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| --- |
| User GuidanceThe standard form following is for the preparation of a tender document for **Project Management Services****Part 3: Conditions of Agreement**Please refer to buy.nsw website at [*https://buy.nsw.gov.au/categories/construction*](https://buy.nsw.gov.au/categories/construction) to locate all documents referenced throughout this text. Guidance is based on Microsoft 365 Word.Guide NotesThis standard form contains guidance in hidden text, ie:**GUIDE NOTES:**Guide Note examplesIf the Guide Notes are not visible, click on the **Show/Hide** button “¶”.If still not visible, then:**•** Go to Microsoft Word **File/Options** menu;• Select the **Display** tab; then**•** Tick the **Hidden Text** check box and click the **OK** button.This process can also be used to hide guide notes in a finished document.GeneralInsertion PointsEach ‘»’ shows where input is required. Click onto each ‘»’ and overtype.When Completed:1. Remove all Guide Notes manually or by the following steps:**•** On the **Editing** menu click **Replace**, then (if required) **•** Click the **More** button;**•** Click the **Format** button, click on **Font**;**•** Tick the **Hidden** check box and click the **OK** button;**•** Click the **Special** button, click on **Any Character**; then**•** Click the **Replace All** button.2. Delete this **User Guidance**, along with the following **Page Break**.  |



*New South Wales Government*

Project Management Services

General Conditions of Agreement

(Standard Version of General Conditions as at 11 July 2022)

Space

 [**Preface**](#Preface)

 [**General Conditions of Agreement**](#General_Conditions_of_Agreement)

 [**Agreement Information**](#Agreement_Information)

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**Copyright**

Project Management Services General Conditions of Agreement

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NSW Procurement Service Centre

Telephone: 1800 679 289

Email: nswbuy@treasury.nsw.gov.au

Acknowledgments

This General Conditions of Agreement for Project Management Services was developed by the Department of Regional NSW - Public Works.

Government Codes and Guidelines

Unless noted otherwise, copies of the Codes and Guidelines referred to may be obtained from Categories/Construction on the buy.nsw.gov.au website with address: <https://buy.nsw.gov.au/categories/construction>

Preface

**Preface**

Project Management Services General Conditions of Agreement

The Project Management Services (PMS) Conditions of Agreement is the major component of the PMS Standard Form documents, which also includes the Conditions of Tendering, Tender Schedules and The Services.

In particular, the PMS suite of documents have been designed to:

* provide an easily understood standardised form of Agreement for construction related project management services;
* incorporate Lump Sum Fee, Upper Limit Fee and Schedule of Rates forms of pricing;
* provides for insurable liability;
* align with the requirements in relevant Project Manager prequalification schemes; and
* suit current NSW Government policies and provisions such as:
	+ NSW Procurement Board Directions;
	+ Procurement (Enforceable Procurement Provisions) Direction 2019; and
	+ NSW Government Supplier Code of Conduct.

S

insert the AGREEMENT nAME and REQUEST FOR TENDER nUMBER in the footer.

The details must match those on the title page.

to update the table of contents:

* Click and highlight the table;
* Press “F9” Key; and
* in the “update table of contents” box select “update entire table”

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OPERATIVE CLAUSES

Include the Conditions of Agreement without alteration except for sections to be deleted where indicated by a guide note. follow the guide note to preserve numbering for cross-referencing.

1. Definitions

 Except where the context requires otherwise the definitions in this Agreement are:

|  |  |  |
| --- | --- | --- |
| ***Agreement*** |  | the contract between the Project Manager and the Principal constituted by the Agreement Documents, which supersedes all understandings, representations and communications between the parties related to the subject matter of the Agreement made before the Date of Agreement |
| ***Agreement Documents*** |  | Agreement Documents include:* Conditions of Agreement;
* Agreement Information;
* The Services;
* Appendices;
* Drawings and documents; and
* Letter of Award and any other documents listed therein;
 |
| ***Agreement Material*** |  | all material brought, or required to be brought, into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means; |
| ***Business Day*** |  | any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December; |
| ***Contract*** |  | a services agreement or building or construction contract the Principal enters into for the Project with a Service Provider for the Project Manager to manage, other than this Agreement; |
| ***Contract Works*** |  | the services or works to be carried out under the Contracts; |
| ***Date of Agreement*** |  | the date of the Letter of Award; |
| ***Expiry Date*** |  | the date nominated in Agreement Information Item 18 and is the date on which the Agreement may be terminated in accordance with Clause 11.13; |
| ***Fee*** |  | the fee described in Clause 5, as adjusted. The fee described in Item 9 of the Agreement Information; |
| ***Intellectual Property*** |  | all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property; |
| ***Letter of Award*** |  | a letter from the Principal to the Project Manager awarding the contract to the Project Manager; |
| ***Principal*** |  | the entity named in Agreement Information Item 1; |
| ***Principal’s Authorised Person*** |  | the person stated in the Agreement Information, who is appointed by the Principal to act with its full authority in all matters relating to the Contract; |
| ***Project Budget*** |  | the amount in Agreement Information Item 19; |
| ***Project Manager*** |  | the entity named in Agreement Information Item 3; |
| ***Project Manager’s Authorised Person*** |  | the person stated in the Agreement Information, who is appointed by the Project Manager to act with its full authority in all matters relating to the Contract; |
| ***Senior Executive*** |  | the person appointed by either party to confer and resolve an Issue;. |
| ***Service Provider*** |  | any consultant or contractor the Principal engages to provide services or works, including design and construction of the Contract Works. Service Provider does not include the Project Manager, nor does it include any subcontractor, subconsultant or in-house resource the Project Manager may have as part of the project team; |
| ***Services*** |  | the services described in the The Services. |

1. Engagement
	* 1. The Principal engages the Project Manager in the capacity set out in Item 5 of the Agreement Information to perform the Services, and the Project Manager accepts the engagement and undertakes to perform the Services, on the terms set out in this Agreement.
2. Project Manager's obligations

 Completion of the Contracts and Services

* + 1. The Project Manager must:
			1. carry out and complete the Services and execute all other work under the Agreement required to be completed by the Project Manager in accordance with the requirements of the Agreement;
			2. use reasonable endeavours to achieve completion of the Contracts by the relevant dates for completion and within the relevant budgets; and
			3. perform and observe all the provisions expressed in, or reasonably inferred from, the Agreement which are to be performed and observed by the Project Manager.

 Professional Standard of Care

* + 1. The Project Manager must perform the Services to that standard of care and skill to be expected of a project manager who regularly acts in the capacity in which the Project Manager is engaged and who possesses the knowledge, skill and experience of a project manager qualified to act in that capacity.

 Knowledge of Requirements of the Principal

* + 1. The Project Manager must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly consult with the Principal during the performance of the Services.

 Personnel

* + 1. The Project Manager must:
			1. ensure that all personnel engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of the type of services required by the Principal; and
			2. engage persons named by the Project Manager and agreed by the Principal to carry out the services nominated.
		2. The Project Manager's responsibility for the performance of the Services and for the work and performance of its personnel is not altered in any way by Clause 3.4 or by anything done in accordance with Clause 3.4.

 Discrepancies in Principal-Supplied Information

* + 1. If the Project Manager considers that Principal-Supplied Information (information, documents and other particulars made available to it) is inadequate or contains errors, inconsistencies, discrepancies or ambiguities, the Project Manager must give written notice to the Principal at least 15 Business days before the Project Manager proposes to use the Principal-Supplied Information. The notification must include details of:
			1. the inadequacies, errors, inconsistencies, discrepancies or ambiguities (Information Issues);
			2. the effect on the Fee and the Time for Completion; and
			3. any other matters the Project Manager considers relevant.
		2. The Principal must resolve the Information Issues notified under Clause 3.6. If resolution has an effect on time and/or cost the Project Manager is entitled to an adjustment to the Fee and/or Time for Completion where:
			1. the Information Issues could not reasonably be identified prior to the Date of Award; and
			2. the Project Manager incurs more time and costs than that which could have been reasonably expected at the Date of Award

 Services Delivery Plan

* + 1. The Project Manager must, by the time specified in Item 6 of the Agreement Information, submit to the Principal a Services Delivery Plan for the performance and completion of the Contracts within the time specified in Item 6 of the Agreement Information and the Services.

 Timely Provision of Services

* + 1. The Project Manager must perform the Services expeditiously and in accordance with the Project Program.

 Change of Scope or Timing

* + 1. As soon as practicable after becoming aware of any matter which is likely to change, or which has changed, the scope or timing of the Contracts or the Services, the Project Manager must give written notice to the Principal detailing the circumstances and extent, or likely extent, of the change or delay and whether the Project Manager will be proposing a variation in accordance with Clause 6.

 Alterations to Approved Documents

* + 1. The Project Manager must not make any substantial alteration to, addition to or omission from the plans, drawings, layouts, designs, specifications or other material previously approved without the prior written approval of the Principal.

 Principal's Materials

* + 1. The Project Manager must protect and keep safe and secure all materials and documentation provided by the Principal to the Project Manager.
		2. Upon discharge of this Agreement by performance or termination, the Project Manager must promptly return to the Principal those materials and documentation.

 Cooperation by the Project Manager

* + 1. The Project Manager must
			1. liaise, cooperate and confer with others as directed by the Principal;
			2. inform the Principal about matters likely to adversely affect the Services and the Contract Works; and
			3. coordinate the Services and the Contract Works.

 Obtain All Necessary Approvals

* + 1. The Project Manager must obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services, except where obtained by the Principal as set out in Item 8 of the Agreement Information.

 Project Manager's Relationship with the Principal

* + 1. The Project Manager must not act outside the scope of the authority conferred on it by this Agreement and must not bind the Principal in any way or hold itself out as having any authority to do so, except where authorised by this Agreement.

 Confidentiality

* + 1. The Project Manager and its employees or agents must not without the prior written consent of the Principal disclose any information in connection with the Services or this Agreement to any person not a party to this Agreement other than:
			1. as necessary to perform the Services; or
			2. with respect to any matter already within public knowledge.

 Project Manager's Authorised Person

* + 1. The person named in Item 4 of the Agreement Information will be responsible on behalf of the Project Manager for all aspects of the Services and has the legal power to bind the Project Manager in respect of any matters arising in connection with the Services. Any substituted representative must be notified promptly in writing to the Principal.

 Subcontracting and Assignment

* + 1. The Project Manager must not assign or subcontract any part of the Services without the prior written approval of the Principal.
		2. An approval given by the Principal permitting the Project Manager to subcontract any portion of the Services does not relieve the Project Manager from its obligations and liabilities pursuant to this Agreement.

 Statutory Requirements

* + 1. The Project Manager must ensure that all work done in connection with the Services complies with the requirements of all applicable legislation, codes and Authorities' requirements and all relevant Australian standards applicable to the Services.

 Project Manager’s Costs

* + 1. The Project Manager must carry out all the Services, including provision of all personnel, equipment, facilities, consumables, transport, accommodation, furnishings and other things necessary for or incidental to the Services at its cost.
		2. The Project Manager may, at its own cost, obtain advice, services or assistance from others in connection with the Services, but will not be reimbursed those costs unless those costs are listed in Item 10 of the Agreement Information and the Project Manager has obtained the prior written consent of the Principal to incur them.

 Conflict of Interest

* + 1. The Project Manager warrants that it has no conflict of interest at the date of this Agreement.
		2. The Project Manager must immediately inform the Principal in writing upon becoming aware of the existence, or possibility, of a conflict of interest.

 Security of Premises

* + 1. The Project Manager must comply with all directions, procedures and policies relating to occupational health, safety and security pertaining to the Principal's premises and facilities when using them.

 Access to Project Manager's Premises

* + 1. The Project Manager must, upon reasonable notice, permit the Principal access to the Project Manager's premises in order for the Principal to inspect, discuss and assess anything in connection with the Services.

 Insurances

* + 1. The Project Manager must provide the Principal with proof of all insurance required to be maintained by the Project Manager under this Agreement.

 Media Releases and Enquiries

* + 1. The Project Manager must obtain the Principal’s prior written consent to:
			1. any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
			2. the release for publication in any media of any information concerning the Contract, the Principal or the Works.
		2. The Project Manager must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal. The Project Manager must not respond to any media enquiry without the Principal’s prior written consent.
		3. The Principal may give or refuse its consent, in its absolute discretion.

 Authorisation to release and use information

* + 1. The Project Manager authorises the Principal to:
			1. provide information about the Project Manager, including information provided by the Project Manager and information related to the Project Manager’s performance, to other Commonwealth, State or local government agencies at any time or for any reason; and
			2. The Project Manager agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the Defamation Act 2005 (NSW) in making information available to others.
		2. The Project Manager releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 3.32 or anything done by a recipient of the information.
1. Principal's obligations

 Provide Information

* + 1. The Principal will as soon as practicable, or as required by this Agreement, make available to the Project Manager all relevant instructions, information, documentation or data or any other material required for the performance of the Services.

 Appoint a Representative

* + 1. The person named in Item 2 of the Agreement Information, or any other person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.
1. Payment

 Payment

* + 1. In consideration of the provision of the Services the Principal will pay the Project Manager the Fee calculated in the manner provided in Item 9 of the Agreement Information, subject to the conditions of this Agreement.

 Right of Set-Off

* + 1. The Principal may deduct from amounts otherwise payable to the Project Manager any amount due from the Project Manager to the Principal in connection with the Services.

 Effect of Payment of the Fee

* + 1. Payment, in part or in total, of the Fee set out in Item 9 of the Agreement Information does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Project Manager.

 Reimbursable Expenses

* + 1. The Principal will reimburse the Project Manager the reasonable costs, expenses, fees or charges incurred by the Project Manager limited to those items set out in Item 10 of the Agreement Information, provided that in all cases the Project Manager has first obtained the Principal's prior written approval to incur or pay those costs, expenses, fees or charges.

 Timing of Payment

* + 1. At the times specified in Item 11 of the Agreement Information, and upon Termination pursuant to Clause 11, the Project Manager must lodge with the Principal a payment claim for the Services performed (and for approved reimbursable expenses, if any, incurred) during the specified period. The payment claim must be accompanied by a completed and true Combined Subcontractor’s Statement and Supporting Statement in form at the Annexures, executed on the date of the payment claim.
		2. Within 10 Business Days after the Project Manager’s payment claim is served, the Principal will provide to the Project Manager a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. Reasons will be given if the amount is less than that claimed.
		3. The Principal will pay the Project Manager the amount due within 15 Business Days after the Project Manager ’s payment claim is served.
		4. Payment by the Principal will be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Project Manager. No payment will be due to the Project Manager until details of the nominated account (name of financial institution, account name and account number) are notified in writing to the Principal. The Project Manager shall promptly notify the Principal in writing of any change to the nominated account, but the Principal will not be responsible for any payments made into a previously nominated account prior to notification of such change being received by the Principal.

 Tax Invoices

* + 1. If Agreement Information Item 11 states that the Principal is responsible for issuing the tax invoice, then the Principal will issue payment schedules in the form of Recipient-Created Tax Invoices. The Project Manager must not issue Tax Invoices in respect of the Contract.
		2. If Agreement Information Item 11 states that the Project Manager is responsible for issuing the tax invoice, then:
			1. following the provision by the Principal of the Payment Schedule*,* the Project Manager must immediately issue a tax invoice to the Principal;
			2. the Project Manager must not issue a tax invoice in respect of any taxable supply it makes to the Principal, other than under this clause; and
			3. the tax invoice must be:
1. issued within 2 Business Daysafter the provision by the Principal of the relevant Payment Schedule; and
2. for the Scheduled Amount identified in the Payment Schedule; and.
	* + 1. the tax invoice is to show the Scheduled Amount excluding GST, the GST component and the total Scheduled Amount including the GST component.
		1. Each party warrants it is registered for GST at the time of entering into the Contract, and must notify the other party if it ceases to be registered for GST or to satisfy any requirements for the issue of Recipient-Created Tax Invoices.

 Pay as You Go

* + 1. If the Project Manager does not quote its ABN in its Tender or on its claims or invoices, or otherwise advise the Principal of its ABN relating to the Services, the Principal will withhold tax from payments in accordance with Australian Tax Office requirements.
1. Variations
	* 1. The Principal may instruct variations to the Services in writing and the Project Manager must comply with these instructions.
		2. The Project Manager must take all reasonable steps to minimise the effects of variation work on the time to complete the Services.

 Variation Proposed by the Principal

* + 1. Variations to the Services instructed by the Principal must be generally consistent with, or of a similar nature to, the type of work included in the Services.
		2. When requested by the Principal, the Project Manager must within the time specified in the request, advise the Principal of its price (including any delay costs) for a proposed variation to the Services and its effect on the time to complete the Services, or on any other matter specified in the request.
		3. Unless the Principal instructs the Project Manager to proceed, the Project Manager must not begin to carry out a variation to the Services until the parties have resolved price and time implications (including delay costs) by agreement or determination under Clause 12.

Variation claimed by the Project Manager

* + 1. If the Project Manager considers that a variation to the Services applies but the Principal has not instructed a variation to the Services, the Project Manager must make its claim for a variation within 10 Business Days from the start of the event giving rise to the variation, or from the time when the event should have become known to the Project Manager with reasonable diligence on its part.
		2. If the Project Manager has instructed a variation to a Contract and considers that a variation to the Services applies but the Principal has not instructed a variation to the Services, the Project Manager must make its claim for a variation to the Services within 10 Business Days from the date of the instruction of the variation to a Contract.
		3. If the Principal does not agree with the Project Manager’s contention that a variation applies, the Principal must advise the Project Manager in writing within 10 Business Days from the date of the instruction of the variation to a Contract.

 Variation to a Contract

* + 1. The Principal may instruct variations to the Contracts in writing and the Project Manager must comply with these instructions.
		2. The Project Manager must take all reasonable steps to minimise the effects of variation work on the time to complete the Contracts.
		3. The Project Manager must not instruct a variation to a Contract which will result, or may result, in additional cost to the Principal without approval in writing from the Principal including details of the financial delegation with the signature and position held, except in cases of emergency.
		4. When requested by the Principal, the Project Manager must within the time specified in the request advise the Principal of its estimate of the price (including any delay costs) for a proposed variation to a Contract and its effect on the time to complete the Contract, or on any other matter specified in the request.
		5. If the parties agree that a variation to a Contract applies they must endeavour to agree in writing on its price and effect on the time to complete the Contract. Failing agreement on price or time, or that a variation to a Contract applies, the Project Manager must comply with an instruction by the Principal.
		6. If the Project Manager considers that a variation to a Contract applies but the Principal has not instructed a variation, the Project Manager must present a case for a variation within 10 Business Days from the start of the event giving rise to the variation, or from the time when the event should have become known to the Project Manager with reasonable diligence on its part.
		7. Variations to a Contract instructed by the Principal to the Project Manager must be generally consistent with or of a similar nature to the type of work included in the Contract.
		8. Variations to a Contract instructed by the Project Manager must be generally consistent with, or of a similar nature to, the type of work included in the Contract.
		9. The Project Manager’s services to coordinate, develop and refine the Contract Works are not reason for a variation to the Services.

 Valuation

* + 1. If the parties agree that a variation to the Services applies they must endeavour to agree in writing on its price and effect on the time to complete the Services. Failing agreement on price or time, or that a variation applies, the provisions of Clause 12 apply.
		2. Unless otherwise agreed, the price of a variation to the Services will be determined using the hourly rates set out in Hourly Rates for Variations - Tender Schedules, where included. If Hourly Rates for Variations - Tender Schedules is not included, or does not include hourly rates relevant to the variation, reasonable rates and prices apply.
		3. The Fee must be adjusted to account for the price of a variation to the Services.
1. Copyright and Intellectual Property

 Vesting

* + 1. Subject to Clause 7.2, title to and Intellectual Property in or in relation to Agreement Material (other than the Agreement Material listed in Item 12 of the Agreement Information) vests upon its creation in the Principal. The Project Manager must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.
		2. If title to Intellectual Property in or in relation to Agreement Material is not capable of being vested in the Principal under Clause 7.1 because the Project Manager itself does not own that Intellectual Property, the Project Manager must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Project Manager or direct licence from the owner) to use that Agreement Material or Intellectual Property.
		3. The Principal indemnifies the Project Manager against any costs, claims, actions or expenses incurred by the Project Manager as a result of any reproduction, adaptation or commercialisation by the Principal of any Intellectual Property or Agreement Material vested in the Principal under Clause 7.
		4. The Project Manager indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement of Intellectual Property rights by the Project Manager, its officers, employees, agents or subcontractors in connection with the performance of the Services or the use by the Principal of the Agreement Material for any purpose reasonably contemplated under the agreement.

 Delivery of Agreement Material

* + 1. On, or as soon as practicable after, the expiration or earlier termination of this Agreement, the Project Manager must deliver to the Principal all Agreement Material.

 Limitations

* + 1. The Project Manager must ensure the Agreement Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. While the Principal will not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.
1. Indemnity (People and property)
	* 1. The Project Manager indemnifies the Principal from and against all actions, claims, costs, expenses and damages (including the costs of defending or settling any action or claim) in respect of:
			1. loss of or damage to property of the Principal; or
			2. personal injury (including death) to any person or loss of or damage to any property,

arising out of or by reason of anything done or omitted intentionally or negligently by the Project Manager in respect of the Services.

* + 1. The Project Manager's liability to indemnify the Principal is reduced proportionally to the extent that an act or omission of the Principal or employees or agents (other than the Project Manager) of the Principal may have contributed to the injury, damage or loss.
		2. Subject to Clause 8.4, the Project Manager’s liability under Clause 8 is limited to the amount specified in Item 13 of the Agreement Information.
		3. Clause 8.3 does not apply to liability for damages arising from:
			1. the death of, or injury to, a person;
			2. infringement of third party intellectual property rights;
			3. an unlawful or wrongful act or omission; or
			4. a wilful, reckless or negligent act or omission.
		4. The liability of the Project Manager under Clause 8 may be limited if the Project Manager is a member of an occupational association with an approved Scheme under the *Professional Standards Act, 1994* (NSW).
1. Insurance

 Professional Indemnity Insurance

* + 1. The Project Manager must have insurance covering liability for errors in provision of the Services. The insurance must be with an insurer approved by the Principal (which approval will not be unreasonably withheld) and provide coverage for an amount not less than the amount shown in Item 14 of the Agreement Information.

 Workers' Compensation

* + 1. The Project Manager must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Agreement, covering liability for death of or injury to persons employed by the Project Manager and related liability as required under the *Workers' Compensation Act 1987* (NSW).

 Public Liability

* + 1. The Project Manager must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.
		2. The policy must be:
			1. with an insurer and under conditions approved by the Principal (which approval will not be unreasonably withheld);
			2. obtained prior to commencing the carrying out of the Services;
			3. maintained for the duration of the Agreement; and
			4. for an amount not less than that stated in Item 15 of the Agreement Information in respect of any single occurrence.
		3. The policy must cover the Project Manager, the Principal, the Principal’s Representative and all subcontractors and subconsultants employed from time to time for or in relation to the Agreement and the Services for their respective rights and interests and cover their liabilities to third parties.
		4. The policy must also provide that:
			1. in so far as the policy covers more than one insured party, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured party;
			2. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured party;
			3. failure by any insured party to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured parties;
			4. any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
			5. a notice to the insurer by one insured party will be deemed to be notice by all insured parties.
1. Inspection of records

 Records

* + 1. The Project Manager must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others engaged pursuant to this Agreement.

 Access

* + 1. The Project Manager must, within a reasonable time of any request, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.
1. Termination

 Termination by the Principal other than for Default by the Project Manager

* + 1. The Principal may terminate the whole or any part of the performance of the Services at any time, by written notice addressed to the Project Manager.
		2. The Project Manager must, after receipt of a notice under Clause 11.1:
			1. cease work on the terminated Services by the date specified in the notice; and
			2. comply with any reasonable directions given by the Principal in relation to performance of the Agreement.
		3. As soon as practicable after ceasing work under Clause 11.2, the Project Manager must lodge with the Principal a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Project Manager to be payable for Services performed to the earlier of:
			1. the date of cessation of the terminated Services; or
			2. the date by which the Project Manager was required to cease work on those Services.

The statement must be accompanied by supporting information as reasonably required by the Principal.

 Termination by the Principal for Default by the Project Manager

* + 1. If the Project Manager:
			1. becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
			2. fails to carry out the Services with due diligence and competence;
			3. without reasonable cause suspends the carrying out of the Services; or
			4. commits a substantial breach of this Agreement,

the Principal may:

* + - 1. in the case of the default specified in Clause 11.4.1, forthwith terminate this Agreement by written notice addressed to the Project Manager; and
			2. in the case of any other specified default, terminate this Agreement by written notice addressed to the Project Manager if the Project Manager fails to remedy the default within 14 days from the date of service of a notice by the Principal on the Project Manager specifying the relevant default.

 Termination by the Project Manager

* + 1. If the Principal fails to pay the Project Manager any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Project Manager may give notice requiring the Principal to remedy the default within 10 Business Days after receiving the notice.
		2. If the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Project Manager to do so within the time specified in clause 11.5, the Project Manager may issue a notice terminating the Agreement.
		3. The Principal must pay the amounts prescribed in Clause 11.12.

 Project Manager's Continuing Liability

* + 1. Termination by the Principal or Project Manager, or completion of the Services, will not release the Project Manager from liability in respect of any breach or non-performance of any obligation pursuant to this Agreement.

 Effect of Termination

* + 1. Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

 Adjustment of the Fee on Termination

* + 1. If any of the Services are terminated pursuant to Clause 11.1, the Principal will pay the Project Manager:
			1. a reasonable amount for the Services performed by the Project Manager to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement, and
			2. a further amount calculated in the manner set out in Item 16 of the Agreement Information,

in full and final satisfaction of any claim the Project Manager has or may have.

* + 1. If this Agreement is terminated pursuant to Clause 11.4, the Principal will pay the Project Manager a reasonable amount for the Services performed by the Project Manager up to the date of termination, adjusted to take into account loss or damage suffered, or reasonably likely to be suffered, by the Principal as a consequence of breach by the Project Manager. The Principal may recover any shortfall from the Project Manager as a debt due and payable.
		2. If this Agreement is terminated pursuant to Clause 11.6, the Principal will pay the Project Manager:
			1. a reasonable amount for the Services performed by the Project Manager to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement, and
			2. a further amount calculated in the manner set out in Item 16 of the Agreement Information,

in full and final satisfaction of any claim the Project Manager has or may have.

 Expiry Date Option to Terminate

* + 1. Whether or not the Services have been completed, the Project Manager can, by giving three months notice in writing to the Principal, terminate the Agreement at the Expiry Date nominated in the Agreement Information or at any time thereafter.
1. Issue resolution
	* 1. If the Principal’s Authorised Person and the Project Manager’s Authorised Person are unable to resolve a dispute, difference or disagreement, either party can give notice to the other party of an Issue. The Issue must be referred to a Senior Executive from both parties. The Senior Executives, who must not be an Authorised Person, are to promptly confer to try to resolve the Issue.

 Nomination of an Expert

* + 1. If an Issue between the Project Manager and the Principal is not resolved by negotiation under Clause 12.1 within 30 Business Days from the date of the Issue notice, then either party has a further 30 Business Days to refer the Issue to Expert Determination.
		2. If an Issue is not referred to Expert Determination in accordance with Clause 12.2 the Issue for which the notice has been given is barred from Expert Determination or litigation or similar action.
		3. If the Project Manager and the Principal do not agree upon an independent expert ("Expert"), either may request the Chief Executive Officer of the Australian Commercial Disputes Centre to nominate an Expert.
		4. Once an Expert has been agreed or nominated, the Principal will appoint the Expert in writing on behalf of both parties, with a copy to the Contractor.

 Submissions

* + 1. Within 20 Business Days after the appointment of the Expert, the claimant will submit in writing to the Expert the claim and all the evidence which the claimant wishes the Expert to take into account. Within 30 Business Days thereafter the other party will submit in writing to the Expert that party's response to the claim, particulars of any counterclaim and all the evidence which that party wishes the Expert to take into account.

 Procedure

* + 1. Copies of documents sent to the Expert must be sent to the other party at the same time. The Expert may meet with the parties jointly but not separately and may ask questions of the parties which must be answered orally or in writing as requested by the Expert.

 Determination

* + 1. As soon as possible the Expert must give the parties the Expert's determination in writing as to:
			1. the respective rights and entitlements of the parties, and
			2. the amount or service, if any, which the Expert considers is due from one party to the other.
		2. The determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the parties except where the Expert's determination is that one party shall pay to the other an amount, or carry out work, in excess of $750,000. Such determination shall not be final and binding, provided either party gives notice to the other party of its intent to commence litigation within 10 Business Days of the determination being given.
		3. If a notice is not given in accordance with Clause 11.9 the Issue for which the Issue notice has been given is barred from litigation or similar action

 Liability

* + 1. The Expert will not be liable to the parties for negligence in the conduct of the determination.

 Costs

* + 1. The Principal and the Project Manager will be jointly and severally liable to the Expert for the fees of the Expert. As between themselves, the Principal and the Project Manager will each bear half the Expert's fee and each will bear their own costs of the determination.

 Continuing Performance

* + 1. Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.
1. Notices
	* 1. Any notice given under this Agreement:
			1. must be in writing addressed to the intended recipient at the address shown in Item 17 of the Agreement Information or the address last notified by the intended recipient to the sender;
			2. must be signed by an authorised officer of the sender; and
			3. will be taken to have been given or made (in the case of delivery in person or by facsimile or post) when delivered, received or left at the specified address.
		2. If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent or later than 4.00 pm (local time), it will be taken to have occurred at the commencement of business on the next Business Day in that place.
2. Communication
	* 1. The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).
3. Quality Management System

**ONLY USE THIS CLAUSE if the estimated fee is greater than $250,0000.**

**NOTE THAT all work categories in prequalification scheme scm1191 require the consultant to have a certified quality management system.**

**IF THE CLAUSE IS NOT APPLICABLE ADD TO THE ABOVE HEADING “NOT USED” AND USE STRIKETHROUGH FONT FOR THE CLAUSE CONTENT**

The Project Manager must have in place a Quality Management System certified to AS/NZS ISO 9001, or demonstrate that equivalent QMS systems are in place

1. Work Health and Safety Management System

**only include this clause and above heading if using the following work categories of consultants in construction prequalification scheme SCM1191:**

* **Project Manager Planning & Delivery – Health Infrastructure (Work Category 336)**
* **Project Management (Work Category 313)**

**only include this clause and above heading if using the following work categories of consultants in construction prequalification scheme SCM10611:**

* **Project Manager Planning & Delivery – Health Infrastructure**
* **Project Management**

**IF THE CLAUSE IS NOT APPLICABLE ADD TO THE ABOVE HEADING “NOT USED” AND USE STRIKETHROUGH FONT FOR THE CLAUSE CONTENT.**

* + 1. The Project Manager must have in place:
			1. Work Health and Safety Management System accreditation to ISO 45001 (or AS 4801 until 13 July 2023) or
			2. Staff having relevant qualifications in managing safety with a Certificate 4 (C4) in Work Health and Safety or above such as a diploma or
			3. Two written examples of second party audit reports where the Consultant has satisfactorily overseen implementation of a Work Health and Safety system on a construction project
1. Aboriginal Participation

DELETE THIS CLAUSE AND THE ABOVE HEADING where an aboriginal participation plan is not required for the CONTRACT.

If this clause is deleted:

* Delete clause “aboriginal participation” in the conditions of tendering;
* Delete tender Schedule – SCHEDULE OF aboriginal participation information; AND
* Delete schedule aboriginal participation in the conditions of Contract.

Agencies must include minimum requirements for Aboriginal participation in all Contracts valued at $7.5 million as per the definition of ‘Aboriginal Participation Requirement’ below.

* + 1. The Project Manager must comply with the requirements of Aboriginal Participation at Annexures
1. Protection of children and other vulnerable people

Delete this clause and above heading unless children or other vulnerable people are cared for on a site where services under the Agreement are to be carried out, eg, existing school site.

* + 1. The Project Manager must ensure that all persons performing services on the site, or sites, under the Agreement, including but not limited to the Project Manager’s employees and managers, subconsultants and suppliers (Project Manager Employees), understand and comply with the requirements shown below:
			1. all Project Manager Employees must gain permission to enter the school or facility before performing related services and they may only enter approved areas. The Project Manager’s Representative or where a subconsultant is performing services without the supervision of the Project Manager, the subconsultant’s representative must report their presence to the person in charge of the school or facility on arrival each day and record, in the Site Visit Log, the details of all Project Manager Employees performing services at the site or sites that day;
			2. Project Manager Employees should avoid talking with, touching or interacting with any children or residents or other users of the school or facility except where performing services requires it or in an emergency or safety situation;
			3. Project Manager Employees must only use approved toilets and other facilities, unless the person in charge of the school or facility gives written authority to use alternative arrangements;
			4. appropriate privacy must be maintained when performing services on toilets and similar facilities. Project Manager Employees must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform the services, and that performance of services does not continue when use of the facilities is required. Where practicable male employees should perform services on male facilities and female employees on female facilities;
			5. Project Manager Employees should report any concerns about children’s behaviour or child abuse to the person in charge of the school or facility; and
			6. Project Manager Employees must wear or carry an identity card at all times when on the site or sites.

end of clause “PROTECTION OF CHILDREN AND OTHER VULNERABLE PEOPLE”

1. Dealing with Modern Slavery

**Include the above heading and the FOLLOWING paragraph where the responsible agency requires the Project Manager to comply with the requirements of *Modern slavery act 2018* (NSW) in the Contract, Otherwise delete THIS CLAUSE AND THE ABOVE HEADING.**

**If this clause is deleted, also Delete:**

* **clause “dealing with modern slavery” in the conditions of tendering;**
* **tender Schedule – SCHEDULE OF COMPLIANCE FOR DEALING WITH MODERN SLAVERY; and**
* **schedule modern slavery in the conditions of Contract.**
	+ 1. The Project Manager must comply with the requirements of Schedule Modern Slavery at Annexures and implement processes and procedures to identify and manage the risks of Modern Slavery.

end of clause “dealing with modern slavery”

AGREEMENT INFORMATION

|  |
| --- |
| **Item** |

1. The Principal

Mentioned in Clause 1

The Principal must be an entity that is legally capable of entering the Contract. For example, the Principal could be a DEPARTMENT OR A government owned corporation or a Minister of the Crown if appropriate statutory power exists.

|  |  |
| --- | --- |
| The Principal is: | » |
| The Principal’s ABN is: | »ABN |

1. Principal’s Authorised Person

Insert the name, title and contact details of the authorised person. this will be the person administering the AGREEMENT on a day-to-day basis.

Mentioned in Clause – Definitions

|  |  |
| --- | --- |
| The Principal Authorised Person is: | » |
| Telephone number: | » |
| Email address: | » |

1. The Project Manager

AFTER AGREEING TO ACCEPT THE project manaer’s FEE PROPoSAL, INSERT the project manger’s name AND ABN or ACN NUMBER

Completed at Agreement Award

|  |  |
| --- | --- |
| The Project Manager is: | » |
| The Project Manager’s ABN or ACN is | » ABN or ACN |

1. Project Manager’s Authorised Person

Insert the name, title and contact details of the authorised person. this will be the person administering the AGREEMENT on a day-to-day basis.

Completed at Agreement Award

|  |  |
| --- | --- |
| The Project Manager’s Authorised Person is: | » |
| Telephone number: | » |
| Email address: | » |

1. Capacity in which the Project Manager is Engaged

Mentioned in Clause 2

where the capacity required of the project manager is beyond a standard engagement it should be described here.

|  |  |
| --- | --- |
| The capacity in which the Project Manager is engaged is: | » |

1. Time by which Project Manager must provide Program or Plan

Mentioned in Clause 3.8

Insert suitable time period, for example:

* 5 business days for simple straightforward engagements; or
* 10 business days for large, complex engagements.

|  |  |
| --- | --- |
| The time by which the Project Manager must provide a program or plan to the Principal is: | » Business Days. |

1. Time to complete the Services

Mentioned in Clause 3.6

Insert the time in weeks

|  |  |
| --- | --- |
| The time to complete the Services is: | » weeks from date of Letter of Award.  |

1. Approvals obtained by Principal

Mentioned in Clause 3.15

Insert "Nil" if no approvals are to be obtained by Principal.

|  |  |
| --- | --- |
| Approvals obtained by Principal: | » |

1. The Fee at Date of Contract

Mentioned in Clause 5.1

Use either option 1, option 2, OR option 3.

INSERT THE APPROPRIATE OPTION, WHICH MUST BE CONSISTENT WITH THE TENDER FORM.

Option 1 LUMP SUM FEE

‘is the lump sum accepted by the Principal.’

Option 2 UPPER LINMIT FEE

‘shall be calculated in accordance with the Schedule of Rates, using actual quantities and the tendered rates and prices accepted by the Principal, up to the maximum UPPER LIMIT AMOUNT OF $........ amount accepted by the Principal.’

Option 3 SCHEDULE OF RATES

‘shall be calculated in accordance with the Schedule of Rates, using actual quantities and the tendered rates and prices accepted by the Principal.’

|  |  |
| --- | --- |
| The Fee at date of Agreement is: | $ |

1. Reimbursable Expenses

Mentioned in Clause 5.4

List the items applicable to the particular engagement.

Use "not applicable" if no reimbursable expenses apply.

Examples of reimbursable expenses are:

* fees paid to any relevant statutory authority;
* cost of documents provided by a relevant statutory authority; or
* costs of advertising and publishing of notices.

|  |  |
| --- | --- |
| Reimbursable expenses are: | » |

1. Payment Claims

Mentioned in Clause 5.5

|  |  |
| --- | --- |
| The date in the month for making Payment Claims is: | » (“The last Business Day prior to the end of each calendar month” applies if not filled in). |
| The person authorised to deal with Payment Claims is: | » (“The Principal’s Authorised Person” applies if not filled in). |
| The address for submission of Payment Claims is: | » (The email address shown in Agreement Information Item 2 applies if not filled in). |

Payment Claims and tax invoices - options under clause 5

A tax invoice is required for each payment made by the principal to the project manager. this provides PROOF of payment for gst purposes.

The default option where the PRINCIPAL ISSUES the tax invoice under the ATO preferred RCTI process has been a SUCCESSFUL process and significantly minimises the risk of exceeding the time limit for payment under the Security of Payment Act as no further action is required by the project manager after SUBMITTING a complying Payment Claim.

the ALTERNATIVE option provided WHERE THE project manager provides a Tax INVOICE after a Payment Schedule is issued has been included for circumstances where the Principal’s finance system does not (yet) allow payments unless a tax invoice is provided. this option requires immediate project manager action on any ADJUSTED Payment Claim.

other options have further risks:

* where a initial ‘draft’ Payment Claim is required there is a significant additional risk that the draft Claim can be determined to be a complying Payment Claim under SoPA.
* where a tax invoice is to be submitted as part of the Payment Claim and the project manager is required to issue a credit note for any adjustment by the principal, there is increased complexity in dealing with continuing gst issues in a process where payments are ‘on account’ until the final payment.

Agencies are strongly advised to adopt the default option in order to minimise their risks.

|  |  |
| --- | --- |
| The party responsible for issuing the tax invoice for a Payment Claim (after a Payment Schedule has been issued by the Principal) is:(the Principal / the Project Manager) | » (“the Principal” applies if not filled in”). |

1. Intellectual Property

List in this item any Agreement material that is listed in the consultant’s tender at item 12 of the “tender schedule - Agreement information” and accepted by the principal at tender award.

Government policy is that the Principal retains sole intellectual property rights.

Mentioned in Clause 7.1

|  |  |
| --- | --- |
| Intellectual property not vesting in the Principal is: | (“Nil” applies if not filled in”). |

1. Limitation on Liability

unless special circumstances exist, indemnities given by consultants should be capped. the indemnity complements the insurance arrangements that are made so that there are a number of relevant tools for dealing with risk under the Contract.

the default position is for the liability limit to be related to the estimated Fee. The amounts in the table below are considered reasonable in light of the availability of insurance.

Estimated Fee Liability Limit

Up to $250,000 $1m

From $250,001 to $500,000 $2m

From $500,001 to $1m $5m

above $1m $10m

Insert the liability limit agreed with the appropriate senior manager and the client agency.

Mentioned in Clause 8.3

|  |  |
| --- | --- |
| The Project Manager’s liability is limited to: | » |
| If no amount is stated here, the Project Manager’s liability is unlimited. |

1. Professional Indemnity Insurance

Mentioned in Clause 9.1

If the services are for a project without unusual risks, Insert The amounts in the table below.

Estimated Fee Amount

Up to $250,000 $1m

From $250,001 to $9m $1m

above $9m $10m

for a project with high or unusual risks contact icare to ascertain if principal initiated insurance can be used.

|  |  |
| --- | --- |
| Quantum of professional indemnity insurance: | » |

1. Public Liability Insurance

Mentioned in Clause 9.4.4

If the services are for a project without unusual risks, Insert The amounts in the table below.

Estimated Fee Amount

Up to $250,000 $5m

From $250,001 to $9m $5m

above $9m $20m

for a project with high or unusual risks contact icare to ascertain if principal initiated insurance can be used.

|  |  |
| --- | --- |
| Quantum of public liability insurance: | » |

1. Fee Adjustment on Termination

Mentioned in Clauses 11.10 and 11.12

|  |  |
| --- | --- |
| The Fee adjustment payable on termination (other than for default by the Project Manager) is: | 5% of the Fee that would have been payable for the Services that will not be provided due to the termination. |

1. Notices

Mentioned in Clause 13

 Notices to the Principal

For notices to the Principal the intended recipient is the Principal’s Authorised Person

|  |  |
| --- | --- |
| Office address:(for delivery by hand) | »»»» |
|  |  |
| Postal address:(for delivery by post) | »»»» |
|  |  |
| Email address: | As nominated in Agreement Item 2 |

 Notices to the Project Manager

For notices to the Project Manager the intended recipient is the Project Manager’s Authorised Person:

|  |  |
| --- | --- |
| Office address:(for delivery by hand) | As nominated in the Project Manager’s Tender and accepted by the Principal. |
|  |  |
| Postal address:(for delivery by post) | As nominated in the Project Manager’s Tender and accepted by the Principal. |
|  |  |
| Email address | As nominated in the Project Manager’s Tender and accepted by the Principal. |

1. Expiry Date

Mentioned in Clauses 1 and 11.13

no input required unless another expiry date is contemplated.

seek advice if another expiry date is contemplated. the project manager is expected to continue to manage even if contracts run over time. allowance is made for services after the last contract is completed.

|  |  |
| --- | --- |
| The Expiry Date is: | Three months after the date of completion of the last Contract. |

1. Project Budget

Mentioned in Clause -Definitions

Insert the approved amount

|  |  |
| --- | --- |
| The Project Budget is: | $ » |

ANNEXURES

1. SUPPORTING STATEMENT AND SUBCONTRACTOR’S STATEMENT

Refer to Clause 5.5 of the Construction Consultancy Services Conditions of Agreement and the Notes included in this Statement.

The Project Manager is required to complete these two statements and submit both statements with each Payment Claim. Do not alter the forms.

Relevant legislation includes *Workers Compensation Act 1987* (NSW), s175B; *Payroll Tax Act 2007* (NSW), Schedule 2 Part 5; *Industrial Relations Act 1996* (NSW), s127.

**Supporting Statement**

The Project Manager is the “head Contractor” in terms of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and makes relevant statements below accordingly. The Project Manager, as the “head Contractor”, carries out the construction related work for the Principal under the Agreement.

The Supporting Statement must be signed by the Project Manager, a director of the Project Manager or a person authorised by the Project Manager.

**Subcontractor’s Statement**

The Project Manager is a “subcontractor” in terms of the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW) and makes relevant statements below accordingly. The Project Manager as the “subcontractor” carries out the construction work for the Principal under the Agreement. The Principal is called the “principal contractor” in these Acts.

For clarity, the Subcontractor’s Statement refers to the “Contractor” and “Principal” under the Contract rather than the “subcontractor” and “principal contractor” under the above Acts.

The Subcontractor’s Statement must be signed by the Project Manager (or by a person who is authorised, or held out as being authorised, by the Project Manager to sign the statement).

Information, including referenced Notes, Statement Retention and Offences under various Acts, is included at the end of the Subcontractor’s Statement.

**SUPPORTING** **STATEMENT**

**Construction Contracts**

Pursuant to section 13(7) of the [*Building and Construction Industry Security of Payment Act 1999* (NSW)](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1999-046#statusinformation) (the Act) a supporting statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

This form should be used by a head contractor who has a construction contract that is not an owner- occupier construction contract. If the contract is an owner-occupier construction contract the ‘Supporting Statement – Owner-Occupier Construction Contracts’ form should be used instead.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, “construction contract” and “owner-occupier construction contract” have the meanings given in section 4 of the Act.

|  |  |
| --- | --- |
| Head contractor(business name of head contractor): |  |
| **1.** has entered into a contract with: (business name of subcontractor) |  |
| ABN of subcontractor |  |
| Contract number/identifier |  |
| **or** |
| **2.** has entered into a contract with the subcontractors listed in Schedule 1 |
|  |
| This statement applies to work between (start date) |  | and (end date) |  |
| **or** |
| This statement applies to work completed in Stage (number) of the construction contract |  |
|  |
| Subject of the payment claim dated (date) |  |

**DECLARATION FOR SUPPORTIN****G STATEMENT**

|  |
| --- |
| I, (full name) ………………………………………………………………………………………being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work that is the subject of this payment claim.These subcontractors and the amounts paid to them are identified in Schedule 1 on page 3 of this Supporting Statement. |
| **It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is $110,000 for corporations, and $22,000 for an individual.****It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is $110,000 for corporations, and $22,000 or 3 months imprisonment (or both) for individuals.** |
| Full Name of Individual |  |
| Position/Title |  |
| Signature |  |
| Date |  |

**SCHEDULE 1 (page 3 of Supp****orting Statement)**

**List all subcontractors that have been paid all amounts that have become due and payable in relation to the construction work that is the subject of the payment claim which this supporting statement accompanies.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of Subcontractor | ABN | Agreement number/ identifier | Date of works (period or stage) | Date of subcontractor’s payment claim |
|  |  |  |  |  |
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Approved form under Building and Construction Industry Security of Payment Act 1999 - Section 13(9) For more information visit Fair Trading website: [www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment](http://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment)*.*

**SUBCON****TRACTOR’S STATEMENT**

REGARDING WORKER’S COMPENSATION, PAYROLL TAX

AND REMUNERATION **(NOTE 1)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Subcontractor: | ............................................................................................. | ABN: | .................... |  |
|  | (Business name) |  |  |  |
| of | .......................................................................................................................................................... |  |
|  | (Address of subcontractor) |  |
| has entered into a contract with | ..................................................................... | ABN: | .................... |  |
|  |  | (Business name of principal contractor) |  |  | **(Note 2)** |
|  |  |  |  |  |  |  |  |  |  |  |  |
| Contract number/identifier | ................................................................................ |  | **(Note 3)** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| This Statement applies for work between: | ....../....../...... | and | ....../....../...... |  |  | **(Note 4)** |
| subject of the payment claim dated: | ....../....../...... |  |  |  |  |  | **(Note 5)** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| I, | ................................................................................ | a Director or a person authorised by the |  |
| Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief: |  |
| **(a)** | The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. **Tick** [ ]  if true and comply with (b) to (g) below, as applicable. If it is not the case that the workers or subcontractors are involved or you are an exempt employer for workers compensation purposes **tick** [ ]  and only complete (f) and (g) below. You must tick one box.  | **(Note 6)** |
| **(b)** | All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is **dated** ....../....../...... | **(Note 7)** |
| **(c)** | All remuneration payable to relevant employees for work under the contract for the above period has been paid. | **(Note 8)** |
| **(d)** | Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement.  | **(Note 9)** |
| **(e)** | Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. | **(Note 10)** |
|  |  |  |  |  |  |  |  |  |
| **(f)** | Signature | ..................................................... | Full name | .................................................................. |
|  |  |  |  |  |  |  |  |  |
| **(g)** | Position/Title | .............................................................................................................. | Date ....../....../...... |

*NOTE: Where required [in (b)] above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987* (NSW)*.*

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**Notes to the Subcontractor’s Statement**

**These notes have been prepared using the terms in the referenced Acts. Where this Statement is being completed for the purposes of this Contract, (unless the context otherwise requires) ‘subcontractor’ means the ‘Contractor’ and ‘principal contractor’ means the ‘Principal’.**

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW), section 127 of the *Industrial Relations Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the subcontractor) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor’s business.

1. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
2. Provide the unique contract number, title, or other information that identifies the contract.
3. In order to meet the requirements of s127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration “as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.”

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states “to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.”

1. Provide the date of the most recent payment claim.
2. For Workers Compensation purposes an exempt employer is an employer who pays less than $7,500 annually, who does not employ an apprentice or trainee and is not a member of a group.
3. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
4. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
5. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
6. It is important to note that a business could be both a subcontractor and a principal contractor if a business “in turn” engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor’s Statements from your subcontractors.

**Statement Retention**

The principal contractor receiving a Subcontractor’s Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

|  |
| --- |
| **Offences in respect of a false Statement** |
| In terms of s127(8) of the *Industrial Relations Act 1996* (NSW), a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if: 1. the person is the subcontractor;
2. the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
3. the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* (NSW) and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence. |

**Further Information**

For more information visit SafeWork website<https://www.safework.nsw.gov.au/> , iCare (for Workers Compensation queries) via the[iCare](file:///E%3A%5CGC21%20Docs%20Review%20Backup%5CiCare%20website) web site or NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>

Copies of relevant legislation can be found at[www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**only Include the following schedule where the responsible agency requires the PROJECT MANAGER to comply with the requirements of *Modern slavery act NSW* (2018) in the agreement.**

1. MODERN SLAVERY

further guidance is available from: [*https://buy.nsw.gov.au/resources/modern-slavery-and-procurement*](https://buy.nsw.gov.au/resources/modern-slavery-and-procurement)

In this Schedule:

|  |  |
| --- | --- |
| ***Anti-slavery Commissioner*** | means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW); |
| ***Information*** | may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes “personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals; |
| ***Modern Slavery*** | has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children; |
| ***Modern Slavery Laws*** | means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth); |
| ***Modern Slavery Offence*** | has the same meaning as in the *Modern Slavery Act 2018* (NSW); |
| ***Modern Slavery Statement*** | means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth). |

**Compliance**

1. The Project Manager warrants that, as at the date of its Date of Contract, neither the Project Manager, any entity that it owns or controls or, to the best of its knowledge, any sub-Project Manager of the Project Manager, has been convicted of a Modern Slavery Offence.

**Information**

1. The Project Manager must:
2. subject to any restrictions under any applicable laws by which it is bound, provide to the Principal, within 30 days of a request by the Principal, any Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal’s/Audit Office’s auditors to interview the Project Manager’s staff and, so far as these matters are known to the Project Manager, disclosing the source, place and country of origin of goods and services being supplied;
3. within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal; and
4. notify the Principal in writing as soon as it becomes aware of either or both of the following:

(i) a material change to any of the Information it has provided to the Principal in relation to Modern Slavery; and

(ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

1. The Project Manager may provide any Information or report requested by the Principal in the form of a previously prepared statement or repurposed report, for example, a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Principal to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Principal.
2. The Project Manager must, during the term of this Agreement and for a period of seven (7) years thereafter:
	1. maintain; and
	2. upon the Principal’s reasonable request, give the Principal access to, and/or copies of,

a complete set of records in the possession or control of the Project Manager to trace, so far as practicable, the supply chain of all goods and services provided under this Agreement and to enable the Principal to assess the Project Manager’s compliance with this Annexure (Modern Slavery).

**Modern Slavery Due Diligence**

1. The Project Manager must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Project Manager and any entity that it owns or controls.

**Subcontractors**

1. The Project Manager must take reasonable steps to ensure that all subcontracts of the whole or part of this Agreement contain Modern Slavery provisions that are reasonably consistent with the provisions in this Annexure (Modern Slavery), having regard to the nature of the procurement.

 **Response to Modern Slavery Incident**

1. If the Project Manager becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Project Manager must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Project Manager and any relevant Code of Practice/ Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Principal notifies the Project Manager that it requires the Project Manager to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
2. Any action taken by the Project Manager under the Clause above will not affect any rights of the Principal under this Contract, including its rights under Clause 10 – Termination.

**Termination on Ground of Modern Slavery**

1. The Principal may terminate this Agreement for Project Manger’s Default in accordance with the termination clause of the General Conditions of Contract, on any one or more of the following grounds:

(a) the Project Manager has failed to disclose to the Principal, prior to the Date of Contract, that the Project Manager, or any entity owned or controlled by the Project Manager, has been convicted of a Modern Slavery Offence;

(b) the Project Manager, or any entity owned or controlled by the Project Manager, is convicted of a Modern Slavery Offence during the term of this Contract;

(c) in the Principal’s reasonable view, the Project Manager has failed to notify the Principal as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);

(d) in the Principal’s reasonable view, the Project Manager has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or

(e) in the Principal’s reasonable view and in accordance with Clause 10.4.4., the Project Manager has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches).

**only USE this annexure IF aboriginal participation plan is required for the AGREEMENT. Agencies must include minimum requirements for Aboriginal participation in all Contracts valued over $7.5 million.**

1. ABORIGINAL PARTICIPATION

The following definitions apply to Agreement requirements dealing with Aboriginal participation.

|  |  |  |
| --- | --- | --- |
| ***Aboriginal Business*** |  | means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such by Supply Nation, the NSW Indigenous Chamber of Commerce or a similar acceptable indigenous business verification organisation; |
| ***Aboriginal Employee*** |  | means an employee of the Project Manager or Subconsultant, who is a person of Aboriginal or Torres Strait Islander descent as verified by the Project Manager in accordance with guidance provided under the Aboriginal Procurement Policy (refer to website); |
| ***Aboriginal Participation Requirement*** |  | means the mandatory minimum requirement for Aboriginal participation in the Agreement (Contract) as determined by:* at least 1.5% of the specified APP Contract Value is subcontracted to Aboriginal Businesses;
* at least 1.5% of the full time equivalent (FTE) Australian based workforce deployed on the Contract are Aboriginal Employees, on average, over the duration of the Agreement;
* at least 1.5% of the specified APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Contract; or
* any combination of the above, such that the combined percentages add up to at least 1.5%;

Note that the 1.5% figure expresses mathematically the extent of Aboriginal Participation required by combining financial and non-financial factors. |
| ***Aboriginal Procurement Policy*** |  | means the NSW government’s “Aboriginal Procurement Policy” and published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> |
| ***Actual Aboriginal Participation*** |  | means the percentage of actual Aboriginal participation in the Contract, as determined by combining:* the percentage of the APP Contract Value that is subcontracted to Aboriginal Businesses;
* the percentage of the full time equivalent Australian based workforce deployed on the Contract who are Aboriginal Employees, on average over the period of the Contract, and
* the percentage of the APP Contract Value that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Contract;
 |
| ***APP Contract Value*** |  | is the *Agreement Price* less exclusions accepted or determined by the Principal; |
| ***Unmet Percentage*** |  | is the difference between the Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Agreement. |

Application of Requirements

The APP Contract Value for Aboriginal Participation in this Agreement is the Agreement Price less exclusions accepted or determined by the Principal at time of Agreement award.

Within 28 days of Agreement Award provide an Aboriginal Participation Plan (APP) setting out how the Aboriginal Participation Requirement for the Agreement will be met.

The APP is to be developed from the Tendered Aboriginal Participation Plan (TAPP) that set out how the Tenderer plans to meet the Aboriginal Participation Requirement.

Reporting

Provide an Aboriginal Participation Report within 5 Business Days after 31 March, 30 June, 30 September and 31 December, during the Agreement period.

The report must detail how the Project Manager’s APP is being implemented and quantify, with appropriate calculations, the Actual Aboriginal Participation being achieved to date. The report is to include verifiable evidence to support the Actual Aboriginal Participation reported.

Submit a final Aboriginal Participation report prior to completion of the Agreement.

The report must detail how the Project Manager’s APP has been implemented and quantify the Actual Aboriginal Participation for the Agreement. It is to include verifiable evidence to support the Actual Aboriginal Participation reported. Where the Actual Aboriginal Participation by the Project Manager is less than the Aboriginal Participation Requirement, the report is to include a calculation of the Unmet Percentage.

All reports must be in a format acceptable to the Principal and utilise the DCS Reporting Portal, where applicable. Access to the portal will be provided by the Principal. Contact the Principal for access at least 10 Business Days before the first report is due

The submission of an acceptable final Aboriginal Participation Report is a condition of completion of the Agreement.

Additionally, provide any information or other assistance, as reasonably requested, to enable the Principal to meet its obligations under the Aboriginal Procurement Policy

Implementation assessment

Audits and/ or reviews may be carried out by, or on behalf of, the Principal of the Contractor’s actual Aboriginal participation

Where an Unmet Percentage has been assessed by the Principal, the Project Manager will be liable to pay the Principal an amount equal to the Unmet Percentage multiplied by the APP Agreement Value. The amount so calculated will be a debt due from the Project Manager.