

Does the Respondent accept disclosure of their Offer to third parties approved by Department of Housing and Works?

RESPONDENT TO COMPLETE:

Does the Respondent accept disclosure of their Offer to third parties, approved by Department of Housing and Works?

(Yes / No)

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.9 INSURANCE REQUIREMENTS

The Respondent must demonstrate that it has the insurance specified under Part A clause A.8.1.5

RESPONDENT TO COMPLETE:

Does the Respondent have all the insurance coverage required under Part A Clause A.8.1.5?

(Yes / No)

If yes, the Respondent must complete the following table:

	Insurer	ABN	Policy No	Insured Amount	Expiry Date	Exclusions, if any
Public Liability Insurance						
Professional Indemnity						
Workers' Compensation including common law liability of $50m for any one occurrence						

OR

If no, does the Respondent confirm that if it is appointed to the Occupational Safety and Health Consultancy Services Panel 2014, then it will obtain the insurance cover specified prior to engagement for specific project work?

(Yes / No)

If no, the reasons why.

The Respondent must forward its current certificates of insurance with this Offer to the Principal.

Panel Members must ensure that the Principal is provided with up to date insurance Certificates of Currency at all times.

The Principal reserves the right to suspend any firm on the Panel if the insurance details provided fall out of date or cease to be applicable for any reason.

Refere

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.10 RECIPIENT CREATED TAX INVOICE AGREEMENT

(REQUIRED FOR ReadyContracts USE ONLY)

This Agreement is submitted in relation to any contracts derived from the Occupational Safety and Health Consultancy Services Panel 2014 No: BMW2014/00189

In accordance with the Australian Tax Office's (ATO's) Goods and Services Tax Ruling (GSTR) 2000/10 paragraph 13(e) the following is agreed between the Department of Housing and Works – acting for and on behalf of The Principal (The Minister for Works) and

(ENTER THE FULL NAME OF THE CONSULTANT)

The Department of Housing and Works will issue tax invoices to the Consultant in respect of the payments by the Principal under Contracts derived from this Panel;

The Consultant shall not issue tax invoices in respect of claims for payment issued by the Consultant under Contracts derived from this Panel;

The Consultant is registered for the GST at the time of this agreement and that it will notify the Department of Housing and Works if it ceases to be registered.

The Consultant's Australian Business Number (ABN) is:

☐☐ ☐☐☐ ☐☐☐ ☐☐☐ ☐☐☐

(The Consultant is to enter its ABN and if applicable its GST Branch registration number)

The Department of Housing and Works is currently registered for the GST and will notify the Consultant if it ceases to be registered.

The Department of Housing and Works ABN is **99 593 347 728**

Name of Consultant: _____

(IN BLOCK LETTERS)

This Agreement is signed by a person authorised to do so on behalf of the Consultant.

Signature: _____

Full Name: _____

(IN BLOCK LETTERS)

Position with Consultant: _____

(IN BLOCK LETTERS)

Date:

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.11 CLAIM FOR REGISTRATION FOR ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE

For the purpose of registration for Aboriginal Enterprise and Employment Tendering Preference the Respondent must submit this completed form.

Is the Respondent:

(PLEASE TICK APPROPRIATE BOX)

A sole trader, where the person is an Aboriginal Person: Yes ❑ No ❑

A partnership or firm, where not less than 50% of the partners are Aboriginal Persons:
Yes ❑ No ❑

A corporation that has its registered and head offices in Western Australia, where Aboriginal Persons own not less than 50% of the legal entity submitting the tender:
Yes ❑ No ❑

A legal entity that employs an *Aboriginal Person*, including an apprentice or a trainee:
Yes ❑ No ❑

A *Joint Venture with Aboriginal Participation* that is a joint venture between any *Aboriginal Enterprise* and non-Aboriginal Enterprise where not less than 50% of the equity in the joint venture is owned by the *Aboriginal Enterprise* submitting the tender:
Yes ❑ No ❑

If Yes to any of the above, please attach supporting information.

If Yes to (iv) provide an estimation of the proportion (%) of total cost that may be attributable to the direct employment costs of the *Aboriginal Person(s)* engaged on work under contracts derived from membership of the Panel ……%

Name of Respondent: _____

(IN BLOCK LETTERS)

This Claim for Registration for Aboriginal Enterprise and Employment Tendering Preference is signed by a person authorised to do so on behalf of the Respondent in respect to the submitted Request Number 04035 for membership of the Occupational Safety and Health Consultancy Services Panel 2014:

Signature: _____ Full Name: _____

(IN BLOCK LETTERS)

Position with Respondent:.....Date:.....

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.12 CONFIRMATION OF ATTACHMENTS

Please confirm the contents of your Offer by ticking the boxes below:

IDENTITY OF RESPONDENT	✈
CORPORATE STATUS	✈
REGISTRATION AS A REGIONAL BUSINESS	❑
ELIGIBILITY REQUIREMENTS	✈
SELECTION CRITERIA	❑
SUBMITTED HOURLY RATES	❑
COMPLIANCE AND DISCLOSURE REQUIREMENTS	❑
INSURANCE REQUIREMENTS	❑
RECIPIENT CREATED TAX INVOICE	❑
CLAIM FOR REGISTRATION FOR ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE	❑

Reference Only

PART C RESPONDENT TO COMPLETE AND RETURN THIS PART

C.13 RESPONDENT'S CERTIFICATION OF THE OFFER

In reply to the Request for the Occupational Safety and Health Consultancy Services Panel 2014 I/we offer to perform the work under the Panel and as described in Part B – SPECIFICATION in accordance with the Part A - REQUEST and subject to the terms and conditions contained in the General Conditions of Contract and Annexure.

This completed Offer Form and the schedules nominated under Part C together will comprise the Respondent's Offer.

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

Signature: …… Witness Signature: ……

Full Name: …… Witness Full Name: ……..

(Please print) (Please print)

Position With Respondent: …….. Relationship To Respondent:…….

Date: Date:

Reference Only

SCHEDULE 1 - 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 Subcontractors 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:*

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;

Reference Only

war, insurrection, civil disturbance or acts of terrorism; or

act of God;

impact of vehicles or aircraft; or

epidemic or pandemic,

but does not include:

lack of or inability to use funds for any reason;

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;

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;

breakdown of any equipment used by the Consultant or any Subcontractor to the Consultant;

strikes or Industrial Action by the Consultant's Personnel in any way directed at the Consultant or any Subcontractor or directed at the Site;

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

act or omission of the Subcontractors (including if a Subcontractor suffers an Insolvency Event);

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 (e) above; or

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

Reference Only

individual or group of individuals and the Consultant or a Subcontractor to the Consultant that is lodged, registered or certified in accordance with any law applying in Western Australia.

Insert the following new definition:

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

Insert the following new definition:

Subcontractor 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, subconsultants and subcontractors 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

Reference Only

Insert the following new subclause 5.5

5.5 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 provision 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.

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.

Reference Only

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.

CLAUSE 10 PAYMENT

- SUBCLAUSE 10.4

Delete subclause 10.4 and in lieu thereof insert the following:

10.4 The payment claim must:

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:

Reference Only

(i) all amounts which are then due and payable by the Consultant to its subcontractors 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 subcontractor, 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; 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, subcontractors, consultants and subconsultants.

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, subconsultants or subcontractors, may delay the performance of the Services, the Consultant must promptly notify the Client in writing with

Reference Only

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:

following conditions precedent to any entitlement to an extension of time are satisfied:

(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 minimise the delay and no reprogramming or alteration of the sequence of activities or other method could avoid the delay.

- 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, subconsultants or subcontractors; or

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

Reference Only

- 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:

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

indicate the interdependencies of each component part of the Services;

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

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

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

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

CLAUSE 13 LAW AND APPROVALS

- **SUBCLAUSE 13.3**

Delete subclause 13.3 and in lieu thereof insert the following:

Reference Only

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;

(a) the consultant is bound to comply with or obtain;

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.

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:

Reference Only

(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 subcontractor or subconsultant 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 Principal will affect the manner in which or the ability of the Consultant to perform the Contract.

CLAUSE 21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- SUBCLAUSE 21.4

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

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

CLAUSE 24 SUSPENSION BY THE CLIENT

Reference Only

- 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.

- 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;

Reference Only

(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

(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.

Reference Only

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."

Reference Only

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, subconsultants and subcontractors.

CLAUSE 30 INSURANCE

- SUBCLAUSE 30.8

Insert the following new subclause 30.8 immediately after subclause 30.7:

Reference Only

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

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.

_____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

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 thereof:

Each party irrevocably submits to the exclusive jurisdiction of courts exercising 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, subconsultants and subcontractors 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

SCHEDULE 2 - USAGE STATISTICS

Occupational Safety and Health Consultancy Services Panel 2014 – BMW2014/00189

SAMPLE

Quarterly Returns of Commissions Received

Quarter Ending: Mar ❑ Jun ❑ Sep ❑ Dec ❑ 201_

ONLY

Firm	Number	Commission Date	Project No.	Project Manager	Project Title	Agency	Fee [illegible] (hourly rates, lump sum fee)	[illegible] for Quarter ($) (GST-incl)

Reference Only