



Power and Water Corporation Minor Works Contract

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CONTRACT DETAILS

Item #	Reference	Details
1.	Contract No.	[insert contractor number]
2.	Contract Name	[insert Contract name]
3.	Principal	Power and Water Corporation (ABN 15 947 352 360) Address: GPO Box 1921 Darwin NT 0801 Email: [insert]
4.	Principal's Representative	Name: [insert name] Phone: [insert phone number] Email: [insert email address]
5.	Contractor	[insert full name] [insert ABN/ACN] Address: [insert address] Email: [insert email]
6.	Contractor's Representative (clause 9.3)	Name: [insert name] Phone: [insert phone number] Email: [insert email address]
7.	Contract Model (clause 1.2)	This Contract is (select one option only): <input type="checkbox"/> a contract for one-off Works <input type="checkbox"/> a standing offer contract – sole Contractor for multiple Works as required for the period of [insert term of standing offer contract] years from the Award Date (Initial Term) <input type="checkbox"/> a standing offer contract – multiple contractors for Works as required (panel arrangement) for the period of [insert term of standing offer contract] years from the Award Date (Initial Term)

**8. Further Term
(clause 1.6)**

Where this Contract is identified as a standing offer contract in Item 7, is there an option to extend the Initial Term of this Contract?

Yes, as follows:

Further Term	[insert months]
---------------------	-----------------

No, not applicable.

**9. Site
(clause 2.2)**

Where:

this Contract is identified as one-off Works in Item 7: [insert Site details]

OR

this Contract is identified as a standing offer contract in Item 7, the Site details will be as set out in the Scope of Works or each Order.

**10. Access to Site
(clause 2.3(a))**

Where:

this Contract is identified as one-off Works in Item 7: [insert date]

OR

this Contract is identified as a standing offer contract in Item 7, the date for access to the Site(s) will be set out in each Order.

**11. Award Date
(clause 3.1)**

Where:

this Contract is identified as one-off Works in Item 7: The date specified as such in the Notice of Acceptance (or if no date is specified, the date of the Notice of Acceptance).

OR

this Contract is identified as a standing offer contract in Item 7, the date of each Order issued under this Contract.

**12. Security
(clause 6)**

The Contractor must provide the following Security:

A. where this Contract is identified as one-off Works in Item 7:

2 x 2.5% of the Contract Price.

OR

\$[insert]

OR

B. where this Contract is identified as a standing offer contract in

Item 7:

- (i) On entering into this Contract:
- \$[insert]; and
- (ii) Any additional amount directed by the Principal's Representative, or otherwise agreed between the Parties, in respect of each Order (provided always that it cannot exceed 5% of the Contract price payable under the Order).

**13. Insurances
(clause 7)**

Insurance Type	Minimum Amount
Public Liability Insurance	\$(insert amount) for any one occurrence; unlimited in the annual aggregate from the date of this Contract to one year after the expiry of the Defects Liability Period or termination of this Contract.
Professional Indemnity Insurance	<input type="checkbox"/> Yes, \$(insert amount) for any one occurrence; unlimited in the annual aggregate from the date of this Contract to a date not less than 7 years after the expiry of the Defects Liability Period or earlier termination of this Contract. <input type="checkbox"/> No, not applicable (if Item 14 is marked not applicable).
Contract Works Insurance	Contract Price + 15%.
Other insurances	The Contractor must also take out and maintain all other insurances required by Statutory Requirements (including the <i>Return to Work Act (NT) and Motor Accidents (Compensation) Act (NT)</i>).

**14. Contractor's design obligations
(clause 8)**

Does the Contractor have specific design obligations?

A. where this Contract is identified as one-off Works in Item 7:

Yes, as follows:

Contractor's design obligations
As set out in the Scope of Works and which the Contractor must ensure the design meets the requirements set out in clause 8.

No, not applicable.

OR

B. where this Contract is identified as a standing offer contract in Item 7, the Contractor's design obligations are as specified in an Order, and in which case, the Contractor must ensure the design meets the requirements set out in clause 8.

**15. Contract Price
(clause 20.2)**

For Works which the Parties have agreed a lump sum, the lump sum of \$[insert] (inclusive of GST) and is not subject to rise and fall costs.

OR

For Work which the Parties have agreed rates under the Schedule of Rates, the sum of \$[insert] (inclusive of GST).

OR

For Work to which both a lump sum and rates under the Schedule of Rates apply, the sum of \$[insert] (inclusive of GST).

**16. Schedule of Rates
(clause 20.3)**

Is there a specific Schedule of Rates?

Yes, refer to Schedule 4.

OR

No, not applicable.

**17. Date for Practical
Completion
(clause 22.1)**

Where:

this Contract is identified as one-off Works in Item 7: [insert date]

OR

this Contract is identified as a standing offer contract in Item 7, the Date for Practical Completion will be as identified as between the Parties in, or during negotiations in relation to, an Order under this Contract.

**18. Defects Liability Period
(clause 25.2)**

[insert] weeks from the Date of Practical Completion.

19. Intellectual Property Rights (clause 32) **Property** Intellectual Property Rights in Contract Material will be:
 licensed to the Principal (owned by the Contractor).
 owned by the Principal.

20. Appointment as Principal Contractor **as** Is the Contractor appointed as the principal contractor?
 Yes, Special Condition 1 applies.

OR

 No, not applicable.

FORM OF AGREEMENT

1 CONTRACT

1.1 Establishing the Contract

The Parties acknowledge and agree that the Principal issuing the Notice of Acceptance to the Contractor creates a binding contract between the Parties in relation to the undertaking of the Works on the terms and conditions of this Contract.

1.2 Appointment of the Contractor and Contract Model

A contract for one-off Works

- (a) Where Item 7 provides that this Contract is a *fixed term contract for one-off Works*, this clause 1.2(a) applies in addition to the other terms and conditions of this Contract (except clauses 1.2(b) and 1.2(c), which do not apply) and that:
- (i) on and from the Award Date, the Principal appoints the Contractor to undertake the Works under the Contract;
 - (ii) the Contractor must undertake the Works under the Contract:
 - A. within the timeframe(s) specified in this Contract;
 - B. for the Contract Price;
 - C. in accordance with the terms and conditions of this Contract; and
 - D. in accordance with any directions issued by the Principal's Representative in accordance with this Contract.

A standing offer contract – sole Contractor for multiple Works as required

- (b) Where Item 7 provides that this Contract is either a *standing offer contract – sole Contractor for multiple Works as required* or a *standing offer contract – multiple contractors for Works as required (panel arrangement)*, this clause 1.2(b) applies in addition to the other terms and conditions of this Contract (except clause 1.2(a), which does not apply, and clause 1.2(c), which does not apply where Item 7 provides that this Contract is a *standing offer contract – sole Contractor for multiple Works as required*) and that:
- (i) the Contractor irrevocably makes a standing offer to provide the Works to the Principal as and when required by the Principal during the Term;
 - (ii) the Principal may issue the Contractor with an Order for the Works required by the Principal from the Contractor;
 - (iii) prior to the issue of any Order, the Principal may provide the Contractor with a quotation request specifying the Works required by the Principal;
 - (iv) promptly, but in any event within 5 Business Days of the date of receipt of a quotation request, or such longer period as may be agreed by the Principal in writing, the Contractor must issue a written quotation to the Principal responding

to the quotation request, which if accepted by the Principal (as evidenced in or through the subsequent issue of an Order) constitutes the Contract Price for the required Works;

- (v) the Contractor must undertake the Works set out in each Order issued to the Contractor by the Principal in accordance with the terms of that Order and otherwise in accordance with the terms and conditions of this Contract (for the avoidance of doubt, each Order creates additional obligations on the Parties with respect to the Works set out in that Order under the terms and conditions of this Contract and the termination or expiry of this standing offer contract will not affect the obligation under any Order); and
- (vi) notwithstanding any other provision of this Contract, the Principal is not obliged to issue any Orders to the Contractor or to contract any minimum value of Works from the Contractor and has not made any representation or warranty to the Contractor that it will acquire any minimum value of Works from the Contractor.

A standing offer contract – multiple contractors for Works as required (panel arrangement)

- (c) Where Item 7 provides that this Contract is a *standing offer contract – multiple contractors for Works as required (panel arrangement)*, the following terms apply in addition to clause 1.2(b) and the other terms and conditions of this Contract (except clause 1.2(a), which does not apply):
 - (i) the Principal may from time to time issue orders or quotation requests to any one or more Contractor's on the panel in the Principal's sole discretion;
 - (ii) the Principal may suspend the Contractor's appointment to the panel of Contractor's at any time, for any reason and for any period by giving written Notice to the Contractor;
 - (iii) the Principal may add additional panel members to the panel at any time in the Principals sole discretion; and
 - (iv) the Contractor will not be entitled to any compensation from the Principal as a result of the operation of the panel arrangements, including the exercise by the Principal of any of the Principal's rights under this clause 1.2(c).

1.3 PWC Entities to benefit from Works

- (a) The Contractor acknowledges and agrees that the Principal may be entering this Contract, in whole or in part, for and on behalf of a PWC Entity.
- (b) Where the Principal is entering into this Contract in order to facilitate the provision of the Works, whether in whole or in part, for the benefit of a PWC Entity, the Contractor further acknowledges and agrees that:
 - (i) the Principal enters into this Contract as both a Principal in its own right and also as an agent for and on behalf of the PWC Entity in respect of the Works;
 - (ii) the Contractor's liability for any Claims arising under this Contract extend to the PWC Entity in the same manner as if that PWC Entity was the 'Principal' under this Contract;

-
- (iii) the Principal is entitled to pursue any Claim arising under this Contract, whether in its own right or for and on behalf of the PWC Entity (in which case the Principal holds the benefit of any Claims on trust for the PWC Entity); and
 - (iv) the Contractor's liability to the Principal under this Contract is not limited, reduced or compromised in any way by the fact that the basis of the Claim relates to a PWC Entity as distinct to the Principal.

1.4 Non-exclusive appointment

Nothing in this Contract prohibits the Principal from procuring works or services that are the same as or similar to the Works at any time from any other person.

1.5 Orders

Each Order will form part of this Contract with effect on and from the date the relevant Order is issued by the Principal. For clarity, Orders do not create contracts separate from this Contract. Except as required under an Order, the Contractor is not permitted to undertake any Works or entitled to any payment under this Contract.

1.6 Initial Term and Further Term

Where Item 7 provides that this Contract is either a *standing offer contract – sole Contractor for multiple Works as required* or a *standing offer contract – multiple contractors for Works as required (panel arrangement)*:

- (a) this Contract commences on the Award Date and ends on the expiry of the Initial Term unless extended or terminated earlier in accordance with this Contract; and
- (b) the Principal may extend this Contract for the Further Term on the terms and conditions then in effect (including pricing) by providing the Contractor with Notice in writing at least 30 days prior to the end of the Initial Term. The Further Term commences on and from the expiry of the Initial Term.

2 COMMENCEMENT OF WORKS

2.1 The Obligations of the Parties

- (a) The Contractor agrees to perform the Works in accordance with this Contract.
- (b) The Principal agrees to pay the Contractor the Contract Price in accordance with this Contract.

2.2 Conditions Precedent to access the Site

The Conditions Precedent to access the Site are that:

- (a) the Contractor has provided the proposed Contract Program;
- (b) the Security is provided in accordance with clause 6; and
- (c) the Contractor provides evidence satisfactory to the Principal's Representative that each insurance policy required under clause 7 is current,

and where Item 7 provides that this Contract is a *standing offer contract – sole Contractor for multiple Works as required* or a *standing offer contract – multiple contractors for Works as required (panel arrangement)*, the Conditions Precedent to access the Site are applicable to each Site at which works are to be undertaken under this Contract and any Order.

2.3 Principal's Obligations

Subject to clause 2.2, the Principal must give the Contractor sufficient access to the Site to allow it to commence Works on the Site on the latest of:

- (a) the date specified in Item 10; and
- (b) 5 Business Days following the satisfaction of the Conditions Precedent,

and where Item 7 provides that this Contract is a *standing offer contract – sole Contractor for multiple Works as required* or a *standing offer contract – multiple contractors for Works as required (panel arrangement)*, the Principal's obligations under this clause 2.3 apply to each Site at which works are to be undertaken under this Contract and any Order.

2.4 Conditions of Site Access

- (a) Once access to the Site is granted, the Contractor agrees to immediately commence carrying out the Works and to diligently and regularly continue to perform its obligations under this Contract.
- (b) Subject to any contrary express provision in this Contract or Special Condition appointing the Contractor as the principal contractor, the Contractor agrees:
 - (i) it will not have sole or exclusive possession of any part of the Site; and
 - (ii) its access to those parts of the Site reasonably necessary for the Contractor to comply with its obligations under this Contract may be:
 - A. limited for any period of time;
 - B. non-continuous; or
 - C. hindered by other works, including the work of Other Contractors,if reasonably required by the Principal.

2.5 Delay in gaining access to the Site

- (a) Any failure by the Principal to give access as required by clause 2.3 will not be a breach of this Contract but will entitle the Contractor to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly out of the Principal's failure to give the Contractor access to the Site, such cost to be determined by the Principal's Representative.
- (b) To the extent permitted by any Law, the Contractor will not be entitled to make (nor will the Principal be liable for) any Claim arising out of or in connection with the Principal's failure to give the Contractor access to the Site other than under clause 2.5(a).

3 DOCUMENTS FOR WORKS

3.1 Contract Program

If required in the Scope of Works or an Order, the Contractor must within 10 Business Days of the Award Date, prepare a proposed Contract Program of the Works based on the proposed Contract Program submitted in the Contractor's Tender (or any quotation issued in respect of an Order (if applicable)) and otherwise in accordance with the requirements of this Contract.

3.2 Project Plans

The Contractor must carry out the Works in accordance with, and otherwise implement, the Project Plans.

4 DOCUMENTS AND INFORMATION

4.1 Documents

The Contractor agrees that:

- (a) it will keep documents produced by or on behalf of the Contractor and written information supplied by the Principal to the Contractor in respect of the Works, including Contract documents, at the Site or other locations approved by the Principal's Representative; and
- (b) it will make them available at all times to the Principal, the Principal's Representative or any person (including representatives of the Principal) the Principal nominates.

4.2 The Principal Supplied Information

The Contractor and the Principal agree that the Principal Supplied Information:

- (a) has been or will be provided only for the Contractor's convenience; and
- (b) has not been and will not be relied on by the Contractor for any purpose (including entering into this Contract or performing obligations under this Contract) and if it is relied upon by the Contractor, the Contractor does so entirely at its own risk.

4.3 Contractor Supplied Information

The Contractor warrants and represents that the Contractor Supplied Information is free from errors, omissions, inconsistencies, ambiguities and discrepancies and that the Contractor Supplied Information otherwise complies with this Contract.

4.4 Discrepancies

- (a) The several documents forming this Contract and the documents that are produced or issued under this Contract are to be taken as mutually explanatory of one another. However, if an inconsistency, ambiguity or discrepancy between those documents exists, the Contractor must promptly seek the direction of the Principal's Representative regarding the interpretation to be adopted and comply with that direction.
- (b) In giving the direction, the Principal's Representative may override the order of precedence set out in clause 36(n).

-
- (c) The Contractor is not entitled to make any Claim in connection with the direction unless the Contractor considers the direction constitutes a Variation, in which case the Contractor must give Notice to the Principal's Representative under clause 24.3.

5 APPROVALS, AUTHORITIES AND LEGISLATIVE REQUIREMENTS

5.1 Approvals and Statutory Requirements

The Contractor must, without being entitled to make any Claim:

- (a) unless otherwise specified in this Contract, perform the Works so they comply with the BCA, all relevant standards published by Standards Australia, and any Statutory Requirements;
- (b) apply for and maintain all Approvals, give all notices and pay all fees necessary to perform the Works; and
- (c) provide to the Principal copies of all Approvals.

6 SECURITY

6.1 Purpose

Security is for the purposes of ensuring due and proper performance of this Contract by the Contractor.

6.2 Provision of Security

The Contractor must give Security to the Principal, within 10 Business Days of the Award Date.

6.3 Recourse to Security

The Principal may have recourse to the Security if it reasonably believes that:

- (a) the Contractor has breached or failed to comply or is likely to breach or fail to comply with any of its obligations under this Contract, including the occurrence, or possible occurrence, of an Insolvency Event;
- (b) the Principal is, or will be, entitled to Claim payment of moneys from the Contractor in relation to the Works; or
- (c) the Principal is, or will be, entitled to reimbursement of any moneys paid to or to be paid to others under or in connection with this Contract.

6.4 Release of Security

- (a) For Security provided under this Contract or any Order in respect of the Works (other than as provided for in Item 12B(i), which is dealt with under clause 6.4(b)), the Principal will, subject to clause 6.3:
 - (i) within 10 Business Days after the Date of Practical Completion, return only so much of the Security provided by the Contractor as is required to leave a balance of 50% of the Security with the Principal; and

(ii) within 10 Business Days after the Principal's Representative issues the final Payment Statement under clause 20.8 the Principal must release the balance of the Security, subject to any amounts being retained by the Principal to cover any claims the Principal may have against the Contractor.

(b) Where:

(i) Item 7 provides that this Contract is either a standing offer contract – sole Contractor for multiple Works as required or a standing offer contract – multiple contractors for Works as required (panel arrangement); and

(ii) Item 12B(i) identifies that the Contractor must provide Security on entering into this Contract,

the Principal will, subject to clause 6.3, return the Security identified in Item 12(a) on the expiration or earlier termination of the Term of the standing offer contract as identified in Item 7.

7 INSURANCE

7.1 Insurances Required

(a) Prior to the commencement of the Works, the Contractor must have in place the insurances stated in Item 13 with an insurer or insurers approved by the Principal.

(b) Without limiting the previous clause 7.1(a), the policy of Public Liability Insurance must note the Principal's interest arising from this Contract and to the extent possible must extend to cover the Principal for its vicarious liability as principal arising from the Contractor's performance of the Works.

7.2 Professional Indemnity Insurance

If Item 14 applies and is marked 'yes':

(a) before the Contractor commences the Works, the Contractor must obtain a Professional Indemnity Insurance policy as stated in Item 13;

(b) the policy must extend to cover the Contractor's liability for infringement of Intellectual Property Rights; and

(c) the Contractor must ensure that each consultant's policy is maintained for the period as stated in Item 13.

7.3 Evidence of Insurance

Prior to the commencement of the Works or within 10 Business Days after the Award Date, whichever is earlier, the Contractor must provide the Principal's Representative copies of certificates of insurance for the insurance policies required by this Contract.

7.4 Notice of claims or occurrences

As soon as practicable, the Contractor must inform the Principal's Representative in writing of any occurrence arising from the Contractor's performance of the Works that may give rise to an insurance claim under any insurance policy required by this Contract.

8 DESIGN

If Item 14 applies and is marked 'yes', the Contractor must ensure its Design Documents meet the requirements set out in this clause 8.

8.1 Design Obligation

The Contractor must ensure the design:

- (a) is fully and professionally completed without error, omission or defects;
- (b) complies with:
 - (i) the requirements of this Contract, or to the extent that the standard is not prescribed, a standard consistent with Good Industry Practice for designs of a nature similar to that required for the Works;
 - (ii) any specifications set out within this Contract (including the Design Intent); and
- (c) is fit for construction;
- (d) is fit for all purposes for which it might reasonably be used;
- (e) addresses all safety in design requirements as required in accordance with any Legislative Requirements and as more specifically set out in the Scope of Works; and
- (f) is fit for any purposes made known to the Contractor prior to the date of this Contract or reasonably inferred from the information provided.

8.2 Design Documents

The Contractor must provide Design Documents as set out in Item 14.

9 PERSONNEL AND DIRECTIONS

9.1 Principal's Representative

- (a) The Principal's Representative for the purposes of this Contract is the person named in Item 4.
- (b) The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

9.2 Compliance with directions

The Contractor must comply with a direction given by the Principal's Representative, including an oral direction, given or purported to be given, under a provision of this Contract. Before complying with an oral direction, the Contractor must first give written Notice to the Principal's Representative of the oral direction and allow the Principal's Representative 2 Business Days to confirm in writing or withdraw the oral direction.

9.3 Contractor's Representative

- (a) The Contractor's Representative identified in Item 6 or its replacement(s) fulfils the role of Contractor's Representative in carrying out the Works.
- (b) The Contractor must ensure that the Contractor's Representative is present on the Site at all times during the working hours set out in the Scope of Works, or as otherwise required, for the purposes of receiving directions given by the Principal's Representative and of ensuring that the Contractor's obligations under this Contract are carried out.
- (c) Any direction given to the Contractor's Representative is deemed to be given to the Contractor.

10 CONDUCT ON SITE

10.1 Standards on Site

The Contractor must ensure that its Personnel maintain good standards of behaviour on Site and that complaints are properly and promptly investigated.

10.2 Subcontracting

- (a) The Contractor must not subcontract any of the Contractor's obligations under this Contract without the prior written consent of the Principal's Representative (such consent not to be unreasonably withheld).
- (b) If the Contractor enters into a subcontract with any third party for the performance of any of the Contractor's obligations under this Contract:
 - (i) any such subcontract does not excuse the Contractor from performing the Contractor's obligations under this Contract;
 - (ii) the Contractor must ensure that the subcontractor and its personnel comply with the Contractor's obligations under this Contract; and
 - (iii) the Contractor is liable for the acts and omissions of the subcontractor and its personnel as if such acts and omissions were those of the Contractor.

10.3 Record Keeping

The Contractor must make available to the Principal's Representative, on request, all necessary records required to demonstrate that the Contractor and its subcontractors are complying with the provisions of the applicable relevant awards, registered/certified agreement, Federal and State codes of practice, employment legislation and any other Legislative Requirements concerning industrial relations and employment conditions.

11 SITE CONDITIONS

11.1 Acceptance of Site Conditions

Subject to clause 11.2, the Contractor acknowledges and agrees that prior to entering into this Contract, it has conducted a careful inspection and assessment of the Site and available information in relation to the Site, and accepts the state and condition of the Site and all risks associated with carrying out the Works on, under or adjacent to the Site.

11.2 Notification of Latent Condition

- (a) Within 5 Business Days after the Contractor becomes aware or should reasonably have become aware of a Latent Condition while carrying out the Works, the Contractor must give the Principal's Representative a written Notice setting out:
 - (i) the nature of the Latent Condition encountered and the respect in which it differs materially to the expected Site conditions, or the Site conditions that should reasonably have been expected having regard to the inspection and assessment of the Site and available information in relation to the Site under clause 11.1;
 - (ii) any delay or estimated delay to the Works caused by the Latent Condition; and
 - (iii) any additional Direct costs incurred or to be incurred as a result of the encountering of a Latent Condition.
- (b) The Contractor is only entitled to Claim additional Direct costs associated with the Latent Condition, and the Contractor is not entitled to make any further Claim in relation to a Latent Condition, including any Claim for any:
 - (i) Loss or damage suffered as a result of the Latent Condition; and
 - (ii) delay or disruption costs, expenses or other costs related to the Latent Condition.

12 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS

- (a) As a precondition to payment under a Payment Claim, the Contractor must provide with the Payment Claim documentary evidence of the payment of amounts due and payable to:
 - (i) workers of the Contractor and its subcontractors;
 - (ii) consultants; and
 - (iii) subcontractors,in respect of the Works the subject of that Payment Claim.
- (b) The Principal's Representative must be reasonably satisfied that based on the documentary evidence provided by the Contractor, the Contractor has paid all amounts due and payable to its workers, subcontractors and consultants.

13 USE OF LOCAL CONTRACTORS AND SUPPLIERS

Local Benefit Commitments

- (a) The Contractor acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.
- (b) In the Contractor's Tender for the Works, the Contractor made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Contractor as part of this Contract. These promises and commitments form part of this Contract (and are referred to in this clause 17 as the '**Local Benefit Commitment**').

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- (c) The Supplier must fulfil all aspects of the Local Benefit Commitment.

Use of Local Contractors and Suppliers

- (d) Subject to the *Competition and Consumer Act 2010* (Cth), and unless the Contractor demonstrates to the Principal that, for commercial, technical or other reasons, it is impractical to do so, in carrying out the Works, the Contractor must use:
- (i) labour available within the Northern Territory;
 - (ii) subcontractors established in the Northern Territory; and
 - (iii) the services of, and obtain supplies and materials supplied by, businesses established in the Northern Territory.

Reporting

- (e) The Contractor must on written request by the Principal's Representative, provide a written report in relation to its compliance with clauses 13(b) and 13(d) within the timeframe specified in the Principal's Representatives' written request.

Performance to be reported in Contractor's Performance Reports

- (f) The Contractor's compliance or non-compliance with this clause 14 will be recorded in the Contractor's Performance Report to be prepared by the Principal in accordance with clause 35.13.

14 RESPONSIBILITY FOR THE WORKS

14.1 Risk of Works

Except to the extent that it arises from a Principal Risk, the Contractor will bear the risk of and indemnifies the Principal against:

- (a) any loss of or damage to:
- (i) the Works;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Works,
- until:
- (iv) in the case of loss of or damage to the Works, a Certificate of Practical Completion is issued for the Works; or
 - (v) otherwise, a Certificate of Practical Completion is issued for the Works to reach Practical Completion; and
- (b) after the issue of a Certificate of Practical Completion for the Works, any loss of or damage to the Works arising from any act or omission of the Contractor during the

Defects Liability Period or from an event which occurred prior to the issue of the Certificate of Practical Completion for the Works.

14.2 Responsibility for the Works

The Contractor is responsible for the care and protection of the whole of the Works, including for the security of the Site if appointed as the principal contractor, from the commencement of the Works in accordance with clause 2 to 5pm on the date the Certificate of Practical Completion is issued.

15 QUALITY

15.1 Construction

The Contractor must, in performing the Works:

- (a) use workmanship of a Good Industry Practice which is fit for the intended purpose of the Works; and
- (b) comply with the requirements of this Contract, and, to the extent they are not inconsistent with the Contract requirements, with all relevant standards of Standards Australia.

15.2 Examination and Testing

- (a) At any time prior to the issue of the final Payment Claim under clause 20.8, the Principal's Representative may direct that all or part of the Works or any Contractor's Materials be tested.
- (b) The Principal's Representative may direct that any part of the Works must not be covered up or made inaccessible without written approval.

15.3 Non-Complying Activities Before Practical Completion

If, before the Date of Practical Completion, in the opinion of the Principal's Representative any part of the Works are not in accordance with this Contract, it may give the Contractor a direction specifying the non-conformance:

- (a) requiring the Contractor to correct it or carry out a Variation and specifying the time within which either must occur; or
- (b) advising the Contractor that the Principal will accept the work despite the non-conformance.

16 WORK HEALTH AND SAFETY

16.1 Work Health and Safety Plan

- (a) Prior to the Commencement Date, the Contractor must, if a Work Health and Safety Plan is required under the Scope of Works:
 - (i) prepare a Work Health and Safety Plan applicable to the nature of works being undertaken; and

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- (ii) provide the Work Health and Safety Plan to the Principal's Representative.
 - (b) The Contractor must, and must ensure its Personnel engaged in the performance of the Works, comply with:
 - (i) the Work Health and Safety Plan;
 - (ii) any directions on safety issued by the Principal or the Principal's Representative; and
 - (iii) any directions on safety issued by any authorities or otherwise required by any Statutory Requirement or required under this Contract.

16.2 Work Health and Safety

The Contractor must, when undertaking the Works:

- (a) comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the Works, comply with all WHS Legislation and other requirements of this Contract concerning work health and safety management;
- (b) comply with all reasonable directions of the Principal's Representative given following any potential perceived breach of any WHS Legislation concerning work health and safety management;
- (c) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site and the Works;
- (d) ensure that all Works are executed in a manner that ensures the health and safety of persons present on the Site;
- (e) provide the Principal's Representative with a written report, all work health and safety matters, or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
- (f) if appointed as principal contractor under the Special Conditions, perform that role in accordance with the applicable Statutory Requirements; and
- (g) on request by the Principal's Representative or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or any subcontractor commences such work.

17 SUSTAINABLE SUPPLY CHAIN MANAGEMENT

- (a) All of the Principal's contractors play a vital part in the Principal's sustainability performance. As such, the Contractor must comply with all environmental, human rights, labour, social, governance and other sustainability standards of conduct set by applicable Laws and key international standards which are applicable in those jurisdictions where the Contractor sources materials for the Works or any part of them.

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- (b) Without limiting clause 17(a), if the Principal develops a responsible sourcing code or similar, the Contractor will cooperate with the Principal in relation to such code, including:
 - (i) responding fully and accurately to any relevant questionnaire; and
 - (ii) using reasonable efforts to improve any aspects of non-compliance with such code.

18 ENVIRONMENT

18.1 Obligations of Contractor in respect of the environment

- (a) The Contractor must, in connection with the Contractor's obligations under this Contract:
 - (i) comply with all Environmental Laws in force from time to time;
 - (ii) not cause or allow any Site to be the subject of any Contamination or Environmental Incident; and
 - (iii) comply with any specific requirements with respect to the environment as provided for in the Scope of Works.
- (b) The Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in a breach of Environmental Laws.
- (c) Without limiting clause 18.1(b), in conducting the Contractor's activities on a Site, the Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in the Principal breaching any Environmental Laws.

18.2 Environmental Incidents

- (a) If the Contractor becomes aware that an Environmental Incident has occurred or may occur on, over or under the Site as a result of or in connection with the Contractor's acts, omissions or obligations under this Contract, the Contractor must immediately notify the Principal of the Environmental Incident that has occurred or may occur.
- (b) The Contractor must comply with all directions by the Principal in respect of any Environmental Incident occurring on, over or under the Site as a result of or in connection with the Contractor's acts, omissions or obligations under this Contract.

19 USE OF HAZARDOUS SUBSTANCES

The Contractor must notify the Principal's Representative of any hazardous substances or dangerous goods to be brought onto the Site and must ensure that it complies with all Statutory Requirements applicable to the use, transportation, storage and disposal of any hazardous, dangerous, waste or deleterious substances on or in the vicinity of the Site or in respect of the Works.

20 CONTRACT PRICE AND PAYMENT

20.1 Performance and Payment Obligation

- (a) The Contractor must execute and complete the Works.
- (b) Subject to Schedule 1, clause 20.12, and to any other right to set-off which the Principal may have under this Contract, the Principal will pay the Contractor the Contract Price and any other amounts which are payable by the Principal to the Contractor under this Contract for the Works.

20.2 Contract Price

In the Contract Price, the Contractor has allowed for the provision of all labour, Contractor's Plant, Equipment and Work and Contractor's Materials and other work or things necessary for the Works, whether or not expressly mentioned in this Contract.

20.3 Schedule of Rates

If Item 16 states that, a Schedule of Rates applies then:

- (a) quantities in a Schedule of Rates are estimated quantities only; and
- (b) if the actual quantity of an item to be performed by the Contractor is greater or less than the quantity shown in the Schedule of Rates, the Contractor is required to do the actual quantity without any direction from the Principal's Representative.

20.4 Adjustments

- (a) If the Principal has included quantities for the Contractor to price in a Schedule of Rates and the actual quantity of an item of the Works required to be performed by the Contractor is greater than 115% or less than 85% of the quantity shown in the Schedule of Rates:
 - (i) if the Contractor accepted a lump sum for the item, the difference between the actual quantity and 115% or 85% (as applicable), will be valued under clause 24.5(d) as if it were varied work directed by the Principal's Representative as a Variation; and
 - (ii) if the Contractor accepted a rate for the item, either Party may give a Notice to the other Party that they consider the rate to be applied to the actual quantities should be varied having regard to the actual quantities, and the Principal's Representative may issue a direction in respect of the reasonable applicable rate and any such direction will be valued in accordance with clause 24.5(d).
- (b) Subject to clause 20.4(c), the Contractor is not entitled to make any Claim against the Principal if the items of work or quantities are incorrect, including where this is:
 - (i) an incorrect quantity;
 - (ii) an item which should not have been included; or
 - (iii) an item which was omitted but should have been included.

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- (c) This clause 20.4 does not apply to the valuation of Variations directed by the Principal's Representative under clause 24.5 of this Contract.

20.5 Payment Claims

The Contractor must give to the Principal's Representative Claims for payment on account of the Contract Price and all other amounts payable by the Principal to the Contractor under this Contract:

- (a) On at least a monthly basis or such longer period agreed between the Parties in writing; and
- (b) in the form of a tax invoice showing in sufficient detail of the Work performed and the basis of calculating the amount claimed in accordance with this Contract.

20.6 Payment Statements

- (a) The Principal's Representative:
 - (i) must - within 10 Business Days of receiving a valid Payment Claim submitted in accordance with clause 20.5; or
 - (ii) may - if the Contractor fails to submit a Payment Claim in accordance with clause 20.5, at any time,

give the Contractor, on behalf of the Principal, a Payment Statement which shows the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise in accordance with this Contract.

- (b) If the amount in clause 20.6(a) is less than the amount claimed in the Payment Claim, the Principal's Representative will provide reasons why the amount is less than the amount claimed in the Payment Claim.
- (c) The issue of a Payment Statement will not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the Payment Statement has been satisfactorily carried out in accordance with this Contract.

20.7 Payment

The Principal will pay the Contractor the amount set out as then payable in the Payment Statement, by the later of:

- (a) 20 Business Days of the Contractor submitted Payment Claim; and
- (b) 15 Business Days of the Principal receiving a Payment Statement under clause 20.6.

20.8 Final Payment Claim and Notice

- (a) Within 20 Business Days (or such longer period agreed in writing by the Principal's Representative) after the end of the Defects Liability Period for the Works the Contractor must give the Principal's Representative:

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- (i) a Payment Claim which must include all amounts which the Contractor claims from the Principal on account of all amounts payable under this Contract; and
 - (ii) Notice of any other amounts which the Contractor claims from the Principal, in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Contract which occurred during the Defects Liability Period for the Works.
- (b) The Payment Claim and Notice required under this clause 20.8 are in addition to the other Notices which the Contractor must give to the Principal's Representative under this Contract in order to preserve its entitlements to make any such Claims.
 - (c) Subject to satisfaction of clauses 20.8(a) and 20.8(b), the Principal's Representative will issue to the Contractor a final Payment Statement titled 'Final Payment Statement' under this clause 20.8(c), in accordance with the requirements for issuing Payment Statements under clause 20.6.

20.9 Release after Final Payment Claim and Notice

After the date for submitting the Payment Claim and Notice under clause 20.8 has passed, the Contractor releases the Principal from any Claim in respect of the Works or this Contract which occurred during the performance of the Works or during the Defects Liability Period, except for any Claim included in a Payment Claim or Notice under clause 20.8.

20.10 Interest

- (a) The parties will pay Interest calculated daily on any:
 - (i) amount which has been set out as payable by the Principal's Representative under clause 20.6, but which is not paid by the party within the time required by this Contract (from the date on which the relevant amount was due for payment); and
 - (ii) damages or other liabilities of the Parties to each other (excluding any agreed damages agreed between the Parties in writing) arising under this Contract.
- (b) Interest must be claimed by the Parties within 20 Business Days after the date of payment by the other Party and such Claim must constitute a tax invoice in accordance with clause 20.11.

20.11 GST

- (a) Unless otherwise indicated, the consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract is inclusive of GST, where GST is calculated using the GST Rate at the Award Date.
- (b) The Party making a Supply must provide the Recipient with a tax invoice and/or adjustment note in relation to the Supply prior to an amount being paid by the Recipient under this Contract and must do all things reasonably necessary to enable and assist the Recipient to claim and obtain any Input Tax Credit available to it in respect of a Supply.
- (c) Where the GST Rate is changed after the Award Date, then any amount of consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract which:

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- (i) was specified in this Contract before the change to the GST Rate was announced; and
 - (ii) has not been invoiced at the time such change takes effect,
- will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate.
- (d) If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an Input Tax Credit or otherwise.
 - (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, and if GST is not already included in the amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream plus GST.
 - (f) If an Adjustment Event arises in respect of a Supply made by a supplying Party, the GST amount payable by the receiving Party will be recalculated to reflect the Adjustment Event and a payment will be made by the receiving Party to the supplying Party, or by the supplying Party to the receiving Party, as the case requires.

20.12 Right of Set-Off

The Principal may:

- (a) deduct from moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to the Principal; or
 - (ii) any Claim to money which the Principal may have against the Contractor under this Contract or otherwise in connection with this Contract or the Works, whether for damages (liquidated or unliquidated) or otherwise; and
- (b) without limiting clause 20.12(a), deduct any debt or Claim referred to in clause 20.12(a)(i) or clause 20.12(a)(ii) from any moneys which may be or may become payable to the Contractor by the Principal in respect of any Variation under clause 24.

21 CONSTRUCTION

21.1 Construction

The Contractor must carry out the Works in accordance with this Contract.

21.2 Progress of Works

The Contractor must progress the Works in a manner and at a rate of progress satisfactory to the Principal's Representative.

21.3 Covering up Work

- (a) The Contractor must comply with any provision of this Contract or any direction from the Principal's Representative that the Works are not to be covered up or made inaccessible, without the prior approval of the Principal's Representative.

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- (b) The Contractor must not cover up any Works until the Principal's Representative has been afforded a reasonable opportunity to inspect it.

21.4 Storage on Site

- (a) The Contractor must not store anything on the Site unless expressly permitted by the Principal's Representative.
- (b) If permitted by the Principal's Representative, the Contractor must comply with the directions of the Principal's Representative in respect of that storage and with any applicable Statutory Requirements in respect of the storage of chemicals and/or dangerous goods.

21.5 Protection of People and Property

The Contractor will provide all things and take all measures necessary to protect people and property on or adjacent to the Site, including the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, removal of obstructions and protection of services.

22 PRACTICAL COMPLETION

22.1 Date for Practical Completion

The Contractor must achieve Practical Completion by the Date for Practical Completion. If the Contractor fails to achieve Practical Completion by the Date for Practical Completion, the Principal's Representative may extend the Date for Practical Completion if it reasonably considers the circumstances justify granting an extension.

22.2 Notice of Practical Completion

When the Contractor believes that Practical Completion has been reached, the Contractor must immediately notify the Principal's Representative in writing and provide the Principal's Representative with a Payment Claim for all Works performed, and Notice of any Claims of the Contractor, in the period prior to Practical Completion.

22.3 Certificate of Practical Completion

- (a) If the Principal's Representative is satisfied that the Works have reached Practical Completion, the Principal's Representative will issue a Certificate of Practical Completion certifying the Date of Practical Completion.
- (b) If the Principal's Representative is not satisfied that the Works have reached Practical Completion, the Principal's Representative must give the Contractor reasons in writing within a reasonable time following the Contractor's Notice under clause 22.2.
- (c) The Contractor must complete or rectify all minor omissions and minor defects within 20 Business Days after the Date of Practical Completion or such period as reasonably determined by the Principal's Representative and specified in the Certificate of Practical Completion.
- (d) The issue of a Certificate of Practical Completion will not constitute approval of any of the Works nor will it prejudice any Claim by the Principal.

22.4 Possession on Practical Completion

With effect on and from the Date of Practical Completion, the Principal will take possession of the Works.

23 SUSPENSION

23.1 Notice to Suspend

The Principal may, at any time, direct the Contractor by Notice in writing to suspend all or any part of the Works, if the Principal's Representative is of the opinion that it is necessary.

23.2 Contractor's Entitlement to additional Direct costs

- (a) If the Principal suspends all or part of the Works because of any act, omission or default of the Principal or the Principal's Representative, the Principal will pay for any additional Direct costs incurred by the Contractor as a result of the Suspension.
- (b) The Contractor's entitlement to payment of additional Direct costs will be the Principal's sole liability for any Suspension.

23.3 Recommencement of work under this Contract

- (a) As soon as the Principal's Representative becomes aware that the reason for any Suspension no longer exists, the Principal's Representative may direct the Contractor to recommence work on all or part of the Works.
- (b) On being directed by the Principal's Representative to recommence all or part of the Works, the Contractor must immediately recommence the Works.

24 VARIATIONS

24.1 Variations only as directed by the Principal

The Contractor must not alter the Works in any way nor deviate from the requirements of this Contract except as directed by the Principal's Representative.

24.2 The Principal may direct a Variation

- (a) The Principal's Representative may give a direction to the Contractor to carry out a Variation.
- (b) A direction to carry out a Variation is only valid if given or confirmed in writing by the Principal's Representative and the mere issue of a direction by the Principal's Representative does not entitle the Contractor to any additional payment unless the direction gives rise to a Variation.
- (c) The Principal's Representative may give a direction to the Contractor to omit Work from the Contract. Any omitted Works may be carried out by another contractor if required by the Principal's Representative concurrent with the Contractor carrying out the Contractor's Activities.

24.3 Variation Notice

- (a) If:
- (i) the Principal's Representative gives a direction to the Contractor; and
 - (ii) the Contractor considers that the implementation of the direction will give rise to a Variation,
- the Contractor must give Notice to the Principal's Representative that it considers that the direction is a Variation within 2 Business Days after the date on which the direction is given, giving reasons for its opinion that the direction will give rise to a Variation.
- (b) The Contractor's Notice must set out:
- (i) the Contractor's reasons for its opinion that the direction will give rise to a Variation;
 - (ii) the Contractor's estimate of any increase or decrease in the Contractor's scope of Works resulting from the direction;
 - (iii) the Contractor's estimate of any impact on the Date for Practical Completion of the Works; and
 - (iv) the Contractor's estimate of any adjustment to the Contract Price resulting from any increase or decrease in the Contractor's scope of the Works.
- (c) The Principal's Representative may retract the direction by giving the Contractor a Notice within 2 Business Days of the date that the Contractor issued the Notice under clause 24.3(a).
- (d) The Contractor's compliance with Notice requirements set out in clause 24.3(a) and clause 24.3(b) is a precondition to the Contractor's entitlement to make any claim in relation to a Variation directed by the Principal's Representative.

24.4 Effect of Variations on Contract Price

The amount payable or deductible in relation to Variations directed by the Principal's Representative will be added to or deducted from the Contract Price.

24.5 Value of Variations

The Parties agree that the amount payable or deductible in relation to a Variation must be calculated as follows:

- (a) the agreed amount, if the Parties have agreed the value of the Variation;
- (b) if clause 24.5(a) does not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner in which a Variation is to be valued, then those rates or provisions will apply;
- (c) if clauses 24.5(a) and 24.5(b) do not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner of valuing work performed under this Contract, then those rates or provisions will apply; or

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- (d) if clauses 24.5(a), 24.5(b) and 24.5(c) do not apply, an amount that is reasonable in all the circumstances having regard to the cost and the risk associated with the Variation, as determined by the Principal's Representative.

24.6 Daywork

The Contractor must not undertake or raise any Claim for work undertaken as "daywork" unless a written direction from the Principal's Representative is received to carry out Daywork.

25 DEFECTS AND DEFECT LIABILITY PERIOD

25.1 Rectification Works during Defects Liability Period

- (a) The Contractor must correct all Defects which existed on or prior to the Date of Practical Completion or become apparent during the Defects Liability Period.
- (b) At any time prior to the expiry of the Defects Liability Period for the Works, the Principal's Representative may, in respect of any Defect which existed on or prior to the Date of Practical Completion or becomes apparent during a Defects Liability Period, give the Contractor a written direction specifying the Defect or omission and requiring that the Defect be rectified by the Contractor.
- (c) If the Contractor fails to rectify Defects within 5 Business Days after the Contractor receives a direction from the Principal's Representative in accordance with clause 25.1(b) or such other period stated in the direction, then:
 - (i) the Principal's Representative may, exercising an absolute discretion, have the rectification works carried out by another contractor; and
 - (ii) the cost incurred of such rectification works will be a debt due to the Principal from the Contractor.

25.2 Defects Liability Period

The Defects Liability Period is stated in Item 18.

25.3 Extension of Defects Liability Period

If:

- (a) the Principal's Representative gives the Contractor a direction under clause 25.1; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the direction by 52 weeks or such shorter period as directed by the Principal's Representative, commencing on completion of the correction of the Defect (or the relevant part).

26 WARRANTIES

26.1 Contractor Warranties

- (a) The Contractor represents and warrants, in addition to any other applicable representation or warranty in this Contract or implied by any Law:

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- (i) the Works will be performed in a proper and workmanlike manner and in accordance with all requirements of the Principal as set out in the Scope of Works and this Contract;
 - (ii) it has all necessary resources available to it, including financial resources and access to labour and materials, to undertake its obligations under this Contract; and
 - (iii) the Works will be done with due diligence and expedition and within the times stated in this Contract.
- (b) The Contractor acknowledges that the Principal has entered into this Contract in reliance on the representations and warranties given in this clause 26.1.

26.2 Warranties Remain Unaffected

The Contractor agrees that the warranties it gives under clause 26.1 remain unaffected and the Contractor will bear all liability and responsibility in accordance with this Contract despite any review by or on behalf of the Principal, any direction by the Principal's Representative or any Variation.

27 TERMINATION

27.1 Right to damages not prejudiced

If a Party breaches or repudiates this Contract, nothing in this clause 27 will prejudice the right of the other Party to recover damages or exercise any other right or remedy and if the Principal terminates this Contract due to the Contractor's default, the rights and liabilities of the Parties will be the same as if the Contractor had repudiated this Contract and the Principal had elected to terminate this Contract and recover damages.

27.2 Breach or Default Notice

- (a) The Principal may by hand or by registered post, give the Contractor a written Notice to show cause, if the Contractor breaches any provision of this Contract.
- (b) A Notice to show cause must state:
- (i) that it is a Notice under clause 27.2(a) of this Contract;
 - (ii) the legal and factual basis of the alleged breach or non-compliance with this Contract by the Contractor;
 - (iii) the Contractor is required to show cause in writing by providing the following:
 - A. particulars as to what actions and steps the Contractor has taken or proposes to take, and the timeframe within which they will take those actions and steps to rectify the breach;
 - B. details of mitigation actions the Contractor is taking to minimise the impact of the breach on the Works; and
 - C. details of the Principal should not exercise its right to terminate this Contract for Default in accordance with clause 27.3;

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- (iv) the date and time by which the Contractor must show cause (which must not be less than 5 Business Days after the Notice is received by the Contractor); and
 - (v) the place at which cause must be shown.

27.3 Notice of Termination

- (a) If the Contractor fails to show reasonable cause by the stated date and time set out in the Notice to show cause, the Principal may by written Notice to the Contractor:
 - (i) step-in and take out of the Contractor's hands all or part of the Works remaining to be completed under this Contract, and suspend any further payment to the Contractor, until the time when clause 27.3(a)(ii) applies; or
 - (ii) terminate this Contract for default of the Contractor.
- (b) If this Contract is terminated under clause 27.3(a)(ii), the Principal may complete all or part of the Works taken out of the Contractor's hands and may, without payment of compensation to the Contractor:
 - (i) take possession of, and use, such of the Contractor's Plant, Equipment and Work Materials and other things on or in the vicinity of the site that was used or intended to be used by the Contractor for the Works;
 - (ii) contract with the Contractor's consultants and subcontractors; and
 - (iii) take possession of, and use, the Contractor's Project Documents,

as are reasonably required by the Principal to facilitate completion of the Works taken out.
- (c) If the Principal exercises its step-in rights, the Contractor is liable for and indemnifies the Principal for all Claims in relation to and as a result of the Principal exercising its step-in rights and must, at its cost, co-operate fully with the Principal and its Personnel and provide all necessary assistance, including giving the Principal access to the Contractor's premises, Plant, Equipment and Work, and all Project Documents.
- (d) If the Principal is reasonably satisfied that the Contractor is capable of recommencing to carry out the Works in accordance with this Contract after the Principal has exercised its step-in rights, the Principal may, but is not obliged to, cease to exercise its step-in rights after the relevant event of default has been rectified.

27.4 Insolvency

- (a) Without prejudice to any other rights under this Contract, the Principal may immediately terminate this Contract by Notice to the Contractor, on the occurrence of any Insolvency Event.
- (b) The Principal's rights and remedies on termination under this clause 27.4 are, at its election, the same as its rights and remedies for termination for default by the Contractor.

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- (c) The rights and remedies given by this clause 27.4 are additional to any rights and remedies including any accrued rights and remedies under this Contract. They may be exercised even if there has been no breach of this Contract.

28 INDEMNITIES

28.1 Indemnities

- (a) The Contractor indemnifies the Principal against any Claim for Loss or damage (including legal costs on a full indemnity basis) which the Principal is liable for in respect of:
- (i) any negligent acts or omissions by the Contractor;
 - (ii) death, disease or illness (including mental illness) of, or personal injury to persons;
 - (iii) loss of, or damage to, any real or personal property (including property belonging to the Principal or for which it is responsible); and
 - (iv) any Loss or damage suffered by the Principal as a result of any breach of this Contract by the Contractor,
- to the extent that any Claim or Loss or damage arises in any way in connection with:
- (v) the Works;
 - (vi) the performance or non-performance by the Contractor of its obligations under the Contract; or
 - (vii) access by the Contractor or its Personnel of any of them to the Site.
- (b) The Contractor will not be obliged to indemnify the Principal in respect of any Claim, Loss or damage to the extent that the Claim, Loss or damage is caused by:
- (i) any negligent or unlawful act or omission or wilful misconduct of the Principal;
 - (ii) a breach of this Contract by the Principal;
- (c) The reference to the Principal in clauses 28.1(a) and 28.1(b) includes its directors, officers and employees.

28.2 Indemnity Provisions

All obligations to indemnify under this Contract survive termination of this Contract.

29 DISPUTE RESOLUTION

29.1 Notice of Dispute

- (a) If a Dispute arises in respect of any fact, matter or thing arising out of, or in any way in connection with the Works or this Contract, or either Party's conduct before this Contract, the dispute or difference must be determined in accordance with the procedure in this clause 29.

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- (b) Where such a Dispute or difference arises, either Party may give a Notice of Dispute to the Principal's Representative and the other Party specifying:
 - (i) the Dispute or difference;
 - (ii) particulars of the Party's reasons for being dissatisfied; and
 - (iii) the position which the Party believes is correct.

29.2 Principal Determination

Within 20 Business Days after the service of a Notice of Dispute, the Principal's Representative must consider the dispute and must submit his or her decision to the Parties in writing. The decision of the Principal's Representative is not binding on the Parties, but may be accepted by the Parties by mutual agreement as the appropriate means of resolving the Dispute or difference.

29.3 Senior Executive Meeting

If the Principal's Representative has submitted its determination in relation to the Dispute to the Parties under clause 29.2 and the Parties do not agree with the Principal's Representative's decision, either Party may, within 10 Business Days of receipt of the Principal's Representative's decision under clause 29.2, escalate the Dispute or difference to be the subject of a good faith negotiation at a meeting. Senior Executives of the Parties must meet within 10 Business Days of a Party escalating the Dispute.

29.4 Expert Determination

- (a) If, within 10 Business Days of the meeting between the Principal's Senior Executive and the Contractor's Senior Executive, or within 20 Business Days of the date of the Principal's Representative's decision under clause 29.2, the Dispute or difference is not resolved, either Party may refer the Dispute or difference to determination by an expert in accordance with this clause 29.4.
- (b) The expert determination under this clause 29.4 is to be conducted by an independent industry expert appointed by the Prescribed Appointer.
- (c) The Prescribed Appointer, before appointing an independent industry expert, make reasonable enquiries as to whether the independent industry expert will be restricted from accepting the appointment.
- (d) If the Prescribed Appointer nominated under this clause 29.4:
 - (i) is unavailable;
 - (ii) declines to appoint an expert;
 - (iii) does not respond within 10 Business Days to the Party's request that it conduct the appointment; or
 - (iv) does not appoint an expert within 10 Business Days of the Party's request that it conduct the appointment,

the Principal may appoint another Prescribed Appointer for the purposes of this clause 29.4.

29.5 Procedure for Expert Determination

- (a) The independent expert must:
 - (i) promptly notify a place and manner for receiving submissions or information from the Parties or from any other party he or she thinks fit;
 - (ii) not be bound by the rules of evidence;
 - (iii) make a determination only in respect of matters expressly referred for resolution;
 - (iv) provide a draft determination to the Parties within 20 Business Days of appointment. The Parties may make written submissions to the independent expert within 40 Business Days of appointment. The independent expert must take into account the Parties' submission on the draft determination to the extent necessary, if any, determined in his or her absolute discretion. The independent expert may amend a draft determination prior to making a final determination;
 - (v) provide a final determination within 50 Business Days of appointment; and
 - (vi) keep confidential all information coming to his or her knowledge by reason of the appointment and the performance of his or her duties.
- (b) A person appointed as an independent expert acts as an expert and is deemed not to be an arbitrator and the law relating to arbitration, including the *Commercial Arbitration (National Uniform Legislation) Act*, which does not apply to the independent expert or a determination or the procedures by which the independent expert may reach a determination.
- (c) The independent expert's decision is final and binding on the Parties.
- (d) Each Party must bear its own costs in relation to the dispute save that the cost of the independent expert and any advisers to the independent expert is borne by the Parties equally.

29.6 Continuation of Works

Despite the existence of a Dispute between the Parties, the Contractor must:

- (a) continue to carry out the Works; and
- (b) otherwise comply with its obligations under this Contract.

29.7 Injunctive relief

Nothing in this clause 29.7 will prejudice the right of a Party to institute proceedings to seek injunctive or urgent declaratory relief.

29.8 Survival of clause

Clause 29 survives termination of this Contract.

30 PRIVACY AND SECURITY REQUIREMENTS

30.1 Privacy

If, as a result of this Contract, the Contractor is able to access any Personal Information that is collected, handled or held by or on behalf of the Principal, the Contractor must:

- (a) comply with:
 - (i) the *Privacy Act 1988* (Cth);
 - (ii) the Information Privacy Principles under the *Information Act* (NT);
 - (iii) all other applicable Legislative Requirements relating to privacy that may be applicable during the Term;
 - (iv) any privacy code or policy which has been adopted by the Principal, provided that a copy of the adopted privacy code or policy is provided a reasonable period in advance of the Contractor being required to start complying with that privacy code or policy;
 - (v) any code of practice or authorisation issued under any of the above; and
 - (vi) such other Laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information,
 - (i) to the extent bound by the above and, if not bound by any of the above, as if the Contractor were bound in the same way and to the same extent as the Principal is bound in respect of such Personal Information;
- (b) comply with any directions of the Principal from time to time relating to privacy that are consistent with the laws, codes and policies referred to in clause 30.1(a);
- (c) not use any such Personal Information for any purpose, except where and to the extent expressly authorised by the Principal in writing, in which case the Contractor must use such Personal Information under this Contract;
- (d) restrict access to any such Personal Information to employees of the Principal and any subcontractors or consultants who need to access the Personal Information to fulfil the Contractor's obligations under this Contract, where and to the extent expressly approved in writing by the Principal;
- (e) promptly notify the Principal in writing of any request made for access to any such Personal Information by an individual to whom that information relates; and
- (f) cooperate with the Principal in the resolution of any complaint under, or relating to, any of the Legislative Requirements, codes or policies referred to in clause 30.1(a).

30.2 Security Requirements

- (a) The Contractor must comply with all rules, policies, guidelines, processes and procedures of the Principal in relation to security (whether existing at the Award Date or introduced from time to time) notified in writing by the Principal.

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- (b) The Contractor must establish, maintain and apply security procedures which ensure that the Principal's Personnel are appropriately vetted and meet the requirements of clause 30.2(a).
 - (c) The Contractor must comply with any specific security requirements in the performance of the Contractor's obligations under this Contract as provided for in the Scope of Works.
 - (d) The Contractor must promptly provide the Principal with written Notice of any security weaknesses or incidents:
 - (i) that have impacted or may impact the Works; and
 - (ii) in connection with the performance of the Contractor's obligations under this Contract.
 - (e) Within 5 Business Days of giving any Notice under clause 30.2(d), the Contractor must provide the Principal with a detailed written report setting out the corrective actions planned to address the relevant weaknesses or incidents and to prevent similar weaknesses or incidents.

31 CONFIDENTIALITY

- (a) Subject to the provisions of clauses 31(b) and 31(c), each Party must:
 - (i) treat as strictly confidential and only use the Confidential Information of the other Party solely for the purposes contemplated by this Contract;
 - (ii) not, without the prior written consent of the Party to whom the Confidential Information relates (which may be withheld in that Party's sole discretion), publish, use or otherwise disclose to any person the Confidential Information of the other Party, except for the purposes contemplated by this Contract;
 - (iii) maintain adequate security for the Confidential Information of the other Party while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Contract; and
 - (iv) not make use of the Confidential Information of the other Party to the reputational, commercial, financial or competitive disadvantage of the other Party.
- (b) Each Party may disclose Confidential Information which would otherwise be subject to clause 31(a) if, but only to the extent, it can demonstrate that:
 - (i) such disclosure is required by applicable Legislative Requirement or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
 - (ii) the Confidential Information was lawfully in its possession prior to its disclosure by the other Party (as evidenced by written records);
 - (iii) the Confidential Information was independently developed by that Party; or

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- (iv) the Confidential Information has come into the public domain other than as a result of a breach of this Contract or any other obligation of confidence,
 - (ii) provided that any such disclosure must not be made without prior consultation with the Party the Confidential Information relates to and, in the case of disclosures under clause 31(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on the Principal under this clause 31 will not be taken to have been breached to the extent that Confidential Information is communicated or disclosed by the Principal:
- (i) to any person for the purposes of the Principal's business or operations or for improving the provision of power, water or sewerage services anywhere in Australia;
 - (ii) to the Northern Territory of Australia;
 - (iii) to a Minister or Cabinet, or to the Legislative Assembly of the Northern Territory of Australia;
 - (iv) to a committee of the Legislative Assembly of the Northern Territory of Australia;
 - (v) to any public-sector agency (whether of the Northern Territory of Australia, a State, other Territory or the Commonwealth) for the purposes of benchmarking or any other government business or government initiative, provided that as far as reasonably practicable information that is identifiable as related to this Contract or the Contractor will not be made public by the Principal; and
 - (vi) in accordance with any licence rights granted under this Contract.
- (d) Each Party may for the purposes contemplated by this Contract, disclose the Confidential Information of the other Party to its personnel and its professional advisers, auditors, bankers and insurers, provided that such persons have first been directed by the disclosing Party to keep it confidential.
- (e) A Party must promptly give Notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the Confidential Information of the other Party and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

32 INTELLECTUAL PROPERTY

32.1 Contract Material

- (a) Where Item 19 provides that Intellectual Property Rights in Contract Material will be owned by the Principal, all Intellectual Property Rights in the Contract Material vest in the Principal with effect from the date of creation and the Contractor irrevocably and unconditionally assigns to the Principal, including by way of an assignment of future Intellectual Property Rights, all of the Intellectual Property Rights in Contract Material on creation.
- (b) Where Item 19 provides that Intellectual Property Rights in Contract Material will be licensed to the Principal (and owned by the Contractor), all Intellectual Property Rights in

the Contract Material that are created by the Contractor will remain vested in the Contractor.

- (c) On expiry or termination of this Contract or otherwise on request, the Contractor must promptly provide the Principal with complete copies of the Contract Material.

32.2 Existing Material

This clause 32.2 does not affect the ownership of:

- (a) the Principal's or its licensors' Intellectual Property Rights in any Principal IPR; or
- (b) the Contractor's or its licensors' Intellectual Property Rights in any Contractor IPR.

32.3 Licences

- (a) The Contractor grants to, or must obtain for, the Principal a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence (including the right to sub-licence) to use, copy, modify, reproduce, publish, adapt, distribute, communicate and create derivative works from the Contractor IPR, and to repair, maintain, alter, demolish or renovate the Works to the extent required for the Principal to receive the full benefit of the Works.
- (b) The Principal grants the Contractor a non-exclusive, non-transferable and royalty-free licence until the expiry of the last Defects Liability Period to use the Principal IPR solely for the purpose of performing the Contractor's obligations under this Contract.
- (c) The Contractor must comply with any directions of, or conditions imposed by, the Principal (including conditions imposed on the Principal by a third-party owner or licensor of the Principal IPR) in relation to the Principal IPR.

32.4 Third Party Material

Before using any Third Party Material under this Contract, the Contractor must obtain all necessary copyright and other Intellectual Property Right permissions required for the use of such Third Party Material and the granting of any licences under this Contract.

32.5 Moral Rights

To the extent permitted by applicable Law, the Contractor must ensure that any individual that contributed to the Works:

- (a) unconditionally and irrevocably consents to any act or omission that would otherwise infringe any Moral Rights in relation to the Works, whether occurring before or after a consent is given; and
- (b) unconditionally and irrevocably waives all Moral Rights in relation to the Works,

for the benefit of the Principal and the Principal's Representative, customers and other contractors.

33 PUBLICITY

33.1 Public statements

The Contractor must not make any public statements, including issuing any media release, in connection with this Contract without the prior written consent of the Principal.

33.2 Reputation

The Contractor must not do or omit to do anything which may:

- (a) damage, bring into disrepute or ridicule the Principal's name, messages or reputation; or
- (b) attract public or media attention which may be prejudicial or otherwise detrimental to the Principal's brand, messages, reputation or interests.

33.3 Principal name

The Contractor must not use the Principal's name in any of the Contractor's advertising, marketing, promotional or other similar material without the prior written consent of the Principal.

34 NOTICES

- (a) Any notice or other communication required to be given under this Contract (**Notice**) must be in writing (unless the Contract otherwise provides) and in the English language. Subject to clause 34(b), a Notice must be sent to each Party in accordance with the details set out in the Contract Details, as updated from time to time.
- (b) A Notice may be sent by email if the relevant Notice is signed by an authorised person, scanned and attached as a PDF or other readable format to an email and sent to the receiving Party's Email Service Address.
- (c) Any Notice is regarded as given and received:
 - (i) if sent by mail 3 Business Days after it is posted; and
 - (ii) if sent by email:
 - A. when the sender receives an automated message confirming delivery, if sent after 5pm or on a day that is not a Business Day, Notice will be effective at 9am on the following Business Day; or
 - B. 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed and provided that, if sent after 5pm or on a day that is not a Business Day, Notice will be effective at 9am on the following Business Day,

whichever happens first.
- (d) Where there is a dispute in relation to the provision of a Notice by email, the sender must disclose copies of electronic records or logs to the other Party evidencing that the relevant email has been sent from its IT systems.

35 GENERAL

35.1 Liability for Indirect or Consequential Losses

- (a) Subject to clause 35.1(b), neither will be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise, nor will they be entitled to make any Claim, under or in connection with this Contract for any Consequential Loss, even if such Party has been advised of the possibility of such Consequential Loss.
- (b) Unless otherwise specified, any limit on the liability of the Contractor under this Contract does not apply in relation to:
 - (i) personal injury (including sickness and death) for which the Contractor is legally liable;
 - (ii) an infringement of Intellectual Property Rights for which the Contractor is legally liable;
 - (iii) a breach of any obligation of confidentiality, security requirement or privacy for which the Contractor is legally liable;
 - (iv) liability to the extent that the Contractor has an entitlement to recover insurance proceeds in respect of that liability under an insurance policy which the Contractor is required by this Contract to effect and maintain up to the limits of insurance coverage set out under this Contract, less any policy deductible paid by the Contractor under such insurance policy; or to the extent a liability is of a nature that would have been recoverable under an insurance policy but for a failure by the Contractor to fulfil its insurance obligations under this Contract; or
 - (v) the Principal's entitlement to Claim against the Contractor for:
 - A. any direct Loss or damage;
 - B. any amounts expressly provided for under this Contract; and
 - C. any costs of repairing or completing the Works, which includes:
 - (I) costs of any other party engaged by the Principal for this purpose, including any contractors or consultants;
 - (II) costs of implementing any reasonably necessary temporary works;
 - (III) administrative costs and expenses, including for management and staff time;
 - (IV) mitigation costs and expenses; and
 - (V) expenditure on preserving or restoring goodwill, sustained, incurred or suffered by the Principal, which is caused by or arises from any wrongful act or omission, tort (including negligence) or breach of this Contract by the Contractor or the Principal's termination of this Contract under clause 27.3(a)(ii).

35.2 Entire Agreement

- (a) This Contract constitutes the whole agreement between the Parties relating to this Contract's subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter (specifically including any standard terms and conditions of the Contractor).
- (b) Each Party acknowledges that it has not been induced to enter into this Contract by any representation or warranty other than those contained in this Contract and, having negotiated and freely entered into this Contract, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

35.3 Amendment

An amendment of this Contract must be in writing and signed by the Parties.

35.4 Waiver

No Party to this Contract may rely on the words or Conduct of any other Party as a Waiver of any Right unless the Waiver is in writing and signed by the Party granting the waiver.

35.5 Governing Law

This Contract is governed by, and must be construed in accordance with, the laws of the Northern Territory of Australia. Each Party submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia.

35.6 Assignment and Novation

- (a) The Principal may assign, novate, transfer, or otherwise dispose of any or all of the Principal's rights and/or obligations under this Contract to any third party (including another Government Owned Corporation (as that term is defined by the *Government Owned Corporations Act* (NT)) or government agency) upon notice to the Contractor without the prior consent of the Contractor and, in the case of a novation, the Principal, the Contractor and the relevant third party will each execute a novation agreement in a form reasonably prescribed by the Principal.
- (b) The Contractor must not assign, novate, transfer, sub-licence or otherwise dispose of any or all of the Contractor's rights and/or obligations under or in connection with this Contract without the prior written consent of the Principal (which may be withheld in the Principal's sole discretion).
- (c) The Contractor must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by the Principal in connection with any consent sought under clause 35.6(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

35.7 Severability

The Parties agree that if part or all of any provision of this Contract is illegal or unenforceable it may be severed from this Contract and the remaining provisions of this Contract will continue in force.

35.8 The Principal as trustee for its Personnel

In entering into and obtaining the benefits, rights and remedies under this Contract, including the benefit of the Contractor's obligations and any indemnity given by the Contractor, the Principal acts on its own behalf and as trustee for each of its Personnel. Each of the Principal's Personnel is entitled to separately and directly enforce against the Contractor the benefits, rights and remedies conferred on the Principal by this Contract.

35.9 Costs of Contract

Each Party must bear its own costs of and incidental to the preparation and execution of this Contract.

35.10 Survival of Provisions

The rights and obligations contained which are expressed or intended to have a continuing effect or operation despite the expiry or earlier termination of this Contract will continue to bind the Parties despite the expiry or earlier termination of this Contract.

35.11 Special Conditions

The Parties agree to be bound by any Special Conditions.

35.12 Taxes other than GST and Duties

Unless otherwise expressly provided in this Contract, the Contractor must pay all taxes due in connection with the Contractor's performance of its obligations under this Contract and that such payments have been included in the Contract Price.

35.13 Rights and Remedies Not Affected

The rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers and remedies provided under any Legislative Requirement or otherwise at Law independently of this Contract, unless otherwise stated.

35.14 Contractor's Performance Report

- (a) The Contractor agrees that following the expiry of the Defects Liability Period or upon the earlier termination of this Contract:
 - (i) the Principal may prepare a report on the Contractor's performance under this Contract (**Contractor's Performance Report**);
 - (ii) the Principal will liaise with the Contractor in completing the Contractor's Performance Report although the Principal reserves the right to complete the Contractor's Performance Report (other than the Contractor's comments); and
 - (iii) the Principal may use and/or release the Contractor's Performance Report to any other agency of the Commonwealth or of any State or Territory (**Recipient Agency**) in relation to the evaluation of the Contractor's performance in the assessment of future tenders.
- (b) The Contractor agrees that:

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- (i) neither the Contractor nor any other person will have any Claim against the Principal or any Recipient Agency or any of their respective Personnel under any circumstances as a result of the preparation or use of the Contractor's Performance Report; and
 - (ii) the Contractor's Performance Report will not, in itself, constitute evidence that the Works comply with the relevant requirements of this Contract, or otherwise limit the Contractor's obligations or the Principal's rights and remedies.

35.15 Time Bar

- (a) Any Claim by the Contractor for additional time, a Variation, additional Direct costs or any other compensation or remedy must be provided to the Principal's Representative in writing:
 - (i) strictly in compliance with the periods specified under this Contract; or
 - (ii) where no period is specified under this Contract, within 5 Business Days of the date when the Contractor became aware or ought reasonably to have become aware of the circumstances giving rise to a Claim.
- (b) The time limits and other requirements set out in this Contract applicable to the making of a Claim referred to in clause 35.15(a) is intended to be strict and if the Contractor fails to comply, then:
 - (i) the Contractor's entitlement to make the Claim is extinguished;
 - (ii) the Principal is not liable to the Contractor for the Claim; and
 - (iii) the Contractor is barred from making the Claim against the Principal.

36 INTERPRETATION

- (a) In this Contract, unless the context otherwise requires references to:
 - (i) a Party includes the Party's successors and assigns;
 - (ii) anything includes part of that thing;
 - (iii) persons include companies, associations, firms, authorities and bodies corporate;
 - (iv) gender includes all other genders;
 - (v) a document includes the document as changed or replaced from time to time;
 - (vi) currencies mean Australian currencies;
 - (vii) a reference to time is to Central Standard Time;
 - (viii) a Party, where the Party is more than one person, means all of them together and each of them separately;
 - (ix) a clause or schedule or recital refers to a clause or schedule or recital in this Subcontract;

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- (x) statute, regulation, code or standard includes a reference to it as amended from time to time; and
 - (xi) a day refers to the period commencing at midnight and ending 24 hours later.
 - (b) Interpretation must not be affected by the fact that one Party put forward any part of this Contract.
 - (c) Invalidity of any provision of the Subcontract must not affect the validity of any other provision except to the extent made necessary by the invalidity.
 - (d) The singular includes the plural and the other way around.
 - (e) Headings do not affect the meaning of this Contract.
 - (f) If a word or phrase is defined, any variation of that word or phrase has the same meaning to the extent possible.
 - (g) A reference to 'a Party' or 'Parties' is a reference to a Party or the Parties to this Contract.
 - (h) A reference to 'indemnify' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any Loss, damage, Claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against. This means that if the person indemnified suffers any Loss or must pay any money (whether or not it is actually paid) because of an indemnified event the Party giving that indemnity must pay the amount of Loss or the amount of liability to the indemnified Party. If it does not, the indemnified Party can recover the amount as a debt due.
 - (i) A debt due becomes due and payable at the time specified in this Contract, or if no time is specified, it is payable on demand.
 - (j) If there is any inconsistency between a clause of this Contract and a provision of a Schedule, the clause of this Contract will prevail.
 - (k) Without limiting any express provisions of this Contract to the contrary, if anything to be done under this Contract falls on a day, which is not a Business Day, then it must be done on the next Business Day.
 - (l) Where examples of a general term are given (whether or not using words such as 'includes' or 'including'), the use of the examples is without limitation to the general term and otherwise 'includes' or 'including' means includes or including without limitation.
 - (m) Where a plan or drawing is referred to, it is a reference to the plan or drawing in its proper scale and its most recent version.
 - (n) In the event of any conflict or inconsistency between the terms and conditions of this Contract, the terms and conditions or documents listed earlier below prevail to the extent of such conflict or inconsistency, and the provisions or documents listed later below are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency:
 - (i) the Order/s (if any);

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- (ii) the Special Conditions;
 - (iii) the Contract Details;
 - (iv) the terms and conditions of this document in clauses 1 to 37 (inclusive);
 - (v) Schedule 3 – Design Documents;
 - (vi) the Notice of Acceptance;
 - (vii) Schedule of Rates;
 - (viii) Scope of Works;
 - (ix) any other documents referred to in the above documents as forming part of this Contract; and
 - (x) any schedules, annexures, appendices or other documents (if any) attached to or referred to in this Contract.

37 DEFINITIONS

In this Contract the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:

Adjustment Event has the meaning assigned to that term in the GST Act.

Affiliate means, in respect of the Contractor, any company or other entity that directly or indirectly controls, or is controlled by, or is under common control with, the Contractor.

Approvals means any approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences or waivers under any Statutory Requirements or by any Authority, including any condition attached to the approval, authorisation, consent, permission, permit, determination, certificate, notice, licence or waiver and under any renewal, amendment or variation thereof:

- (a) for the construction of the Works and use of the Works; and
- (b) to the extent that the Contractor has design obligations and design responsibility under clause 8, for the design of the Works.

Authority means any court or tribunal within the relevant jurisdiction, or any public or statutory or government (whether federal, territory or local) body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects any aspect of the Works, or any private or corporate provider of a Utility.

Award Date means the date as set out in Item 11.

BCA means the code entitled "Building Code of Australia" published by or on behalf of the Australian Building Codes Board (or any replacement board or entity) as amended from time to time.

Business Days means any day which is not a Saturday or a Sunday or a public holiday in Darwin.

Certificate of Practical Completion means the certificate issued by the Principal's Representative to the Contractor in accordance with clause 22.3 when the Works reach Practical Completion.

Claim means a claim, demand, proceedings or other action.

Commencement Date means the date for commencement of the Works at the Site in accordance with clause 2.3.

Conditions Precedent means the conditions set out in clause 2.2.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the disclosing Party to the confidant as confidential;
- (c) the confidant knows or ought to know is confidential; or
- (d) relates to:
 - (i) the financial, the corporate and the commercial information of any Party; and
 - (ii) the strategies, practices and procedures of a Party,

and, for the avoidance of doubt, the following items comprise Confidential Information of the Principal:

- (e) the Principal Data;
- (f) Personal Information that is collected, handled or held by or on behalf of the Principal; and
- (g) all details relating to the Principal's assets and infrastructure at the Site.

Consequential Loss means any Loss, damage or expense recoverable at Law:

- (a) which is a loss of opportunity, goodwill, profits, anticipated savings or business; and
- (b) including any costs or expenses incurred in connection with any of the losses referred to in paragraph (a),

but excluding any Loss, damage or expense which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant Loss, damage or expense.

Contract means this contract, consisting of the documents listed in clause 36(n).

Contract Details means the section at the front of this Contract headed 'Contract Details'.

Contract Material means all materials created by the Contractor:

- (a) on or following the Award Date in the course of, or as a consequence of, performing the Contractor's obligations under this Contract; or

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- (b) prior to the Award Date in performing any early works or activities ahead of and in anticipation of entering into this Contract, with the prior written approval of the Principal's Representative.

Contract Price means:

- (a) where the Parties have agreed a lump sum, the lump sum;
- (b) where the Parties have agreed rates under the Schedule of Rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out in accordance with the terms of this Contract by the relevant agreed rate set out in the Schedule of Rates for that section or item; and
- (c) where both a lump sum and rates apply, the sum of (a) and (b),

in respect of the Works required under this Contract, and including the sum as referred to or otherwise calculated in accordance with an Order for any ongoing Works required under clauses 1.2(b) or 1.2(c).

Contract Program means the program prepared by the Contractor in accordance with clause 3.1.

Contractor means the person named in Item 5 of this Contract is bound to carry out and complete the Works in accordance with this Contract, and includes its successors and assigns as permitted under this Contract.

Contractor IPR means any Intellectual Property Rights in material made available by the Contractor in connection with this Contract that is:

- (a) existing prior to the Award Date;
- (b) licensed from any third party during the period of the Works; and/or
- (c) obtained (whether created, purchased or licensed) by the Contractor during the period of the Works but separately from and otherwise than in connection with this Contract,

and where Item 19 provides that Contract Materials will be owned by the Contractor, Contractor IPR includes Contract Materials.

Contractor's Materials means any items, parts, components, raw materials, consumables or other tangible or intangible goods, materials or other items furnished by the Contractor and intended for incorporation into the Works.

Contractor's Plant means all appliances, equipment, plant, vehicles, vessels, tools and things that the Contractor supplies or is required to supply for the performance of the Works, whether owned, leased or hired.

Contractor's Representative means the person named in Item 6 and in accordance with clause 9.3.

Contractor Supplied Information means any information (whether written or otherwise) supplied or made available to the Principal or the Principal's Representative by the Contractor before, on or after the Award Date in connection with the Works, the Site or anything in connection with this Contract.

Contractor's Tender means the Contractor's tender in response to the RFT, including any drawings contained within the Contractor's tender.

Cyclone means a cyclone named and categorised under the Australian Cyclone Severity Scale by the Bureau of Meteorology.

Date for Practical Completion means the date specified in Item 17 as the date by which the Contractor is required to reach Practical Completion in relation to the Works and as adjusted under this Contract.

Date of Practical Completion means the date specified in the Certificate of Practical Completion as the date on which the Contractor has achieved Practical Completion in relation to the Works.

Default means a breach by a Party of any of its obligations under this Contract.

Defect means:

- (a) any defect, fault, deficiency or omission in design, Contractor's Materials, workmanship or otherwise in respect of the Works;
- (b) any non-compliance of the Works, or part thereof, with this Contract; or
- (c) any Works which is not executed or performed in accordance with this Contract (including Contractor's materials provided or to be provided).

Defects Liability Period means the period specified in Item 18, which commences on the Date of Practical Completion.

Design Documents means those:

- (a) documents referred to in the Scope of Works that the Contractor is to supply as part of its design obligation; and
- (b) drawings or specifications:
 - (i) supplied to the Contractor by the Principal's Representative (including the Scope of Works and any documents included at Schedule 3); and/or
 - (ii) provided by the Contractor and approved by the Principal's Representative in accordance with this Contract.

Direct costs means direct, demonstrable and actual costs, but excludes margins or profit.

Dispute means a dispute or difference that arises in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Contract, the Principal's Representative's or either Party's conduct before this Contract.

Dispute Notice means a Notice in writing specifying:

- (a) the Dispute;
- (b) particulars of the Party's reasons for being dissatisfied; and
- (c) the position which the Party believes is correct.

Email Service Address means:

- (a) in the case of the Contractor, its email address set out in Item 5 (as may be updated from time to time by the Contractor giving notice in writing to the Principal); or
- (b) in the case of the Principal, the email address set out in Item 3 (as may be updated from time to time by the Principal giving notice in writing to the Contractor).

Environmental Incident means:

- (a) a likely or actual breach of Environmental Laws applying or relating to the Site; or
- (b) a real, present or potential danger to the safety of persons or property on the Site or to the environment.

Environmental Laws means all Laws regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, heritage, coastal protection, water catchments, weed management, pollution of the land, air or waters, noise, soil or ground water contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades or any other aspect of protection of the environment or person or property from environmental harm.

Further Term means the period specified in Item 8.

Good Industry Practice means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a reputable and prudent contractor providing the Works similar to the Contractor's obligations and under conditions comparable to those applying to this Contract;
- (b) compliance with applicable standards and codes, being the standards and codes specified in this Contract or, if this Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with Statutory Requirements.

Government Requirements includes all the Principal's policies, plans, manuals, guidelines, instructions (including procurement policy instructions) and other Northern Territory Government entity requirements which are, or may become, applicable to the Site or the Works. To the extent that any of the requirements would require or suggest the insertion of provisions into this Contract, then:

- (a) those provisions will be incorporated by reference into this Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved in accordance with clause 36(n), but subject to clause 4.4.

GST has the meaning assigned to that term in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Rate means the percentage amount of GST payable determined under section 9-70 of the GST Act as amended from time to time.

Initial Term means the period specified in Item 7.

Input Tax Credit has the meaning assigned to that term in the GST Act.

Insolvency Event means any of the following events:

- (a) the Contractor informs the Principal in writing, or creditors generally, that the Contractor is insolvent or is financially unable to proceed with this Contract;
- (b) a writ of execution, instalment order, garnishee order, mareva injunction or similar order or process is made, levied or issued against the Contractor or in relation to any assets of the Contractor;
- (c) in the case of a corporation:
 - (iii) an application is made to a court for an order or an order is made that the corporation be wound up;
 - (iv) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order;
 - (v) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
 - (vi) except to reconstruct or amalgamate while solvent, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them;
 - (vii) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors;
 - (viii) a resolution is passed to wind up or dissolve that corporation;
 - (ix) the corporation is dissolved;
 - (x) the corporation is or becomes or states that it is insolvent or any of the events mentioned in subsection 459C(2) (a) to (f) inclusive of Part 5.4 of the *Corporations Act 2001* (Cth) occurs in respect of the corporation;
 - (xi) the appointment of an administrator in respect of the corporation or a receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation;
 - (xii) as a result of the operation of Part 5.4 of the *Corporations Act 2001* (Cth) the corporation is taken to have failed to comply with a statutory demand;
 - (xiii) the corporation is, or makes a statement from which it may be reasonably deduced that the corporation is the subject of an event described in s459C(2)(b) or s585 of the *Corporations Act 2001* (Cth); or
 - (xiv) anything analogous or having a substantially similar effect to any of the events specified in subparagraphs (i) to (xi) (inclusive) above has occurred under the Law of any applicable jurisdiction or the Principal reasonably believes any of the above has or will occur in the next 6 months;
- (d) in the case of an individual or a partnership:

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- (i) the individual or any partner in the partnership proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of that individual's or that partner's creditors or any class of them;
 - (ii) the individual or any partner in the partnership commits an act of bankruptcy;
 - (iii) in relation to a partnership, the partnership is dissolved or has an administrator appointed under relevant Law; or
 - (iv) anything analogous or having a substantially similar effect to any of the events specified subparagraphs (i) to (iii) (inclusive) above has occurred under the law of any applicable jurisdiction or the Principal reasonably believes any of the above has or will occur in the next 6 months.

Intellectual Property Rights means:

- (a) patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and suppliers and other proprietary knowledge and information;
- (b) internet domain names; rights protecting goodwill and reputation;
- (c) database rights; and
- (d) all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

Interest means the rate of 7% per annum compounded weekly.

Item means an item set out in the Contract Details.

Latent Conditions means any physical conditions at the Site, excluding all weather conditions and ground conditions resulting from weather conditions wherever occurring, as at the date of lodgement of the Contractor's Tender which could not have been anticipated by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing the Contractor's Tender. Latent Conditions do not include physical conditions associated with tidal movements.

Law includes:

- (a) any treaty or Statutory Requirements in force from time to time;
- (b) the common law and the law of equity;
- (c) any binding court order, judgement or decree applicable to this Contract;
- (d) any applicable industry code, policy or standard, whether or not enforceable by law; and
- (e) any applicable direction, policy, rule or order that is given in writing by a regulator, whether or not enforceable by law.

Legislative Requirement includes:

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- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof are being carried out;
 - (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works; and
 - (c) fees and charges payable in connection with the foregoing.

Loss includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

Maintenance means the Works required to maintain the Works in good operating order and condition.

Moral Rights means rights conferred under Part IX of the *Copyright Act 1968* (Cth) and any similar or analogous rights which exist or come to exist anywhere in the world.

Notice has the meaning set out in clause 32.

Notice of Acceptance means the written notification and any accompanying documentation sent to the Contractor by the Principal advising of acceptance of the Contractor's Tender to undertake the Works under this Contract.

Order means the document or documents setting out the scope of, and the Principal's requirements for, any Works that are required to be provided by the Contractor under this Contract which may be issued by the Principal as contemplated by either clause 1.2(b) or clause 1.2(c).

Other Contractors means any contractor, subcontractor, consultant, artist, tradesperson or other person engaged to do work on or near the Site (whether by the Principal or a third party) or otherwise in connection with the Works other than the Contractor and its subcontractors.

Party or Parties means the Principal and/or the Contractor.

Payment Claim means a claim by the Contractor falling within clause 20.5.

Payment Statement means a document issued by the Principal's Representative under clause 20.6.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth), the *Information Act* (NT) and any applicable analogous legislation in any jurisdiction from time to time.

Personnel includes, in relation to a Party:

- (a) that Party's officers, employees and agents;
- (b) that Party's Affiliates, advisers, consultants and subcontractors;
- (c) the officers, employees and agents of that Party's Affiliates, advisers, consultants and subcontractors; and
- (d) any other person under that Party's direction or control.

Plant, Equipment and Work means those things used, or work undertaken, by the Contractor, to deliver the Works, but which will not form part of the Works.

Practical Completion means that stage in the carrying out and completion of the Works when:

- (a) the Works are complete except for minor defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;
 - (ii) which the Principal's Representative determines the Contractor has reasonable grounds for not rectifying;
 - (iii) the rectification of which will not prejudice the convenient use of the Works; and
- (b) those tests which are required to be carried out by the Contractor under this Contract have been carried out and passed;
- (c) documents and other information required under this Contract which in the Principal's Representative's opinion are essential for the use, operation and maintenance of the Works have been supplied by the Contractor; and
- (d) satisfying all other requirements and conditions in this Contract which are expressly required to be satisfied prior to Practical Completion occurring.

Prescribed Appointer means the President of the Law Society of the Northern Territory.

Principal means Power and Water Corporation ABN 15 947 352 360.

Principal Data means all data and information relating to the Principal, the Principal's operations, facilities, customers, clients, personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through the Principal's computing and communications infrastructure by or on behalf of the Principal and includes any other data and information provided to, collected or recorded by the Principal.

Principal IPR means any Intellectual Property Rights in material made available by the Principal in connection with this Contract that is:

- (a) existing prior to the Award Date;
- (b) licensed from any third party to the Principal during the period of the Works; and/or
- (c) obtained (whether created, purchased or licensed) by the Principal during the period of the Works but not from the Contractor,

and where Item 19 provides that Contract Materials will be owned by the Principal, Principal IPR includes Contract Materials.

Principal Risk means:

- (a) any act or omission of the Principal, the Principal's Representative or Other Contractor and each of their Personnel (excluding the Contractor or its Personnel);

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- (b) Cyclone, earthquake, fire and flood, in each case not caused by the Contractor or any of its Personnel;
 - (c) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority; and
 - (d) ionising radiation by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Personnel.

Principal's Representative means the person nominated in Item 4 or any other person from time to time nominated by the Principal to replace that person and any representative appointed under clause 9.1 of the Conditions of Contract.

Principal Supplied Information means any information (whether written or otherwise) supplied or made available to the Contractor:

- (a) by or on behalf of the Principal; or
- (b) by or on behalf of the Principal's Representative,

before, on or after the Award Date of this Contract in connection with the Works, the Site or anything in connection with this Contract.

Professional Indemnity Insurance means an insurance policy to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its subcontractors in carrying out the Works.

Project Documents includes:

- (a) Design Documents, if the Contractor has design obligations under Item 14;
- (b) Approvals;
- (c) programs;
- (d) operation and maintenance manuals and warranties from subcontractors;
- (e) Project Plans; and
- (f) without limiting clauses (a) - (e), any other material provided, or required to be provided, to the Principal or the Principal's Representative, under, for the purposes of or in connection with this Contract, the Works by, for or on behalf of the Contractor (including by subcontractors).

Project Plans means the documents required to be provided by the Contractor as set out in the Scope of Works.

Public Liability Insurance means an insurance policy covering the Contractor, and noting the interests of the Principal, the Principal's Representative and all subcontractors, for their respective liabilities to:

- (a) third parties; and

(b) the Parties,

for loss of or damage to property and death of or injury to any person, arising out of, or in any way in connection with, the Works.

PWC Entity means:

- (a) every past, present and future “subsidiary” (as that term is defined in the *Government Owned Corporations Act (NT)*) of the Principal; and
- (b) where any part of the Principal’s operations or businesses that receives the benefit of the Works under this Contract becomes or is transferred to a separate entity, that separate entity.

Recipient has the meaning assigned to that term in the GST Act.

Schedule means a Schedule to this Contract.

Schedule of Rates means if Item 16 specifies that there is a Schedule of Rates, the prices, fees and charges for the Works are provided for in Schedule 4.

Scope of Works means the Principal’s requirements for the Works to be carried out under this Contract and as updated from time to time in accordance with this Contract, or any Order and as set out under Schedule 2.

Security means approved unconditional undertaking(s) in the value specified in Item 12 issued by an Australian domiciled bank, insurance company or other financial institution carrying on business in Australia that is well established, reputable, financially solvent, well known, rated by Standard & Poors or AM Best as ‘A-’ or higher, and otherwise acceptable to the Principal, in accordance with clause 6.

Senior Executives means the representatives nominated by the relevant Party.

Site means the site for the Works described in Item 9 and includes other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

Special Conditions means the special conditions as provided for in Schedule 1.

Standards Australia means the not-for-profit organisation ‘Standards Australia’ which, amongst other things, develops and adopts standards in Australia.

Statutory Requirements means all:

- (a) Legislative Requirements;
- (b) Government Requirements; and
- (c) Environmental Laws,

except for those Statutory Requirements identified in the Scope of Works or elsewhere in this Contract that the Contractor is not required to comply with.

Suspension means a suspension of the Works directed by the Principal under clause 23 of this Contract.

Third Party Material means any material in respect of which the Contractor does not own the Intellectual Property Rights.

Utility means any utility service, including water, electricity, gas, telecommunication and electronic communications (including voice and data), drainage and sewerage, and supply of all supporting structures and media necessary for such services.

Variation means any:

- (a) increase, decrease or omission of any part of the Works;
- (b) change to the character, method of performance or quality of any material or work;
- (c) change in the levels, lines, position or dimensions of any part of the Works;
- (d) execution of additional work; and/or
- (e) demolition or removal of material or work no longer required by the Principal,

as directed by the Principal's Representative in accordance with clause 24.

WHS Legislation means:

- (f) *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*;
- (g) *Work Health and Safety (National Uniform Legislation) Regulations 2011 (NT)*; and
- (h) any legislation in other States and Territories of Australia addressing work health and safety.

Work Health and Safety Plan means the work health and safety plan, if required under the Scope of Works, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Works from a work health and safety perspective; and
- (b) describe how the Contractor proposes to ensure the Works are performed consistently with Statutory Requirements in relation to work health and safety.

Works where the context requires means:

- (a) the physical works which the Contractor must:
 - (i) design, if Item 14 requires; and
 - (ii) commission, complete and hand over to the Principal in accordance with this Contract,as set out in the Scope of Works or an Order, and
- (b) all things or tasks which are necessary, or may be necessary, for the Contractor to do to comply with this Contract (including under any Orders) and includes the Works, Variations, remedying any Defects and all Plant, Equipment and Work.

SCHEDULE 1 – Special Conditions

1 APPOINTMENT AS PRINCIPAL CONTRACTOR FOR WORK HEALTH AND SAFETY

Where Item 20 applies, the Contractor is to have full control of the entire site for the Works, with responsibility for the delivery of all Works at the site as a principal contractor:

- (a) the Principal engages the Contractor as principal contractor and authorises the Contractor to have management or control of the Works and in carrying out the Works for the purpose of discharging the duties imposed on a principal contractor for the project, under the WHS Legislation;
- (b) the Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the Works, unless relieved of that engagement and authorisation by written Notice given by the Principal or the Principal's Representative;
- (c) for the purposes of the Contract and the WHS Legislation, principal contractor means the role as appointed under this Special Condition; and
- (d) the Contractor must ensure that all relevant elements of its Work Health and Safety Plan reflect the Contractor's engagement as principal contractor.

SCHEDULE 2– Scope of Works

[Insert Scope of Works]

SCHEDULE 3 – Design Documents

[Insert detailed list or actual drawings]

SCHEDULE 4 – Schedule of Rates

[Insert Schedule of Rates]

SCHEDULE 5 – Lump Sum Breakdown

[Insert Lump sum Breakdown]