

# Major Works Contract

Version 1.3

Date Issued: 8 March 2023

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# CONTRACT DETAILS

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Item #	Reference	Details
1.	Contract no.	[insert Contractor number]
2.	Contract name	[insert Contract name]
3.	Principal (including address for notices under clause 48)	<b>Power and Water Corporation</b> <b>(ABN 15 947 352 360)</b> Attention: Chief Procurement Officer Address: GPO Box 1921 Darwin NT 0801 Email: ChiefProcurementOfficer.PWC@powerwater.com.au
4.	Principal's Representative (clause 13.1)	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 13.3)	Name: [insert name] Phone: [insert phone number] Email: [insert email address]
7.	Site (clause 2.2)	[insert Site details]

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<b>8. Conditions Precedent</b> <b>(clause 2.2(e))</b>	Are there any additional Conditions Precedent to access the Site? <input type="checkbox"/> Yes, as follows:		
	<table border="1"> <tr> <td data-bbox="646 367 1043 400"> <b>Additional Conditions Precedent</b> </td> </tr> <tr> <td data-bbox="646 456 1430 533">         [insert any additional condition required to be satisfied prior to access to Site being provided]       </td> </tr> </table>	<b>Additional Conditions Precedent</b>	[insert any additional condition required to be satisfied prior to access to Site being provided]
<b>Additional Conditions Precedent</b>			
[insert any additional condition required to be satisfied prior to access to Site being provided]			
	OR		
	<input type="checkbox"/> No, not applicable.		

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<b>9. Access to Site</b> <b>(clause 2.3(a))</b>	[insert date]
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<b>10. Award Date</b> <b>(clause 3.1(a))</b>	The date specified as such in the Notice of Acceptance (or if no date is specified, the date of the Notice of Acceptance).
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<b>11. Project Plans</b> <b>(clause 3.3)</b>	Are any Project Plans required? <input type="checkbox"/> Yes, as follows (only tick the ones that apply):												
	<table border="1"> <thead> <tr> <th data-bbox="646 1126 1015 1160">Plan</th> <th data-bbox="1051 1126 1390 1279">Days for submission after Award Date and number of days for the Principal's Representative's review</th> </tr> </thead> <tbody> <tr> <td data-bbox="646 1317 1015 1388"> <input type="checkbox"/> Environmental Management Plan         </td> <td data-bbox="1051 1317 1390 1350">5 Business Days</td> </tr> <tr> <td data-bbox="646 1429 1015 1462"> <input type="checkbox"/> Site Management Plan         </td> <td data-bbox="1051 1429 1390 1462">10 Business Days</td> </tr> <tr> <td data-bbox="646 1503 1015 1574"> <input type="checkbox"/> Work Health and Safety Plan         </td> <td data-bbox="1051 1503 1390 1536">10 Business Days</td> </tr> <tr> <td data-bbox="646 1615 1015 1648"> <input type="checkbox"/> Project Quality Plan         </td> <td data-bbox="1051 1615 1390 1648">10 Business Days</td> </tr> <tr> <td data-bbox="646 1688 1015 1944"> <input type="checkbox"/> Commissioning and Handover Plan  <input type="checkbox"/> a copy of all relevant Approvals and Certificates  <input type="checkbox"/> advice on equipment operation         </td> <td data-bbox="1051 1688 1390 1722">10 Business Days</td> </tr> </tbody> </table>	Plan	Days for submission after Award Date and number of days for the Principal's Representative's review	<input type="checkbox"/> Environmental Management Plan	5 Business Days	<input type="checkbox"/> Site Management Plan	10 Business Days	<input type="checkbox"/> Work Health and Safety Plan	10 Business Days	<input type="checkbox"/> Project Quality Plan	10 Business Days	<input type="checkbox"/> Commissioning and Handover Plan <input type="checkbox"/> a copy of all relevant Approvals and Certificates <input type="checkbox"/> advice on equipment operation	10 Business Days
Plan	Days for submission after Award Date and number of days for the Principal's Representative's review												
<input type="checkbox"/> Environmental Management Plan	5 Business Days												
<input type="checkbox"/> Site Management Plan	10 Business Days												
<input type="checkbox"/> Work Health and Safety Plan	10 Business Days												
<input type="checkbox"/> Project Quality Plan	10 Business Days												
<input type="checkbox"/> Commissioning and Handover Plan <input type="checkbox"/> a copy of all relevant Approvals and Certificates <input type="checkbox"/> advice on equipment operation	10 Business Days												

	<input type="checkbox"/> any guarantees or warranties provided by subcontractors  <input type="checkbox"/> a record of capital items of plant, including specific plant costs (identifying separately the costs associated with supply installation commissioning)  <input type="checkbox"/> a strategy for the ongoing maintenance of the Works  <input type="checkbox"/> a report on the commissioning of the Works  <input type="checkbox"/> a report on the validation testing of the Works  <input type="checkbox"/> other information or documents required by the Principal's Representative  <input type="checkbox"/> recommended spare parts and part numbers	
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OR

☐ No, not applicable.

**12. Exempt Approvals**  
(clause 5.1)

[insert Approvals to be obtained by the Principal]

**13. Exceptions to Statutory Requirements**  
(clause 5.1)

Are there any exceptions to Statutory Requirements?

☐ Yes, as follows:

<b>Exceptions to Statutory Requirements</b>
[insert exceptions to Statutory Requirements]

OR

☐ No, not applicable.

14. <b>Security</b> (clause 6)	Two (2) unconditional undertakings of equal value in a total amount equal to the value of not less than 5% of the Contract Price.	
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15. <b>Deed of Guarantee and Indemnity</b> (clause 6.5)	Is a Deed of Guarantee and Indemnity required?			
	<input type="checkbox"/> Yes, as follows:			
	<table border="1"> <tr> <td data-bbox="646 526 1062 560"><b>Deed of Guarantee and Indemnity</b></td> </tr> <tr> <td data-bbox="646 616 1433 689">Executed by Contractor and [insert the related body corporate, shareholder or director of the Contractor]</td> </tr> </table>		<b>Deed of Guarantee and Indemnity</b>	Executed by Contractor and [insert the related body corporate, shareholder or director of the Contractor]
<b>Deed of Guarantee and Indemnity</b>				
Executed by Contractor and [insert the related body corporate, shareholder or director of the Contractor]				
	OR			
	<input type="checkbox"/> No, not applicable.			

  

16. <b>Insurances</b> (clause 7)	<table border="1"> <tr> <th data-bbox="643 920 831 954">Insurance Type</th> <th data-bbox="1023 920 1251 954">Minimum Amount</th> </tr> <tr> <td data-bbox="643 994 948 1028"><b>Public Liability Insurance</b></td> <td data-bbox="1023 994 1433 1220">\$[insert amount] for any one occurrence from the date of this Contract to one year after the expiry of the Defects Liability Period or termination of this Contract.</td> </tr> <tr> <td data-bbox="643 1263 900 1337"><b>Contractor's Plant &amp; Machinery Insurance</b></td> <td data-bbox="1023 1263 1433 1753"> <div data-bbox="1023 1263 1433 1373">[insert Specific items of critical Plant &amp; Machinery to be separately insured]</div> <div data-bbox="1023 1451 1433 1641"> <input type="checkbox"/> Yes, minimum market value of Plant and Machinery from the date of this Contract to the Date of Practical Completion or earlier termination. </div> <div data-bbox="1023 1720 1292 1753"> <input type="checkbox"/> No, not applicable. </div> </td> </tr> </table>		Insurance Type	Minimum Amount	<b>Public Liability Insurance</b>	\$[insert amount] for any one occurrence from the date of this Contract to one year after the expiry of the Defects Liability Period or termination of this Contract.	<b>Contractor's Plant &amp; Machinery Insurance</b>	<div data-bbox="1023 1263 1433 1373">[insert Specific items of critical Plant &amp; Machinery to be separately insured]</div> <div data-bbox="1023 1451 1433 1641"> <input type="checkbox"/> Yes, minimum market value of Plant and Machinery from the date of this Contract to the Date of Practical Completion or earlier termination. </div> <div data-bbox="1023 1720 1292 1753"> <input type="checkbox"/> No, not applicable. </div>
Insurance Type	Minimum Amount							
<b>Public Liability Insurance</b>	\$[insert amount] for any one occurrence from the date of this Contract to one year after the expiry of the Defects Liability Period or termination of this Contract.							
<b>Contractor's Plant &amp; Machinery Insurance</b>	<div data-bbox="1023 1263 1433 1373">[insert Specific items of critical Plant &amp; Machinery to be separately insured]</div> <div data-bbox="1023 1451 1433 1641"> <input type="checkbox"/> Yes, minimum market value of Plant and Machinery from the date of this Contract to the Date of Practical Completion or earlier termination. </div> <div data-bbox="1023 1720 1292 1753"> <input type="checkbox"/> No, not applicable. </div>							

	<b>Non-compulsory Motor Vehicle Insurance</b>	<input type="checkbox"/> Yes, replacement value of motor vehicles used for the Works from the date of this Contract to the Date of Practical Completion or earlier termination. <input type="checkbox"/> No, not applicable.
	<b>Professional Indemnity Insurance</b>	<input type="checkbox"/> Yes, \$[Insert amount] for any one occurrence and 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.
	<b>Contract Works Insurance</b>	Contract Price + 15%.
	<b>Workers compensation insurance</b>	In accordance with Statutory Requirements.
	<b>Other insurances</b>	[insert any additional requirements for insurance]

**17. Contractor's design obligations (clause 10)**

Does the Contractor have specific design obligations?

☐ Yes, as follows:

**Contractor's design obligations**

The Contractor must ensure the design meets the requirements set out in clause 10.

OR

☐ No, not applicable.

**18. Samples**

**Are there any samples required?**

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(clause 11)	<input type="checkbox"/> Yes, required.
	OR
	<input type="checkbox"/> No, not required.

---

**19. Key People**  
**(clause 13.4)**

Are there any Key People?

☐ Yes, as follows:

Names of Key People	Position
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]

OR

☐ No, not applicable.

---

**20. Principal Supplied Materials**  
**(clause 19A)**

☐ Yes, required.

OR

☐ No, not required.

[if Principal Supplied Materials are not required, delete the following table]

Principal Supplied Material	Delivery Location	Date for Delivery
[insert description of Principal Supplied Material]	[insert location]	[insert date]
[insert description of Principal Supplied Material]	[insert location]	[insert date]

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**21. Contract Price**  
**(clause 25.2)**

For Works which the Parties have agreed a lump sum, the lump sum of \$[insert] (inclusive of GST).

OR

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

OR

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		For Works to which both a lump sum and rates under the Schedule of Rates apply, the sum of \$[insert] (inclusive of GST).		
22.	<b>Schedule of Rates</b> (clause 25.3)	<b>Is there a Schedule of Rates?</b> <input type="checkbox"/> Yes, refer to SCHEDULE 6 - Schedule of Rates.  OR <input type="checkbox"/> No, not applicable.		
23.	<b>Working hours and days</b> (clause 26.3)	<b>The Contractor will carry out the Contractor's Activities on the following working hours and days:</b> [insert]		
24.	<b>Provisional Sum Work</b> (clause 28)	As described in the Scope of Works or Lump Sum Breakdown, is there Provisional Sum Work? <input type="checkbox"/> Yes, Provisional Sum Work allowance: \$[insert] (inclusive of GST)  OR <input type="checkbox"/> No, not applicable.		
25.	<b>Date for Practical Completion</b> (clause 30)	[insert]		
26.	<b>Liquidated damages</b> (clause 32)	[insert - \$xxx per day]		
27.	<b>Maintenance</b> (clause 35.2)	<table border="1"> <tr> <td><b>Maintenance</b></td> </tr> <tr> <td>[insert specific maintenance tasks and timeframes]</td> </tr> </table>	<b>Maintenance</b>	[insert specific maintenance tasks and timeframes]
<b>Maintenance</b>				
[insert specific maintenance tasks and timeframes]				
28.	<b>Defects Liability Period</b> (clause 35.4)	[insert] weeks from the Date of Practical Completion.		
29.	<b>Whole Of Life (WOL)</b> (clause 38)	<b>Do Whole of Life (WOL) requirements apply?</b> <input type="checkbox"/> Yes, as follows:		



	<div>WOL</div> <div>[insert specific additional matters for WOL]</div>
	OR <input type="checkbox"/> No, not applicable.
<b>30. Post occupancy evaluation</b> <b>(clause 38.5)</b>	Is a post occupancy evaluation required? <input type="checkbox"/> Yes, required. OR <input type="checkbox"/> No, not required.
<b>31. Decisions of independent expert</b> <b>(clause 41.5(c))</b>	The independent expert's decision is final and binding on the Parties unless the value of the expert's decision in favour of a Party exceeds: A\$[insert maximum value of expert's decision that is binding]
<b>32. Intellectual Property Rights</b> <b>(clause 44.1)</b>	Intellectual Property Rights in Contract Material will be: <input type="checkbox"/> licensed to the Principal (owned by the Contractor). <input type="checkbox"/> owned by the Principal.
<b>33. Limit of Contractor's liability</b> <b>(clause 51.1(a)(ii))</b>	The Contractor's liability is: <input type="checkbox"/> unlimited. OR <input type="checkbox"/> limited to A\$[insert limit of Contractor's liability].

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# FORM OF AGREEMENT

## 1 CONTRACT

### 1.1 Formation of 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 Contractor's Activities on the terms and conditions of this Contract.

### 1.2 Appointment of the Contractor

- (a) On and from the Award Date, the Principal appoints the Contractor to undertake the Contractor's Activities.
- (b) The Contractor must undertake the Contractor's Activities:
  - (i) within the timeframe(s) specified in this Contract;
  - (ii) for the Contract Price;
  - (iii) in accordance with the terms and conditions of this Contract; and
  - (iv) in accordance with any directions issued by the Principal's Representative in accordance with this Contract.

### 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 Contractor's Activities, 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 Contractor's Activities; and
  - (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; and
  - (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.

## 2 COMMENCEMENT OF WORKS

### 2.1 The obligations of the Parties

- (a) The Contractor agrees to perform the Contractor's Activities 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 the Contractor has:

- (a) provided the proposed Contract Program;

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- (b) prepared and finalised the Project Plans under clause 3.3 which have not been rejected;
  - (c) provided the Security in accordance with clause 6;
  - (d) provided evidence satisfactory to the Principal's Representative that each insurance policy required under clause 7 is current; and
  - (e) satisfied any additional conditions set out in Item 8.

### **2.3 Principal's obligations**

- (a) Subject to clause 2.2, the Principal must give the Contractor sufficient access to the Site to allow it to commence Contractor's Activities on the Site on the latest of:
  - (i) the date specified in Item 9;
  - (ii) 5 Business Days following the satisfaction of the Conditions Precedent; or
  - (iii) the date stated in the Contract Program.
- (b) Subject to other provisions in this Contract affecting access, the Principal must continue to allow the Contractor sufficient access to the Site to enable it to perform the Contractor's Activities in accordance with this Contract.

### **2.4 Conditions of Site access**

- (a) Subject to satisfaction of the Conditions Precedent and the Principal granting access to the Site in accordance with clause 2.3 (which the Principal may waive in its absolute discretion), the Contractor agrees to immediately commence carrying out the Contractor's Activities and to diligently and regularly continue to perform its obligations under this Contract.
- (b) The Contractor must not enter any part of the Site not reasonably necessary for the Contractor to comply with its obligations under this Contract without the prior written consent of the Principal's Representative.
- (c) 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.
- (d) The Contractor agrees that there is sufficient allowance in the Contract Price, Contract Program and Date for Practical Completion to accommodate any reasonable restrictions, non-continuity or hindrances that may occur. The Contractor is not entitled to make any Claim arising out of or in connection with any reasonable restriction, non-continuity or hindrance of access to the Site.
- (e) The Contractor must comply with security arrangements applicable to the Site from time to time set by the Principal or the Principal's Representative.
- (f) The Contractor must not permit any Personnel to enter on the Site unless it has complied with the requirements of this Contract and any reasonable directions of the Principal's Representative.
- (g) The Contractor indemnifies the Principal against any loss or damage arising out of or in connection with a breach by the Contractor of this clause 2.4.

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## **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:
  - (i) claim an Extension of Time to any relevant Date for Practical Completion where it is not otherwise so entitled; and
  - (ii) 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)(i) and 2.5(a)(ii).

## **3 Documents for works**

### **3.1 Contract Program**

- (a) The Contractor must within 10 Business Days of the Award Date:
  - (i) prepare a proposed Contract Program of the Contractor's Activities and the Works based on the proposed Contract Program submitted in the Contractor's Tender and otherwise in accordance with the requirements of this Contract and any direction by the Principal's Representative; and
  - (ii) provide the Principal's Representative with copies of the proposed Contract Program.
- (b) The proposed Contract Program must:
  - (i) set out the dates by which, or the times within which, the various stages or parts of the Works are to be executed or completed;
  - (ii) include identification in detail of all work required for, and all risks which could be encountered in achieving Practical Completion by the Date for Practical Completion, which a prudent competent and experienced contractor would anticipate and provide for in its program for the performance of the Contractor's Activities and the Works;
  - (iii) have regard to all relevant considerations including:
    - A. the desirability of staging and sequencing the Contractor's Activities so as to enable the Principal to have use of facilities forming part of the Works safely and as soon as possible and without hindering access to the Site by other users of the Site (as notified in writing by the Principal's Representative) as and when required; and
    - B. the paramount importance to the Principal of balancing between minimising the time to achieve Practical Completion of the Works and the cost of the Works, provided that no Date for Practical Completion in the proposed Contract Program can be after the relevant Date for Practical Completion; and
  - (iv) include all such other matters as the Principal's Representative may direct in writing.
- (c) If the Principal's Representative reasonably considers that the proposed Contract Program does not meet the requirements of this Contract, the Principal's Representative may issue a Notice to the Contractor setting out the reasons for this view.
- (d) Within 3 Business Days of receipt of the Notice from the Principal's Representative under clause 3.1(c), the Contractor may:

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- (i) amend the proposed Contract Program, at its own cost, and resubmit the revised proposed Contract Program to the Principal's Representative; or
    - (ii) notify the Principal's Representative that it does not agree with the view of the Principal's Representative and that the Contractor does not consider it necessary to amend the proposed Contract Program.
  - (e) Following the action taken under clause 3.1(d), the amended proposed Contract Program issued under clause 3.1(d)(i), or the original proposed Contract Program if notification is given under clause 3.1(d)(ii), becomes the Contract Program. The Contract Program does not form part of this Contract for the purposes of clause 52(n).
  - (f) The Contractor is not entitled to any Claim in relation to any delay to the commencement of the Contractor's Activities or the Works caused by the Principal's Representative's Notice under clause 3.1(c), or of any amended proposed Contract Program prepared by the Contractor or notification issued by the Contractor under clause 3.1(d).
  - (g) Subject to any Extension of Time, or other changes to any task or activity scheduling which does not impact on the ability of the Contractor to achieve Practical Completion by the Date for Practical Completion, the Contractor is not entitled to depart from the Contract Program.
  - (h) Any review of the Contract Program by the Principal's Representative will not:
    - (i) relieve the Contractor from or alter its liabilities or obligations under this Contract, especially (without limitation) the obligation to achieve Practical Completion by the Date for Practical Completion;
    - (ii) evidence or constitute a direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities or the Works; or
    - (iii) affect the time for performance of the Principal's or Principal's Representative's obligations under the Contract, including requiring the Principal or Principal's Representative to do anything earlier than is necessary to enable the Contractor to achieve Practical Completion by the Date for Practical Completion.

### **3.2 Updated Contract Program**

- (a) The Contractor must provide to the Principal's Representative a monthly updated Contract Program to take account of changes to the Contract Program or delays which may have occurred to the Works (including any delays for which the Contractor has obtained an Extension of Time).
- (b) The updated Contract Program is to be accompanied by a written monthly progress report that sets out:
  - (i) the overall summary of physical completion percentage for each activity compared with the planned level of completion for each activity under the Contract Program;
  - (ii) any Delay Events and Non-Delay Events; and
  - (iii) proposed strategies for mitigating any Delay Events and Non-Delay Events.

### **3.3 Project Plans**

- (a) The Contractor:
  - (i) must carry out the Works in accordance with, and otherwise implement, the Project Plans; and
  - (ii) for the purposes of clause 3.3(a)(i), must:
    - A. prepare draft Project Plans based on the outline approach to preparing the Project Plans submitted in the Contractor's Tender (if any) and otherwise in accordance with

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the requirements of this Contract (including any direction by the Principal's Representative), and submit them to the Principal's Representative within the relevant time set out in Item 11 for the relevant Project Plans;

- B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Principal's Representative has had the number of days set out in Item 11 to review the draft Project Plans and has not rejected them;
- C. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Principal's Representative;
- D. finalise each Project Plan so as to ensure that there is no delay or disruption to the Works and in accordance with the requirements of this Contract to the satisfaction of the Principal's Representative; and
- E. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.

- (b) The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under this Contract or otherwise according to any Law as a result of:
- (i) the implementation of, and compliance with, the requirements of any Project Plan;
  - (ii) any direction by the Principal's Representative concerning a Project Plan or the Contractor's compliance or non-compliance with a Project Plan;
  - (iii) any audit or other monitoring by the Principal's Representative of the Contractor's compliance with a Project Plan; or
  - (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

### **3.4 Commissioning and Handover Plan**

If a Commissioning and Handover Plan is required in Item 11, within the time set out in Item 11, the Contractor must give the Principal's Representative a Commissioning and Handover Plan for the Works in an electronic form and that is clear and legible and which contains the information specified as required in Item 11.

## **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 Contractor's Activities, 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.

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## **4.2 The Principal Supplied Information**

- (a) Subject to clause 4.2(b), the Contractor and the Principal agree that, other than in relation to Rely-upon Information:
  - (i) 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; and
  - (ii) the Principal does not:
    - A. assume any responsibility or duty of care in respect of; or
    - B. warrant, guarantee or make any representation as to,the Principal Supplied Information including its accuracy, completeness or adequacy for the purposes of this Contract or otherwise;
  - (iii) the Principal is not liable to the Contractor in contract, tort, equity, under any Statutory Requirement or otherwise in connection with the Principal Supplied Information;
  - (iv) the Contractor is not entitled to rely on the Principal Supplied Information for or in connection with the carrying out of the Contractor's Activities;
  - (v) the Contractor must satisfy itself as to the accuracy, completeness and adequacy of the Principal Supplied Information;
  - (vi) the Principal Supplied Information will remain the property of the Principal and must be returned by the Contractor to the Principal on request in writing; and
  - (vii) the Principal Supplied Information must not, without the written approval of the Principal, be used, copied or reproduced for any purpose other than conducting the Contractor's Activities.
- (b) The Contractor and Principal agree that the Contractor is entitled to rely on Principal Supplied Information that constitutes Rely-upon Information and any errors, discrepancies or omissions in the Rely-upon Information will entitle the Contractor to make a relevant Claim under and in accordance with the terms of this Contract.

## **4.3 Contractor Supplied Information**

- (a) If this Contract requires the Contractor to provide any Contractor Supplied Information, then the Contractor will provide the Contractor Supplied Information to the Principal.
- (b) 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.
- (c) The Contractor agrees that:
  - (i) the Principal or the Principal's Representative is not bound to check the Contractor Supplied Information for errors, omissions or compliance with the requirements of this Contract;
  - (ii) the Principal's or the Principal's Representative's approval of any Contractor Supplied Information will not relieve the Contractor from responsibility for its errors or omissions or compliance with the requirements of this Contract; and
  - (iii) approval of any Contractor Supplied Information will not constitute a direction or an approval to vary the Works in accordance with clause 34 unless the approval includes a

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direction or approval expressed to be given under clause 34 and describes the nature of the Variation.

- (d) The Contractor acknowledges that the Principal has relied on the contents of this clause 4.3 in entering into 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:
  - (i) identify and immediately bring to the attention of the Principal's Representative, any ambiguity, inconsistency or discrepancy in or between:
  - (ii) a provision or provisions of this Contract;
  - (iii) documents that are produced or issued under this Contract; and
  - (iv) 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 52(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 34.3.

## **5 APPROVALS, AUTHORITIES AND STATUTORY REQUIREMENTS**

### **5.1 Approvals and Statutory Requirements**

- (a) The Contractor must, without being entitled to make any Claim:
  - (i) unless otherwise specified in this Contract, perform the Contractor's Activities so they comply with the BCA, all relevant standards published by Standards Australia, and any Statutory Requirements;
  - (ii) unless otherwise specified as an Exempt Approval in Item 12, apply for and maintain all Approvals, give all notices and pay all fees necessary to perform the Contractor's Activities; and
  - (iii) provide to the Principal copies of all Approvals.
- (b) If a change is made to a Statutory Requirement after the Award Date relating to the Contractor's Activities, the Contractor must notify the Principal's Representative in writing specifying the change within 2 Business Days after the Contractor was or ought reasonably to have been aware of the change.
- (c) If the Principal's Representative assesses that the change to the Statutory Requirement is one that:
  - (i) could not reasonably have been anticipated by a competent and experienced contractor;
  - (ii) necessitates a change to the Contractor's Activities; and
  - (iii) the Contractor has incurred greater or lesser cost as a result of the change,

the Contractor will be entitled to claim the additional Direct costs incurred by the Contractor in performing the Contractor's Activities as a result of the change to the Statutory Requirements.



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## **5.2 Industrial disputes**

The Contractor must:

- (a) take all steps and measures to avoid and to minimise the consequences of industrial disputes affecting the Works;
- (b) advise the Principal's Representative of any dispute that arises or is likely to arise among its employees or between its employees and the employees of Other Contractors or the Principal's employees;
- (c) promptly inform the Principal's Representative of any industrial dispute, potential industrial dispute, or demands made by its workforce or any representative of its workforce and of any other matter which could lead to industrial action affecting the continuity of the Contractor's Activities or the Works;
- (d) comply at its cost with any reasonable direction by the Principal's Representative issued with the objectives of reducing industrial disputes and its impacts on the Works;
- (e) not make any Claim arising out of or in connection with any industrial dispute;
- (f) indemnify the Principal for the consequences to the Principal of any industrial disputes contributed to or caused by the Contractor; and
- (g) during any industrial dispute, maintain on the Site all of the Contractor's Plant which it would have had on Site if there were no Dispute or stoppage to be ready and available to recommence the Works in the event the Dispute ceases. If the Contractor breaches this clause 5, the Principal may retain those resources and recover any costs incurred in so doing from the Contractor as a debt due from the Contractor.

## **6 SECURITY**

### **6.1 Purpose**

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

### **6.2 Provision of Security**

- (a) The Contractor must give the Security to the Principal, within 10 Business Days of the Award Date.
- (b) The provision by the Contractor of the Security or any additional Security required under this clause 6 is a precondition to the Contractor's entitlement to lodge a Payment Claim. Until the Security or any additional Security is provided in accordance with this clause 6, no progress payment or other payments are due from the Principal to the Contractor.
- (c) All stamp duty and other taxes payable in relation to the Security and any additional Security must be paid by the Contractor prior to providing the Security to the Principal.

### **6.3 Recourse to Security**

- (a) The Principal may have recourse to the Security if it reasonably believes that:
  - (i) 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;
  - (ii) the Principal is, or will be, entitled to claim payment of moneys from the Contractor in relation to the Works; or

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- (iii) 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.
  - (b) The Contractor will have no Claim against the Principal for any Loss that it may suffer (including Consequential Loss) occasioned by use or recourse to the Security under this clause 6.
  - (c) The Principal is not required to provide any Notice to the Contractor before making any call on the Security.
  - (d) If the Principal has recourse to the Security, then the Principal may require the Contractor to increase the amount of the Security, to top up the level of the Security available to the Principal as specified in this Contract.
  - (e) If the Contractor takes any steps to injunct or otherwise restrain:
    - (i) the Principal from having recourse to the Security;
    - (ii) the Principal from using any sum or sums received from having recourse to the Security;
    - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security, and

the Contractor is unsuccessful in its actions, the Contractor indemnifies the Principal in relation to any Loss as a result of defending or responding to any steps taken by the Contractor to injunct or otherwise restrain the Principal or the issuer of the Security.

#### **6.4 Release of Security**

- (a) In respect of the Security provided under this Contract:
  - (i) within 10 Business Days after the Date of Practical Completion, the Principal must 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;
  - (ii) within 10 Business Days after the Principal's Representative issues the final Payment Statement under clause 25.11, the Principal must release the balance of the Security; and
  - (iii) if at any time, the Principal is required to release the Security to the Contractor and the Principal believes that:
    - A. the Contractor owes the Principal unpaid moneys; or
    - B. the Principal has any unsatisfied Claims against the Contractor,the Principal is only obliged to release the Security to the extent that the value of the Security exceeds the value of the unpaid moneys or unsatisfied Claims.
- (b) If:
  - (i) the Principal's Representative has issued a final Payment Statement under clause 25.11; and
  - (ii) the Principal has retained part of the Security under clause 6.4(a)(iii) above; and
  - (iii) the Principal:
    - A. receives the unpaid moneys from the Contractor; or
    - B. receives confirmation that the Contractor has satisfied the Principal's Claims,the Principal must release the balance of the Security held under clause 6.4(a)(iii) within 10 Business Days of the occurrence of all of the events specified under this clause 6.40.
- (c) The Principal will not, and does not, hold on trust, either actual or constructive, the Security or any proceeds received from the Principal's recourse to the Security under this clause 6.4 or for any Undertakings.

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- (d) The Principal is not liable to the Contractor for any interest earned on amounts retained under this clause 6.4 or the proceeds of any other Security or Undertaking to which the Principal has had recourse under this clause 6.4.

## **6.5 Guarantee**

The Contractor must, if required by Item 15, give the Principal, within 10 Business Days of the Award Date, a Deed of Guarantee and Indemnity:

- (a) in the form annexed to SCHEDULE 2 - Form of Deed of Guarantee and Indemnity; and
- (b) duly executed by the Contractor and the related body corporate, shareholder or director of the Contractor named in Item 15.

# **7 INSURANCE**

## **7.1 Insurances required**

- (a) Prior to the commencement of the Contractor's Activities, the Contractor must have in place the insurances stated in Item 16 with an insurer or insurers approved by the Principal.
- (b) The insurances procured by the Contractor must be in accordance with the requirements set out in Item 16 concerning:
  - (i) the types of insurance;
  - (ii) the amounts of insurance; and
  - (iii) the periods of insurance.
- (c) Without limiting the previous clauses, the 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 Contractor's Activities.
- (d) The non-compulsory motor vehicle insurance must:
  - (i) cover all mechanically propelled vehicles used by the Contractor in connection with the Contractor's performance of the Contractor's Activities;
  - (ii) include 'gap' cover for Claims in respect of personal injury or death not covered by the Contractor's Public Liability Insurance or any applicable compulsory motor vehicle third party liability policy; and
  - (iii) be extended to cover the Principal for its vicarious liability as principal arising from the Contractor's performance of the Contractor's Activities.
- (e) The Contractor's plant and machinery insurance must:
  - (i) cover loss of or damage to the Contractor's property used in conjunction with its performance of the Contractor's Activities; and
  - (ii) cover items of property which are hired, leased or otherwise acquired by the Contractor.

## **7.2 Professional Indemnity Insurance**

If Item 17 (Design) applies and is marked 'yes':

- (a) before the Contractor commences the Contractor's Activities, the Contractor must obtain a Professional Indemnity Insurance policy as stated in Item 16;
- (b) the policy must extend to cover the Contractor's liability for infringement of Intellectual Property Rights;

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- (c) the Contractor must ensure that every consultant engaged by the Contractor is insured for professional indemnity for an amount not less than the sum stated in Item 16, or where that consultant is only undertaking a part of the preparation of the Design Documents, a reasonably lesser amount having regard to the extent of the consultant's activities in the preparation of the Design Documents; and
  - (d) the Contractor must ensure that each consultant's policy is maintained for the period as stated in Item 16.

### **7.3 Evidence of insurance**

- (a) Prior to the commencement of the Contractor's Activities or within 10 Business Days after the Award Date, whichever is earlier, the Contractor must provide the Principal's Representative copies of certificates of currency for the insurance policies required by this Contract.
- (b) The Contractor must not change any term of the insurance policies required by this Contract without the prior written consent of the Principal's Representative. The Contractor must notify the Principal's Representative immediately should any insurance become ineffective for any reason.
- (c) If the Contractor fails to effect or maintain the insurances required by this clause 7, the Principal may, in its absolute discretion and without Notice to the Contractor, obtain and maintain the insurance policies (or any of them) and all costs and expenses incurred by the Principal will be recoverable from the Contractor as a debt due to the Principal.
- (d) The Contractor will not be relieved of any liability under this Contract as a result of the Principal obtaining or maintaining insurance in accordance with clause 7.3(c).

### **7.4 Insurance by subcontractors**

The Contractor must ensure that its subcontractors, if any, have similar workers compensation insurance to that which the Contractor is required to have under this clause 7.

### **7.5 Notice of claims or occurrences**

- (a) 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 Contractor's Activities that may give rise to an insurance claim under any insurance policy required by this Contract.
- (b) The Contractor must give all information reasonably practicable as requested by the Principal's Representative in respect of any such occurrence.
- (c) Without limiting any other provision of this Contract, the Contractor must:
  - (i) notify the Principal and the Principal's Representative in writing prior to giving Notice of cancellation of a policy to an insurer of insurance required by this Contract; and
  - (ii) notify the Principal and the Principal's Representative immediately in writing if it receives any Notice of cancellation resulting from the Contractor's failure to renew a policy or to pay a premium or any other Notice materially affecting any insurance policy required by this Contract.

### **7.6 Contractor must not prejudice insurance**

The Contractor must ensure that it:

- (a) does not do anything which prejudices any insurance required by this Contract;
- (b) if necessary, rectifies anything which might prejudice any insurance required by this Contract;
- (c) reinstates a policy if it lapses;

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- (d) does not cancel, allow to lapse or vary in any manner that vitiates its scope, any insurance policy required by this Contract;
  - (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
  - (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance required by this Contract.

## **8 EARLY WORKS**

The Parties agree that:

- (a) this Contract applies retrospectively to all works which have or should have been undertaken by the Contractor and which constitute part of the Works, even if the works were undertaken prior to the date of this Contract; and
- (b) any payments made to the Contractor for works undertaken by the Contractor as part of the Works prior to the date of this Contract are deemed payments on account of the Contract Price.

## **9 BUILDABILITY WARRANTY**

- (a) The Contractor acknowledges and agrees:
  - (i) it has examined the Design Documents in detail and has not identified any Buildability Problem in the Design Documents; and
  - (ii) it will bear the risk of, and not be entitled to any Claim (including for a Variation or an Extension of Time) for any additional work or cost required to resolve any Buildability Problem in the Design Documents.
- (b) The Contractor acknowledges and agrees the Principal has relied on the Contractor's acknowledgment at clause 9(a) above.

## **10 DESIGN**

If Item 17 applies and is marked 'yes', the Contractor must ensure its Design Documents meet the requirements set out in this clause 10.

### **10.1 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 Statutory 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.

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## **10.2 Design responsibility**

- (a) The Contractor represents and warrants that if it is relying on any of the Principal Supplied Information (other than Rely-upon Information), it does so entirely at its own risk.
- (b) The Principal has no liability whatsoever in connection with the Contractor's use or reliance on the Principal Supplied Information (other than Rely-upon Information).
- (c) The Principal or the Principal's Representative's review of any Design Documents prepared by the Contractor does not relieve the Contractor from responsibility for the Contractor's errors, omissions, Defects and any non-compliance with the requirements of this Contract.

## **10.3 Design Documents**

- (a) The Principal's Representative may require the Contractor to provide the Design Documents in the manner and form as the Principal's Representative reasonably requires.
- (b) The manner and form that the Principal's Representative may require the Design Documents to be provided by the Contractor include drawings, specifications, workshop drawings, as-built drawings, operating and maintenance manuals, calculations, test certificates, surveys, reports and schedules.

## **10.4 Submission of design in time to allow re-work**

- (a) The Contractor must submit any Design Documents developed by the Contractor:
  - (i) in accordance with the Contract Program; and
  - (ii) within a reasonable time for:
    - A. the Principal or the Principal's Representative to comment on the design; and
    - B. re-design work or amended design work to be performed if required by the Principal or the Principal's Representative.
- (b) The Principal's Representative must reject or give permission to use the Contractor's Design Documents, or any resubmitted Design Documents, within 20 Business Days of submission by the Contractor. Where the Design Documents are rejected the Contractor must submit amended Design Documents to the Principal's Representative and must not commence construction of that part of the Works until the Principal's Representative gives permission to use the Contractor's Design Documents.
- (c) The Contractor must use best endeavours to perform any re-design work or amended design work without causing any delay to the progress of the Works.
- (d) The Contractor is not entitled to make any Claim if required to carry out any re-design work or amended design work in accordance with this clause 10.4.

## **10.5 Design presentation**

- (a) The Contractor must make design presentations to the Principal and its representatives at the times or stages required by the Scope of Works.
- (b) The Contractor must ensure that its designer and other relevant personnel attend design presentations and include appropriate provision of Design Documents, samples and other relevant information as required by the Principal's Representative.

## **10.6 Design Intent**

- (a) Unless otherwise directed by the Principal's Representative, the Contractor must not depart from the Design Intent.

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- (b) If the Contractor proposes to depart from the Design Intent, the Contractor must, as soon as it becomes aware of the need or desirability of such departure, notify the Principal's Representative in writing of the proposed departure and the reasons for the proposed departure.
  - (c) The Contractor must not implement any work the subject of a proposed departure until the Principal's Representative has directed the Contractor to proceed on the basis of the proposed departure.
  - (d) Unless the Principal's Representative directs the Contractor to proceed on the basis of the proposed departure, the Contractor must continue to perform the Works in accordance with the existing Design Intent.
  - (e) The Principal's Representative is under no obligation to direct the Contractor to perform the Works in accordance with any proposed departure from the Design Intent.

#### **10.7 Design certificate**

- (a) The Contractor must employ a designer (which may be a consultant) for the Works who is appropriately and professionally qualified.
- (b) The Contractor must give the Principal's Representative, prior to any design work commencing and at such other time as the Principal's Representative may require, details of the designer's qualifications.
- (c) When the Works reach approximately 75% completion, or such other level required by the Principal in the Scope of Works, the Contractor must submit a certificate issued by the Contractor's designer (or if the Contractor has multiple designers, certificates from each designer in respect of their part of the Works) certifying that the Works have been constructed in accordance with the design prepared by the designer and that the design is in accordance with the requirements of this Contract. The certificate must be in a form approved by the Principal's Representative and may include a list of minor omissions and Defects.

### **11 SAMPLES**

If Item 18 is marked 'yes' and the Contractor is required to provide samples:

- (a) the Contractor must, in accordance with the Contract Program, obtain and submit for the Principal's Representative's approval each sample or range of samples required by Item 18 together with relevant technical literature and examples of use;
- (b) the Principal's Representative may reject the use of the sample or range of samples provided by the Contractor or any resubmitted sample or range of samples within 10 Business Days of submission by the Contractor;
- (c) where the sample or range of samples is rejected the Contractor must submit an amended or substituted sample or range of samples to the Principal's Representative within 10 Business Days and must not commence construction of any part of the Works to which it applies until the Principal's Representative accepts the use of the sample or range of samples; and
- (d) the Principal's Representative owes no duty to the Contractor to review the sample or range of samples submitted by the Contractor for errors, omissions or compliance with this Contract. No comments on, reviews or rejection or indications of acceptance of the use the sample or range of samples will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under this Contract or otherwise.

### **12 SEPARABLE PORTIONS**

- (a) The Principal's Representative may direct Separable Portions.

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- (b) In issuing a direction for a Separable Portion, the Principal's Representative must clearly identify the:
    - (i) portion of the Works;
    - (ii) Date for Practical Completion of the Separable Portion; and
    - (iii) respective amounts for Security and liquidated damages for the portion (valued by the Principal's Representative on a pro rata basis by reference to the value of the Separable Portion work and the value of the Works).
  - (c) Despite any other provision of this Contract:
    - (i) subject to extension of the Defects Liability Period for the Works the subject of the Separable Portion in accordance with clause 35.7, the Defects Liability Period for any Separable Portion will end on the date of expiry of the Defects Liability Period of the last Separable Portion or the Works, whichever is the later;
    - (ii) the Contractor's entitlement to a reduction in the Security held by the Principal on the issue of the Certificate of Practical Completion will apply only in respect of the Security held by the Principal in respect of the Separable Portion; and
    - (iii) the Principal may have recourse to the Security held in respect of any Separable Portion in any circumstance where the Principal has an entitlement to have recourse to Security under this Contract and irrespective of whether or not it relates to the Works the subject of the Separable Portion.

## **13 PERSONNEL AND DIRECTIONS**

### **13.1 Principal's Representative**

- (a) The Principal's Representative for the purposes of this Contract is the person named in Item 4.
- (b) Except as otherwise specified in this Contract or notified by the Principal, the Principal's Representative has full authority to act on behalf of the Principal in connection with this Contract. Any act which may be, or is required to be done by the Principal, it may be done by the Principal's Representative on the Principal's behalf.
- (c) 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.
- (d) Any substitute Principal's Representative appointed under this clause 13.1 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

### **13.2 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.

### **13.3 Contractor's Representative**

- (a) The Contractor must ensure that the Contractor's Representative identified in Item 6 or its replacement(s) fulfils the role of Contractor's Representative in carrying out the Contractor's Activities.



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- (b) The Contractor must not replace the Contractor's Representative identified in Item 6 without the prior written consent of the Principal's Representative, such consent not to be unreasonably withheld.
  - (c) 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.
  - (d) Any direction given to the Contractor's Representative is deemed to be given to the Contractor.

#### **13.4 Key People**

- (a) The Contractor must employ those people specified as Key People in the position specified in Item 19.
- (b) Key People engaged by the Contractor must be able to meet the requirements of the position to which he or she has been appointed by the Contractor by:
  - (i) having sufficient relevant experience; and
  - (ii) being appropriately qualified.
- (c) The Contractor may only replace Key People if they will be replaced with persons of at least equivalent experience, ability and expertise and approved by the Principal's Representative.

#### **13.5 Meetings**

- (a) The Contractor must comply with any requirements for meetings and reporting monthly, and at such other times as the Principal's Representative may require.
- (b) For such meetings, if the Contractor requires instructions from the Principal in relation to the Contractor's Activities, the Contractor must make all necessary recommendations in respect of the action required and:
  - (i) before each meeting - prepare an agenda for that meeting; and
  - (ii) after each meeting - prepare minutes of the meeting and distribute them to all attendees of the meeting.

### **14 CONDUCT ON SITE**

#### **14.1 Standards on Site**

- (a) The Contractor must ensure that its Personnel maintain good standards of behaviour on Site and that complaints are properly and promptly investigated.
- (b) The Contractor must ensure that its Personnel do not engage in offensive behaviour or language on the Site.
- (c) The Principal's Representative may direct the Contractor to remove from the Site, any of the Contractor's Personnel who, in the opinion of the Principal's Representative, may have engaged in offensive behaviour or language while on Site or whose presence on the Site is otherwise considered to be contrary to the due or proper completion of the Works or performance of the Contractor's Activities. The person must not be employed on the Site or on activities connected with the Contractor's Activities without the written approval of the Principal's Representative.
- (d) The Contractor will not be entitled to any Claim arising out of or in connection with a direction given by the Principal's Representative under clause 14.1(c).

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## **14.2 Cooperation with others**

- (a) The Contractor must:
  - (i) without being entitled to make any Claim, accommodate and coordinate its Works with work carried out by the Principal and others retained by the Principal or any person lawfully entitled to carry out works on or near the Site (including Other Contractors); and
  - (ii) comply with the directions of the Principal's Representative as to how to proceed where a dispute arises with others on or near the Site.
- (b) The Contractor agrees that failure to comply with directions given by the Principal's Representative or with the requirements under this Contract regarding access to the Site and co-operation with others will entitle the Principal to have any part of the Works performed by others and the cost will be a debt due and payable on demand by the Contractor to the Principal.

## **14.3 Employment of persons**

The Contractor must at its own cost ensure that:

- (a) its Personnel are correctly classified in accordance with any relevant award and registered/certified workplace agreement (where applicable);
- (b) its Personnel are adequately trained and hold current certificates of competence to operate the Contractor's Plant and to otherwise perform the Contractor's Activities as required under any Statutory Requirement, or code of practice;
- (c) it and its subcontractors are responsible for any training, skills assessment and/or reclassification of their Personnel that may be required during the performance of the Contractor's Activities;
- (d) if the Principal issues Site identification/induction cards, all Personnel of the Contractor must carry such cards at all times while on Site and produce the cards on request to any employee of the Principal;
- (e) it and its subcontractors do not employ any person who is at the time an employee of another subcontractor employed at the Site without prior written consent of both the Principal and the other subcontractor;
- (f) it must not do, cause or permit anything to be done where an employee working on Site for another subcontractor is directly or indirectly induced to change employment on Site from their initial employer; and
- (g) it must not, and must ensure that its subcontractors do not, engage in what is referred to in the building industry as 'pyramid subcontracting' or 'cash-in-hand payments'.

## **14.4 Selected subcontract work**

- (a) If selected subcontract work is required under this Contract, the Parties agree as follows:
  - (i) the Parties acknowledge that prior to the Commencement Date, the Principal provided the Contractor with a list of selected subcontractors who are identified to perform the identified parts of the Work, being the selected subcontract work;
  - (ii) the Contractor must subcontract the selected subcontract work identified in clause 14.4(a)(i) to the relevant selected subcontract identified by the Principal; and
  - (iii) if a selected subcontractor refuses to enter, or is unwilling or unable to enter, a subcontract to carry out the selected subcontract work, the Contractor must give the Principal's Representative:

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- A. written reasons as to why that selected subcontractor is unable to enter the subcontract; and
  - B. a list of alternative subcontractors capable of providing the selected subcontract work.
- (b) Following receipt of the written reasons and alternative list, the Principal's Representative must approve one or more of the alternative subcontractors proposed. If the Principal's Representative does not approve any of the alternative subcontractors, the Principal must provide the Contractor with a new list of alternative selected subcontractors for the Contractor to consider. The Contractor must then select which subcontractor off the alternative list provided by the Principal will carry out the selected subcontract work, or alternatively the Contractor may carry out the selected subcontract work itself.

#### **14.5 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.

#### **14.6 Record keeping**

- (a) 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 Statutory Requirements concerning industrial relations and employment conditions.
- (b) If required by the Principal's Representative, the Contractor must give the Principal's Representative the following information in relation to each of the Contractor's labour force and its subcontractors' labour force directly employed on Site in respect of the Contractor's Activities:
  - (i) full name, address, date of birth and award classification;
  - (ii) evidence of compliance with any applicable award or agreement or otherwise in compliance with any Statutory Requirement in relation to employee entitlements;
  - (iii) evidence of relevant certificates of competency and/or licences; and
  - (iv) evidence of general safety induction and work activity training details.
- (c) The Principal's Representative may, in its absolute discretion, remove the Contractor's labour force and/or the labour force of its subcontractors from the Site without entitlement to make any Claim if the Contractor fails to provide any of the information required under this clause 14.6.

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## **14.7 Taxation**

The Contractor must ensure that it and its subcontractors comply with all other applicable Statutory Requirements with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees.

## **14.8 Breach**

If the Contractor breaches this clause 14 and the breach results either directly or indirectly, in causing or contributing to any industrial action, the Contractor indemnifies the Principal for any Loss incurred as a result of the breach.

# **15 SITE CONDITIONS**

## **15.1 Acceptance of Site conditions**

Subject to clause 15.2, 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 Contractor's Activities on, under or adjacent to the Site, including:

- (a) geological conditions;
- (b) existing structures, Utility and other materials;
- (c) the extent and nature of work and availability and conditions for transporting materials to the Site necessary for the performance of the Contractor's Activities or the Works;
- (d) access, and any restrictions or lack of access, to the Site;
- (e) labour conditions which may affect performance of the Contractor's Activities or the Works;
- (f) availability of accommodation and transportation for the Contractor's Personnel;
- (g) availability of fuel, power and water necessary for the performance of the Contractor's Activities or the Works;
- (h) the presence or suitability of any Utility; and
- (i) all environmental conditions including:
  - (i) land, air or water;
  - (ii) flora and fauna;
  - (iii) any organic or inorganic matter and any living organisms;
  - (iv) human made or modified structures and areas;
  - (v) any aesthetic characteristics of the components of the earth including appearance, sound, odour, taste and texture; and
  - (vi) any ecosystem.

## **15.2 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 Contractor's Activities, 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 15.1;
  - (ii) any delay or estimated delay to the Works caused by the Latent Condition; and

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- (iii) any additional Direct costs incurred or to be incurred as a result of the encountering of a Latent Condition.
  - (b) Subject to compliance with the Notice and information requirements set out in this Contract and clause 15.2(a), the Contractor may be entitled to an Extension of Time in accordance with and subject to clause 31, caused by the Latent Condition and any additional Direct costs incurred as a result of the Latent Condition.
  - (c) As a precondition to payment of additional Direct costs incurred under clause 15.2(b), the Contractor must within 5 Business Days of becoming aware of, or incurring, the Direct costs give a further Notice of its Claim setting out:
    - (i) the amount of additional Direct costs incurred together with evidence of those costs incurred; and
    - (ii) advice as to what steps the Contractor has taken or will take to minimise the additional Direct costs incurred as a result of the Latent Condition.
  - (d) The failure of the Contractor to comply with clause 15.2(c) will result in:
    - (i) the Contractor's entitlement to make any Claim for additional Direct costs incurred for the Latent Condition being extinguished;
    - (ii) the Principal not being liable to the Contractor for any Claim for additional Direct costs incurred for the Latent Condition; and
    - (iii) the Contractor being barred from making any Claims for additional Direct costs for the Latent Condition against the Principal.
  - (e) Other than the Contractor's entitlement to claim an Extension of Time and additional Direct costs, payment by the Principal to the Contractor of additional Direct costs in accordance with this clause 15.2 is in full satisfaction of and is a limitation on any liability arising from any Claim which the Contractor may have against the Principal in relation to any 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.
  - (f) Nothing in this clause 15.2 obliges the Principal to pay additional Direct costs to the Contractor which have already been included in any other payment under this Contract.

### **15.3 Existing services and structures**

The Contractor:

- (a) may only modify or remove existing structures or services within the Site in accordance with the Design Documents which the Principal's Representative has given permission to use in accordance with clause 10.4(b);
- (b) must obtain the written approval of the Principal's Representative for the timing of any connection, disconnection or interference with existing structures and services;
- (c) must carry out investigations to verify services locations prior to any excavations. Existing infrastructure records and information must not be taken to be complete nor accurate. Without limiting clause 15.3(a), the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage;
- (d) must notify the Principal's Representative immediately on the discovery of services or obstructions not shown in the Design Documents or identified by inspection;

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- (e) must immediately notify the Principal's Representative in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also, at its own cost, repair, divert, relocate, cut, seal, disconnect or make safe these services as required by any Statutory Requirement; and
  - (f) must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the Contractor's Activities or the Works and must comply with any direction of the Principal's Representative and all relevant Statutory Requirements.

#### **15.4 Adjoining properties**

- (a) In this clause 15.4 'adjoining property' has the same meaning as in the Building Act (NT).
- (b) In respect of all adjoining properties to the Site, the Contractor must:
  - (i) before commencement of the Contractor's Activities on the Site:
    - A. inspect the adjoining properties and make a detailed dilapidation record (including photographic evidence) of the existing conditions of the adjoining properties, especially structural defects and other damage or defacement; and
    - B. make the dilapidation record available for inspection by the owner of each adjoining property or the Principal's Representative, at the Contractor's office;
  - (ii) during the performance of the Contractor's Activities on the Site, keep a copy of dilapidation records on Site;
  - (iii) prior to Practical Completion:
    - A. reinstate the adjoining properties to the condition described in the dilapidation records; and
    - B. inspect the adjoining properties with the Principal's Representative and the adjoining property owners for the purpose of comparing the condition of the property with the record; and
  - (iv) give and obtain relevant notices and approvals for the Works to and from owners of adjoining properties including those required in accordance with Part 9 of the Building Act (NT).

## **16 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS**

### **16.1 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 Contractor's Activities 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.

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## **16.2 Direct payment**

- (a) Before payment under a Payment Claim, the Principal may pay unpaid moneys the subject of clause 16.1 direct to the Contractor's workers, consultants or subcontractors where:
  - (i) permitted by any Statutory Requirement;
  - (ii) given a court order in favour of the worker, consultant or subcontractor; or
  - (iii) requested in writing by the Contractor.
- (b) Payment under clause 16.2(a) will be deemed to be either full or partial satisfaction of the Principal's liability to make payment to the Contractor in accordance with a Payment Statement.

## **17 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').
- (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 Contractor's Activities, 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 and review*

- (e) The Contractor must on written request by the Principal's Representative, provide a written report in relation to its compliance with clauses 17(b) and 17(d) within the timeframe specified in the Principal's Representatives written request.
- (f) The Contractor acknowledges and agrees that it must comply with the NTG's Buy Local Plan and that the Buy Local Industry Advocate may conduct audits of such compliance.
- (g) The Contractor agrees to grant access rights to the Buy Local Industry Advocate to ensure the Contractor (and the Works) satisfy the Buy Local Plan.
- (h) Audits will be conducted no more than once in any 12 month period unless a second or subsequent audit during that period is required to be conducted:
  - (i) to investigate specific concerns of the Principal or the Buy Local Industry Advocate in connection with the Contractor's compliance under the Buy Local Plan;
  - (ii) for compliance with Law;
  - (iii) for the purpose of verifying the accuracy of any report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to its compliance under the Buy Local Plan;

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- (iv) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that the Buy Local Industry Advocate cannot reasonably achieve that purpose without conducting an audit; or
    - (v) at the request of the Buy Local Industry Advocate.
  - (i) In order for the Buy Local Industry Advocate to exercise any of the Buy Local Industry Advocate's audit rights under this clause 17, the Contractor must give the Buy Local Industry Advocate, through the Principal where necessary, full access at all reasonable times and on reasonable notice to (without limitation):
    - (i) all information in relation to Subcontractors and Contractor Personnel; and
    - (ii) all relevant software, data, records, accounts, documents, reports, records and systems (whether prepared by the Contractor or not) relating to the Contractor's obligations under this Contract.
  - (j) The Contractor must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 17.
  - (k) The Contractor is liable for its own costs of any audit or inspection conducted pursuant to this clause 17.
  - (l) The Contractor must meet with the Principal to discuss in good faith any recommendations made by the Buy Local Industry Advocate following the completion of an audit. The Contractor will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Buy Local Plan as directed by Principal or the Buy Local Industry Advocate. The cost of implementing those recommendations will be borne by the Contractor.
  - (m) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause acknowledging and granting the Buy Local Industry Advocate the same rights as specified in this clause 17.

*Performance to be reported in Contractor's Performance Reports*

- (n) The Contractor's compliance or non-compliance with this clause 17 will be recorded in the Contractor's Performance Report to be prepared by the Principal in accordance with clause 51.16.

## **18 RESPONSIBILITY FOR THE WORKS**

### **18.1 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) Contractor's Materials and Contractor's Plant; 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 the Separable Portion; or
  - (v) otherwise, a Certificate of Practical Completion is issued for the Works or the last Separable Portion to reach Practical Completion; and



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- (b) after the issue of a Certificate of Practical Completion for the Works or a Separable Portion, 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 or the Separable Portion.

## **18.2 Other risks**

Except to the extent that it arises from a Principal Risk, the Contractor indemnifies the Principal against:

- (a) any loss of or damage to property of the Principal (other than property referred to in clause 18.1(a)); and
- (b) any liability to or Claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Works provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that a Principal Risk has contributed to the loss, damage, injury or death.

## **18.3 Responsibility for the Works**

- (a) 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 Contractor's Activities in accordance with clause 2 to 5pm on the date the Certificate of Practical Completion is issued.
- (b) The Contractor remains liable after the Date of Practical Completion for:
  - (i) any outstanding items of Works, including rectification of Defects;
  - (ii) items to be removed from Site; and
  - (iii) Contractor's Plant to be removed from Site,until the outstanding items of Works are completed and the items and Contractor's Plant have been removed from Site.
- (c) If loss or damage occurs to the Works, the Contractor must at its own cost rectify the loss or damage except where it was caused by a Principal Risk.
- (d) If loss or damage was caused by a Principal Risk, the Contractor must, to the extent directed by the Principal's Representative, rectify the loss or damage. The rectification works will be deemed to be a Variation and will be valued in accordance with clause 34.

# **19 QUALITY**

## **19.1 Construction**

The Contractor must, in performing the Contractor's Activities:

- (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.

## **19.2 Contractor's Materials and Contractor's Plant**

- (a) The Contractor must:
  - (i) ensure that the Contractor's Plant is suitable for use in connection with the Works and is fit for its intended purposes as set out or otherwise reasonably inferred from this Contract;

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- (ii) ensure that the Contractor's Plant complies with all Statutory Requirements;
  - (iii) ensure that it maintains the Contractor's Plant in safe, operable and good working condition;
  - (iv) ensure that it has access to replacement equipment and spare parts so that the performance of the Contractor's Activities would not be affected by breakdowns in the Contractor's Plant;
  - (v) not remove any items of Contractor's Plant from the Site, unless no longer required for the Works, without the written approval of the Principal's Representative;
  - (vi) ensure that the Contractor's Plant:
    - A. undergoes daily maintenance inspections;
    - B. is serviced in accordance with the manufacturer's specification;
    - C. has any defects identified and promptly repaired. Non-compliant Contractor's Plant that poses a risk to health or safety will be tagged with an out of service tag or removed from Site;
    - D. has all electrical equipment tagged by a licensed person using the national colour coding system; and
    - E. has all lifting equipment tagged with a current safe working load.
  - (b) The Contractor must give the Principal, on request, documented evidence that the above requirements in clause 19.2(a) have been met.
  - (c) The Principal's Representative may direct the Contractor to supply particulars in relation to the Contractor's Plant and Contractor's Materials including:
    - (i) the source of supply;
    - (ii) performance capabilities; and
    - (iii) maintenance records.
  - (d) The Principal's Representative may reject any item of Contractor's Plant or the Contractor's Materials which it considers unsuitable for the purposes for which the Contractor proposes to use it. Any Contractor's Plant or Contractor's Materials so rejected must not be used by the Contractor except with the written approval of the Principal's Representative. The Principal's Representative may direct that any Contractor's Plant or Contractor's Materials so rejected be removed from the Site.
  - (e) If the Contractor wishes to substitute an alternative to any item of the Contractor's Plant or the Contractor's Material (Proposed Alternative), then:
    - (i) the Contractor must first submit to the Principal's Representative for approval copies of its calculations and detailed drawings supporting use of the Proposed Alternative;
    - (ii) the substitution of the Proposed Alternative is at the Contractor's cost; and
    - (iii) time spent by the Principal's Representative in considering the substitution is not a ground for an Extension of Time, nor a ground for any other Claim by the Contractor, whether under this Contract or otherwise in accordance with any Law.
  - (f) The Principal's Representative may, in its absolute discretion, approve a Proposed Alternative and any approval may be subject to conditions.
  - (g) The Contractor will not be entitled to any Claim arising out of or in connection with the Proposed Alternative and the Contractor acknowledges and agrees that the Principal's Representative is entitled to adjust the Contract Price if the Proposed Alternative costs less or is of a lesser value than the Contractor's Plant or Contractor's Material.

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- (h) Whether or not any approval is given by the Principal's Representative of a Proposed Alternative, the Contractor indemnifies the Principal against any Loss arising out of or in connection with the use of the Proposed Alternative.

## **19 A PRINCIPAL SUPPLIED MATERIALS**

- (a) If Item 20 is marked 'yes', the Principal must supply the Principal Supplied Materials:
- (i) at the Principal's own cost;
  - (ii) to the relevant 'Delivery Location' referred to in Item 20; and
  - (iii) by the relevant 'Date for Delivery' referred to in Item 20.
- (b) The Contractor:
- (i) warrants that the Principal Supplied Materials:
    - A. are suitable for incorporation into the Works; and
    - B. will allow the Contractor to satisfy the requirements of this Contract;
  - (ii) must:
    - A. if Principal Supplied Materials are unsuitable for incorporation into the Works or will not allow the Contractor to satisfy the requirements of the Contract, give the Principal's Representative notice in accordance with clause 19.2A(c)(i)A;
    - B. unless a 'Delivery Location' listed in Item 20 is the Site, transport the Principal Supplied Materials from the relevant 'Delivery Location' listed in Item 20 to the Site at the Contractor's own cost and risk; and
    - C. as part of the Contractor's Activities, incorporate the Principal Supplied Materials into the Works and must not use the Principal Supplied Materials for any other purpose;
    - D. agrees that:
    - E. as between the Principal and the Contractor, title in the Principal Supplied Materials remains with the Principal; and
    - F. the Sale of Goods Act 1972 (NT) does not apply to the Principal's obligations under clause 19.2A(a) and the Principal makes no representation as to the quality, merchantability or fitness of the Principal Supplied Materials for a particular purpose; and
  - (iii) subject to clause 19.2A(c):
    - A. is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal providing the Principal Supplied Materials; and
    - B. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal Supplied Materials.
- (c) If any of the Principal Supplied Materials:
- (i) contain any Defect, then:
    - A. the Contractor must notify the Principal's Representative as soon as reasonably practicable but by no later than 5 Business Days after discovery of the Defect and before incorporation of the relevant Principal Supplied Materials into the Works; and
    - B. either:

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- (I) the Principal will supply replacement Principal Supplied Materials at the Principal's cost; or
  - (II) the Principal's Representative will direct the Contractor to overcome the relevant Defect by directing a Variation under clause 34.2; or
- (ii) are not supplied to the relevant 'Delivery Location' referred to in Item 20 by the relevant 'Date for Delivery' referred to in Item 20, then the Contractor may be entitled to Claim an Extension of Time under clause 31.3(a)31.

## **19.2 Quality assurance**

- (a) If applicable, the Contractor must implement the quality assurance system specified in the Project Quality Plan.
- (b) The Contractor will not be relieved from any of its Contract obligations arising from:
  - (i) compliance with the quality assurance requirements of this Contract; or
  - (ii) any direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system.

## **19.3 Examination and testing**

- (a) At any time prior to the issue of the final Payment Claim under clause 25.11, the Principal's Representative may direct that all or part of the Works or any Contractor's Materials be tested.
- (b) The Contractor must give the assistance and samples and make accessible the parts of the Works as may be directed by the Principal's Representative.
- (c) The Principal's Representative may direct that any part of the Works must not be covered up or made inaccessible without written approval.
- (d) The Contractor must carry out all tests directed by the Principal's Representative or otherwise required by this Contract or the Scope of Works.
- (e) On completion of the tests, the Contractor must make good the Works in accordance with the results of the test so that it fully complies with this Contract.
- (f) Test results must be promptly provided to the Principal's Representative.
- (g) If the Principal's Representative directs the Contractor to carry out a test which is not:
  - (i) otherwise required by this Contract or the Scope of Works; or
  - (ii) on work in respect of which the Principal's Representative gave a direction under clause 19.4,

and the results of the test show the Work is in accordance with this Contract, the reasonable costs of carrying out the test will be assessed by the Principal's Representative and added to the Contract Price.

## **19.4 Non-complying activities before Practical Completion**

- (a) 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 and:
  - (i) requiring the Contractor to correct it or carry out a Variation, and specifying the time within which either must occur; or
  - (ii) advising the Contractor that the Principal will accept the work despite the non-conformance.
- (b) If a direction is given under clause 19.4(a), the Contractor:

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- (i) must correct the non-conformance or carry out the Variation within the time specified in the Principal's Representative's direction; and
  - (ii) will only be entitled to receive an Extension of Time or to have the Contract Price adjusted, for correcting the non-conformance or carrying out the Variation if:
    - A. it complies with clauses 31.1, 31.3, 34.3 and clause 48 (as the case may be); and
    - B. the non-conformance is something for which the Contractor is not responsible.
  - (c) If a direction is given under clause 19.4(a)(ii) and the Contractor is responsible for the non-conformance, the Contract Price will be reduced by the amount determined by the Principal's Representative which represents the cost of correcting the non-conformance.

## **19.5 Commissioning and handover**

Without limiting clause 20, the Contractor's obligations or liabilities, or the Principal's or the Principal's Representative's rights under clause 30, the Contractor must:

- (a) fully co-operate with Other Contractors and otherwise take all steps necessary to ensure the timely, efficient and comprehensive commissioning and handover of the Works;
- (b) comply with its Commissioning and Handover Plan;
- (c) in consultation with the Principal's Representative, give the Principal such other specific assistance as may be required by the Principal's Representative to facilitate the timely, efficient and comprehensive commissioning and handover of the Works; and
- (d) as and when reasonably required by the Principal's Representative, meet with the Principal's Representative, Other Contractors or other persons nominated by the Principal's Representative in order to provide sufficient information to enable the Principal, the nominated Other Contractors or other persons to:
  - (i) operate the Works;
  - (ii) maintain the Works; or
  - (iii) perform such other activities as may be required by the Principal in respect of the Works.

## **20 WORK HEALTH AND SAFETY**

### **20.1 Work Health and Safety Plan**

- (a) Prior to the Commencement Date, the Contractor must, if a Work Health and Safety Plan is required under Item 11:
  - (i) prepare a Work Health and Safety Plan applicable to the nature of works being undertaken; and
  - (ii) provide the Work Health and Safety Plan to the Principal's Representative.
- (b) The Principal's Representative may give the Contractor amendments to be incorporated into the Work Health and Safety Plan.
- (c) The Contractor must then promptly amend the Work Health and Safety Plan to incorporate and implement any amendments as suggested by the Principal's Representative, and keep the Work Health and Safety Plan updated as regularly as required during the undertaking of the Contractor's Activities.
- (d) The Contractor must, and must ensure its Personnel engaged in the performance of the Contractor's Activities, comply with:
  - (i) the Work Health and Safety Plan;
  - (ii) any directions on safety issued by the Principal or the Principal's Representative; and

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- (iii) any directions on safety issued by any authorities or otherwise required by any Statutory Requirement or required under this Contract.
  - (e) The Contractor must as soon as practicable, (and in any event within 24 hours) inform the Principal's Representative of any accident or incident under any Statutory Requirement, including WHS Legislation or the Work Health and Safety Plan, resulting in injury or damage which:
    - (i) occurs during the performance of the Contractor's Activities; or
    - (ii) is associated with the Works or the Contractor's Activities, andwithin 36 hours, provide a written report to the Principal's Representative containing the details of the accident or incident, and the results of any investigations or recommendations to prevent its recurrence, including the implementation of suitable control measures and remedial action as required.

## **20.2 Work health and safety**

- (a) This clause 20.2 does not limit the Contractor's other obligations under this Contract.
- (b) The Contractor must, when undertaking the Contractor's Activities:
  - (i) comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the Contractor's Activities comply with all WHS Legislation and other requirements of this Contract concerning work health and safety management;
  - (ii) 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;
  - (iii) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site;
  - (iv) implement and comply with all necessary security requirements of the Principal's Representative for the Site;
  - (v) ensure that all Contractor's Activities are executed in a manner that ensures the health and safety of persons present on the Site including:
    - A. erecting and maintaining, as required by existing conditions in the progress of the Contractor's Activities and the Works, all safeguards necessary for safety and protection (including barriers, fences and railings); and
    - B. posting danger signs and other warnings against hazards and notifying the Principal's Representative and other users of any dangerous or hazardous conditions arising out of the execution of the Contractor's Activities and the Works; and
  - (vi) regularly review, update, amend and submit (as necessary) its Work Health and Safety Plan in accordance with clause 20.1 and the WHS Legislation;
  - (vii) institute systems to obtain regular written assurances from subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;
  - (viii) give written assurances obtained under clause 20.2(b)(vii) together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation and the Work Health and Safety Plan to the Principal's Representative;
  - (ix) provide the Principal's Representative with a written report, on 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;

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- (x) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
  - (xi) ensure its subcontracts:
    - A. include provisions equivalent to the obligations of the Contractor in this clause 20;
    - B. comply with the provisions of this clause 20; and
  - (xii) if required by any Statutory Requirement, ensure that all persons for whom it is responsible or over whom it is capable of exercising control (including its subcontractors):
    - A. is authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace and complies with any conditions of such authorisation or licence; and
    - B. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; and
  - (xiii) if any Statutory Requirement requires that a workplace, plant or substance (or design), or work (or class of work) is authorised or licensed, ensure that workplace, plant or substance, or work is so authorised or licensed; and
  - (xiv) if appointed as principal contractor under the Special Conditions, perform that role in accordance with the applicable Statutory Requirements;
  - (xv) ensure that all persons for whom it is responsible or over whom it is capable of exercising control (including its subcontractors):
    - A. comply with any of the Principal's policies relating to fitness for work (including drug and alcohol testing), as notified to the Contractor from time to time;
    - B. confirm that all tools and equipment to be used are in a safe condition and working;
    - C. are suitably identified when working on the Principal's work sites;
    - D. comply with any other of the Principal's policies or procedures concerned with work health and safety notified by the Principal's Representative to the Contractor; and
    - E. comply with any direction by the Principal's Representative given in connection with this clause 20; and
  - (xvi) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, competency, licensing, prescribed qualifications or experience required by any Statutory Requirement are met; and
  - (xvii) 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.
- (c) The Principal's Representative may, or may appoint a third party to, monitor or audit the Contractor's compliance with its work health and safety obligations, including under this clause 20.2.
  - (d) The Contractor must allow the Principal's Representative or appointee access to the Contractor's procedures, policies, systems or documents relevant to the Works, and to any documents or activities so as to enable monitoring and quality auditing.
  - (e) If the Principal's Representative reasonably considers that there is a risk of injury to persons or damage to property arising out of the Contractor's Activities or the Works, the Principal's



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- Representative may direct the Contractor to change its manner of working at the cost of the Contractor and without entitlement to any Claim.
- (f) Nothing contained in this clause 20.2 or elsewhere in this Contract will in any way reduce the Contractor's responsibility to identify and control foreseeable risks arising from or in connection with the Contractor or its Personnel performing the Works.

### **20.3 Work in the vicinity of Power and Water assets**

The Contractor agrees that:

- (a) prior to commencing any work in the vicinity of any sewerage system, high voltage cable or power line or other high voltage structure, the Contractor must liaise with the Principal and obtain and become cognisant with written guidelines or procedures setting out safe practices for working in or adjacent such hazardous areas; and
- (b) while working in the vicinity of sewerage systems, high voltage cables or power lines or other high voltage structures the Contractor must follow all directions and instructions issued by the Principal.

### **20.4 Work in the vicinity of natural gas pipelines**

- (a) In accordance with the Energy Pipelines Act (NT), the Contractor must obtain the written approval of the relevant Authority before commencing any of the following activities in the vicinity of high pressure natural gas pipelines:
  - (i) any activities within the pipeline right-of-way which involve construction of any kind including:
    - A. excavation for drains, pipelines or sewers;
    - B. excavation for buried Utilities;
    - C. construction or maintenance of roads or tracks;
    - D. boring of holes for fence posts or installation of power/telephone poles; and
    - E. any survey or exploration work involving excavation, explosives or vibration; and
  - (ii) any nearby construction activities which are likely to affect the right-of-way, such as re-routing surface water flows, construction of high voltage lines, or erection of large metal structures; and
  - (iii) any passage of heavy vehicles and equipment over the pipeline other than on public roads.
- (b) While working in the vicinity of natural gas pipelines the Contractor must follow all directions and instructions issued by any Authorities or other entity having a right arising out of the Energy Pipelines Act (NT).

### **20.5 Asbestos**

- (a) Where the Contractor removes, disposes of, repairs and/or renovates products containing asbestos, it must do so in accordance with the Safe Work Australia Code of Practice – How to safely remove asbestos (or any updated or replacement Code of Practice), and applicable Bulletins published by NT WorkSafe.
- (b) In accordance with the WHS Legislation, the Contractor must obtain necessary approvals before commencing any work on or with products that contain asbestos; evidence of approval must be presented to the Principal's Representative before commencing work.



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## **20.6 Fire precautions**

- (a) The Contractor must take all necessary precautions to ensure that no fire hazard is created through the carrying out of the Contractor's Activities.
- (b) Where a fire alarm is activated due to actions of the Contractor or its subcontractors, resulting in a call out of the fire service, the Contractor will be required to pay for the subsequent call out fee.

## **20.7 Scaffolding and excavation**

All scaffolding and excavation must conform to the WHS Legislation. The Contractor must provide all ladders and scaffolding necessary to carry out the Contractor's Activities.

## **20.8 Disabled access**

Where there is a likelihood that the Works or Contractor's Activities may cause a danger or inconvenience to the disabled, the Contractor must seek advice from the Department of Health, Office of Disability. The Contractor may be required to advertise in relevant newspapers or on community radio programs giving forewarning of the Works or Contractor's Activities.

## **20.9 Dial Before You Dig**

- (a) Dial Before You Dig (DBYD) is a community service that provides information on underground pipes and cables from all underground service providers in the area. There is no cost to the user for this service; however, some asset owners reserve the right to make a modest charge for some plans.
- (b) The Contractor must contact DBYD at least two (2) Business Days before it plans to excavate and obtain the plans of the underground services before commencing excavation.
- (c) The Contractor must provide a written Notice to the Principal's Representative stating that the plans have been received and include the DBYD sequence number.
- (d) DBYD can be contacted at the following numbers:

Telephone: 1100 8am to 5pm weekdays, excluding Public Holidays

Internet: [www.1100.com.au](http://www.1100.com.au)

## **20.10 Protection of telecommunication underground cables**

The Contractor agrees that:

- (a) in addition to the requirements of clause 20.9 and prior to commencing any excavation, boring of holes, blasting, rock breaking, soil compaction or similar activity in the vicinity of telecommunication underground cables, whether fibre optic or copper, the Contractor must obtain the location of the cables from the accredited plant locator, and pay all fees; and
- (b) the Contractor must follow all directions and instructions issued by the owner of such telecommunication underground cables in relation to work in the vicinity of such cables.

## **20.11 Appointment as principal contractor for work, health and safety**

- (a) In accordance with regulation 293 of the WHS Legislation the Principal engages the Contractor as principal contractor and authorises the Contractor to have management or control of the Site for the purpose of discharging the duties imposed on a principal contractor.
- (b) The Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor, unless relieved of that engagement and authorisation by written Notice given by the Principal or the Principal's Representative.

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- (c) the Contractor must ensure that all relevant elements of its Work Health and Safety Plan reflect the Contractor's engagement as principal contractor.

## **21 PERSONAL PROTECTIVE EQUIPMENT (PPE)**

### **21.1 PPE**

The Contractor must ensure that all Personnel engaged in undertaking the Contractor's Activities have the personal protective equipment on the Site in accordance with the Principal's specific site requirements or as identified via a risk assessment by the Principal's Representative, as notified to the Contractor from time to time, or as set out in the Scope of Works.

### **21.2 Induction**

The Contractor must, at its cost, ensure its personnel undertake a health and safety induction prior to commencing Contractor's Activities at the Site.

## **22 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.
- (b) Without limiting clause 22(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.

## **23 ENVIRONMENT**

### **23.1 Environmental Management Plan**

Without reducing the Contractor's obligations under clause 23.2, if the Contractor is required to provide an Environmental Management Plan under Item 11 the Contractor must:

- (a) implement, and ensure subcontractors, implement the Environmental Management Plan; and
- (b) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

### **23.2 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.

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- (c) Without limiting clause 23.2(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.

### **23.3 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.

## **24 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 or Contractor's Activities.

## **25 CONTRACT PRICE AND PAYMENT**

### **25.1 Performance and payment obligation**

- (a) The Contractor must execute and complete the Contractor's Activities.
- (b) Subject to clause 25.6 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 Contractor's Activities.

### **25.2 Contract Price**

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

### **25.3 Schedule of Rates**

If Item 22 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.

### **25.4 Adjustments**

- (a) If:
- (i) the Principal has included quantities for the Contractor to price in a Schedule of Rates; and
- (ii) 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,

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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.

- (b) In response to a Notice under clause 25.4(a), 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 34.5(d).
- (c) Subject to clause 25.4(d), the Contractor is not entitled to make any Claim against the Principal if the items of work or quantities are incorrect, including where there 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.
- (d) This clause 25.4 does not apply to the valuation of Variations directed by the Principal's Representative under clause 34.5 of this Contract.
- (e) The Contractor is not entitled to any adjustment to the Contract Price if actual quantities differ from those shown in any Lump Sum Breakdown.
- (f) The Contract Price is not subject to adjustment for rise and fall.

## **25.5 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) by the 20th day of the calendar month in respect of the Contractor's Activities undertaken in the period between the last Payment Claim and the date of the Payment Claim up until the earlier of:
  - (i) the Date of Practical Completion;
  - (ii) termination of this Contract; or
  - (iii) the Principal taking the Works out of the Contractor's hands in accordance with this Contract; and
- (b) unless terminated earlier:
  - (i) after Practical Completion, within 20 Business Days (or such longer period agreed in writing by the Principal's Representative) after the issue of a Certificate of Practical Completion under clause 30.3; and
  - (ii) after the Defects Liability Period, within the time required by clause 35; and
- (c) which must constitute a tax invoice in accordance with clause 25.14;
- (d) in the format which the Principal's Representative reasonably requires;
- (e) which are based on the Schedule of Rates (if applicable);
- (f) which show separately the amounts (if any) claimed on account of the Contract Price and all other amounts then payable by the Principal to the Contractor under this Contract; and
- (g) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
  - (i) to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this Contract; and
  - (ii) including any such documentation or information which the Principal's Representative may by written Notice from time to time require the Contractor to set out or attach, whether in relation to a specific Payment Claim or all Payment Claims generally.

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## **25.6 Conditions precedent to Payment Claim**

- (a) The Contractor's entitlement to submit a Payment Claim under clause 25.5 is conditional on the Contractor having:
  - (i) provided the Principal with the Security in accordance with clause 6;
  - (ii) obtained the insurance required by clause 7 and provided evidence of this to the Principal's Representative;
  - (iii) complied with its Contract Program obligations under clauses 3.1 and 3.2;
  - (iv) complied with clause 16; and
  - (v) complied with its reporting requirements under clause 27.
- (b) If the Contractor has not satisfied the conditions in clause 25.6(a) at the time of submitting a Payment Claim, then:
  - (i) the Payment Claim is deemed to have been invalidly submitted under clause 25.5;
  - (ii) the Principal's Representative will not be obliged to include in any Payment Statement under clause 25.7 any amount included in the Payment Claim; and
  - (iii) the Principal will not be liable to pay any amount included in the Payment Claim.

## **25.7 Payment Statements**

- (a) The Principal's Representative:
  - (i) must - within 10 Business Days of receiving a valid Payment Claim submitted in accordance with clause 25.5; or
  - (ii) may - if the Contractor fails to submit a Payment Claim in accordance with clause 25.5, at any time,
  - (iii) give the Contractor, on behalf of the Principal, a Payment Statement which states:
  - (iv) the Payment Claim to which it relates (if any);
  - (v) total value of the Contractor's entitlement under this Contract;
  - (vi) the amount already paid to the Contractor;
  - (vii) 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 and which the Principal proposes to pay to the Contractor including any Principal rights to set-off under clause 25.15; and
  - (viii) if the amount in clause 25.7(a)(vii) is less than the amount claimed in the Payment Claim:
    - A. the reason why the amount in clause 25.7(a)(vii) is less than the amount claimed in a Payment Claim; and
    - B. if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) Any assessment of a Payment Claim, or issue of a Payment Statement, by the Principal's Representative will not:
  - (i) constitute approval of any Work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the Payment Statement has been satisfactorily carried out in accordance with this Contract; or

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- (ii) constitute a waiver of the requirements of clause 25.5 in relation to any Payment Claim other than to the extent (if any) to which the Principal expressly waives such requirements in respect of the Payment Claim the subject of the Payment Statement.
  - (c) Any amounts owing from the Contractor to the Principal will be assessed and certified by the Principal's Representative and will be payable as a debt due to the Principal (and which may be set-off against any Payment Claim) on the date the Contractor receives Notice of that assessment by the Principal's Representative.

## **25.8 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 25.7.

## **25.9 Payment on account**

Any payment of moneys under clause 25.8 is only to be taken as payment on account and is not:

- (a) evidence of the value of Works or that Works have been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Contract.

## **25.10 Unfixed goods and materials**

- (a) Unfixed goods or materials will not be included in the value of Contractor's Activities in a Payment Statement under clause 25.7:
  - (i) unless:
    - A. the Principal's Representative is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under this Contract;
    - B. the Contractor gives the Principal's Representative with its Payment Claim under clause 25.5:
      - (I) an additional Undertaking equal to the payment claimed for the unfixed goods and materials; and
      - (II) such evidence as may be required by the Principal's Representative that title (free of all Security Interests or other encumbrances) to the unfixed goods and materials will vest in the Principal on payment; and
    - C. the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and
    - D. the unfixed goods and materials are properly stored in a secure location approved by the Principal's Representative; or
  - (ii) unless:
    - A. the Contractor has requested that this clause 25.10(a)(ii) applies in respect of the particular unfixed goods and materials;

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- B. the Principal's Representative has given the Contractor a written notice:
- (I) agreeing at its discretion that this clause 25.10(a)(ii) applies in respect of the particular unfixed goods and materials; and
  - (II) setting out the measures (if any) which the Principal's Representative requires the Contractor to put in place in relation to the particular unfixed goods and materials (Required Measures), for example:
    - a) any of the requirements referred to in clause 25.10(a)(i);
    - b) a requirement for the Contractor to provide a deed of guarantee and indemnity in the form of Schedule 2 and otherwise to the satisfaction of the Principal's Representative;
    - c) a requirement for moneys to be deposited and held in a nominated trust account;
    - d) a requirement for a relevant Security Interest to be granted in favour of the Principal;
    - e) a requirement for the Contractor to enter into a side deed with the Principal and any relevant third parties in relation to the particular unfixed goods and materials on terms acceptable to the Principal; and
- C. the Contractor has put in place all of the Required Measures to the satisfaction of the Principal's Representative.
- (b) On payment of a Payment Statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.
  - (c) If the Contractor has provided to the Principal an additional Undertaking for payment for unfixed goods and materials in accordance with 25.10, the Principal must release it to the Contractor once those goods and materials are incorporated into the Works.
  - (d) Any amounts paid by the Principal under clause 25.8 in respect of unfixed good and materials referred to in this clause 25.10 must be applied by the Contractor towards the relevant unfixed good and materials only and must not be applied for any other purpose.

#### **25.11 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 (including all Separable Portions), the Contractor must give the Principal's Representative:
  - (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 25.11 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 25.11(a) and 25.11(b), the Principal's Representative will issue to the Contractor a final Payment Statement titled 'Final Payment Statement' under this clause 25.11(c), in accordance with the requirements for issuing Payment Statements under clause 25.7.

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**25.12 Release after final Payment Claim and Notice**

- (a) After the date for submitting the Payment Claim and Notice under clause 25.11 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities 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 25.11 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 25.11.
- (b) Without limiting clause 25.12(a), the Contractor cannot include in a Payment Claim or Notice under clause 25.11 any Claims which are barred by clause 40.

**25.13 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 25.7, 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 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 25.14.
- (c) The entitlement to claim Interest under this clause 25.13 is a Party's sole entitlement, including for damages for loss of use of, or the cost of borrowing, money.

**25.14 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:
  - (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.



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- (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.

### **25.15 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 25.15(a), deduct any debt or Claim referred to in clause 25.15(a)(i) or clause 25.15(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 34.

## **26 CONSTRUCTION**

### **26.1 Construction**

The Contractor must carry out the Contractor's Activities in accordance with:

- (a) this Contract;
- (b) the Design Documents; and
- (c) any design prepared by the Contractor and for which the Principal's Representative has given permission to use under clause 10.4(b).

### **26.2 Progress of Works**

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

### **26.3 Working hours and days**

- (a) The Contractor may only conduct the Contractor's Activities at the Site during the working hours and on the days as set out in Item 23, unless agreed otherwise in writing by the Principal's Representative.
- (b) The Contractor must ensure that all of its Personnel who are required to work at the Site are working there during normal working hours, unless waived in writing by the Principal's Representative.

### **26.4 After-hours access**

The Contractor:

- (a) may only carry out the Contractor's Activities outside working hours set out in Item 23 as permitted or directed by the Principal's Representative;
- (b) acknowledges that the Principal's Representative has power to permit and direct the Contractor to work outside working hours set out in Item 23;
- (c) must ensure that any Contractor's Activities at the Site outside working hours set out in Item 23 are properly supervised; and

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- (d) is not entitled to make any Claim in connection with the permission or direction of the Principal's Representative or for any additional costs associated with working outside working hours set out in Item 23, unless directed to do so by the Principal's Representative in accordance with clause 26.4(b), except where the direction is in response to a request from the Contractor to permit it to work outside working hours set out in Item 23 .

## **26.5 Prior Work**

- (a) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (Prior Work), the Contractor must:
- (i) inspect the Prior Work as soon as is practicable after the Principal gives the Contractor access to the Site under clause 2.3 of the Contract;
  - (ii) if it discovers any defect or matter in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Principal's Representative in writing providing:
    - A. full particulars of the defect or matter identified; and
    - B. the reasons for the opinion formed by it in respect to the defect or matter identified; and
  - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
- (b) On receipt of the Contractor's notice, the Principal's Representative will investigate the Prior Work the subject of the notice and:
- (i) if the Principal's Representative agrees with the Contractor - issue a direction to the Contractor and value any work carried out by the Contractor by reason of that direction as a Variation under clause 34.5 of the Contract; or
  - (ii) if the Principal's Representative disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.
- (c) If the Contractor fails to:
- (i) inspect the Prior Work as required by clause 26.5(a)(i); or
  - (ii) notify the Principal's Representative of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,
- and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

## **26.6 Setting out the Works**

- (a) The Principal's Representative must, if applicable as set out in the Scope of Works, supply to the Contractor the information and Survey Marks necessary to enable the Contractor to set out the Contractor's Activities.

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- (b) On receipt of any necessary information and Survey Marks, the Contractor must set out the Works in accordance with this Contract and must provide all instruments, information and other deliverables and things necessary for that purpose.
  - (c) The Contractor must maintain all Survey Marks in their true position as supplied by the Principal's Representative.
  - (d) If a Survey Mark is disturbed or destroyed, the Contractor must immediately notify the Principal's Representative in writing and must promptly reinstate the Survey Mark at the Contractor's own risk and cost.
  - (e) The Contractor is responsible for any errors in setting out and establishment of levels.
  - (f) If the Contractor discovers any error in the position, level, dimensions or alignment of any of the Works, the Contractor must immediately notify the Principal's Representative in writing and rectify the error at its own risk and cost.
  - (g) The Contractor is not relieved of any of its responsibility under this clause 26.6 due to any approval, review or examination by the Principal's Representative of the position, level, dimensions or alignment of any Survey Marks or the Works under this Contract.
  - (h) The Contractor must:
    - (i) after setting out and establishing levels for the Works, submit to the Principal's Representative a certificate from a licensed surveyor certifying that the setting out and levels are in accordance with this Contract and any information furnished by the Principal's Representative under this Contract; and
    - (ii) before Practical Completion, submit to the Principal's Representative a certificate signed by a licensed surveyor certifying that the whole of the Works are within the boundaries stipulated in this Contract.
  - (i) The Contractor indemnifies the Principal against any Claims, Loss or damage arising from any:
    - (i) rectification works required by reason of the Works being incorrectly set out on the Site; and
    - (ii) encroachments by the Works or Contractor's Activities on any adjoining site or property including but not limited to adjoining footpaths, roads and public utilities.

## **26.7 Construction methodology**

- (a) If so directed by the Principal's Representative prior to commencement of any part of the Contractor's Activities, the Contractor must give the Principal's Representative a complete, appropriate and competently prepared construction method statement for that part of the Contractor's Activities within the timeframe specified in the direction.
- (b) If a direction is given under clause 26.7(a), until a construction method statement directed by the Principal's Representative is received by the Principal's Representative, the Contractor must not commence that part of the Contractor's Activities.

## **26.8 Site cleanliness**

- (a) The Contractor must:
  - (i) keep the Site, the Works and the Contractor's Plant clean and tidy and free from refuse;
  - (ii) not bury refuse on the Site; and
  - (iii) as a condition precedent to Practical Completion, remove all rubbish, materials and Contractor's Plant from the Site unless directed otherwise in writing by the Principal's Representative.
- (b) The Contractor must ensure that all waste material generated is kept to an absolute minimum.

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- (c) The Contractor must:
- (i) to the extent it is practicably able to do so, minimise packing of the Contractor's Materials;
  - (ii) to the extent it is practicably able to do so, arrange for the return of packaging to the supplier;
  - (iii) continuously remove its rubbish to rubbish skips or bins with reasonable frequency to maintain the cleanliness and safety of the Site; and
  - (iv) provide all labour, plant and equipment necessary for the removal of its rubbish to skips or bins.
- (d) If the Contractor fails to provide sufficient labour to keep the Site and the Works clean and tidy, the Principal may, without prior Notice to the Contractor, employ others to clean up and the Principal's costs incurred will be recoverable as a debt due from the Contractor.

#### **26.9 Urgent protection**

- (a) The Principal may take any action necessary to protect the Contractor's Activities, other property, the Site or the Environment or to prevent or minimise risks to the health and safety of persons if:
- (i) it is necessary and it is not practicable to have the Contractor take the action, in the sole opinion of the Principal; or
  - (ii) it was action which the Contractor should have taken but did not.
- (b) Where the Principal takes action under clause 26.9(a):
- (i) in the case of clause 26.9(a)(i), the reasonable costs incurred by the Principal will be a debt due from the Contractor to the Principal; or
  - (ii) in the case of clause 26.9(a)(ii), all costs incurred by the Principal will be a debt due from the Contractor to the Principal.

#### **26.10 Salvaged materials**

Subject to clause 43, unless expressly stated to the contrary in this Contract or directed by the Principal's Representative, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Works are the property of the Principal.

#### **26.11 Measurements and dimensions**

Without limiting clause 26.6, unless the following is contained in Rely-upon Information:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Works;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Design Documents (if any) are to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Works must be obtained and checked by the Contractor; and
- (c) the Principal will not be liable on any Claim by the Contractor resulting from the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by this clause 26.11.

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#### **26.12 Public Utilities and services**

- (a) If the Contractor or any Personnel, damages Utility infrastructure on or adjacent to the Site, the Contractor must promptly make good the damage and pay any compensation which the Contractor is required to pay under any applicable Statutory Requirements.
- (b) If the Contractor fails to do so, in addition to any other remedies of the Principal, the Principal's Representative may after giving reasonable written Notice to the Contractor, have the remedial work carried out by other persons and the costs incurred by the Principal will be a debt due from the Contractor to the Principal.
- (c) The Contractor indemnifies the Principal against any Loss, damage or Claim arising out of or in connection with the damage to public utilities and services on or adjacent to the Site.

#### **26.13 Diversion or relocation of existing Utilities**

Where an existing Utility obstructs the Contractor's Activities and requires diversion or relocation, then unless this Contract provides otherwise, the Contractor is required to undertake the diversion or relocation and is not entitled to make any Claim arising out of or in connection with the relocation or diversion of the Utility.

#### **26.14 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.
- (b) The Contractor must not cover up any Works until the Principal's Representative has been afforded a reasonable opportunity to inspect it.

#### **26.15 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.

#### **26.16 Joining up**

Where the method of joining up of old and new work is not specified in the Design Documents or elsewhere in this Contract, the Contractor will:

- (a) submit its proposed manner of cutting away and joining up to the Principal's Representative for approval; and
- (b) carry out the relevant Contractor's Activities in the manner approved by the Principal's Representative.

#### **26.17 Project signboards**

- (a) The Contractor must, if specified in the Scope of Works, provide the number and type of project signboards specified in the Scope of Work.
- (b) The Contractor must:
  - (i) fix the project signboards in the locations directed by the Principal's Representative;
  - (ii) maintain the project signboards until the testing and commissioning of the Works are complete; and

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- (iii) dismantle and remove the project signboards within 5 Business Days of the Date of Practical Completion.

#### **26.18 Protection of people and property**

- (a) 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.
- (b) The Contractor must ensure that no damage, nuisance or inconvenience is caused to anyone lawfully on the Site (including any tenants) and occupiers of adjacent properties or the public by dust, dirt, water or noise and avoid any unnecessary interference with:
  - (i) the passage of people and vehicles; and
  - (ii) Other Contractors or Other Contractors' works on the Site.
- (c) The Contractor must comply with any direction of the Principal's Representative concerning reduction in dust, dirt, water, noise or any other environmental nuisance (including but not limited to odour, smoke, fumes and vibration).
- (d) The Contractor is not entitled to any Claim arising out of or in connection with a direction from the Principal's Representative under clause 26.18(c).

#### **26.19 Work within a road reserve**

Before any work is carried out within a road reserve by the Contractor or its subcontractors, the Contractor must apply to the appropriate Authority for permission to work within the road reserve and where relevant, permission to open the road. The Contractor must pay the necessary fees, and must conform to the requirements of that Authority and all Statutory Requirements.

#### **26.20 Keys for accessing the Site**

The Contractor must keep the Site secure all times until the Date of Practical Completion. Unless specified otherwise in the Scope of Works, the Contractor must supply and install its own padlock and keys on any existing gate for the Site.

#### **26.21 Connection of Utility services**

Unless otherwise specified in this Contract, the Contractor is responsible for the connection of all Utility services to the Works and the Contractor must apply for all relevant Approvals and pay all associated fees and charges which are levied by the appropriate Authority for the connection of those services.

### **27 REPORTS**

- (a) The Contractor must give the Principal's Representative a monthly report in respect of the Contractor's Activities at the same time it gives its Payment Claim containing details of the following:
  - (i) a copy of the Contract Program, updated in accordance with clause 3.2;
  - (ii) a schedule of the status of the Contractor's Activities including performance against the Contract Program;
  - (iii) where required by the Principal in the Scope of Works, details of the physical works completion percentage derived from the Contract Program in order to determine the overall project earned value;
  - (iv) a report on the progress of the Works including photographs of the Works;

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- (v) particulars of deviations from the Contract Program;
  - (vi) a description of any matters which currently or may have a positive or adverse affect on the execution of the Contractor's Activities;
  - (vii) a description of any matters which in the Contractor's opinion have or may have the potential to significantly affect the execution of the Contractor's Activities;
  - (viii) particulars of the preventative and remedial action which has been, is being or may be taken in respect of the items referred to in clause 27(a)(vi) and clause 27(a)(vii);
  - (ix) a report on the status of all Variations (and any potential Variations);
  - (x) a report on the progress of the tendering procedure for the subcontracting of any part of the Works;
  - (xi) a summary of all Claims made by the Contractor;
  - (xii) invoicing and cash flow forecast;
  - (xiii) a report on all work health and safety matters (including matters concerning or arising out of, or in connection with, clause 20) or any other related matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation; and
  - (xiv) evidence of insurance policy renewals as they become due.
- (b) Provision of the monthly report specified in clause 27(a) is a precondition to the Contractor's entitlement to payment under each Payment Claim.
  - (c) The Contractor must on request give the Principal and the Principal's Representative access to its documents and records for the purpose of verifying the information to be provided under this clause 27.
  - (d) The Contractor must establish and maintain any records which the Principal's Representative reasonably requires.

## **28 PROVISIONAL SUM WORK**

### **28.1 Undertaking Provisional Sum Work**

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor an instruction either deleting the item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the item of Provisional Sum Work.
- (b) The Contractor must not conduct any item of Provisional Sum Work, and is not entitled to payment for any item of Provisional Sum Work, unless the Principal's Representative directs the Contractor to perform the item of Provisional Sum Work.
- (c) Any Provisional Sum Work undertaken by the Contractor forms part of the Works.

### **28.2 Price adjustment for Provisional Sum Work**

- (a) If an item of Provisional Sum Work is deleted from the Contract:
  - (i) the Contract Price will be reduced by the amount allowed for the item of Provisional Sum Work specified in the Contract Particulars;
  - (ii) the Principal may itself, or engage an Other Contractor to, carry out the item of Provisional Sum Work; and
  - (iii) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with the deletion of the item of Provisional Sum Work.
- (b) For each item of Provisional Sum Work that the Principal's Representative directs the Contractor to proceed with, the Contract Price will be adjusted by the difference between:

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- (i) the relevant Provisional Sum allowed for the item of Provisional Sum Work; and
  - (ii) either:
    - A. an amount agreed between the Contractor and the Principal's Representative; or
    - B. if they fail to agree, an amount determined by the Principal's Representative under clause 34 as if the item of Provisional Sum Work were a Variation,
- at the time the amount is either agreed or determined in accordance with clause 28.2(ii).

## **29 SERVICES DURING WORKS**

### **29.1 Light and power**

Subject to the requirements set out in the Scope of Works and availability of mains power and lighting at the Site, the Contractor must provide and install any temporary electric light and power installations required to complete the Contractor's Activities and in accordance with the Statutory Requirements.

### **29.2 Water**

Subject to the requirements set out in the Scope of Works and availability of water, the Contractor must arrange for the supply of all water required to complete the Contractor's Activities and pay all fees and charges associated with the supply and use of that water.

### **29.3 Sanitary facilities**

Subject to the requirements set out in the Scope of Works, the Contractor must provide adequate and clean sanitary facilities (e.g. chemical toilets) for the use of all persons employed on the Contractor's Activities and clear away and remove such facilities from the Site on completion of the Works.

## **30 PRACTICAL COMPLETION**

### **30.1 Date for Practical Completion**

- (a) The Contractor must achieve Practical Completion by the Date for Practical Completion.
- (b) The Contractor may, if it chooses, accelerate progress and reach Practical Completion before the Date for Practical Completion at its own cost and without any entitlement to claim additional costs from the Principal.
- (c) If the Contractor chooses to accelerate progress neither the Principal, the Principal's Representative nor any other person will be obliged to do or not do anything to enable the Contractor to reach Practical Completion before the Date for Practical Completion and doing or failing to do anything is not an act or omission by the Principal, the Principal's Representative or a person for whom the Principal is responsible.
- (d) The time for performance of any of the Principal's or Principal's Representative's obligations under this Contract is not affected by the Contractor's decision to accelerate.

### **30.2 Notice of Practical Completion**

**The Contractor must:**

- (a) give the Principal's Representative at least 20 Business Days prior Notice of the date on which the Contractor anticipates that Practical Completion will be reached; and
- (b) when the Contractor believes that Practical Completion has been reached, immediately notify the Principal's Representative in writing.



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### **30.3 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 30.2.
- (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.

### **30.4 Possession on Practical Completion**

- (a) With effect on and from the Date of Practical Completion, the Principal will take possession of the Works.
- (b) No partial or entire use or occupancy of the Site or the Works by the Principal, the Principal's Representative or its Personnel, including carrying out testing and commissioning work prior to the Date of Practical Completion, constitutes acceptance of the Works or operates to release the Contractor from any of its warranties, obligations or liabilities under this Contract.

### **30.5 Release of Claims at Practical Completion**

On the Date of Practical Completion, the Contractor releases the Principal and its Personnel from all Claims whether under this Contract, in tort or under any Law, arising out of or in any way connected with this Contract or the Works which the Contractor has or may have had against the Principal as at the Date of Practical Completion with the exception of:

- (a) any amounts shown in a Payment Certificate as being due or to become due (including the Payment Claim issued under clause 25.5(b)(i)); and
- (b) any Claim for which the Contractor has served a valid Notice of Dispute under clause 41.1.

## **31 EXTENSION OF TIME**

### **31.1 Delay**

If the Contractor becomes aware of anything that will likely cause delay to the Contractor:

- (a) on or prior to the Date for Practical Completion, in reaching Practical Completion of the Works or a Separable Portion by the Date for Practical Completion; or
- (b) after the Date for Practical Completion, in reaching Practical Completion of the Works or a Separable Portion,  
  
the Contractor must, as soon as it becomes aware, or ought reasonably to have become aware, of the delay, give a Notice to the Principal's Representative setting out:
  - (c) the event that has occurred;
  - (d) the reason why the event has occurred;
  - (e) the estimated duration of the delay to the Works or Separable Portion by reason of the event; and
  - (f) what steps the Contractor has taken or will take to minimise the delay.

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### 31.2 Delay Notice

If the delay in clause 31.1 continues for more than 10 Business Days, or if the likely extent of the delay changes, the Contractor must provide an updated Notice in accordance with clauses 31.1(c) to 31.1(f).

### 31.3 Entitlement and assessment

- (a) The Contractor may Claim an Extension of Time if the Contractor is or will be delayed as described in clause 31.1 by:
- (i) a Principal Risk;
  - (ii) subject to clause 19.4(b)(ii), a Variation;
  - (iii) Latent Conditions;
  - (iv) Inclement Weather at the Site, but subject to clause 31.6;; or
  - (v) pandemic (including the Covid-19 pandemic);
- (Delay Event)**, and the Contractor provides a Notice to the Principal's Representative within 10 Business Days of the start of the delay, or within 10 Business Days of when the Contractor ought reasonably to have become aware of the start of the delay, which demonstrates to the reasonable satisfaction of the Principal's Representative that:
- (vi) the Contractor is or will be delayed in reaching Practical Completion by the Date for Practical Completion, or by reaching Practical Completion, by a Delay Event;
  - (vii) the Delay Event has affected the critical path of the Works or the Separable Portion;
  - (viii) the Contractor has complied with all of the Notice and information requirements set out in clause 31.1 and 31.2; and
  - (ix) the Contractor has taken all reasonable steps to minimise the effect of the Delay Event on the critical path of the Works or Separable Portion.
- (b) The Principal's Representative will assess the Contractor's claim for an Extension of Time as follows:
- (i) if the Principal's Representative assesses that an Extension of Time should be granted, then it will issue a written direction confirming the Extension of Time so assessed; or
  - (ii) if the Principal's Representative rejects the Contractor's Extension of Time claim, then it will issue a Notice to the Contractor setting out the reasons for rejection of the Claim.
- (c) In assessing the Contractor's Extension of Time claim, the Principal's Representative is entitled to rely on any Contract Program or updated Contract Program and any other relevant information available to the Principal's Representative existing at the time of the assessment.
- (d) In assessing each Extension of Time claim, the Principal's Representative will have regard to any prevention or mitigation steps that were not taken by the Contractor.
- (e) The Principal's Representative is entitled to assess and grant a reduced Extension of Time to the extent that the Contractor and its Personnel failed to:
- (i) take any steps as necessary to preclude or prevent the cause of the delay; and
  - (ii) avoid or mitigate the consequences of the delay.
- (f) The prevention principle has no operation and time is not set at large by reason of the Contractor's failure to comply with the Notice and information requirements set out in this clause 31 or by any delay or failure of the Principal's Representative in assessing and granting an Extension of Time.

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#### **31.4 The Principal's unilateral discretion**

- (a) Even though:
- (i) the Contractor is not entitled to claim an Extension of Time under clause 31.3, including by reason of failure to comply with the Notice and information requirements set out in clauses 31.1 and 31.2 and 31.3 above; or
  - (ii) the Contractor has not claimed an Extension of Time,
- the Principal's Representative may, in its absolute discretion, at any time and before issuing the final Payment Statement under clause 25.11(c), grant an Extension of Time to the Contractor. The Principal's Representative may exercise its power under this clause 31.4 at any time and for any reason whatsoever.
- (b) The Principal's Representative is not obliged or required to exercise the unilateral discretion to grant an Extension of Time for the benefit of the Contractor.

#### **31.5 Concurrent delays**

The Contractor will not be entitled to an Extension of Time to the extent that the effects of Non-Delay Events and Delay Events overlap.

#### **31.6 Inclement Weather**

- (a) The Contractor is not entitled to any Extension of Time for delay caused by Inclement Weather in a particular month until the aggregate of such delays in that month exceeds the Inclement Weather Allowance applicable to that month and, even then, the Contractor may only Claim an Extension of Time under this clause 31 for Inclement Weather delays in that month which are over and above the Inclement Weather Allowance.
- (b) The Contractor has the onus of establishing that delays caused by Inclement Weather have exceeded the Inclement Weather Allowance and the Contractor must keep adequate records of all delays caused by Inclement Weather. The Principal's Representative must be given access to those records on reasonable request and the Principal's Representative may take copies of any of the records.
- (c) For the purposes of determining whether and when the Inclement Weather Allowance has been exhausted:
- (i) the delay periods taken into account must be periods in which Works at the Site is actually delayed by Inclement Weather;
  - (ii) the delay caused by the Inclement Weather must delay the Contractor in a manner which will delay it achieving Practical Completion by the Date for Practical Completion; and
  - (iii) periods of delay caused by Inclement Weather must be measured to the nearest hour and each 10 hours of delay will be regarded as one day's delay but the maximum allowance for any one calendar day will be one day so that, for example:
    - A. a continuous delay of 10 hours will be treated as one day's delay;
    - B. two separate delays each of five hours duration will be treated as one day's delay; and
    - C. a delay of 20 hours on the one calendar day will be treated as only one day's delay (and not two days' delay).
- (d) Nothing in this clause 31.6 is to be construed as giving the Contractor an entitlement to claim an Extension of Time. That entitlement, if any, is to be determined in accordance with clause 31.3, subject to this clause 31.6.

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## **32 LIQUIDATED DAMAGES, DELAY COSTS AND ACCELERATION**

### **32.1 Liquidated damages**

- (a) If the Contractor does not reach Practical Completion by the Date for Practical Completion, the Contractor is indebted to the Principal for liquidated damages at the rate specified in Item 26 for every day after the Date for Practical Completion to and including the earliest of:
  - (i) the Date of Practical Completion;
  - (ii) termination of this Contract; or
  - (iii) the Principal taking the Works out of the hands of the Contractor.
- (b) The Parties acknowledge that the rate of liquidated damages set out in Item 26 represents a genuine pre-estimate of the loss suffered by the Principal in the event of a failure by the Contractor to achieve Practical Completion by the Date for Practical Completion.
- (c) If the Principal's Representative grants an Extension of Time after the Contractor has paid liquidated damages, the Principal must immediately repay to the Contractor the amount of those liquidated damages as represents the days the subject of the Extension of Time.

### **32.2 Delay costs**

- (a) Subject to the Contractor's compliance with clause 32.2(b), for every day the subject of an Extension of Time for a Compensable Delay Event, the Contractor will only be entitled to recover the additional Direct costs associated with delay incurred as a result of the Compensable Delay Event from the Principal.
- (b) As a precondition to payment of additional Direct costs incurred under clause 32.2(a), the Contractor must:
  - (i) within 5 Business Days of the Compensable Delay Event occurring, give a written Claim to the Principal's Representative setting out:
    - A. the factual basis for the Contractor's Claim that a Compensable Delay Event has occurred;
    - B. the legal basis for the Contractor's Claim for a Compensable Delay Event;
    - C. the length of delay caused by the Compensable Delay Event;
    - D. the amount of additional Direct costs incurred or expected to be incurred; and
    - E. advice as to what steps the Contractor has taken or will take to minimise the Compensable Delay Event; and
  - (ii) if the delay as a result of the Compensable Delay Event has continued for longer than 1 month, provide the Principal's Representative with an updated Claim setting out the information set out in clause 32.2(b)(i) within each succeeding period of 1 month until the Compensable Delay Event has finished.
- (c) The failure of the Contractor to comply with clause 32.2(b) will result in:
  - (i) the Contractor's entitlement to make any Claim for additional Direct costs incurred for the Compensable Delay Event being extinguished;
  - (ii) the Principal not being liable to the Contractor for any Claim for additional Direct costs incurred for the Compensable Delay Event; and
  - (iii) the Contractor being barred from making any Claims for additional Direct costs for the Compensable Delay Event against the Principal.

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- (d) Payment by the Principal to the Contractor of additional Direct costs in accordance with this clause 32.2 is in full satisfaction of and is a limitation on any liability arising from any Claim which the Contractor may have against the Principal in relation to any Delay Event, Compensable Delay Event or disruption caused to the productivity of the Contractor.
  - (e) Nothing in this clause 32.2 obliges the Principal to pay additional Direct costs to the Contractor which have already been included in any other payment under this Contract.

### **32.3 Acceleration**

- (a) If, in the reasonable opinion of the Principal's Representative:
  - (i) the Contractor has failed to progress the Contractor's Activities at the rate required under this Contract; or
  - (ii) the Contractor is likely to fail to progress the Contractor's Activities at the rate required under this Contract,the Principal's Representative may direct the Contractor to:
  - (iii) apply additional resources to the Contractor's Activities; and
  - (iv) modify the manner in which the Contractor plans for and performs the Contractor's Activities,as reasonably required to return to the Contract Program.
- (b) If the delay results from a Non-Delay Event, then the Contractor will at its sole cost comply with the direction of the Principal's Representative.
- (c) If the delay results from:
  - (i) a Compensable Delay Event; or
  - (ii) the direction issued by the Principal's Representative is to overcome a Delay Event for which the Contractor would have otherwise been entitled to the grant of an Extension of Time under clause 31,then the Principal will pay to the Contractor the additional Direct costs incurred by the Contractor resulting from compliance with the Principal's Representative's direction.
- (d) The Contractor has no further entitlement to claim an Extension of Time under clause 31 in respect of the delay that is overcome by any acceleration directed by the Principal's Representative under this clause 32.3.
- (e) Other than under this clause 32.3, the Contractor has no Claim in relation to any additional Direct costs incurred in relation to:
  - (i) applying additional resources to the Contractor's Activities; or
  - (ii) modifying the manner in which the Contractor plans for and performs the Contractor's Activities.
- (f) Without limiting clauses 32.3(a) to (e), the Principal's Representative may issue a direction to the Contractor to accelerate the performance of the Contractor's Activities by applying additional resources at any time.
- (g) Where the Principal's Representative gives Notice to the Contractor of its intention to issue a direction under clause 32.3(f), the Contractor must, within 5 Business Days of the Notice, provide the Principal's Representative with a written statement of the costs the Contractor will incur and Claim against the Principal for undertaking the acceleration if the direction was to be issued (Acceleration Quote). Following receipt of the Acceleration Quote, the Principal's Representative can either:

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- (i) accept the Acceleration Quote and issue the direction under clause 32.3(f), in which case the Acceleration Quote is the Contractor's sole entitlement in respect of the direction under clause 32.3(f); or
  - (ii) reject the Acceleration Quote and negotiate with the Contractor on a revised Acceleration Quote so that the Principal's Representative can issue the direction under clause 32.3(f); or
  - (iii) reject the Acceleration Quote and not issue the direction.

#### **32.4 Principal's Rights to liquidated damages not affected**

The Principal's rights to liquidated damages under clause 32.1 for a failure by the Contractor to achieve Practical Completion of the Works or a Separable Portion by any relevant Date for Practical Completion are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under clause 32.3.

### **33 SUSPENSION**

#### **33.1 Notice to suspend**

The Principal may, at any time, direct the Contractor by written Notice to suspend all or any part of the Contractor's Activities, if the Principal's Representative is of the opinion that it is necessary:

- (a) because of an act, omission or Default of:
  - (i) the Principal or the Principal's Representative or its Personnel (not employed by the Contractor); or
  - (ii) the Contractor or its Personnel; and
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

#### **33.2 Contractor's entitlement to an Extension of Time and additional Direct costs**

- (a) If the Principal suspends all or part of the Contractor's Activities as a result of any act, omission or Default by the Contractor or any of its Personnel, then:
  - (i) the Principal has no liability to the Contractor for any Loss, including overheads, loss of profit or standby costs; and
  - (ii) the Contractor is not entitled to any Extension of Time.
- (b) If the Principal suspends all or part of the Contractor's Activities as a result of:
  - (i) the need for the protection or safety of any person or property; or
  - (ii) the need to comply with a court order,then:
  - (iii) the Principal has no liability to the Contractor for any Loss, including overheads, loss of profit or standby costs; and
  - (iv) subject to compliance with the Notice and information requirements set out in clauses 31.1 and 31.2 the Contractor may be entitled to an Extension of Time in accordance with, and subject to, clause 31.
- (c) If the Principal suspends all or part of the Contractor's Activities as a result of any act, omission or Default of the Principal or the Principal's Representative, then:

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- (i) subject to compliance with the Notice and information requirements of this Contract, the Principal will pay for any additional Direct costs incurred by the Contractor as a result of the Suspension; and
    - (ii) subject to compliance with the Notice and information requirements set out in clauses 31.1 and 31.2, the Contractor may be entitled to an Extension of Time in accordance with, and subject to, clause 31.
  - (d) The Contractor's entitlement to payment of additional Direct costs and an Extension of Time as contemplated by this clause 33.2 will be the Principal's sole liability for any Suspension.

### **33.3 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 Contractor's Activities.
- (b) On being directed by the Principal's Representative to recommence all or part of the Contractor's Activities, the Contractor must immediately recommence the Contractor's Activities.

## **34 VARIATIONS**

### **34.1 Variations only as directed by the Principal**

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

### **34.2 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.
- (c) 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.
- (d) Variations do not include any direction from the Principal's Representative which is given to:
  - (i) rectify a breach of this Contract by the Contractor; or
  - (ii) ensure that the Contractor complies with the requirements of this Contract.
- (e) The Principal's Representative may give a direction to the Contractor to omit Work from the Contract. The Principal may perform omitted Works itself or have them carried out by an Other Contractor.

### **34.3 Variation Notice**

- (a) If:
  - (i) the Principal's Representative gives a direction to the Contractor; and
  - (ii) the Contractor considers that carrying out 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) If the Principal's Representative has not retracted the direction issued under clause 34.3(a)(i) within 2 Business Days of the date that the Contractor issued the Notice under

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clause 34.3(a) (Retraction Notice), the Contractor must issue a further Notice to the Principal's Representative within 5 Business Days from the date that the Retraction Notice was to have been provided, setting out:

- (i) the Contractor's estimate of any increase or decrease in the Contractor's scope of Works resulting from the direction;
  - (ii) the Contractor's estimate of any impact on the Date for Practical Completion of the Works (including Dates for Practical Completion of any Separable Portions); and
  - (iii) 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) Following receipt of the Contractor's Notice under clause 34.3(b), the Principal's Representative may retract the direction by issuing a Retraction Notice within 2 Business Days from the date that the Contractor issued the further Notice. The Contractor must not carry out any aspect of the directed Variation, and will have no entitlement to any Claim, until after the expiry of the period provided for in this clause 34.3(c) for the Principal's Representative to issue a Retraction Notice.
- (d) The Contractor's compliance with Notice requirements set out in clauses 34.3(a), 34.3(b) and 34.3(c) above is a precondition to the Contractor's entitlement to make any Claim in relation to a Variation directed by the Principal's Representative.

#### **34.4 Effect of Variations on Contract Price**

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

#### **34.5 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 34.5(a) does not apply and this Contract includes a Schedule of Rates, Lump Sum Breakdown 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 34.5(a) and 34.5(b) do not apply and this Contract includes a Schedule of Rates, Lump Sum Breakdown 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
- (d) if clauses 34.5(a), 34.5(b) and 34.5(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.

#### **34.6 Daywork**

- (a) 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.
- (b) If work in the nature of Daywork is undertaken without a written direction to be performed as Daywork, it will not be considered a Variation under this Contract.
- (c) Within 24 hours of a written direction from the Principal's Representative to conduct Daywork, the Contractor must provide a Daywork docket for signature by the Principal's Representative.
- (d) Daywork dockets must contain the following information:
  - (i) the activities and tasks that were being undertaken listed in considerable detail;



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- (ii) details of or attaching the relevant written direction by the Principal's Representative;
  - (iii) details of the specific days, hours and times that the activities and tasks were undertaken;
  - (iv) details of the name(s) of the person(s) performing the day labour; and
  - (v) details of the contractor responsible if the day labour was for the rectification of another contractor's defect or damage.
- (e) If the above information is not contained on a Daywork docket, it will not be considered a proper Daywork docket under this Contract even if it is signed by the Principal's Representative.
  - (f) The Principal's Representative's signing of Daywork dockets is for the purposes of verifying hours worked for 'record purposes only'. The signature does not constitute a direction to carry out Variations under this Contract or any agreement by the Principal's Representative that the relevant work carried out by the Contractor constitutes Daywork or a Variation.

## **35 DEFECTS AND DEFECT LIABILITY PERIOD**

### **35.1 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 becomes apparent during the Defects Liability Period.
- (b) At any time prior to the expiry of the Defects Liability Period, 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 the 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) In the direction the Principal's Representative may direct that the rectification works be commenced and completed by specified dates.
- (d) 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 35.1(b) or such other period stated in the direction, then:
  - (i) the Principal's Representative may, in its absolute discretion, have the rectification works carried out by another contractor; and
  - (ii) the cost incurred for such rectification works will be a debt due to the Principal from the Contractor.
- (e) Instead of a direction in accordance with clause 35.1(b), the Principal's Representative may direct the Contractor in writing that the Principal elects to accept the Defects.
- (f) If the Principal elects to accept the Defects, then any decrease to the Contract Price will be valued as a Variation in accordance with clause 34 of this Contract. The Contractor is not entitled to any increase to the Contract Price resulting from the Principal's election to accept the Defects.

### **35.2 Maintenance during Defects Liability Period**

- (a) The Contractor must provide ongoing maintenance to systems and plant installed as part of the Works up until the end of the Defects Liability Period or earlier date as agreed between the Contractor and the Principal.
- (b) The Contractor's ongoing maintenance referred to in (a) includes the periodical testing of systems and plant, and associated documentation of test outcomes, as required by any Law or as set out in the Scope of Works and as otherwise required to maintain the Works in good operating order and condition.
- (c) The Contractor must provide further specific maintenance as set out in Item 27.

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### **35.3 Subcontractor and supplier defects liability**

The Contractor acknowledges and agrees that notwithstanding any subcontracting of any aspect of the Works by the Contractor, it is the Contractor responsibility to the Principal to ensure the rectification of any and all Defects in works irrespective of whether the Defects relate to Works undertaken by any subcontractors.

### **35.4 Defects Liability Period**

The Defects Liability Period is stated in Item 28.

### **35.5 Urgent rectification**

- (a) If urgent action is necessary to correct a Defect for the purpose of protecting the Works, other property, or people and the Contractor fails to take the necessary action, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal will be a debt due from the Contractor.
- (b) If time permits, the Principal's Representative must give the Contractor prior written Notice of the Principal's intention to take action under this clause 35.5.

### **35.6 Defects Liability Period review and report**

- (a) Without limiting clause 35.1, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects during the Defects Liability Period.
- (b) Within 10 Business Days of the end of the Defects Liability Period for the Works or a Separable Portion, the Contractor must provide a report to the Principal's Representative in a form satisfactory to the Principal's Representative which sets out:
  - (i) adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects or omissions;
  - (ii) recommendations for the future maintenance of the Works;
  - (iii) any matters in respect of work health and safety issues; and
  - (iv) any other matters reasonably required by the Principal's Representative.

### **35.7 Extension of Defects Liability Period**

If:

- (a) the Principal's Representative gives the Contractor a direction under clause 35.1; 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).

## **36 WARRANTIES**

### **36.1 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) it and its Personnel will at all times be suitably qualified, skilled and experienced and exercise due care, skill, timeliness and diligence in undertaking the Contractor's Activities that would be expected of a professional provider of the Contractor's Activities;
  - (ii) it will ensure that it and its Personnel will at all times have the qualifications, certificates and licences required by law or required by an Authority;
  - (iii) the Contractor's Activities will be performed in a proper and workmanlike manner and in accordance with Good Industry Practice;
  - (iv) it has all necessary resources available to it, including financial resources and access to labour and materials, to undertake its obligations under this Contract;
  - (v) the Works are capable of being built as described in this Contract and that it will accept responsibility for overcoming any issues relating to methods of work or similar matters an experienced and competent contractor ought reasonably to have anticipated;
  - (vi) the carrying out of the Contractor's Activities, including all methods of work as contemplated by this Contract, is practical and possible;
  - (vii) the Contractor's Activities will be done with due diligence and expedition and within the times stated in this Contract;
  - (viii) it has inspected and investigated the Site and is familiar with the Site and its surroundings including existing structures and all conditions likely to affect construction;
  - (ix) it accepts the risk of all hazards and difficulties including those relating to logistics, materials handling and deliveries, traffic, adjacent properties, Site safety and public safety;
  - (x) it is satisfied that the provisions of this Contract are consistent and not conflicting;
  - (xi) it has satisfied itself as to the correctness and sufficiency of the Contract Price and that the Contract Price covers the cost of complying with all of its obligations under this Contract and all matters and things necessary for the due and proper performance and completion of this Contract;
  - (xii) the Works will in every respect be fit for the purposes made known to the Contractor and which could be reasonably inferred;
  - (xiii) if the Contractor has design obligations under this Contract, the design of the Works will be:
    - A. performed in accordance, and so as to comply, with the Design Intent;
    - B. fit for its intended purpose as set out in or otherwise reasonably inferred from this Contract; and
  - (xiv) it will exercise a duty of the utmost good faith to the Principal in performing its obligations under this Contract including in making payment claims under clause 25;
  - (xv) it has examined carefully and acquired actual knowledge of the contents of all of the Contract documents and any other information made available by the Principal to the Contractor for the purposes of tendering;
  - (xvi) it has made reasonable enquiries and obtained all information relevant to the risks, contingencies and other circumstances affecting its obligations under this Contract; and
  - (xvii) it is and will remain the holder of all licences and registrations required to perform the Contractor's Activities and will promptly notify the Principal of any change to its licensing or registration status. The Contractor indemnifies the Principal against any Loss or damage as a result of the Contractor carrying out work while unlicensed or unregistered.
- (b) The Contractor acknowledges that the Principal has entered into this Contract in reliance on the representations and warranties given in this clause 36.

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### **36.2 Warranties remain unaffected**

The Contractor agrees that the warranties it gives under clause 36.1 remain unaffected and the Contractor will bear all liability and responsibility in accordance with this Contract despite:

- (a) design work having been carried out by or on behalf of the Principal and included in this Contract;
- (b) the receipt, review, approval or rejection of, or comment or direction on, or permission to use:
  - (i) any Contractor's Plant or Contractor's Materials; or
  - (ii) any document including, if applicable, any design prepared by the Contractor,by or on behalf of the Principal, the Principal's Representative or their representatives or agents;
- (c) the making available to or the provision to the Contractor by or on behalf of the Principal or the Principal's Representative, of any information; or
- (d) any Variation.

## **37 TERMINATION**

### **37.1 Right to damages not prejudiced**

If a Party breaches or repudiates this Contract, nothing in this clause 37 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.

### **37.2 Breach or default Notice**

- (a) The Principal may, by email, hand or by registered post, give the Contractor a written Notice to show cause, if the Contractor breaches any provision of this Contract, including:
  - (i) failing to:
    - A. commence the Contractor's Activities in accordance with the requirements of clause 2;
    - B. proceed with the Contractor's Activities with due expedition and without delay and otherwise at a rate of progress satisfactory to the Principal's Representative;
    - C. use materials or standards of work required by this Contract;
    - D. perform the Contractor's design obligations (if applicable) in accordance with the requirements of this Contract;
    - E. comply with its obligations under clause 5.2 concerning industrial disputes;
    - F. provide Security required under clause 6;
    - G. provide evidence of insurance as required by clause 7;
    - H. safely protect any person or property;
    - I. supply everything necessary (including all Contractor's Plant and Contractor's Materials) for the proper performance of this Contract; or
    - J. comply with any directions of the Principal's Representative under this Contract; or

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- (ii) proceeding with the Works without a Contract Program prepared in accordance with clause 3.1;
    - (iii) suspending the Works by the Contractor (except insofar as the Contractor has a statutory right to suspend which cannot be excluded by this Contract);
    - (iv) substantial departure from the Contract Program in breach of clause 3.1(g); or
    - (v) knowingly providing documentary evidence containing an untrue statement.
  - (b) A Notice to show cause must state that:
    - (i) it is a Notice under clause 37.2(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 why the Principal should not exercise its right to terminate this Contract for Default in accordance with clause 37.3(a); and
    - (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.

### **37.3 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 under clause 37.7 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 37.3(a)(ii) applies; or
  - (ii) terminate this Contract for Default of the Contractor.
- (b) If this Contract is terminated under clause 37.3(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 and Contractor's 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 Project Documents,as are reasonably required by the Principal to facilitate completion of the Works taken out.
- (c) If so directed by the Principal's Representative, on termination under clause 37.3(a)(ii) the Contractor must assign or novate in favour of the Principal all warranties, subcontracts or rights under any subcontracts entered into in relation to the Works.
- (d) If the Principal takes possession of Contractor's Plant, Contractor's Materials, Project Documents or other things, the Principal must maintain them and, on completion of the Works taken out, must return such of them as are surplus.

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- (e) The Principal's Representative must keep records of the cost of completing the Works taken out.
  - (f) When the Works or part of the Works taken out of the Contractor's hands has been completed, the Principal's Representative will assess the additional cost incurred and such costs will be certified as due and payable to the Principal from the Contractor.
  - (g) In making an assessment under clause 37.3(f), the Principal's Representative will have regard to any moneys already paid to the Contractor.
  - (h) If the Principal's Representative's assessment under clause 37.3(f) results in a negative balance, then the negative balance is a debt due from the Contractor to the Principal. The Principal is not in any way liable to the Contractor for any amount if the Principal's Representative's assessment under clause 37.3(f) results in a positive balance.
  - (i) The Principal may retain the Contractor's Plant, Contractor's Materials or other things taken until the debt under clause 37.3(h) is satisfied by the Contractor.
  - (j) If after reasonable Notice, the Contractor fails to pay the debt, the Principal may sell the Contractor's Plant, any surplus Contractor's Materials or other things taken and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess is payable by the Principal to the Contractor.

#### **37.4 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 37.4 are, at its election, the same as its rights and remedies for termination for Default by the Contractor.
- (c) The rights and remedies given by this clause 37.4 are additional to any rights and remedies including any accrued rights and remedies under this Contract. The rights and remedies may be exercised even if there has been no breach of this Contract.

#### **37.5 Termination by frustration**

If this Contract is frustrated:

- (a) the Principal's Representative will issue a Payment Statement for Contractor's Activities carried out to the date of the frustration; and
- (b) the Principal will pay to the Contractor:
  - (i) the amount due to the Contractor under the Payment Statement;
  - (ii) the cost of the Contractor's Plant and Contractor's Materials reasonably ordered by the Contractor for the Contractor's Activities and which the Contractor is liable to accept, but only if they will become the Principal's property on payment;
  - (iii) the costs reasonably incurred by the Contractor in:
    - A. removing any Contractor's Plant;
    - B. returning to their place of engagement the Contractor and its Personnel engaged in Contractor's Activities at the date of the frustration,provided always that the Contractor must take, and demonstrate to the Principal that it has taken, all reasonable steps and measures to mitigate its costs incurred; and
  - (iv) subject to any liability of the Contractor to the Principal, the Principal will return the Security to the Contractor.

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### **37.6 Termination for convenience**

- (a) The Principal may, in circumstances where the Principal reasonably considers this Contract would otherwise fetter the NTG's discretion to exercise to any executive or statutory right, duty or function, terminate this Contract for its convenience by providing a Notice to the Contractor. The Notice must specify the effective date of termination.
- (b) On receipt of the Notice, the Contractor must:
  - (i) immediately discontinue the work on the date specified in the Notice;
  - (ii) enter into no further contractual commitments and place no further orders on subcontracts for Contractor's Materials or Contractor's Plant;
  - (iii) promptly use its best endeavours to obtain termination or cancellation on terms satisfactory to the Principal of all subcontracts or any other agreements existing for the performance of the terminated Works or assign or novate those agreements as directed by the Principal's Representative and assign or novate in favour of the Principal all warranties in relation to the Works;
  - (iv) immediately take all possible action at its cost to ensure the safety of all the Contractor's Personnel and protection of all Contractor's Materials, Contractor's Plant and the Works completed to the date of the termination; and
  - (v) take any other action reasonably required by the Principal in relation to the termination.
- (c) On a termination of this Contract for convenience, other than as provided for in clause 37.6(d), the Principal will not have any liability to the Contractor for any damages, including loss of anticipated profits.
- (d) As its sole right and remedy, the Contractor is entitled to be paid the following on a termination of this Contract for convenience:
  - (i) all amounts due and not previously paid to the Contractor for the Works completed in accordance with this Contract prior to the Notice of termination, and for Works completed as specified in the Notice;
  - (ii) the cost of Contractor's Materials reasonably ordered by the Contractor and which the Contractor is legally obliged to accept but only if they will become the property of the Principal on payment, subject to the Contractor mitigating these costs; and
  - (iii) the reasonable cost of removing from the Site all Contractor's Plant and other things used in the Contractor's Activities, subject to the Contractor mitigating these costs.
- (e) If not already done, title to Contractor's Materials and partially completed Works, the value or costs of which are included in the Contract Price, will pass to the Principal and the Contractor will be advised in writing what disposition must be made of materials which are not Contractor's Materials.
- (f) The Principal's right to terminate for convenience may be exercised in its sole and absolute discretion.
- (g) The Principal may itself, or engage Other Contractors to, complete the Works which are incomplete following the termination for convenience.

### **37.7 Step-in rights**

- (a) If:
  - (i) the Principal has issued the Contractor a Notice in respect of a Default under clause 37.2; and
  - (ii) the Contractor has failed to remedy that Default in the time required in accordance with the Notice,



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then the Principal may, after providing the Contractor with 24 hours' Notice, step in and take over the Contractor's Activities including utilising the Contractor's personnel, subcontractors, Contractor's Plant and Contractor's Materials and take such other action as is reasonably necessary to rectify the relevant Contractor Default.

- (b) If the Principal exercises its step-in rights under clause 37.7(a), the Contractor 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, Contractor's Plant, Contractor's Materials, and all Project Documents.
- (c) The Principal will cease to exercise its rights under clause 37.7(a) as soon as reasonably practicable and, in any event, by no later than the time by which the relevant event has been rectified, provided that the Principal is reasonably satisfied that the Contractor is capable of carrying out the Contractor's Activities in accordance with this Contract.
- (d) The Contractor must indemnify the Principal against all Loss incurred by the Principal in exercising its rights under this clause 37.7.
- (e) The Principal's step-in rights under this clause 37.7 are in addition to any other rights which the Principal has under this Contract or any Statutory Requirements. The Principal may, at its sole discretion and at any time while exercising its rights under this clause 37.7, terminate this Contract in accordance with clause 37.6.

## **38 WHOLE OF LIFE (WOL)**

### **38.1 Design and construction**

Without limiting the Contractor's other obligations under this Contract, the Contractor must:

- (a) design the parts of the Works which this Contract requires it to design; and
- (b) construct the Works,

in a manner which maximises the achievement of the WOL Objectives.

### **38.2 Consultation**

The Contractor must meet at such times and with such Other Contractors as the Principal's Representative may require from time to time to review the progress of the design and construction of the Works against the WOL Objectives and consult with the Principal's Representative and the Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the WOL Objectives.

### **38.3 WOL proposals**

Without limiting its other Contract obligations, the Contractor must at all times in carrying out the Contractor's Activities:

- (a) use its best endeavours to identify, and recommend to the Principal's Representative, all reasonably available proposals for maximising the achievement of the WOL Objectives; and
- (b) consult with the Principal's Representative as to proposals which it is considering making under clause 38.3(a) and possible proposals under clause 38.3(a) identified by the Principal.

### **38.4 Reporting**

The Contractor must provide the Principal's Representative with a written performance report in such form and on such matters as the Principal's Representative may require from time to time, including a detailed explanation of the Contractor's compliance with the WOL Objectives.



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### **38.5 Post occupancy evaluation**

- (a) If a post occupancy evaluation is required in Item 30, the Contractor will do all things necessary to assist (including by advising and consulting to) the Principal's Representative to:
  - (i) carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and
  - (ii) without limiting clause 38.5(a)(i):
    - A. inspect the Works to review the extent to which the Contractor has maximised the achievement of the WOL Objectives in the design (if applicable) and construction of the Works; and
    - B. issue a report to the Principal and the Contractor:
      - (I) stating the extent to which the Contractor has maximised the achievement of the WOL Objectives in the design and construction of the Works; and
      - (II) containing a list of any aspects of the Works which do not conform with the requirements of this Contract.
- (b) The Contractor:
  - (i) must consult with the Principal's Representative and Other Contractors, and must provide such other assistance as is necessary, for the purposes of the Principal's Representative carrying out the requirements in clause 38.5(a)(i) and clause 38.5(a)(ii); and
  - (ii) acknowledges that the results of the post occupancy evaluation may be used in the evaluation of future tenders submitted by the Contractor to the Principal.

### **38.6 Rights and obligations not affected**

Neither the Principal's rights, nor the Contractor's liabilities, whether under this Contract or otherwise according to any Law, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred on the Principal or Principal's Representative by this clause 38 or the failure by the Principal or the Principal's Representative to exercise any such rights;
- (b) the obligations imposed on the Contractor by this clause 38 or the Contractor's compliance with those obligations; or
- (c) any direction of the Principal's Representative under or purported to be given under this Contract, including any comment or direction on or review, acceptance or rejection of:
  - (i) any advice, recommendation or other assistance provided by the Contractor under this clause 38; or
  - (ii) any post occupancy evaluation carried out (including any report prepared and finalised) under clause 38.5.

## **39 INDEMNITIES**

### **39.1 Indemnities**

- (a) The Contractor indemnifies the Principal against any Claim for Loss or damage which the Principal is liable for in respect of:
  - (i) any acts or omissions by the Contractor;
  - (ii) death, disease or illness (including mental illness) of, or personal injury to persons;

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- (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 Contractor's Activities;
  - (vi) the performance or non-performance by the Contractor of its obligations under the Contract; or
  - (vii) access by the Contractor or its Personnel 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; or
    - (ii) a breach of this Contract by the Principal.
  - (c) The reference to the Principal in clauses 39.1(a) and 39.1(b) includes its directors, officers and employees.

### **39.2 Indemnity provisions**

- (a) All obligations to indemnify under this Contract survive termination of this Contract.
- (b) No indemnity in this Contract limits the effect or operation of any other indemnity in this Contract.
- (c) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties.
- (d) If applicable, a Party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.

## **40 TIME BAR FOR LATE NOTIFICATION**

- (a) Any Claim by the Contractor for Extension of 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) Any Claim by the Contractor for Extension of Time, a Variation, additional Direct costs or any other compensation or remedy provided by this Contract, must set out:
  - (i) all information required by the terms of this Contract;
  - (ii) where this Contract does not specify the information required, the written Claim must include:
    - A. the quantum of the Claim;
    - B. the basis of the Contractor's Claim; and
    - C. details of all circumstances relevant to the Claim in sufficient detail to allow the Principal or the Principal's Representative to assess the Claim.
- (c) The time limits and other requirements set out in this Contract applicable to the making of a Claim referred to in clauses 40(a) and 40(b) above are intended to be strict.

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- (d) If the Contractor fails to comply with the requirements applicable to the making of a Claim referred to in clauses 40(a) and 40(b) above, 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.
  - (e) The Contractor releases and discharges the Principal from any Claim which is not made in accordance with the strict time limits and requirements applicable to making a Claim referred to in clauses 40(a) and 40(b) above.
  - (f) The Principal will not be regarded to have waived or amended this requirement unless the waiver or amendment is in accordance with clauses 51.2(a) and 51.5 of this Contract.

## **41 DISPUTE RESOLUTION**

### **41.1 Notice of Dispute**

- (a) If a Dispute arises it must be determined in accordance with the procedure in this clause 41.
- (b) Where such a Dispute arises, either Party may give a Notice to the Principal's Representative and the other Party specifying:
  - (i) the Dispute;
  - (ii) particulars of the Party's reasons for being dissatisfied; and
  - (iii) the position which the Party believes is correct.

### **41.2 Principal determination**

Within 20 Business Days after receipt of a Notice containing the details in 41.1(b), 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.

### **41.3 Senior Executive meeting**

If the Principal's Representative has submitted its determination in relation to the Dispute to the Parties under clause 41.2 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 41.2, escalate the Dispute to be the subject of a good faith negotiation at a meeting of Senior Executives. Senior Executives of the Parties must meet within 10 Business Days of a Party escalating the Dispute.

### **41.4 Expert determination**

- (a) If, within 10 Business Days of the meeting of Senior Executives under clause 41.3, or within 20 Business Days of the date of the Principal's Representative's decision under clause 41.2, the Dispute is not resolved, either Party may refer the Dispute to determination by an expert in accordance with this clause 41.4.
- (b) The expert determination under this clause 41.4 is to be conducted by an independent industry expert appointed by the Prescribed Appointer.
- (c) The Prescribed Appointer must, before appointing an independent industry expert, make reasonable enquiries as to whether the independent industry expert will be restricted from accepting the appointment under clause 41.6(a)(i) to 41.6(a)(v).
- (d) If the Prescribed Appointer nominated under this clause 41.4:

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- (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 41.4.

#### **41.5 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 unless the value of the expert's decision in favour of a Party exceeds the amount stated in item 31, in which case either party may commence litigation.
- (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.

#### **41.6 Disclosure of interest**

The independent expert must:

- (a) disclose to the Parties any:
  - (i) interest he or she has in the outcome of the determination;
  - (ii) conflict of interest;
  - (iii) conflict of duty;
  - (iv) personal relationship which the independent expert has with either Party, or either Party's representatives, witnesses or experts; and
  - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (b) not communicate with one Party to the determination without the knowledge of the other.

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#### **41.7 Continuation of Contractor's Activities**

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

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

#### **41.8 Injunctive relief**

Nothing in this clause 41 will prejudice the right of a Party to institute proceedings to seek injunctive or urgent declaratory relief.

#### **41.9 Survival of clause**

Clause 41 survives termination of this Contract.

#### **41.10 Bar**

Unless a Party refers a Dispute to executive negotiation or expert determination within the time required by clauses 41.2 or 41.3, the decision of the Principal's Representative under clause 41.2 will be final.

### **42 CONTAMINATION**

- (a) If the Contractor discovers any Contamination (or suspected Contamination) in, on, or under any part of a Site, the Contractor must notify the Principal within 3 Business Days after the discovery of the Contamination.
- (b) The Contractor must, at its sole cost, deal with the Contamination in accordance with any Statutory Requirements and any requirements of any Authorities, except to the extent the Contamination is caused by the Principal or constitutes a Latent Condition.
- (c) The Principal is not responsible for, or liable for the costs of dealing with, Contamination caused by the Contractor.

### **43 ARTEFACTS AND CULTURAL HERITAGE**

- (a) The Contractor agrees that it has not entered into this Contract in reliance on any representation, warranty, promise or statement made by the Principal as to the non-existence or otherwise of any Aboriginal cultural heritage or Artefact in respect of any Site or any part of a Site.
- (b) As between the Principal and the Contractor, the Contractor is responsible for dealing with any Aboriginal cultural heritage and Artefacts in respect of any Site or any part of a Site and compliance with any Statutory Requirements.
- (c) All Artefacts discovered on or under the surface of a Site will, as between the Contractor and the Principal, be the absolute property of the Principal.
- (d) If an Artefact is discovered at the Site the Contractor must:
  - (i) continue to perform its obligations under this Contract unless otherwise directed by the Principal's Representative;
  - (ii) immediately on discovery of the Artefact notify the Principal's Representative of such discovery;
  - (iii) at all times permit and allow the Principal's Representative or any other person authorised by the Principal to watch or examine any excavations on the Site;

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- (iv) take every reasonable precaution to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made; and
  - (v) comply with any direction to suspend or cease undertaking the Works imposed on the Principal in respect of any Artefact in accordance with any order of a court, tribunal or Statutory Requirement.

## **44 INTELLECTUAL PROPERTY**

### **44.1 Contract Material**

- (a) Where Item 32 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 32 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.

### **44.2 Existing material**

This clause 44.2 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.

### **44.3 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-license) 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.

### **44.4 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.

### **44.5 Moral Rights**

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

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- (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 Principal's Representative, customers and other contractors.

## **45 PRIVACY AND SECURITY REQUIREMENTS**

### **45.1 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 Laws 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,

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 45.1(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) co-operate with the Principal in the resolution of any complaint under, or relating to, any of the Laws, codes or policies referred to in clause 45.1(a).

### **45.2 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.
- (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 45.2(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.

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- (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 45.2(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.

## **46 CONFIDENTIALITY**

- (a) Subject to the provisions of clauses 46(b) and 46(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 46(a) if, but only to the extent, it can demonstrate that:
  - (i) such disclosure is required by applicable Law 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
  - (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,

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 46(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on the Principal under this clause 46 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



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- 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.

## **47 PUBLICITY**

### **47.1 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.

### **47.2 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.

### **47.3 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.

## **48 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 48(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,

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whichever happens first and provided that, if a Notice is sent by email after 5pm or on a day that is not a Business Day then, unless the sender receives an automated message that delivery failed, Notice will be effective at 9am on the following Business Day.

- (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.

## **49 PPS SECURITY INTERESTS**

- (a) The Contractor acknowledges and agrees that:
- (i) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured Party arising out of or in connection with this Contract, the Principal may at the Contractor's expense take all steps that the Principal considers advisable to:
    - A. perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest (Relevant Personal Property); and
    - B. better secure the Principal's position in respect of Relevant Personal Property under the PPS Act; and
  - (ii) it will do all things reasonably necessary to assist the Principal to take the steps described in clause 49(a)(i);
  - (iii) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in Relevant Personal Property;
  - (iv) if, and only if, the Principal is or becomes a secured Party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Contractor and the Principal agree that, in accordance with section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, section 121(4), section 125, section 129, section 130, section 132(3)(d), section 132(4), section 142 and section 143;
  - (v) subject to section 275(7) of the PPS Act, it will not disclose the contents of this Contract, the amount or performance obligation secured by the Principal's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPS Act in accordance with section 275(4) of the PPS Act;
  - (vi) it must immediately notify the Principal if it becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
  - (vii) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's Interest in Relevant Personal Property.
- (b) For the purposes of this clause 49, "financing statement", "financing change statement", "personal property", "registration", "secured party" and "verification statement" each have the meaning given to those terms in the PPS Act.

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## 50 COMPLIANCE WITH RING-FENCING GUIDELINE

- (a) This clause applies notwithstanding any other clause in this Contract.
- (b) The Contractor acknowledges that the Principal must comply with the Ring-Fencing Guideline.
- (c) The Contractor must, and must ensure that its Personnel:
  - (i) take all necessary steps to understand the Principal's obligations under the Ring-Fencing Guideline as they apply to the performance of Contractor's Activities and the Works, including attending training from time to time as reasonably required by the Principal;
  - (ii) perform the Contractor's Activities Works and otherwise conduct themselves in a manner that strictly complies with the obligations (including the non-discrimination and confidentiality obligations) set out in the Ring-Fencing Guideline as if the Contractor was acting as the Principal; and
  - (iii) not engage in any conduct that, if engaged in by the Principal, would breach or be contrary to the Principal's obligations under the Ring-Fencing Guideline (including, in particular, the obligations under clause 4 of the Ring-Fencing Guideline).
- (d) The Contractor acknowledges that:
  - (i) the application of the Ring-Fencing Guideline to the Principal may change over time (including, for example, where obligations under the Ring-Fencing Guideline which do not currently apply to the Principal commence to apply to the Principal); and
  - (ii) the operation of this clause will change accordingly.
- (e) The Contractor must notify the Principal in writing as soon as reasonably possible after becoming aware of the occurrence, or the suspected or potential occurrence, of a material breach of the Contractor's obligations under this clause.
- (f) The Contractor must cooperate with the Principal, and promptly comply with all reasonable directions given by the Principal, to ensure that the Contractor's Activities and the Works are performed by the Contractor in a manner that is consistent with the requirements of this clause.
- (g) The Contractor must cooperate with, and promptly provide assistance to, the Principal, to the extent reasonably required by the Principal to comply with the Principal's obligations under the Ring-Fencing Guideline, including any obligation to report or provide information to a regulatory authority, or otherwise cooperate with any investigation conducted by a regulatory authority.
- (h) The Contractor must provide the Principal with such written reports, evidence or other information concerning the Contractor's compliance with this clause as may be requested by the Principal from time to time.
- (i) The Contractor must make and keep, and must ensure that all Personnel make and keep, accurate records of the performance of the Contractor's obligations under this clause. The Principal will have the right, at no cost to the Principal, to inspect and copy any record relating to this clause at any time.
- (j) The Principal or its nominated representative has the right (at no cost to the Principal) at all reasonable times and on reasonable notice to visit the Contractor's and its Personnel's premises and audit and inspect all records, procedures and systems of the Contractor and its Personnel which relate to the Contractor's compliance with this clause. The Contractor must (and must ensure that its Personnel fully co-operate with the Principal in relation to any such audit or inspection.

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## 51 GENERAL

### 51.1 Limitation of liability

- (a) Subject to clause 51.1(b):
  - (i) neither Party 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; and
  - (ii) the total aggregate liability of the Contractor is limited to the amount stated in Item 33.
- (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 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;
  - (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,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 37.3(a)(ii);
  - (vi) the Contractor's liability for liquidated damages under clause 32.1; or
  - (vii) fraud, reckless conduct or wilful misconduct.

### 51.2 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).

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- (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.

### **51.3 Amendment**

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

### **51.4 Discretions, determinations, approvals or assessments**

If this Contract allows the Principal or the Principal's Representative a discretion as to whether to do or not do any act, matter or thing of any kind or confers on the Principal or the Principal's Representative a power of determination or right of opinion approval or the like, that discretion, power or right is absolute unless this Contract states otherwise.

### **51.5 Waiver**

- (a) 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.
- (b) In this clause 51.5:
- (i) conduct includes delay in the exercise of a right or failure to exercise a right under this Contract;
  - (ii) right means any right arising under or in connection with this Contract and includes the right to rely on this clause 51.5; and
  - (iii) waiver includes an election between rights and remedies and conduct which might otherwise give rise to an estoppel whether by way of representation or convention.

### **51.6 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.

### **51.7 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 51.7(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

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### **51.8 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.

### **51.9 Costs of Contract**

- (a) Each Party must bear its own costs of an incidental to the preparation and execution of this Contract.
- (b) The Contractor must pay all stamp duties or other taxes of a similar nature on this Contract.

### **51.10 Depreciation schedule**

The Contractor must if and when requested by the Principal's Representative give reasonable assistance in the preparation of a depreciation schedule in respect of the Works in accordance with the reasonable requirements of the Principal or the Principal's Representative or of applicable Statutory Requirements including the *Income Tax Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth).

### **51.11 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.

### **51.12 Counterparts**

- (a) This Contract may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Contract by signing any counterpart.

### **51.13 Special Conditions**

The Parties agree to be bound by any Special Conditions.

### **51.14 Taxes and duties**

- (a) 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.
- (b) The Contractor acknowledges and agrees that it will be liable for and has made adequate allowance in the Contract Price for:
  - (i) currency fluctuations;
  - (ii) all taxes, duties including, without limitation, stamp duty, customs duty and import duty; and
  - (iii) all costs relating to the imposition of any new taxes, duties or the like, or a change in any of them.

### **51.15 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 Statutory Requirement or otherwise at Law independently of this Contract, unless otherwise stated.

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#### **51.16 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:
  - (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.

#### **51.17 Industry Participation Plan**

- (a) Without limiting the Contractor's obligations under clause 17 (Use of Local Contractors and Suppliers), the Contractor must implement and comply with the Industry Participation Plan until the expiry of the Defects Liability Period.
- (b) Within fourteen (14) days of the Award Date, the Contractor must submit one copy of the draft Industry Participation Plan to the Principal's Representative for approval. The Principal's Representative will, within a reasonable time from receipt, either approve the draft Industry Participation Plan, or reject it, giving reasons for the rejections. The Contractor must rectify the deficiencies and resubmit the draft Industry Participation Plan for approval in the timeframe specified in writing by the Principal's Representative.
- (c) To the extent approved by the Principal's Representative, the Industry Participation Plan:
  - (i) will be binding on the Contractor; and
  - (ii) will be deemed to be incorporated into and form part of the Scope of Works.
- (d) The Contractor must on written request by the Principal's Representative provide the Principal's Representative with a written report on compliance (achievements against the requirements/objectives/goals) with the Industry Participation Plan within the timeframe specified in the Principal's Representative's written request.
- (e) If the Contractor fails to comply with the Industry Participation Plan then:
  - (i) without limiting any other right or remedy, Principal will be entitled to recover from the Contractor the relevant sanction or sanctions provided for in the Industry Participation Plan (if any); and
  - (ii) this failure will constitute a Default of this Contract entitling the Principal to terminate this Contract in accordance with clause 37.3 of this Contract.
- (f) The Contractor's compliance or non-compliance with this clause 51.17 will be recorded in the Contractor's Performance Report to be prepared by the Principal in accordance with clause 51.17(Contractor's Performance Report).

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(g) In this clause 51.17:

**“Industry Participation Plan”** means the industry participation plan to the extent approved by the Principal’s Representative.

## 52 INTERPRETATION

In this Contract, unless the context otherwise requires:

- (a) 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;
  - (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 request.
- (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.



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- (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 Special Conditions;
    - (ii) the Contract Details;
    - (iii) the terms and conditions of this document in clauses 1 to 53 (inclusive);
    - (iv) SCHEDULE 5 - Design Documents;
    - (v) the Notice of Acceptance;
    - (vi) Schedule of Rates;
    - (vii) Scope of Works;
    - (viii) any other documents referred to in the above documents as forming part of this Contract; and
    - (ix) any schedules, annexures, appendices or other documents (if any) attached to or referred to in this Contract.

## 53 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 performance of the Contractor's Activities, 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 10, for the design of the Works.

**Artefact** means any places, fossils, bones, artefacts, coins, articles of antiquity, buildings, structures, natural features, objects or other remains or things of scientific, geological, historical, cultural, aesthetic, architectural, social, heritage or archaeological nature or interest or things otherwise of value, including any items of Aboriginal cultural heritage.

**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 Contractor's Activities or the Works, or any private or corporate provider of a Utility.

**Award Date** means the date as set out in Item 10.

**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.

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**Buildability Problem** means any ambiguity, inadequacies, discrepancies, inconsistencies, incompleteness, errors or lack of coordination or integration of, between or in any documents that specify the Works which cause a problem, difficulty, additional cost, additional time, or complexity relating to:

- (a) the means, methods or techniques by which the Works are to be performed; or
- (b) the coordination or integration of the Contractor's Activities and/or the Works.

**Business Days** means any day which is not a Saturday or a Sunday or a public holiday in the Northern Territory.

**Buy Local Industry Advocate** means the person appointed by the NTG to provide an independent advocacy function on behalf of local industry, investigate complaints directly from local industry and act on their own initiative to audit contractors.

**Buy Local Plan** means the standards and requirements as published by the NTG from time to time in respect of promoting local procurement in the Northern Territory.

**Certificate of Practical Completion** means the certificate issued by the Principal's Representative to the Contractor in accordance with clause 30.3 when the Works or a Separable Portion reaches Practical Completion.

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

**Commencement Date** means the date for commencement of the Contractor's Activities at the Site in accordance with clause 2.3.

**Commissioning and Handover Plan** means a plan, if required under Item 11, prepared by the Contractor and finalised in accordance with clause 3.3 which details the items and sequence of steps to be undertaken, and the timeframe required for each, to have the Works at the Site fully operational in accordance with the requirements of this Contract, and must include:

- (a) planning for any validation period;
- (b) provision for dry and wet commissioning;
- (c) risk assessment;
- (d) provision for any training required to be delivered to the Principal's personnel to ensure the ongoing effective operation and maintenance of the Works;
- (e) the efficient and seamless transfer of operations and control to the Principal; and
- (f) the management of maintenance (planned or unplanned) by the Contractor during the Defects Liability period.

**Compensable Delay Event** means:

- (a) any breach of this Contract by the Principal; and
- (b) any Variations directed by the Principal's Representative in accordance with clause 34 of this Contract.

**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

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(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.

**Contamination** means the presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

**Contract** means this contract, consisting of the documents listed in clause 52(n).

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

**Contract Material** means all materials created by the Contractor or Contractor Personnel:

- (a) on or following the Award Date in the course of, or as a consequence of, performing the Contractor's Activities; or
- (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 (including Provisional Sums);
- (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 Contractor's Activities required under this Contract, adjusted for Provisional Sums (by deducting the relevant Provisional Sum where Provisional Sum Work is deleted from the Contract, or in accordance with clause 28.2 where relevant Provisional Sum Works is directed to be performed) and other additions or deductions made under this Contract.

**Contract Program** means the program prepared in accordance with clause 3.1 and updated in accordance with clause 3.2 for progressing the Contractor's Activities.

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**Contractor** means the person named in Item 5 of this Contract is bound to carry out and complete the Contractor's Activities 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 (excluding officers, employees, agents, contractors, suppliers, customers or related Parties of the Contractor) during the course of performing the Works under this Contract; and/or
- (c) obtained (whether created, purchased or licensed) by the Contractor during the course of performing the Contractor's Activities under this Contract but separately from and otherwise than in connection with this Contract,

and where Item 32 provides that Contract Materials will be owned by the Contractor, Contractor IPR includes Contract Materials.

**Contractor's Activities** means all things or tasks which are necessary, or may be necessary, for the Contractor to do to comply with this Contract.

**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 Contractor's Activities, whether owned, leased or hired and includes temporary works.

**Contractor's Representative** means the person named in Item 6 and in accordance with clause 13.3.

**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 Contractor's Activities, 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 as the context permits:

- (a) the date specified in Item 25 as the date by which the Contractor is required to reach Practical Completion in relation to the Works and as adjusted under this Contract; and/or
- (b) the date determined under clause 12 for any Separable Portions 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 or any Separable Portions, as the context permits.

**Daywork** means any additional Works directed in writing by the Principal's Representative to be conducted in accordance with clause 34.6 of this Contract.

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

**Defect** means any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of the Contract.

**Defects Liability Period** means the period specified in Item 28, which commences on the Date of Practical Completion in respect of the Works or a Separable Portion and which may be extended in accordance with clause 35.7.

**Delay Event** means the causes described in clause 31.3(a).

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 4); and/or
  - (ii) provided by the Contractor and approved by the Principal's Representative in accordance with this Contract.

**Design Intent** means the design principles, shapes, forms, outlines, materials, finishes, colours, quality and types of materials and finishes, systems, concepts, and standards and relationships between all and any of these as inferred, shown, evidenced or reasonably contemplated by this Contract (including in the Scope of Works and SCHEDULE 5 - Design Documents).

**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, the Contractor's Activities or this Contract (including the existence of the Contract), the Principal's Representative's or either Party's conduct before this Contract.

**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).

**Environment** has the meaning given to that term at Law or in any legislation in force in the Northern Territory and includes all components of the earth including the following:

- (a) land, air, water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;
- (d) any organic or inorganic matter and any living organism including humans;
- (e) human made or modified structures and areas;
- (f) the aesthetics characteristics of the components of the earth including appearance, sound, odour, taste and texture; and
- (g) ecosystems with any combinations of the above.

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**Environmental Harm** means any actual or threatened adverse impact on, or damage to, the Environment.

**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.

**Environmental Management Plan** means an environmental management plan, if required under Item 11, prepared by the Contractor and, based on any material submitted by the Contractor in relation to its environmental management proposal included in its tender for the Works, and finalised under clause 3.3 which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from an environmental perspective and describe how the Contractor proposes to ensure the Contractor's Activities will be performed consistently with:

- (a) the Environmental Requirements;
- (b) the Statutory Requirements;
- (c) the Environmental Objectives; and
- (d) all other relevant requirements of this Contract.

**Environmental Objectives** are to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise Environmental Harm;
- (c) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Contractor's Activities;
- (e) establish procedures to ensure that no hazardous substance is stored on Principal land without approval;
- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and subcontractors;
- (i) ensure subcontractors implement the Environmental Management Plan;
- (j) define how the management of the Environment during the Contractor's Activities are reported and performance evaluated;

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- (k) describe all monitoring procedures required to identify impacts on the Environment as a result of the Contractor's Activities;
  - (l) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
  - (m) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

**Environmental Requirements** includes any matter or requirement regarding the Environment specified in the Scope of Work.

**Exempt Approval** means the Approvals specified in Item 12 that the Contractor is not required to obtain.

**Extension of Time** means an extension of the Date for Practical Completion.

**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 performing the Contractor's Activities and 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 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 52(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.

**Inclement Weather** means adverse weather conditions, but excluding the effects of adverse weather conditions.

**Inclement Weather Allowance** means 2 Working Days per month (not cumulative) for the months of May to September and 10 Working Days per month (not cumulative) for the months of October to April.

**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;

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- (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:
- (i) an application is made to a court for an order or an order is made that the corporation be wound up;
  - (ii) 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;
  - (iii) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
  - (iv) 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;
  - (v) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors;
  - (vi) a resolution is passed to wind up or dissolve that corporation;
  - (vii) the corporation is dissolved;
  - (viii) 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;
  - (ix) 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;
  - (x) 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;
  - (xi) 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
  - (xii) 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:
- (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 in 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



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- (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.

**Key People** means the Contractor's people set out in Item 19.

**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 its 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:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations applying to jurisdiction where the Contractor's Activities 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 Contractor's Activities; and
- (c) fees and charges payable in connection with the foregoing.

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

**Lump Sum Breakdown** means the breakdown of a lump sum in SCHEDULE 7 - Lump Sum Breakdown (if any).

**Material Environmental Harm** means Environmental Harm (other than environmental nuisance) that is not trivial or negligible in nature, extent or context and causes actual or potential Loss or damage to property.

**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.

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**National Electricity Rules** means the 'National Electricity Rules' as defined in the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA), having force as a law of the Northern Territory under section 6 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT).

**Non-Delay Event** means any event, except a Delay Event, that causes delay to the performance of the Contractor's Activities or the Works.

**Notice** has the meaning set out in clause 48.

**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.

**NTG** means any of the following:

- (a) Northern Territory of Australia (ABN 84 085 734 992) as established under the Northern Territory (Self-Government) Act 1978 (Cth);
- (b) any body established by the Administrator or by a Minister of the Northern Territory of Australia, including a department or unit of a department or other authority or body nominated as an "Agency" from time to time in an Administrative Arrangements Order;
- (c) any incorporated or unincorporated body or organisation over which the Northern Territory of Australia exercises control, whether or not an instrumentality of the Northern Territory of Australia; and
- (d) any government owned corporation as defined under the Government Owned Corporations Act (NT) including any "Subsidiary" (as defined in that Act) of that government owned corporation.

**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 under clause 25.5.

**Payment Statement** means a document issued by the Principal's Representative under clause 25.7.

**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.

**Pollutant** means any pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, gas, industrial or other waste regulated under Environmental Laws.

**PPS Act** means the Personal Property Securities Act 2009 (Cth).

**Practical Completion** means that stage in the carrying out and completion of the Contractor's Activities when:

- (a) the Works are complete except for minor defects:

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- (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 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, constituents, 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 Term; and/or
- (c) obtained (whether created, purchased or licensed) by the Principal during the course of performing the Works under this Contract but not from the Contractor,

and where Item 32 provides that Contract Materials will be owned by the Principal, Principal IPR includes Contract Materials.

**Principal Risk** means:

- (a) any act (excluding acts permitted by the Contract) or omission of the Principal, the Principal's Representative or Other Contractor and each of their Personnel (excluding the Contractor or its Personnel);
- (b) Cyclone, earthquake, fire and flood, in each case not caused by the Contractor or 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 authority; and
- (d) ionising radiation or Contamination 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 13.1 of the Conditions of Contract.

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**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.

**Principal Supplied Materials** means the Principal Supplied Materials listed in Item 20 (if any).

**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 Contractor's Activities.

**Project Documents** includes:

- (a) Design Documents, if the Contractor has design obligations under Item 11;
- (b) Approvals;
- (c) programs;
- (d) operation and Maintenance manuals and warranties from subcontractors;
- (e) Project Plans;
- (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), including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, software, databases or other information stored in any electronically-retrievable medium, technical information, plans, drawings (including as-constructed drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third Parties to the Contractor), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents, any material relating to the Contractor's compliance with the WHS Legislation and any other material of a similar nature to those materials relating to or arising out of or in connection with this Contract, the Contractor's Activities and/or the Works; and
- (g) without limiting clauses (a) - (f), all material at any time derived (under, for the purposes of or in connection with this Contract or the Works) from, or based on, the material described in clauses (a) - (f).

**Project Plans** means the documents listed in Item 11 and as amended (if at all) with the written consent of the Principal's Representative.

**Project Quality Plan** means a project quality plan, if required under Item 11, prepared by the Contractor and, based on any material submitted by the Contractor in relation to its project quality proposal included in the Contractor's Tender, and finalised under clause 3.3 which must set out in adequate detail the procedures the Contractor will implement to manage the Works from a quality assurance perspective.

**Provisional Sum** means a rate or lump sum amount specified in Item 24 as a Provisional Sum item for the Provisional Sum Work.

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**Provisional Sum Work** means the work or goods referred to in Item 24 for which the sum of money has been included in the Contract Price.

**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 Contractor's Activities.

**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.

**Ring-Fencing Guideline** means the Australian Energy Regulator's Electricity Distribution Ring-Fencing Guideline made under clause 6.17.2 of the National Electricity Rules, as that guideline applies in the Northern Territory from time to time.

**Rely-upon Information** means Principal Supplied Information that is expressly identified by the Principal as being information that the Contractor can rely upon in respect of its obligations under this Contract, such as by being marked with the words "Rely-upon Information", "Can be relied upon by the Contractor" or similar notation, but does not include such information that the Principal's Representative subsequently advises in writing can no longer be relied upon.

**Schedule** means a Schedule to this Contract.

**Schedule of Rates** means if Item 22 specifies that there is a Schedule of Rates, the prices, fees and charges for the Works are provided for in SCHEDULE 6 - Schedule of Rates.

**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 and as set out under SCHEDULE 4 - Scope of Works.

**Security** means approved unconditional undertaking(s) in the amount specified in Item 14 and in the form of Schedule 3 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.

**Security Interest** means a security interest within the meaning of the PPS Act.

**Separable Portion** means a portion of the Works which the Principal's Representative has determined to be a Separable Portion in accordance with clause 12 of this Contract.

**Senior Executives** means the representatives nominated by the relevant Party.

**Site** means the site for the Works described in Item 7 and includes other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

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**Site Management Plan** means the site management plan, if required under Item 11, prepared by the Contractor and finalised under clause 3.3, which must set out in adequate detail all procedures the Contractor will implement to manage the Works on and near the Site including:

- (a) the matters specified in the Contract Details; and
- (b) any other matters required by the Principal's Representative.

**Special Conditions** means the special conditions, if any, set out in SCHEDULE 1 - Special Conditions.

**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 exceptions specified under Item 13.

**Survey Mark** means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring the Works.

**Suspension** means a suspension of the Contractor's Activities directed by the Principal under clause 33 of this Contract.

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

**Undertaking** means an unconditional undertaking (duly stamped, if necessary) in the form, and otherwise on terms, and given by a financial institution, approved by the Principal required under clause 25.10.

**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, unless otherwise stated in the Contract, any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WHS Legislation means:

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

**WOL** means whole of life.

**WOL Cost** means the total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to the Principal arising out of, or in any way in connection with, the Works over the whole life of the Works including the costs of designing and constructing the Works prior to Practical Completion and operating and maintaining the Works after Practical Completion.

**WOL Objectives** means balancing:

- (a) WOL Cost;
- (b) the useful life of the Works;

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- (c) the reliability and availability for use of the Works throughout their useful life;
  - (d) the operability and maintainability of the Works throughout their useful life;
  - (e) the value for money achieved by the Principal from the design, construction, operation and maintenance of the Works;
  - (f) the achievement of any other additional matters relating to WOL specified in this Contract; and
  - (g) the achievement of the specific additional matters (if any) relating to WOL specified in Item 29.

**Work Health and Safety Plan** means the work health and safety plan, if required under Item 11, prepared by the Contractor and finalised under clause 3.3, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with Statutory Requirements in relation to work health and safety; and
- (c) address any additional matters specified in the Scope of Works.

**Working Day** means the working days determined as set out in clause 26.3.

**Works where the context requires, means** the physical works which the Contractor must:

- (a) design, if Item 17 requires; and
- (b) commission, complete and hand over to the Principal in accordance with this Contract, as set out in the Scope of Works.

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## **SCHEDULE 1 - Special Conditions**

This Contract is amended as follows:

*[Insert Special Conditions (if any)]*



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## SCHEDULE 2 - Form of Deed of Guarantee and Indemnity

DATED 20

[**GUARANTOR**]

and

**Power and Water Corporation**

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**GUARANTEE AND INDEMNITY**

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## DETAILS

### Date

### Parties

Name	<b>[Insert Guarantor Details]</b>
Short form name	<b>Guarantor</b>
Notice details	<b>[Insert]</b>

Name	<b>Power and Water Corporation ABN [15 947 352 360]</b>
Short form name	<b>Principal</b>
Notice details	<b>[Insert]</b>

### Introduction

- A. The Company is a party to a Contract between the Company and the Principal dated/to be dated on or about **[insert date]** (the Contract).
- B. The Company has requested that the Guarantor guarantees the performance by the Contractor of the Contractor's obligations under this Contract on the terms set out in this Deed, and the Guarantor has agreed to this request.
- C. The Principal requires the Guarantor enters into this Deed prior to the Principal entering into this Contract with the Contractor.
- D. The Guarantor has agreed to enter into this Deed to satisfy the Principal's requirement.

## AGREED TERMS

### 2 DEFINED TERMS & INTERPRETATION

#### 2.1 Defined terms

In this document:

**Accounting Standards** means accounting standards, principles and practices applying by law or otherwise which are generally accepted and consistently applied in Australia.

**Authorised Representative** means a director or company secretary, or a person it notifies to the other party as being authorised to act as its authorised representative for the purposes of the Transaction Documents.

**Business Days** means any day which is not a Saturday or a Sunday or a public holiday in the Northern Territory.

**Contract** means the document referred to in Recital A.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Default** means:

- (a) an Insolvency Event occurs in respect to either or both of the Guarantor and the Company; or
- (b) there is any breach by either or both of the Guarantor and the Company of any undertaking, representation or warranty under the Contract.

**Dollars** and **A\$** mean the lawful currency of Australia.

**External Administrator** means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**Government Agency** means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

**Guarantee and Indemnity** means the guarantee and indemnity contained in clause 3 and generally under this document.

**Liquidation** means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

**Potential Default** means any event, thing or circumstance which would become a Default with the giving of notice, the making of a determination under a Transaction Document or the passage of time (or any combination of those things).

**Power** means any right, power, discretion or remedy of the Principal under any Transaction Document or applicable Law.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Prescribed Return** has the meaning given to that term in the Contract.

**Security Interest** means any:

- (a) 'security interest' as defined in the PPSA;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

**Tax** means any tax, levy, duty, rate, impost or charge imposed, levied or assessed by a Government Agency, and any related penalty, fine, fee or interest. It includes stamp duty, GST and transaction taxes and duties.

**Transaction Document** means:

- (a) this document;
- (b) the Contract; and
- (c) a document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in a paragraph above.

## **2.2 Interpretation**

In this document:

- (a) capitalised terms have the same meaning as in the Contract, unless separately defined in this document;
- (b) headings are for reference only and do not affect interpretation;
- (c) unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days;
- (d) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (e) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (f) a Default or Potential Default subsists until either:
  - (i) remedied to the Principal's satisfaction before a Power relating to that Default or Potential Default is exercised; or
  - (ii) waived by the Principal in writing;
- (g) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (h) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
- (i) examples and use of the word **including** and similar expressions do not limit what else may be included.

Unless the context requires otherwise, a reference in this document to:

- (a) a party to any document includes that person's successors and permitted substitutes and assigns;
- (b) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (c) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (d) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (e) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (f) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (g) time is to Darwin Central Standard time unless stated otherwise;
- (h) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (i) an accounting term is to be interpreted according to the Accounting Standards; and
- (j) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.

### **3 GUARANTEE AND INDEMNITY**

#### **3.1 Consideration**

The Guarantor acknowledges entering this document in return for:

- (a) a guarantee fee of \$20 paid by the Principal to each Guarantor that is a corporation; and
- (b) the Principal agreeing to enter into the Contract.

#### **3.2 Guarantee**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Principal the due, proper and punctual performance and observance by the Contractor of all of the obligations contained in or implied under the Contract that must be performed and observed by the Contractor, including the payment of any money or provision of indemnification or guarantee under the Contract (**Guaranteed Obligations**); and
- (b) indemnifies the Principal against all Losses which the Principal may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Contractor of a Guaranteed Obligations.

#### **3.3 Performance**

The Guarantor must, in addition to its obligations under clause 3.4 of this Deed, within 5 Business Days of a written demand from time to time by the Principal, immediately then perform any of the Guaranteed Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Guaranteed Obligations.

### **3.4 Indemnity**

The Guarantor indemnifies the Principal against, and must pay on demand amounts equal to, any Loss of the Principal as a result of or in connection with:

- (a) any obligation or liability of, or obligation or liability guaranteed by, a Guarantor under this clause 2 (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
- (b) the Company failing, or being unable, to perform any of the Guaranteed Obligations in accordance with the Transaction Documents; or
- (c) an Insolvency Event in respect of the Company,

in each case, for any reason and whether or not the Principal knew or ought to have known anything about those matters.

### **3.5 Demands**

A demand under this clause 2 may be made at any time after a Default occurs.

## **4 EXTENT OF GUARANTEE AND INDEMNITY**

### **4.1 Immediate recourse**

The Guarantor waives any right it may have to require the Principal to proceed against, or enforce any other rights or claim payment from, any other person before claiming from the Guarantor under the Guarantee and Indemnity. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

### **4.2 Continuing obligations**

The Guarantee and Indemnity:

- (a) extends to the present and future balance of all the Guaranteed Obligations (including in respect of any contingent liability of the Guarantor in connection with the Transaction Documents);
- (b) is not wholly or partially discharged by the performance or payment of any money in furtherance of the Guaranteed Obligations, the settlement of any account or anything else;
- (c) continues in full force and effect after expiry or termination of the Contract until all of the Contractor's obligations and liabilities under the Contract have been fully discharged; and
- (d) continues until, subject to clause 10.2, all Guaranteed Obligations have been performed in full.

### **4.3 Liability not affected**

The Guarantor's liability under the Transaction Documents is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Company or the Principal is aware of it or consents to it and despite any legal rule to the contrary), including:

- (a) any time, waiver, concession or consent granted to, or composition with, any Company or other person;
- (b) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Transaction Document), between the Principal and another Company or another person;
- (c) an Insolvency Event in respect of the Company or another person;

- (d) any judgment or order being obtained or made against, or the conduct of any proceedings by, the Company or another person;
- (e) the Company's obligation or a Transaction Document (or any provision of a Transaction Document), being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (f) the whole or partial discharge or release of, or the granting of, the Guarantee and Indemnity;
- (g) the Guaranteed Obligations not being enforceable or the liability of the Company or any other person to the Principal ceasing or reducing (including due to a release or discharge by the Principal or by law);
- (h) any Transaction Document not being executed by, or binding against, any Company;
- (i) the exercise or non-exercise of any Power (including any right to terminate a contract);
- (j) any set-off, combination of accounts or counterclaim;
- (k) any waiver of or failure to satisfy a condition or condition precedent under a Transaction Document (and any such waiver or failure will be disregarded in determining a Guarantor's liability under this Guarantee and Indemnity or whether an obligation is part of the Guaranteed Obligations);
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Company) by the Principal or any other person; or
- (m) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company or any other person.

#### **4.4 Principal and independent obligation**

Each guarantee, indemnity and other obligation of the Guarantor in this document is:

- (a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
- (b) is in addition to, and not prejudiced by, any other Guarantee now or later held by the Principal.

#### **4.5 Deferral of certain rights**

Until all Guaranteed Obligations have been performed and the Principal is satisfied that it will not have further Claim against the Contractor, the Guarantor may not (either directly or indirectly) without the Principal's prior written consent claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:

- (a) against the Company; or
- (b) which another Company may have against the Principal,

which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity.

#### **4.6 Prove in Liquidation**

The Guarantor irrevocably authorises the Principal and each of its Authorised Representatives to prove in the Liquidation of any Company for all money that the Guarantor can claim against the Company on any account. The Principal need only account to the Guarantor for funds it receives in excess of its entitlement under the Contract, without interest.

## 5 REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants to the Principal that:

- (a) **(status)** it is:
  - (i) properly registered and incorporated as a corporation and validly exists in its jurisdiction of incorporation; and
  - (ii) not a trustee of any trust other than as specified in this document;
- (b) **(power and authority)** it has the power, right and necessary corporate authority to carry on its current and contemplated business, and to enter into, and exercise its rights and observe and perform its obligations under, each Transaction Document to which it is expressed to be a party;
- (c) **(no immunity)** neither it nor any of its assets is immune from suit or execution;
- (d) **(no conflicts)** its execution and performance of this Guarantee and Indemnity will not:
  - (i) conflict with or contravene any other law or a judgment, ruling, order, document or agreement applying to it or its assets or its constituent documents;
  - (ii) result in a Security Interest being created on, or crystallising over, any of its assets; or
  - (iii) result in a default under any agreement relating to any actual or contingent debt or other monetary liability in respect of money borrowed or raised or any financial accommodation; and
- (e) **(solvency)** it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable.

## 6 COSTS, TAXES AND GENERAL INDEMNITY

### 6.1 Costs and expenses

The Guarantor must pay or reimburse on demand all reasonable costs and expenses of the Principal (and any of its respective officers, employees and agents) in connection with:

- (a) the negotiation and preparation of any Transaction Document to which it is a party;
- (b) a variation, release or discharge of any Transaction Document at the request of the Guarantor;
- (c) giving a consent or approval or waiving a requirement in connection with a Transaction Document at the request of the Guarantor;
- (d) enforcing a Transaction Document, or exercising, enforcing or protecting a Power, or preparing or attempting to do so; and
- (e) a Default or Potential Default.

This includes reasonable legal costs and expenses (on a full indemnity basis).

### 6.2 Taxes, fees and charges

The Guarantor must pay, or reimburse the Principal on demand for, all:

- (a) Taxes, fees and charges in connection with this document or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, this document, including Taxes passed onto the Principal by another financial institution or supplier of goods and services; and



- (b) fines and penalties for late payment or non-payment of those amounts, except where the Guarantor places the Principal in cleared funds to make the payment not less than five (5) Business Days before the due date and the Principal fails to make the payment.

The Guarantor must pay or reimburse the Principal on demand for all such amounts which are payable.

## **7 INTEREST ON OVERDUE AMOUNTS**

### **7.1 Accrual and calculation**

The Guarantor must pay to the Principal on demand interest on any money owing as part of the Guaranteed Obligations which is due and payable by the Guarantor (including on unpaid interest under this clause) but unpaid:

- (a) from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment; and
- (b) subject to clause 6.3, at the rate determined by the Principal as the sum of 5% per year above Westpac Banking Corporation's indicator rate (reference lending rate).

### **7.2 Payment**

The Guarantor must pay to the Principal accrued interest under clause 6.1 on the last Business Day of each calendar month and on demand.

### **7.3 Judgment or order**

If the Guarantor's liability under a Transaction Document is the subject of a judgment or order:

- (a) its obligation to pay interest under clause 6.1 is separate from, and continues despite, the judgment or order; and
- (b) the interest accrues both before and after judgment at the higher of the rate determined under clause 6.1 and the rate payable under that judgment or order.

## **8 PAYMENTS**

### **8.1 Payment requirements**

All payments by the Guarantor under this document must be made by 12.00 noon on the due date (or, if not a Business Day, on the next Business Day in the same calendar month or, if none, the preceding Business Day) to an account nominated by the Principal. Payments must be made in Dollars, in immediately available funds and in full without set-off, counterclaim or, subject to clause 7.3, deduction or withholding.

### **8.2 Amounts payable on demand**

Any amount which is not expressed by a Transaction Document to be payable on a specified date is payable immediately on demand.

### **8.3 Deduction or withholding required**

If the Guarantor is required by law to deduct or withhold Taxes from a payment to the Principal, it must:

- (a) make that deduction or withholding, pay to the appropriate Government Agency an amount equal to the full amount deducted and/or withheld as required by law and give the Principal a receipt for the payment; and

- (b) unless the Tax is an Excluded Tax, pay additional amounts to the Principal which will result in the Principal receiving (after deduction or withholding of any Taxes in respect of any additional amount) the full amount which the Principal would have received if no deduction or withholding had been required.

#### **8.4 Insufficient payments**

The Principal may apply all money received from the Guarantor under the Transaction Documents (even if insufficient to discharge all of the Guarantor's obligations at that time) to reduce the Guaranteed Obligations in the order, and to satisfy any part of the Guaranteed Obligations, as the Principal sees fit. An application by the Principal will override any appropriation made by the Guarantor.

### **9 ASSIGNMENT**

#### **9.1 By Guarantor**

The Guarantor may not assign, transfer or otherwise deal with its rights, interests or obligations under this document without the Principal's prior written consent.

#### **9.2 By Principal**

The Principal may assign, transfer, novate or otherwise deal with all or any of its rights and obligations under the Transaction Documents without the consent of any person.

### **10 NOTICES, DEMANDS AND COMMUNICATIONS**

All Notices are governed by the Contract.

### **11 PROTECTION OF PRINCIPAL**

#### **11.1 Principal may set off**

At any time while a Default subsists, the Principal may, without any demand or notice, set off and apply indebtedness it owes to the Guarantor (whatever the currency) against any money owing to it by the Guarantor under any Transaction Document, whether or not the amount owed by the Principal or the Guarantor is immediately payable or is owed alone or with any other person. The Guarantor irrevocably authorises the Principal to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

#### **11.2 Reinstating avoided transaction**

The Guarantor agrees that if a payment or other transaction relating to the Guaranteed Obligations is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even though the Principal knew or should have known of the Avoidance:

- (a) each Power and the Guarantor's liability under each Transaction Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) the Guarantor will immediately execute and do anything necessary or required by the Principal to restore the Principal to its position immediately before the Avoidance (including reinstating any Transaction Document).

This clause survives any termination or full or partial discharge or release of any Transaction Document.

### **11.3 Authorised Representatives**

The Guarantor irrevocably authorises the Principal to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Representatives, and to rely on any Notice or other document contemplated by any Transaction Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. The Guarantor warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

## **12 GENERAL**

### **12.1 Notification from Guarantor**

If the Guarantor is required under a Transaction Document to notify the Principal about anything, it must do so in writing.

### **12.2 Powers**

Powers under the Transaction Documents are cumulative and do not limit or exclude Powers at Law. Full or partial exercise of a Power does not prevent a further exercise of that or any other Power.

### **12.3 Waivers**

No failure or delay in exercising a Power operates as a waiver or representation. A waiver by the Principal in relation to a Transaction Document is effective only if in writing.

### **12.4 Notices or demands**

A notice or certificate from or demand by the Principal stating that a Default has occurred, or that a specified sum of money is owing or payable under a Transaction Document or stating any other fact or determination relevant to the rights or obligations of the Principal or the Company under a Transaction Document, is taken to be correct unless proved incorrect.

### **12.5 Law and legislation**

To the extent permitted by Law:

- (a) each Transaction Document prevails to the extent of inconsistency with any Law; and
- (b) any present or future legislation operating to reduce the Guarantor's obligations under a Transaction Document or the effectiveness of the Powers is excluded.

### **12.6 Severability**

A provision of a Transaction Document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of that Transaction Document in any jurisdiction.

### **12.7 Variation**

A variation of this document must be in writing and signed by or on behalf of each party to it.

### **12.8 Governing law, jurisdiction and service of process**

- (a) This document is governed by the laws of the Northern Territory. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court

of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

- (b) Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of Notices under this document.

#### **12.9 Counterparts**

This document may be executed in any number of counterparts.

#### **12.10 Costs of this document**

- (a) The Parties will bear their own legal costs in relation to this Deed.
- (b) The Guarantor and the Company will be equally liable for any stamp duty assessed on this Deed.

## SIGNING PAGE

**EXECUTED** unconditionally as a deed

Executed [*Optional ~as a deed*] by [*Name of Guarantor*] [*Insert ~ACN~ABN*] [*Number*] in accordance with section 127 of the *Corporations Act 2001* (Cth) by authority of its directors

---

Signature of director

---

Signature of director/company secretary  
(Please delete as applicable)

---

Name of director (print)

---

Name of director/company secretary (print)

**Signed for and on behalf of POWER AND WATER CORPORATION (ABN 15 947 352 360)**  
by its authorised signatories:

---

Signature

---

Signature

---

Name (Printed)

---

Name (Printed)

---

Position

---

Position

---

Date

## SCHEDULE 3 - Form of Security

### FORM OF SECURITY

Deed Poll made at ..... on ....., 20.....

By: **[INSERT NAME AND ABN OF BANK]** (Bank)

In favour of: **Power and Water Corporation (Principal)**

#### Recitals

- A. The Principal and **[INSERT NAME AND ABN OF CONTRACTOR]** ("Contractor") have entered into a contract entitled 'Major Works Contract' for **[INSERT BRIEF PROJECT DETAILS]** dated **[INSERT DATE OF CONTRACT SIGNING IF AVAILABLE; IF NOT, DELETE "dated"]** (Contract).
- B. Under the Contract, the Contractor is required to provide this deed to the Principal.

#### This deed poll provides

#### **13 UNCONDITIONAL UNDERTAKING BY BANK**

The Bank unconditionally undertakes and covenants to pay to the Principal any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of \$**[INSERT]**:

- (a) on demand;
- (b) without reference to the Contractor; and
- (c) notwithstanding any notice given by the Contractor to the Bank not to pay that sum or sums.

#### **14 CONTINUING LIABILITY OF BANK**

The Bank's liability under this deed is a continuing liability and will continue until:

- (a) payment is made under this deed of the maximum aggregate sum; or
- (b) the Principal notifies the Bank that this deed is no longer required.

However, the Bank may at any time, without being required to do so, pay to the Principal the maximum aggregate sum less any amounts it may previously have paid under this deed. After such payment, the Bank's liability under this deed will immediately cease.

#### **15 NO DISCHARGE OF LIABILITY BY VARIATION**

The Bank's liability under this deed will not be discharged or impaired by reason of:

- (a) any variation (with or without the knowledge or consent of the Bank) in:
  - (i) any of the provisions of the Contract;
  - (ii) the Contractor's Activities or the Works (as defined in the Contract); or
  - (iii) acts or things to be executed, performed and done under the Contract;
- (b) any breach of the Contract by the Contractor or the Principal.

#### **16 GOVERNING LAW**

This deed is subject to and to be construed in accordance with the laws applicable to the Contract.

**EXECUTED** as a deed poll.

**Signed sealed and delivered** for and on behalf of  
**[INSERT NAME AND ABN OF BANK]** by **[INSERT  
SIGNATORY NAME]** its Attorney under a Power  
of Attorney dated                      and registered Book  
No.                      and the Attorney declares that the  
Attorney has not received any notice of the  
revocation of such Power of Attorney, in the  
presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**[INSERT APPROPRIATE SIGNING BLOCK TO REFLECT MANNER IN WHICH BANK SIGNS DEEDS OF THIS  
TYPE]**

**SCHEDULE 4 - Scope of Works**

[*Insert scope of works*]



**SCHEDULE 5 - Design Documents**

[Insert detailed list or actual drawings]

## **SCHEDULE 6 - Schedule of Rates**

[insert Schedule of Rates]

**SCHEDULE 7 - Lump Sum Breakdown**

[insert Lump Sum Breakdown]

**Version Control details:**

Approved by: Chief Procurement Officer  
EDMS file number: D2023/91514 (Word)  
EDMS file number: D2023/95467 (PDF)

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