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| --- |
| User Guidance  The following document is part of the Construction Consultancy Services (CCS) standard form for preparation of a Request for Tender document for Construction Consultancy Services above $50,000.  **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 Notes  This standard form contains guidance in hidden text, ie:  **GUIDE NOTES:**  Guide Note examples  If 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.  General  Insertion Points  Each ‘»’ 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*

Construction Consultancy Services

General Conditions of Agreement

(Standard Version of General Conditions as at 2 May 2023)

Space

[**Preface**](#Preface)

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

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

**[Annexures](#Annexures)**

**Copyright**

Construction Consultancy 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 construction related Consultancy 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**

Construction Consultancy Services General Conditions of Agreement

The Construction Consultancy Services (CCS) Conditions of Agreement is the major component of the CCS Standard Form documents, which also includes the Conditions of Tendering, Tender Schedules and The Services.

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

* provide an easily understood standardised form of Agreement for construction related consultancy services with fees estimated to be greater than $50,000;
* incorporate Lump Sum Fee, Upper Limit Fee and Schedule of Rates forms of pricing;
* provides for insurable liability;
* provides an option for Novation where the Principal intends to novate the Agreement to another party;
* align with the requirements in relevant consultant 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.

For Consultancy Services with an estimated fee value of less than $50,000 the Minor Construction Consultancy Services suite should be used.

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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”

remember to account for any and all movement of pages.

**TABLE OF CONTENTS**

[**GENERAL CONDITIONS OF AGREEMENT** 1](#_Toc106008626)

[1 DEFINITIONS 1](#_Toc106008627)

[2 ENGAGEMENT 2](#_Toc106008628)

[3 CONSULTANT'S OBLIGATIONS 2](#_Toc106008629)

[4 PRINCIPAL'S OBLIGATIONS 5](#_Toc106008630)

[5 PAYMENT 5](#_Toc106008631)

[6 VARIATIONS 6](#_Toc106008632)

[7 COPYRIGHT AND INTELLECTUAL PROPERTY 7](#_Toc106008633)

[8 INDEMNITY (PEOPLE AND PROPERTY) 8](#_Toc106008634)

[9 INSURANCE 8](#_Toc106008635)

[10 TERMINATION 9](#_Toc106008636)

[11 ISSUE RESOLUTION 11](#_Toc106008637)

[12 NOTICES 12](#_Toc106008638)

[13 COMMUNICATION 12](#_Toc106008639)

[14 QUALITY MANAGEMENT SYSTEM 12](#_Toc106008640)

[15 WORK HEALTH AND SAFETY MANAGEMENT SYSTEM 12](#_Toc106008641)

[16 ABORIGINAL PARTICIPATION 12](#_Toc106008642)

[17 PROTECTION OF CHILDREN AND OTHER VULNERABLE PEOPLE 12](#_Toc106008643)

[18 DEALING WITH MODERN SLAVERY 13](#_Toc106008644)

[19 NOVATION 13](#_Toc106008645)

[**AGREEMENT INFORMATION** 14](#_Toc106008646)

[1 The Principal 14](#_Toc106008647)

[2 Principal’s Authorised Person 14](#_Toc106008648)

[3 The Consultant 14](#_Toc106008649)

[4 Consultant’s Authorised Person 14](#_Toc106008650)

[5 Capacity in which the Consultant is engaged 14](#_Toc106008651)

[6 Time by which Consultant must provide program or plan 14](#_Toc106008652)

[7 Time to complete the Services 15](#_Toc106008653)

[8 Approvals obtained by Principal 15](#_Toc106008654)

[9 The Fee at Date of Contract 15](#_Toc106008655)

[10 Reimbursable Expenses 15](#_Toc106008656)

[11 Payment Claims 15](#_Toc106008657)

[12 Intellectual Property 15](#_Toc106008658)

[13 Limitation on Liability 16](#_Toc106008659)

[14 Professional Indemnity Insurance 16](#_Toc106008660)

[15 Public Liability Insurance 16](#_Toc106008661)

[16 Fee Adjustment on Termination 16](#_Toc106008662)

[17 Notices 16](#_Toc106008663)

[**ANNEXURES** 18](#_Toc106008664)

[1 SUPPORTING STATEMENT AND SUBCONTRACTOR’S STATEMENT 18](#_Toc106008665)

[SUPPORTING STATEMENT 19](#_Toc106008666)

[SUBCONTRACTOR’S STATEMENT 22](#_Toc106008667)

[2 NOVATION DEED 24](#_Toc106008668)

[3 MODERN SLAVERY 27](#_Toc106008669)

[4 ABORIGINAL PARTICIPATION 29](#_Toc106008670)

GENERAL CONDITIONS OF AGREEMENT

Include the Conditions of Agreement without alteration except for sections to be deleted where indicated by a guide note.

1. DEFINITIONS

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

|  |  |  |
| --- | --- | --- |
| ***Contract*** |  | the Agreement between the Consultant 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 Contract; * 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; |
| ***Consultant*** |  | the entity named in Item 3 of the Agreement Information; |
| ***Consultant’s Authorised Person*** |  | the person stated in the Agreement Information, who is appointed by the Consultant to act with its full authority in all matters relating to the Contract; |
| ***Date of Agreement*** |  | the date of the Letter of Award; |
| ***Fee*** |  | the fee described in Item 9 of the Agreement Information; |
| ***Issue*** |  | any issue, dispute or difference raised by either party under Clause 11; |
| ***Intellectual Property*** |  | all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, inventions, models, know-how and all other rights of intellectual property; |
| ***Letter of Award*** |  | a letter from the Principal to the Consultant awarding the Agreement to the Consultant; |
| ***Principal*** |  | the entity named in Item 1 of the Agreement Information; |
| ***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; |
| ***Senior Executive*** |  | the person appointed by either party to confer and resolve an Issue. |

1. ENGAGEMENT
   * 1. The Principal engages the Consultant in the capacity set out in Item 5 of the Agreement Information to perform the Services, and the Consultant accepts the engagement and undertakes to perform the Services, on the terms set out in this Agreement.
2. CONSULTANT'S OBLIGATIONS

Professional Standard of Care

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

Knowledge of Requirements of the Principal

* + 1. The Consultant 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 Consultant 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 Consultant and agreed by the Principal to carry out the services nominated.
    2. The Consultant'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 3.3 or by anything done in accordance with Clause 3.3.

Principal Supplied Information

* + 1. If the Consultant considers that Principal Supplied Information (information, documents and other particulars made available to it) is inadequate or contain errors, inconsistencies, discrepancies or ambiguities, the Consultant must give written notice to the Principal at least 15 Business Days before the Consultant 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 Consultant considers relevant.
    2. The Principal must resolve the Information Issues notified under Clause 3.5. If resolution has an effect on time and/or cost the Consultant 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 Consultant incurs more time and costs than that which could have been reasonably expected at the Date of Award.

Program or Plan

* + 1. The Consultant must, by the time specified in Item 6 of the Agreement Information, submit to the Principal a program or plan for the performance and completion of the Services within the time specified in Item 7 of the Agreement Information.

Timely Provision of Services

* + 1. The Consultant must perform the Services expeditiously and in accordance with the program.

Change of Scope or Timing

* + 1. As soon as practicable after becoming aware of any matter which has changed, or is likely to change, the scope or timing of the Services, the Consultant must give 15 days written notice to the Principal detailing the circumstances and extent, or likely extent, of the change or delay and whether the Consultant will be proposing a variation in accordance with Clause 6.

Alterations to Approved Documents

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

Cooperation by the Consultant

* + 1. The Consultant must liaise, cooperate and confer with others as directed by the Principal.

Obtain all Necessary Approvals

* + 1. The Consultant 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.

Consultant's Relationship with the Principal

* + 1. The Consultant 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 Contract.

Confidentiality

* + 1. The Consultant 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.

Consultant's Authorised Person

* + 1. The person named in Item 4 of the Agreement Information will be responsible on behalf of the Consultant for all aspects of the Services and has authority to act on behalf of the Consultant in all matters relating to this Contract. Any substituted representative must be notified promptly in writing to the Principal.

Subcontracting and Assignment

* + 1. The Consultant 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 Consultant to subcontract any portion of the Services does not relieve the Consultant from its obligations and liabilities pursuant to this Agreement.

Statutory Requirements

* + 1. The Consultant 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.

Conflict of Interest

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

Security of Premises

* + 1. When using the Principal’s premises and facilities, the Consultant must comply with all directions, procedures and policies relating to work health and safety and security at those locations.

Access to Consultant's Premises

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

Records

* + 1. The Consultant 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, reimbursable expenses and fees and reimbursements payable to others engaged to assist in providing the Services.
    2. The Consultant must, within a reasonable time of any request, give the Principal access to, or verified copies of, any information which may reasonably be required to enable any claim to be substantiated and verified.

Insurances

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

Media Releases and Enquiries

* + 1. The Consultant must obtain the Principal’s prior written consent to:
       1. any press release or promotional advertisement it wishes to make or place concerning the Agreement, the Principal or the Works; and
       2. the release for publication in any media of any information concerning the Agreement, the Principal or the Works.
    2. The Consultant must refer any media enquiries concerning the Agreement, the Principal or the Works to the Principal. The Consultant must not respond to any media enquiry without the Principal’s prior written consent.
    3. The Consultant must ensure that all Subconsultants and Suppliers comply with this clause.
    4. The Principal may give or refuse its consent, in its absolute discretion.

Authorisation to Release and Use Information

* + 1. The Consultant authorises the Principal to provide information about the Consultant, including information provided by the Consultant and information related to the Consultant’s performance, to other Commonwealth, State or Local Government agencies at any time or for any reason; and
    2. The Consultant 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.
    3. The Consultant 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 Consultant 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 in all matters relating to this Agreement.

1. PAYMENT

Payment

* + 1. In consideration of the provision of the Services, the Principal will pay the Consultant the value of Fee as determined by the Principal, subject to the conditions of this Agreement.

Right of Set-Off

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

Effect of Payment of the Fee

* + 1. Payment of the Fee, whether in part or in full, does not constitute 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 Consultant.

Reimbursable Expenses

* + 1. The Principal will reimburse the Consultant the reasonable costs, expenses, fees or charges incurred by the Consultant, limited to those items set out in Item 10 of the Agreement Information, provided that in all cases the Consultant 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 10, the Consultant 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 Supporting Statement and a completed and true Subcontractor’s Statement in the form at the Annexures, executed on the date of the Payment Claim.
    2. Within 10 Business Days after the Consultant’s Payment Claim is served, the Principal will provide to the Consultant 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 Consultant the amount due within 15 Business Days after the Consultant’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 Consultant. No payment will be due to the Consultant until details of the nominated account (name of financial institution, account name, BSB and account number) are notified in writing to the Principal. The Consultant 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 Consultant must not issue Tax Invoices in respect of the Agreement.
    2. If Agreement Information Item 11 states that the Consultant is responsible for issuing the tax invoice, then:
       1. following the provision by the Principal of the Payment Schedule*,* the Consultant must immediately issue a tax invoice to the Principal;
       2. the Consultant must not issue a tax invoice in respect of any taxable supply it makes to the Principal, other than under this clause;
       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 Consultant 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 in writing and the Consultant must comply with the instructions, providing the variations are generally consistent with, or of a similar nature to, the Services.
     2. The Consultant must take all reasonable steps to minimise the effects of variations on the time to complete the Services.

Variations proposed by the Principal

* + 1. When requested by the Principal, the Consultant must, within the time specified in the request, advise the Principal of its price (including any delay costs) for a proposed variation and the effect on the time to complete the Services, or on any other matter specified in the request.
    2. Unless the Principal instructs the Consultant to proceed, the Consultant must not begin to carry out a variation until the parties have agreed on the price and time implications (including any delay costs).

Variations claimed by the Consultant

* + 1. If the Consultant considers that a variation applies but the Principal has not instructed a variation, the Consultant must make its claim for a variation within 10 Business Days from the start of the event giving rise to the alleged variation, or from the time when the event should have become known to the Consultant with reasonable diligence on its part. If the Principal does not agree that a variation applies, the Principal must advise the Consultant in writing.

Valuation

* + 1. If the parties agree that a variation applies they must endeavour to agree in writing on its price and its effect on the time to complete the Services. Failing Agreement on price or time, the provisions of Clause 11 apply.
    2. Unless otherwise agreed, the price of a variation will be determined using the hourly rates set out in Tender Schedules - Hourly Rates for Variations. If the Agreement does not include Tender Schedules - Hourly Rates for Variations, or the tendered hourly rates are not relevant to the variation, reasonable rates and prices will apply.
    3. The Fee must be adjusted to account for the price of a variation.

1. COPYRIGHT AND INTELLECTUAL PROPERTY

Vesting

* + 1. Subject to Clause 7.2 and Clause 7.3, 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 Consultant must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.
    2. The Consultant retains the title to Intellectual Property created outside of the terms of this Agreement for the Agreement Material listed in Item 12 of the Agreement Information.
    3. 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 Consultant itself does not own that Intellectual Property, the Consultant must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Consultant or direct licence from the owner) to use that Agreement Material or Intellectual Property.
    4. The Principal indemnifies the Consultant against any costs, claims, actions or expenses incurred by the Consultant 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.
    5. The Consultant indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement of Intellectual Property rights by the Consultant, 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 Consultant must deliver to the Principal all Agreement Material.

1. INDEMNITY (PEOPLE AND PROPERTY)
   * 1. The Consultant 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 Consultant, the Consultant’s agents and subconsultants in respect of the Services.
     2. The Consultant'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 Consultant) of the Principal may have contributed to the injury, damage or loss.
     3. Subject to Clause 8.4, the Consultant’s liability under Clause 8 is limited to the amount specified in Item 13 of the Agreement Information.
     4. 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
     5. The Consultant’s liability under Clause 8 may be limited by the *Professional Standards Act 1994* (NSW) (as amended) if the Consultant is a member of an occupational association with an approved Scheme under that Act.
2. INSURANCE

Professional Indemnity Insurance

* + 1. The Consultant 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. Where the Consultant is not a sole trader, the Consultant must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Contract, covering liability for death of or injury to persons employed by the Consultant and related liability as required or under the *Workers' Compensation Act 1987* (NSW).
    2. Where the Consultant is unable to obtain workers’ compensation insurance because the Consultant is a sole trader or partnership, the Consultant must hold appropriate personal accident insurance.

Public Liability

* + 1. The Consultant 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 Consultant, the Principal, the Principal’s employees, the Principal’s agents and all 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. insofar as the policy covers more than one insured party, all insuring Contracts and endorsements (with the exception of limits of liability) will operate in the same manner as if there was a separate policy of insurance covering each named insured party;
       2. 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;
       3. any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
       4. a notice to the insurer by one insured party will be deemed to be notice by all insured parties.

1. TERMINATION

Termination by the Principal other than for Default by the Consultant

* + 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 Consultant.
    2. The Consultant must, after receipt of a notice under Clause 10.1:
       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 10.2, the Consultant must lodge with the Principal a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Consultant 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 Consultant 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 Consultant

* + 1. If the Consultant:
       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, in the case of the default specified in Clause 10.4.1, forthwith terminate this Agreement by written notice addressed to the Consultant.

* + 1. In the case of any other specified default the Principal may terminate this Agreement by written notice addressed to the Consultant if the Consultant fails to remedy the default within 14 days from the date of service of a notice by the Principal on the Consultant specifying the relevant default.

Termination by the Consultant

* + 1. If the Principal fails to pay the Consultant any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Consultant 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 to propose steps reasonably acceptable to the Consultant to do so within the time specified in Clause 10.5, the Consultant may issue a notice terminating the Agreement.
    3. The Principal must pay the amounts prescribed in Clause 10.12.

Consultant's Continuing Liability

* + 1. Termination by the Principal or Consultant will not release the Consultant 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 10.1, the Principal will pay the Consultant:
       1. a reasonable amount for the Services performed by the Consultant up 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 Consultant has or may have.
    2. If this Agreement is terminated pursuant to Clause 10.4, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant 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 Consultant. The Principal may recover any shortfall from the Consultant as a debt due and payable.
    3. If this Agreement is terminated pursuant to Clause 10.6, the Principal will pay the Consultant:
       1. a reasonable amount for the Services performed by the Consultant up 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 Consultant has, or may have.

1. ISSUE RESOLUTION
   * 1. If the Principal’s Authorised Person and the Consultant’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. Notice of an Issue can only be given once.

Nomination of an Expert

* + 1. If an Issue between the Consultant and the Principal is not resolved by negotiation under Clause 11.1 within 30 Business Days from the date of the Notice of Issue, 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 11.2, the Issue for which the notice has been given is barred from Expert Determination or litigation or similar action.
    3. If the Consultant 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 Consultant.

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 Notice of Issue 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 Consultant will be jointly and severally liable to the Expert for the fees of the Expert. As between themselves, the Principal and the Consultant 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 Contract, notwithstanding the existence of a dispute.

1. NOTICES
   * 1. Any notice given under this Contract:
        1. must be in writing addressed to the intended recipient at an address shown in Item 17 of the Agreement Information or an address last notified by the intended recipient to the sender;
        2. must be signed by an Authorised Person of the sender; and
        3. will be taken to have been given or made 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 5.00 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**

* + 1. The Consultant must have in place a Quality Management System certified to AS/NZS ISO 9001 or demonstrate that equivalent QMS systems are in place

end of clause “quality management system”

1. WORK HEALTH AND SAFETY MANAGEMENT SYSTEM

**only USE this clause if:**

* **the estimated fee is greater than $9m; or**
* **the Services are related to one of the four categories mentioned below for SCM1191 and SCM10611:**
* **Work Category 313; Project manager**
* **Work Category 336; Project manager planning & delivery – health infrastructure;**
* **Work Category 402; occupational hygienist;**
* **Work Category 406; independent safety assessor.**

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

* + 1. The Consultant 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

end of clause “work health and safety management system”

1. ABORIGINAL PARTICIPATION

**only USE this clause 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.**

**IF THE CLAUSE IS NOT APPLICABLE:**

* **ADD TO THE ABOVE HEADING “NOT USED” AND USE STRIKETHROUGH FONT FOR THE CLAUSE CONTENT;**
* **Delete THE ANNEXURE “aboriginal participation” in the conditions of AGREEMENT;**
* **Delete clause “aboriginal participation” in the conditions of tendering; and**
* **Delete tender Schedule “SCHEDULE OF aboriginal participation information”.**
  + 1. The Consultant must comply with the requirements of Aboriginal Participation at Annexure – Aboriginal Participation.

end of clause “aboriginal participation”

1. PROTECTION OF CHILDREN AND OTHER VULNERABLE PEOPLE

**only USE this clause IF 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.**

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

* + 1. The Consultant must ensure that all persons performing services on the site or sites under the Contract, including but not limited to the Consultant’s employees and managers, subconsultants and suppliers (Consultant Employees) understand and comply with the requirements shown below:
       1. All Consultant Employees must gain permission to enter the school or facility before performing related services and they may only enter approved areas. The Consultant’s representatives or where a subconsultant is performing services without the supervision of the Consultant, 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 Consultant Employees performing services at the site or sites that day.
       2. Consultant 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. Consultant 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. Consultant 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. Consultant Employees should report any concerns about children’s behaviour or child abuse to the person in charge of the school or facility.
       6. Consultant 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

**only USE this clause IF the responsible agency requires the consultant to comply with the requirements of Modern slavery act NSW (2018) in the agreement. further guidance is available from https://buy.nsw.gov.au/resources/modern-slavery-and-procurement*.***

**IF THE CLAUSE IS NOT APPLICABLE:**

* **ADD TO THE ABOVE HEADING “NOT USED” AND USE STRIKETHROUGH FONT FOR THE CLAUSE CONTENT;**
* **Delete THE ANNEXURE “dealing with modern slavery” in the conditions of AGREEMENT;**
* **delete clause “dealing with modern slavery” in the conditions of tendering; and**
* **delete tender Schedule “SCHEDULE OF COMPLIANCE FOR DEALING WITH MODERN SLAVERY”.**
  + 1. The Consultant 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”

1. NOVATION

**only USE this clause IF the Principal will novate the consultant to a Contractor who will be engaged on a Design Development and construct (DD&C) or design and Construct (D&C) Contract.**

**IF THE CLAUSE IS NOT APPLICABLE:**

* **ADD TO THE ABOVE HEADING “NOT USED” AND USE STRIKETHROUGH FONT FOR THE CLAUSE CONTENT;**
* **Delete THE ANNEXURE “novation deed” in the conditions of AGREEMENT; and**
* **delete clause “novation” in the conditions of tendering.**
  + 1. The Principal intends to novate the obligations and liabilities in connection with this Agreement (the "Novation Agreement") to the “Head Contractor” for ........................ (Contract number and name) (the "Head Contract").
    2. The Consultant acknowledges that the Principal intends to novate this Contract. The Consultant consents to the novation
    3. The Consultant ("Novation Consultant") must fully cooperate with and assist each Tenderer for the Head Contract, to allow the Tenderer to assess the obligations and work, including but not limited to design requirements under this Contract.
    4. The Novation Consultant must, on presentation by the Principal execute in triplicate the Novation Deed at Annexures and do any other acts and things or execute any other documents which may be necessary to give effect to such novation to the Head Contractor nominated by the Principal.

end of clause “novation”

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 Consultant

AFTER AGREEING TO ACCEPT THE CONSULTANT’S FEE PROPoSAL, INSERT the CONSULTANT’S name AND ABN or ACN NUMBER

Completed at Agreement Award

|  |  |
| --- | --- |
| The Consultant is: | » |
| The Consultant’s ABN or ACN is | » ABN or ACN |

1. Consultant’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 Consultant’s Authorised Person is: | » |
| Telephone number: | » |
| Email address: | » |

1. Capacity in which the Consultant is engaged

Mentioned in Clause 2

Insert the relevant capacity, For Example:

Consulting structural engineer, or

Expert in acoustic engineering.

the technical capacity in which the consultant is engaged needs to be defined so it is clear that the Principal is relying on the consultant’s specialist expertise.

|  |  |
| --- | --- |
| The capacity in which the Consultant is engaged is: | » |

1. Time by which Consultant must provide program or plan

Mentioned in Clause 3.7

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 Consultant must provide a program or plan to the Principal is: | » Business Days. |

1. Time to complete the Services

Mentioned in Clause 3.7

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 3.14

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

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

1. The Fee at Date of Contract

Mentioned in Clauses 1 and 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

|  |  |
| --- | --- |
| 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 consultant. 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 minimizes the risk of exceeding the time limit for payment under the Security of Payment Act as no further action is required by the consultant after SUBMITTING a complying Payment Claim.

the ALTERNATIVE option provided WHERE THE consultant 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 consultant 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 consultant 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 minimize 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 Consultant) | »  (“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 of all Agreement Material. Any amendments to this policy that are proposed by the Consultant in Tender Schedule - Agreement Information and accepted by the Principal are listed in this Item.

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 Consultant’s liability is limited to: | » |

If no amount is stated here, the Consultant’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 9.5.4

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 10.10 and 10.12

|  |  |
| --- | --- |
| The Fee adjustment payable on termination (other than for default by the Consultant) 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 Consultant

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

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

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 Consultant 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 Consultant 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 Consultant, as the “head Contractor”, carries out the construction related work for the Principal under the Agreement.

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

Subcontractor’s Statement

The Consultant 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 Consultant 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 Consultant (or by a person who is authorised, or held out as being authorised, by the Consultant 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 SUPPORTING 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 Supporting 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)*.*

SUBCONTRACTOR’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)*.*

**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:\GC21%20Docs%20Review%20Backup\iCare%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 deed where the Principal will novate the consultant to a Contractor who will be engaged on a Design Development and construct (DD&C) or design and Construct (D&C) Contract.

ensure that the same deed is included in the “head contract” for the DD&C or D&C ontractor.

1. NOVATION DEED

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **NOVATION DEED dated:** | | ....../....../...... |  |  |  |  |  |
| **BETWEEN** |  | ................................................................................ | | | | (“*Principal*”) | |
| **AND** |  | ................................................................................ | | | |  |  |
|  |  | ACN ....................................................................... | | | | (“*Head*  *Contractor*”) | |
| **AND** |  | ................................................................................ | | | |  | |
|  |  | ACN ....................................................................... | | | | (“*Novation* *Consultant*”) | |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| RECITALS | | |  | | | | | |
| A. | By agreement (*the “Novation Agreement*”), dated ....../....../...... between the Principal and the Novation Consultant, the Principal engaged the Novation Consultant to design the Works for Contract ............ (insert contract number) (*the “Head Contract*”). | | | | | | | |
| B. | The Principal wishes to engage the Head Contractor to complete the design and construct the Works under Contract ............ (insert contract number) (*the* “*Head Contract*”) and to novate the obligations and liabilities in connection with the Novation Agreement to the Head Contractor. | | | | | | | |
| C. | The parties have agreed that the Principal is to be released and discharged from the further performance of the Novation Agreement and from all claims and demands in connection with the Novation Agreement under condition that the Head Contractor undertakes to perform the Novation Agreement in substitution of the Principal. | | | | | | | |
| ENGAGEMENT | | |  |  |  |  |  |  |
| Novation Consultant | | |  |  |  |  |  |  |
| 1. | The Novation Consultant undertakes to perform the Novation Agreement and to be bound by the terms and conditions of the Novation Agreement in every way, with the Head Contractor in substitution of the Principal. | | | | | | | |
| 2. | Notwithstanding clause 1, copyright in all sketches, plans, drawings, specifications, estimates, designs, calculations, computer programs, reports, models or other documents produced by or on behalf of the Novation Consultant pursuant to the Novation Agreement remains the property of the Principal. | | | | | | | |
| 3. | The Novation Consultant releases, discharges and indemnifies the Principal from all existing, potential, continuing and future claims and demands by the Novation Consultant arising out of or in respect of the Novation Agreement or this Deed. | | | | | | | |
| 4. | The Novation Consultant warrants that, at the date of the Deed: | | | | | | | |
|  | (a) | all drawings and other documents produced and signed by the Novation Consultant comply in all respects with the requirements of the Novation Agreement; | | | | | | |
|  | (b) | it is not aware of any breach of the Novation Agreement by either the Novation Consultant or the Principal; | | | | | | |
|  | (c) | there are no unresolved disputes and Issues with the Principal; | | | | | | |
|  | (d) | the amount paid to the Novation Consultant by the Principal is $ ........ (incl GST) (insert the appropriate amount); | | | | | | |
|  | (e) | the amount which is due and payable to it by the Principal under the Novation Agreement is $ ........ (incl GST) (insert the appropriate amount); | | | | | | |
|  | (f) | the Novation Agreement has been adjusted by $ ........ (incl GST) (insert the total value of price adjustments) making the total adjusted Fee payable under the Novation Agreement $ ........ (incl GST) (insert the appropriate amount); and | | | | | | |
|  | (g) | the Completion Date for the Novation Agreement is ....../....../...... (insert the appropriate date). | | | | | | |
| HEAD CONTRACTOR | | |  |  |  |  |  |  |
| 1. | The Head Contractor releases, discharges and indemnifies the Principal from all existing, potential, continuing and future claims and demands by the Head Contractor arising out of or in respect of the Novation Agreement or this Deed, and agrees to be bound by the terms of the Novation Agreement in every way as if the Head Contractor were named in the Novation Agreement as a party thereto in place of the Principal. | | | | | | | |
| 2. | The Head Contractor hereby acknowledges that it has accepted the full design responsibility for the Novation Agreement. Upon novation, the Head Contractor shall indemnify the Principal from any claims from any persons including the Head Contractor for any acts, faults, omissions or defects of the Novation Consultant whether they occurred before or after novation of the Novation Agreement. | | | | | | | |
| 3. | The Head Contractor hereby acknowledges that the Novation Consultant releases, discharges and indemnifies the Principal from all existing, potential, continuing and future claims and demands by the Novation Consultant arising out of or in respect of the Novation Agreement or this Deed. | | | | | | | |
| 4. | The Head Contractor hereby acknowledges that the Novation Consultant warrants that, at the date of the Deed: | | | | | | | |
|  | (a) | all drawings and other documents produced and signed by the Novation Consultant comply in all respects with the requirements of the Novation Agreement; | | | | | | |
|  | (b) | it is not aware of any breach of the Novation Agreement by either the Novation Consultant or the Principal; | | | | | | |
|  | (c) | there are no unresolved disputes and Issues with the Principal; | | | | | | |
|  | (d) | the amount paid to the Novation Consultant by the Principal is $ ........ (incl GST) (insert the appropriate amount); | | | | | | |
|  | (e) | the amount which is due and payable to it by the Principal under the Novation Agreement is $ ........ (incl GST) (insert the appropriate amount); | | | | | | |
|  | (f) | the Novation Agreement has been adjusted by $ ........ (incl GST) (insert the total value of price adjustments) making the total adjusted Fee payable under the Novation Agreement $ ........ (incl GST) (insert the appropriate amount); and | | | | | | |
|  | (g) | the Completion Date for the Novation Agreement is ....../....../...... (insert the appropriate date). | | | | | | |
| GENERAL | | |  |  |  |  |  |  |
| 7. | The copyright in all manuals, drawings, computer programs and other documents supplied to the Novation Consultant by the Principal for reproduction or guidance is vested in the Principal and may not be used or reproduced by the Novation Consultant or the Head Contractor except for the purposes of performing the Novation Agreement without the prior written approval of the Principal. Such documents must be returned to the Principal upon demand. | | | | | | | |
| 8. | Whenever allowed by the context, references in this Deed to a party include the agents and servants of that party. | | | | | | | |

**EXECUTED AS A DEED**

**HEAD CONTRACTOR:**

**THE COMMON SEAL** of )

)

is affixed in accordance with )

its articles of association )

in the presence of )

...................................................... ........................................................................................................

Secretary Director

**NOVATION CONSULTANT:**

**THE COMMON SEAL** of )

)

is affixed in accordance with )

its articles of association )

in the presence of )

...................................................... ........................................................................................................

Secretary Director

**PRINCIPAL…………………………….. :**

**SIGNED SEALED and DELIVERED** )

by )

in the presence of )

...................................................... ......................................................

Signature of witness

on behalf of the Principal

......................................................

Name of witness (print)

**only Include the following schedule where the responsible agency requires the consultant 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>

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

Information

1. The Consultant 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 Consultant’s staff and, so far as these matters are known to the Consultant, 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 Consultant 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 Consultant 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 Consultant 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 Consultant’s compliance with this Annexure (Modern Slavery).

Modern Slavery due diligence

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

Subcontractors

1. The Consultant 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 Consultant 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 Consultant must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Consultant and any relevant Code of Practice/ Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Principal notifies the Consultant that it requires the Consultant to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
2. Any action taken by the Consultant 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 Consultant’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 Consultant has failed to disclose to the Principal, prior to the Date of Contract, that the Consultant, or any entity owned or controlled by the Consultant, has been convicted of a Modern Slavery Offence;

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

(c) in the Principal’s reasonable view, the Consultant 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 Consultant 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 Consultant 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 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 utilize 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.