



# Power and Water Corporation Minor Works Contract

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## Table of Contents

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<b>CONTRACT DETAILS</b>	<b>1</b>
<b>FORM OF AGREEMENT</b>	<b>1</b>
<b>1 CONTRACT</b>	<b>1</b>
1.1 Establishing the Contract	1
1.2 Appointment of the Contractor and contract model	1
1.3 Orders	2
1.4 PWC Entities to benefit from Works	2
1.5 Non-exclusive appointment	3
1.6 Initial Term and Further Term	3
<b>2 COMMENCEMENT OF WORKS</b>	<b>3</b>
2.1 The Obligations of the Parties	3
2.2 Conditions Precedent to access the Site	3
2.3 Principal's Obligations	4
2.4 Conditions of Site Access	4
2.5 Delay in gaining access to the Site	4
<b>3 DOCUMENTS FOR WORKS</b>	<b>5</b>
3.1 Contract Program	5
3.2 Project Plans	5
<b>4 DOCUMENTS AND INFORMATION</b>	<b>5</b>
4.1 Documents	5
4.2 Non-Reliance Information	5
4.3 Contractor Supplied Information	5
4.4 Discrepancies	6
<b>5 APPROVALS, AUTHORITIES AND LEGISLATIVE REQUIREMENTS</b>	<b>6</b>
5.1 Approvals and Statutory Requirements	6
<b>6 SECURITY</b>	<b>6</b>
6.1 Purpose	6
6.2 Provision of Security	6
6.3 Recourse to Security	6
6.4 Release of Security	7
<b>7 INSURANCE</b>	<b>7</b>
7.1 Insurances Required	7
7.2 Professional Indemnity Insurance	7
7.3 Evidence of Insurance	8
7.4 Notice of claims or occurrences	8
<b>8 DESIGN</b>	<b>8</b>
8.1 Design Obligation	8
8.2 Design Documents	8
<b>9 PERSONNEL AND DIRECTIONS</b>	<b>8</b>
9.1 Principal's Representative	8
9.2 Compliance with directions	9
9.3 Contractor's Representative	9
<b>10 CONDUCT ON SITE</b>	<b>9</b>
10.1 Standards on Site	9
10.2 Subcontracting	9
10.3 Record Keeping	9

<b>11</b>	<b>SITE CONDITIONS</b>	<b>10</b>
11.1	Acceptance of Site Conditions	10
11.2	Notification of Latent Condition	10
<b>12</b>	<b>PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS</b>	<b>10</b>
<b>13</b>	<b>USE OF LOCAL CONTRACTORS AND SUPPLIERS</b>	<b>11</b>
<b>14</b>	<b>RESPONSIBILITY FOR THE WORKS</b>	<b>12</b>
14.1	Risk of Works	12
14.2	Responsibility for the Works	12
<b>15</b>	<b>PRINCIPAL SUPPLIED MATERIALS</b>	<b>12</b>
<b>16</b>	<b>QUALITY</b>	<b>14</b>
16.1	Construction	14
16.2	Examination and Testing	14
16.3	Non-Complying Activities Before Practical Completion	14
<b>17</b>	<b>WORK HEALTH AND SAFETY</b>	<b>15</b>
17.1	Work Health and Safety Plan	15
17.2	Work Health and Safety	15
<b>18</b>	<b>SUSTAINABLE SUPPLY CHAIN MANAGEMENT</b>	<b>16</b>
<b>19</b>	<b>ENVIRONMENT</b>	<b>16</b>
19.1	Obligations of Contractor in respect of the environment	16
19.2	Environmental Incidents	17
<b>20</b>	<b>USE OF HAZARDOUS SUBSTANCES</b>	<b>17</b>
<b>21</b>	<b>CONTRACT PRICE AND PAYMENT</b>	<b>17</b>
21.1	Performance and Payment Obligation	17
21.2	Contract Price	17
21.3	Schedule of Rates	17
21.4	Adjustments	18
21.5	Payment Claims	18
21.6	Payment Statements	18
21.7	Payment	19
21.8	Final Payment Claim and Notice	19
21.9	Interest	19
21.10	GST	20
21.11	Right of Set-Off	20
<b>22</b>	<b>CONSTRUCTION</b>	<b>21</b>
22.1	Construction	21
22.2	Progress of Works	21
22.3	Covering up Work	21
22.4	Storage on Site	21
22.5	Protection of People and Property	21
<b>23</b>	<b>PROVISIONAL SUM WORK</b>	<b>22</b>
23.1	Undertaking Provisional Sum Work	22
23.2	Price adjustment for Provisional Sum Work	22
<b>24</b>	<b>PRACTICAL COMPLETION</b>	<b>22</b>
24.1	Date for Practical Completion	22
24.2	Notice of Practical Completion	23
24.3	Certificate of Practical Completion	23
24.4	Possession on Practical Completion	23
<b>25</b>	<b>EXTENSION OF TIME</b>	<b>23</b>

25.1	Delay Notice	23
25.2	Entitlement and assessment	24
25.3	The Principal's unilateral discretion	24
<b>26</b>	<b>LIQUIDATED DAMAGES AND DELAY COSTS</b>	<b>25</b>
26.1	Liquidated damages	25
26.2	Delay costs	25
<b>27</b>	<b>SUSPENSION</b>	<b>25</b>
27.1	Notice to Suspend	25
27.2	Contractor's Entitlement to additional Direct costs	26
27.3	Recommencement of work under this Contract	26
<b>28</b>	<b>VARIATIONS</b>	<b>26</b>
28.1	Variations only as directed by the Principal	26
28.2	The Principal may direct a Variation	26
28.3	Variation Notice	27
28.4	Effect of Variations on Contract Price	27
28.5	Value of Variations	27
28.6	Daywork	28
<b>29</b>	<b>DEFECTS AND DEFECT LIABILITY PERIOD</b>	<b>28</b>
29.1	Rectification Works during Defects Liability Period	28
29.2	Defects Liability Period	28
29.3	Extension of Defects Liability Period	28
<b>30</b>	<b>WARRANTIES</b>	<b>29</b>
30.1	Contractor Warranties	29
30.2	Warranties Remain Unaffected	29
<b>31</b>	<b>TERMINATION</b>	<b>29</b>
31.1	Right to damages not prejudiced	29
31.2	Breach or Default Notice	29
31.3	Notice of Termination	30
31.4	Insolvency	31
<b>32</b>	<b>INDEMNITIES</b>	<b>31</b>
32.1	Indemnities	31
32.2	Indemnity Provisions	32
<b>33</b>	<b>DISPUTE RESOLUTION</b>	<b>32</b>
33.1	Notice of Dispute	32
33.2	Principal Determination	32
33.3	Senior Executive Meeting	33
33.4	Expert Determination	33
33.5	Procedure for Expert Determination	33
33.6	Continuation of Works	34
33.7	Injunctive relief	34
33.8	Survival of clause	34
<b>34</b>	<b>PRIVACY AND SECURITY REQUIREMENTS</b>	<b>34</b>
34.1	Privacy	34
34.2	Security Requirements	35
<b>35</b>	<b>CONFIDENTIALITY</b>	<b>36</b>
<b>36</b>	<b>INTELLECTUAL PROPERTY</b>	<b>37</b>
36.1	Contract Material	37
36.2	Existing Material	37
36.3	Licences	37

36.4	Third Party Material	38
36.5	Moral Rights	38
<b>37</b>	<b>PUBLICITY</b>	<b>38</b>
37.1	Public statements	38
37.2	Reputation	38
37.3	Principal name	38
<b>38</b>	<b>NOTICES</b>	<b>39</b>
<b>39</b>	<b>COMPLIANCE WITH RING-FENCING GUIDELINE</b>	<b>39</b>
<b>40</b>	<b>GENERAL</b>	<b>40</b>
40.1	Liability for Indirect or Consequential Losses	40
40.2	Entire Agreement	41
40.3	Amendment	42
40.4	Waiver	42
40.5	Governing Law	42
40.6	Assignment and Novation	42
40.7	Severability	42
40.8	The Principal as trustee for its Personnel	42
40.9	Contractor as trustee	43
40.10	Costs of Contract	44
40.11	Survival of Provisions	44
40.12	Special Conditions	44
40.13	Taxes other than GST and Duties	44
40.14	Rights and Remedies Not Affected	44
40.15	Contractor's Performance Report	44
40.16	Time for making Claims	45
<b>41</b>	<b>INTERPRETATION</b>	<b>45</b>
<b>42</b>	<b>DEFINITIONS</b>	<b>47</b>
	<b>SCHEDULE 1 – SPECIAL CONDITIONS</b>	<b>60</b>
<b>1</b>	<b>APPOINTMENT AS PRINCIPAL CONTRACTOR FOR WORK HEALTH AND SAFETY</b>	<b>60</b>
	<b>SCHEDULE 2 – SCOPE OF WORKS</b>	<b>61</b>
	<b>SCHEDULE 3 – DESIGN DOCUMENTS</b>	<b>62</b>
	<b>SCHEDULE 4 – SCHEDULE OF RATES</b>	<b>63</b>
	<b>SCHEDULE 5 – LUMP SUM BREAKDOWN</b>	<b>64</b>

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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 34)	<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: <a href="mailto:ChiefProcurementOfficer.PWC@powerwater.com.au">ChiefProcurementOfficer.PWC@powerwater.com.au</a>
4.	Principal's Representative	Name: [insert name] Phone: [insert phone number] Email: [insert email address]
5.	Contractor	[insert full name] [insert ABN/ACN] Address: [insert address] Email: [insert email]
6.	Contractor's Representative (clause 9.3)	Name: [insert name] Phone: [insert phone number] Email: [insert email address]
7.	Contract Model (clause 1.2)	This Contract is (select one option only): <input type="checkbox"/> a contract for one-off Works <input type="checkbox"/> a standing offer contract – sole Contractor for multiple Works as required for the period of [insert term of standing offer contract] years from the Award Date ( <b>Initial Term</b> ) <input type="checkbox"/> a standing offer contract – multiple contractors for Works as required (panel arrangement) for the period of [insert term of standing offer contract] years from the Award Date ( <b>Initial Term</b> )

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

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

Yes, as follows:

<b>Further Term</b>	[insert months]
---------------------	-----------------

No, not applicable.

**9. Project Plans  
(clause 2.2)**

<b>Project Plan</b>	<b>Time for submission</b>
<input type="checkbox"/> Environmental Management Plan	within [XXX] days of Award Date
<input type="checkbox"/> Site Management Plan	within [XXX] days of Award Date
<input type="checkbox"/> Work Health and Safety Plan	within [XXX] days of Award Date
<input type="checkbox"/> Project Quality Plan	within [XXX] days of Award Date
<input type="checkbox"/> Commissioning and Handover Plan	within [XXX] days of Award Date

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

Where:

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

OR

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

**11. Award Date**

Where:

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

OR

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

**12. Security  
(clause 6)**

The Contractor must provide the following Security:

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

2 x 2.5% of the Contract Price.



---

OR

\$[insert]

OR

B. where this Contract is identified as a standing offer contract in Item 7:

(i) On entering into this Contract:

\$[insert]; and

(ii) Any additional amount directed by the Principal's Representative, or otherwise agreed between the Parties, in respect of each Order (provided always that it cannot exceed 5% of the Contract price payable under the Order).

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**13. Insurances  
(clause 7)**

Insurance Type	Minimum Amount
<b>Public Liability Insurance</b>	<p> <input type="checkbox"/> <b>Yes</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.         </p>
<b>Professional Indemnity Insurance</b>	<p> <input type="checkbox"/> <b>Yes</b>, \$[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.         </p> <p> <input type="checkbox"/> <b>No</b>, not applicable.         </p>
<b>Contract Works Insurance</b>	Contract Price + 15%.
<b>Other insurances</b>	<p>The Contractor must also take out and maintain all other insurances required by Statutory Requirements (including the <i>Return to Work Act (NT)</i> and <i>Motor Accidents (Compensation) Act (NT)</i>).</p>

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

**design** Does the Contractor have specific design obligations?

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

Yes, as follows:

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

No, not applicable.

OR

B. where this Contract is identified as a standing offer contract in Item 7, the Contractor's design obligations are as specified in an Order, and

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in which case, the Contractor must ensure the design meets the requirements set out in clause 8.

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**15. Principal Materials Supplied**  
**(clause 15)**

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]

---

**16. Contract Price**  
**(clause 21.2)**

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

OR

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

OR

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

---

**17. Schedule of Rates**  
**(clause 21.3)**

Is there a specific Schedule of Rates?

Yes, refer to Schedule 4.

OR

No, not applicable.

---

**18. Provisional Sum Work**  
**(clause 23)**

As described in the Scope of Works or Lump Sum Breakdown, is there Provisional Sum Work?

Yes, Provisional Sum Work allowance: \$[insert] (inclusive of GST)

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OR

No, not applicable.

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**19. Date for Practical Completion** (clause 24.1) Where:  
 this Contract is identified as one-off Works in Item 7: [insert date]  
OR  
 this Contract is identified as a standing offer contract in Item 7, the Date for Practical Completion will be as identified as between the Parties in, or during negotiations in relation to, an Order under this Contract.

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**20. Liquidated damages** (clause 26) [insert – 'NA' or \$xxx per day]

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**21. Defects Liability Period** (clause 29.2) [insert] weeks from the Date of Practical Completion.

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**22. Intellectual Property Rights** (clause 36) Intellectual Property Rights in Contract Material will be:  
 licensed to the Principal (owned by the Contractor).  
 owned by the Principal.

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**23. Appointment as Principal Contractor** (Schedule 1) Is the Contractor appointed as the principal contractor?  
 Yes, the Contract Price exceeds \$500,000 and Special Condition 1 applies.  
OR  
 No, not applicable.

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## FORM OF AGREEMENT

### 1 CONTRACT

#### 1.1 Establishing the Contract

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

#### 1.2 Appointment of the Contractor and contract model

##### *A contract for one-off Works*

- (a) Where Item 7 provides that this Contract is a *contract for one-off Works*:
  - (i) on and from the Award Date, the Principal appoints the Contractor to undertake the Works under the Contract; and
  - (ii) the Contractor must undertake the Works under the Contract:
    - A. within the timeframe(s) specified in this Contract;
    - B. for the Contract Price;
    - C. in accordance with the terms and conditions of this Contract; and
    - D. in accordance with any directions issued by the Principal's Representative in accordance with this Contract.

##### *A standing offer contract*

- (b) Where Item 7 provides that this Contract is either a *standing offer contract – sole Contractor for multiple Works as required* or a *standing offer contract – multiple contractors for Works as required (panel arrangement)*:
  - (i) the Contractor irrevocably makes a standing offer to provide the Works to the Principal as and when required by the Principal during the Term; and
  - (ii) subject to clause 1.3, the Principal may issue the Contractor with an Order for the Works required by the Principal from the Contractor.

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

- (c) Where Item 7 provides that this Contract is a *standing offer contract – multiple contractors for Works as required (panel arrangement)*:
  - (i) the Principal may from time to time issue orders or quotation requests to any one or more Contractor's on the panel in the Principal's sole discretion;
  - (ii) the Principal may add additional panel members to the panel at any time in the Principals sole discretion; and

- 
- (iii) the Contractor will not be entitled to any compensation from the Principal as a result of the Principal exercising its rights under clauses 1.2(c)(i) to 1.2(c)(ii).

### **1.3 Orders**

- (a) Prior to the issue of any Order:
  - (i) the Principal may provide the Contractor with a quotation request specifying Works required by the Principal;
  - (ii) promptly, but in any event within 5 Business Days of the date of receipt of a quotation request, or such longer period as may be agreed by the Principal in writing, the Contractor must issue a written quotation to the Principal responding to the quotation request;
  - (iii) the Principal may unilaterally issue an Order which is consistent with the Contractor's written quotation under clause 1.3(a)(ii), and that Order will be binding on the Contractor;
  - (iv) the Contractor must perform the Works set out in each Order issued to the Contractor by the Principal in accordance with the terms of that Order and this Contract (for the avoidance of doubt, each Order creates additional obligations on the Parties with respect to the additional Works set out in that Order under the terms and conditions of this Contract); and
  - (v) notwithstanding any other provision of this Contract, the Principal is not obliged to issue any Orders to the Contractor or to engage the Contractor to perform any minimum volume of Works and has not made any representation or warranty to the Contractor that it will engage the Contractor to perform any Works.
- (b) Each Order will form part of this Contract with effect on and from the date the relevant Order is issued by the Principal. For clarity, Orders do not create contracts separate from this Contract. Unless this is a *contract for one-off Works*, except as required under an Order, the Contractor is not permitted to perform any Works or entitled to any payment under this Contract.

### **1.4 PWC Entities to benefit from Works**

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

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

### **1.5 Non-exclusive appointment**

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

### **1.6 Initial Term and Further Term**

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

- (a) this Contract commences on the Award Date and ends on the expiry of the Initial Term unless extended or terminated earlier in accordance with this Contract; and
- (b) the Parties may extend this Contract for the Further Term on the terms and conditions then in effect (including pricing) if:
  - (i) the Principal provides the Contractor with Notice in writing at least 30 days prior to the end of the Initial Term seeking the Contractor's consent to such an extension; and
  - (ii) the Contractor provides the Principal with Notice that in writing at least 15 days prior to the end of the Initial Term that the Contractor consents to any such extension; and
- (c) subject to the Contractor providing consent under clause 1.6(b)(ii), the Further Term will commence on and from the expiry of the Initial Term.

## **2 COMMENCEMENT OF WORKS**

### **2.1 The Obligations of the Parties**

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

### **2.2 Conditions Precedent to access the Site**

The Conditions Precedent to access the Site are that:

- (a) The Contractor has submitted the Project Plans;
- (b) the Contractor has provided the proposed Contract Program;
- (c) the Security is provided in accordance with clause 6; and

- 
- (d) the Contractor provides evidence satisfactory to the Principal's Representative that each insurance policy required under clause 7 is current,

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

### **2.3 Principal's Obligations**

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

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

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

### **2.4 Conditions of Site Access**

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

### **2.5 Delay in gaining access to the Site**

- (a) Any failure by the Principal to give access as required by clause 2.3 will not be a breach of this Contract but will entitle the Contractor to claim an extension of time under clause 25 and to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly out of the Principal's failure to give the Contractor access to the Site, such costs to be reasonably determined by the Principal's Representative.



- 
- (b) To the extent permitted by any Law, the Contractor will not be entitled to make (nor will the Principal be liable for) any Claim arising out of or in connection with the Principal's failure to give the Contractor access to the Site other than under clause 2.5(a).

### **3 DOCUMENTS FOR WORKS**

#### **3.1 Contract Program**

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

#### **3.2 Project Plans**

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

### **4 DOCUMENTS AND INFORMATION**

#### **4.1 Documents**

The Contractor agrees that:

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

#### **4.2 Non-Reliance Information**

The Contractor and the Principal agree that the Non-Reliance Information:

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

#### **4.3 Contractor Supplied Information**

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

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#### **4.4 Discrepancies**

- (a) The several documents forming this Contract and the documents that are produced or issued under this Contract are to be taken as mutually explanatory of one another. However, if an inconsistency, ambiguity or discrepancy between those documents exists, the Contractor must promptly seek the direction of the Principal's Representative regarding the interpretation to be adopted and comply with that direction.
- (b) In giving the direction, the Principal's Representative may override the order of precedence set out in clause 41(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 28.3.

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

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

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

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

### **6 SECURITY**

#### **6.1 Purpose**

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

#### **6.2 Provision of Security**

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

#### **6.3 Recourse to Security**

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

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

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## **6.4 Release of Security**

- (a) For Security provided under this Contract or any Order in respect of the Works (other than as provided for in Item 12B(i), which is dealt with under clause 6.4(b)), the Principal will, subject to clause 6.3:
  - (i) within 10 Business Days after the Date of Practical Completion, return only so much of the Security provided by the Contractor as is required to leave a balance of 50% of the Security with the Principal; and
  - (ii) within 10 Business Days after the Principal's Representative issues the final Payment Statement under clause 21.8, release the balance of the Security, subject to any amounts being retained by the Principal to cover any claims the Principal may have against the Contractor.
- (b) Where:
  - (i) Item 7 provides that this Contract is either a standing offer contract – sole Contractor for multiple Works as required or a standing offer contract – multiple contractors for Works as required (panel arrangement); and
  - (ii) Item 12B(i) identifies that the Contractor must provide Security on entering into this Contract,

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

## **7 INSURANCE**

### **7.1 Insurances Required**

- (a) Prior to the commencement of the Works, the Contractor must have in place the insurances stated in Item 13 with an insurer or insurers approved by the Principal.
- (b) Without limiting the previous clause 7.1(a), the policy of Public Liability Insurance must note the Principal's interest arising from this Contract and to the extent possible must extend to cover the Principal for its vicarious liability as principal arising from the Contractor's performance of the Works.

### **7.2 Professional Indemnity Insurance**

If Item 14 applies and is marked 'yes':

- (a) before the Contractor commences the Works, the Contractor must obtain a Professional Indemnity Insurance policy as stated in Item 13;
- (b) the policy must extend to cover the Contractor's liability for infringement of Intellectual Property Rights; and
- (c) the Contractor must ensure that each consultant's policy is maintained for the period as stated in Item 13.

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### **7.3 Evidence of Insurance**

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

### **7.4 Notice of claims or occurrences**

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

## **8 DESIGN**

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

### **8.1 Design Obligation**

The Contractor must ensure the design:

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

### **8.2 Design Documents**

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

## **9 PERSONNEL AND DIRECTIONS**

### **9.1 Principal's Representative**

- (a) The Principal's Representative for the purposes of this Contract is the person named in Item 4.

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- (b) The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

## **9.2 Compliance with directions**

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

## **9.3 Contractor's Representative**

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

## **10 CONDUCT ON SITE**

### **10.1 Standards on Site**

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

### **10.2 Subcontracting**

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

### **10.3 Record Keeping**

The Contractor must make available to the Principal's Representative, on request, all necessary records required to demonstrate that the Contractor and its subcontractors are complying with the

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provisions of the applicable relevant awards, registered/certified agreement, Federal and State codes of practice, employment legislation and any other Legislative Requirements concerning industrial relations and employment conditions.

## **11 SITE CONDITIONS**

### **11.1 Acceptance of Site Conditions**

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

### **11.2 Notification of Latent Condition**

(a) Within 5 Business Days after the Contractor becomes aware or should reasonably have become aware of a Latent Condition while carrying out the Works, the Contractor must give the Principal's Representative a written Notice setting out:

- (i) the nature of the Latent Condition encountered and the respect in which it differs materially to the expected Site conditions, or the Site conditions that should reasonably have been expected having regard to the inspection and assessment of the Site and available information in relation to the Site under clause 11.1;
- (ii) any delay or estimated delay to the Works caused by the Latent Condition; and
- (iii) any additional Direct costs incurred or to be incurred as a result of encountering the a Latent Condition.

(b) The Contractor is only entitled to:

- (i) an extension of time under clause 25; and
- (ii) its additional Direct costs,

associated with the Latent Condition, and the Contractor is not entitled to make any further Claim in relation to the Latent Condition.

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

(a) As a precondition to payment under a Payment Claim, the Contractor must provide with the Payment Claim documentary evidence of the payment of amounts due and payable to:

- (i) workers of the Contractor and its subcontractors;
- (ii) consultants; and
- (iii) subcontractors,

in respect of the Works the subject of that Payment Claim.

(b) The Principal's Representative must be reasonably satisfied that based on the documentary evidence provided by the Contractor, the Contractor has paid all amounts due and payable to its workers, subcontractors and consultants.

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## 13 USE OF LOCAL CONTRACTORS AND SUPPLIERS

### *Local Benefit Commitments*

- (a) The Contractor acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.
- (b) In the Contractor's Tender for the Works, the Contractor made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Contractor as part of this Contract. These promises and commitments form part of this Contract (and are referred to in this clause 13 as the '**Local Benefit Commitment**').
- (c) The Contractor must fulfil all aspects of the Local Benefit Commitment.

### *Use of Local Contractors and Suppliers*

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

### *Reporting 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 13(b) and 13(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) The Contractor must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 13.
- (i) The Contractor is liable for its own costs of any audit or inspection conducted pursuant to this clause 13.
- (j) 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 the Principal or the Buy Local Industry Advocate. The cost of implementing those recommendations will be borne by the Contractor.

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- (k) 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 13.

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

- (l) The Contractor's compliance or non-compliance with this clause 13 will be recorded in the Contractor's Performance Report to be prepared by the Principal in accordance with clause 40.15.

## **14 RESPONSIBILITY FOR THE WORKS**

### **14.1 Risk of Works**

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

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

### **14.2 Responsibility for the Works**

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

## **15 PRINCIPAL SUPPLIED MATERIALS**

- (a) If Item 15 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 15; and



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- (iii) by the relevant 'Date for Delivery' referred to in Item 15.
- (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;
- C. must:
- (I) 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 15(c)(i)A;
- (II) unless a 'Delivery Location' listed in Item 15 is the Site, transport the Principal Supplied Materials from the relevant 'Delivery Location' listed in Item 15 to the Site at the Contractor's own cost and risk; and
- (III) 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;
- (ii) agrees that:
- A. as between the Principal and the Contractor, title in the Principal Supplied Materials remains with the Principal; and
- B. the *Sale of Goods Act 1972* (NT) does not apply to the Principal's obligations under clause 15 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 15(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

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B. either:

- (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 28.2; or

(ii) are not supplied to the relevant 'Delivery Location' referred to in Item 15 by the relevant 'Date for Delivery' referred to in Item 15, then the Contractor may be entitled to Claim an extension of time under clause 25.2.

## **16 QUALITY**

### **16.1 Construction**

The Contractor must, in performing the Works:

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

### **16.2 Examination and Testing**

- (a) At any time prior to the issue of the final Payment Claim under clause 21.8, the Principal's Representative may direct that all or part of the Works or any Contractor's Materials be tested.
- (b) If a test directed by the Principal's Representative under clause 16.2(a):
  - (i) is the first test of the Works or Contractor's Materials directed by the Principal's Representative in the past 180 days prior to the direction;
  - (ii) is required by the Contract (including the Scope of Works); or
  - (iii) establishes that any Works or Contractor's Materials (or any part thereof) do not comply with the Contract,

then all costs and expenses of carrying out the test will be borne by the Contractor.

- (c) Except where clause 16.2(b) applies, the Contractor's reasonable costs and expenses of carrying out the test will be valued as a Variation in accordance with clause 28.
- (d) The Principal's Representative may direct that any part of the Works must not be covered up or made inaccessible without written approval of the Principal's Representative.

### **16.3 Non-Complying Activities Before Practical Completion**

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

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

## **17 WORK HEALTH AND SAFETY**

### **17.1 Work Health and Safety Plan**

- (a) Prior to the Commencement Date, the Contractor must, if a Work Health and Safety Plan is required under the Scope of Works:
  - (i) prepare a Work Health and Safety Plan applicable to the nature of works being undertaken; and
  - (ii) provide the Work Health and Safety Plan to the Principal's Representative.
- (b) The Contractor must, and must ensure its Personnel engaged in the performance of the Works, comply with:
  - (i) the Work Health and Safety Plan;
  - (ii) any directions on safety issued by the Principal or the Principal's Representative; and
  - (iii) any directions on safety issued by any authorities or otherwise required by any Statutory Requirement or required under this Contract.

### **17.2 Work Health and Safety**

The Contractor must, when undertaking the Works:

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

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- (g) on request by the Principal's Representative or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or any subcontractor commences such work.

## **18 SUSTAINABLE SUPPLY CHAIN MANAGEMENT**

### **18.1 Responsible sourcing**

- (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 1818.1, if the Principal develops a responsible sourcing code or similar, the Contractor will cooperate with the Principal in relation to such code, including:
  - (i) responding fully and accurately to any relevant questionnaire; and
  - (ii) using reasonable efforts to improve any aspects of non-compliance with such code.

### **18.2 Modern Slavery**

- (a) Without limiting clause 18.1, the Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the Contractor's operations and in its supply chains used in the performance of the Contract.
- (b) If at any time the Contractor becomes aware of Modern Slavery practices in its operations and/or supply chains used in the performance of the Contract, the Contractor must as soon as reasonably practicable notify the Principal and take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- (c) The Contractor must include in its agreements with subcontractors and suppliers used in the performance of the Contract, obligations on the subcontractors and suppliers to the effect of this clause 18.2.
  - (i)

## **19 ENVIRONMENT**

### **19.1 Obligations of Contractor in respect of the environment**

- (a) The Contractor must, in connection with the Contractor's obligations under this Contract:
  - (i) comply with all Environmental Laws in force from time to time;
  - (ii) not cause or allow any Site to be the subject of any Contamination or Environmental Incident; and
  - (iii) comply with any specific requirements with respect to the environment as provided for in the Scope of Works.

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- (b) The Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in a breach of Environmental Laws.
  - (c) Without limiting clause 19.1(b), in conducting the Contractor's activities on a Site, the Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in the Principal breaching any Environmental Laws.

## **19.2 Environmental Incidents**

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

## **20 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.

## **21 CONTRACT PRICE AND PAYMENT**

### **21.1 Performance and Payment Obligation**

- (a) The Contractor must execute and complete the Works.
- (b) Subject to Schedule 1, clause 21.11, and to any other right to set-off which the Principal may have under this Contract, the Principal will pay the Contractor the Contract Price and any other amounts which are payable by the Principal to the Contractor under this Contract for the Works.

### **21.2 Contract Price**

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

### **21.3 Schedule of Rates**

If Item 17 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.

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## **21.4 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,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 21.4(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 28.5(d).
- (c) Subject to clause 21.4(d), the Contractor is not entitled to make any Claim against the Principal if the items of work or quantities are incorrect, including where this is:
  - (i) an incorrect quantity;
  - (ii) an item which should not have been included; or
  - (iii) an item which was omitted but should have been included.
- (d) Except as stated in clause 28.2(c), this clause 21.4 does not apply to the valuation of Variations directed by the Principal's Representative under clause 28.5 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.

## **21.5 Payment Claims**

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

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

## **21.6 Payment Statements**

- (a) The Principal's Representative:
  - (i) must - within 10 Business Days of receiving a valid Payment Claim submitted in accordance with clause 21.5; or

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- (ii) may - if the Contractor fails to submit a Payment Claim in accordance with clause 21.5, at any time,

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

- (b) If the amount in clause 21.6(a) is less than the amount claimed in the Payment Claim, the Principal's Representative will provide reasons why the amount is less than the amount claimed in the Payment Claim.
- (c) The issue of a Payment Statement will not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the Payment Statement has been satisfactorily carried out in accordance with this Contract.

### **21.7 Payment**

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

- (a) 20 Business Days of the Contractor submitted Payment Claim; and
- (b) 15 Business Days of the Principal receiving a Payment Statement under clause 21.6.

### **21.8 Final Payment Claim and Notice**

- (a) Within 20 Business Days (or such longer period agreed in writing by the Principal's Representative) after the end of the Defects Liability Period for the Works the Contractor must give the Principal's Representative:
  - (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 21.8 are in addition to the other Notices which the Contractor must give to the Principal's Representative under this Contract in order to preserve its entitlements to make any such Claims.
- (c) Subject to satisfaction of clauses 21.8(a) and 21.8(b), the Principal's Representative will issue to the Contractor a final Payment Statement titled 'Final Payment Statement' under this clause 21.8(c), in accordance with the requirements for issuing Payment Statements under clause 21.6.

### **21.9 Interest**

- (a) The parties will pay Interest calculated daily on any:

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- (i) amount which has been set out as payable by the Principal's Representative under clause 21.6, but which is not paid by the party within the time required by this Contract (from the date on which the relevant amount was due for payment); and
  - (ii) damages or other liabilities of the Parties to each other (excluding any agreed damages agreed between the Parties in writing) arising under this Contract.
- (b) Interest must be claimed by the Parties within 20 Business Days after the date of payment by the other Party and such Claim must constitute a tax invoice in accordance with clause 21.10.

#### **21.10 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.
- (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.

#### **21.11 Right of Set-Off**

The Principal may:

- (a) deduct from moneys otherwise due to the Contractor:



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- (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 21.11(a), deduct any debt or Claim referred to in clause 21.11(a)(i) or clause 21.11(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 28.

## **22 CONSTRUCTION**

### **22.1 Construction**

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

### **22.2 Progress of Works**

The Contractor must progress the Works in a manner and at a rate of progress consistent with the Contract Program (if applicable) and otherwise satisfactory to the Principal's Representative acting reasonably.

### **22.3 Covering up Work**

- (a) The Contractor must comply with any provision of this Contract or any direction from the Principal's Representative that the Works are not to be covered up or made inaccessible, without the prior approval of the Principal's Representative.
- (b) The Contractor must not cover up any Works until the Principal's Representative has been afforded a reasonable opportunity to inspect it.

### **22.4 Storage on Site**

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

### **22.5 Protection of People and Property**

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

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## **23 PROVISIONAL SUM WORK**

### **23.1 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.

### **23.2 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 Details;
  - (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:
  - (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 28.5 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 23.2(b)(ii).

## **24 PRACTICAL COMPLETION**

### **24.1 Date for Practical Completion**

The Contractor must achieve Practical Completion by the Date for Practical Completion. If the Contractor fails to achieve Practical Completion by the Date for Practical Completion, the Principal's

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Representative may extend the Date for Practical Completion if it reasonably considers the circumstances justify granting an extension.

#### **24.2 Notice of Practical Completion**

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

#### **24.3 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 24.2.
- (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.

#### **24.4 Possession on Practical Completion**

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

### **25 EXTENSION OF TIME**

#### **25.1 Delay Notice**

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 by the Date for Practical Completion; or
- (b) after the Date for Practical Completion, in reaching Practical Completion of the Works,

the Contractor must, promptly after 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 estimated duration of the delay to the Works by reason of the event; and
- (e) what steps the Contractor has taken or will take to minimise the delay.

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## 25.2 Entitlement and assessment

- (a) The Contractor may claim an extension the Date for Practical Completion if the Contractor is or will be delayed as described in clause 25.1 by:
- (i) a Principal Risk;
  - (ii) Cyclone, earthquake, fire and flood, in each case not caused by the Contractor or its Personnel;
  - (iii) a Variation;
  - (iv) Latent Conditions;
  - (v) Inclement Weather delays in a month exceeding the Inclement Weather Allowance for that month;
  - (vi) pandemic (including the Covid-19 pandemic);
  - (vii) any other cause specifically stated in the Contract as giving rise to an entitlement to claim an extension of time,
- (**Delay Event**), and the Contractor provides a Notice to the Principal's Representative promptly after the end of the delay, which demonstrates to the reasonable satisfaction of the Principal's Representative that:
- (viii) 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; and
  - (ix) the Contractor has taken all reasonable steps to minimise the effect of the Delay Event on the Works.
- (b) The Principal's Representative will, acting reasonably, 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 Claim for extension of time, then it will issue a Notice to the Contractor setting out the reasons for rejection of the Claim.

## 25.3 The Principal's unilateral discretion

Even though:

- (a) the Contractor is not entitled to Claim an extension of time under clause 25.2; or
- (b) the Contractor has not claimed an extension of time,

the Principal's Representative may, in its absolute discretion, at any time grant an extension of time to the Contractor.

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## **26 LIQUIDATED DAMAGES AND DELAY COSTS**

### **26.1 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 20 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 20 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 under clause 25.2 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.

### **26.2 Delay costs**

- (a) Subject to the Contractor's compliance with clause 26.2(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 26.2(a), the Contractor must promptly after the Compensable Delay Event occurs, give a written Claim to the Principal's Representative setting out:
  - A. the basis for the Contractor's Claim;
  - B. the amount of additional Direct costs incurred or expected to be incurred; and
  - C. advice as to what steps the Contractor has taken or will take to minimise the additional costs.

## **27 SUSPENSION**

### **27.1 Notice to Suspend**

The Principal may:

- (a) in the interests of safety, or in the event of an emergency, direct the Contractor to immediately suspend this Contract (in whole or in part); or

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- (b) for any other reasonable purposes, direct the Contractor by Notice in writing to suspend all or any part of the Works, such notice to include the reasons for and extent of Suspension.

## **27.2 Contractor's Entitlement to additional Direct costs**

- (a) If the Principal suspends all or part of the Works because of any act, omission or default by the Contractor or any of its Personnel, then:
  - (i) the Principal has no liability to the Contractor for any loss, including Direct Costs, 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 Works because of any act, omission or default of the Principal or the Principal's Representative, the Principal will pay for any additional Direct costs incurred by the Contractor as a result of the Suspension.
- (c) The Contractor's entitlement to payment of additional Direct costs will be the Principal's sole liability for any Suspension.

## **27.3 Recommencement of work under this Contract**

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

## **28 VARIATIONS**

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

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

### **28.2 The Principal may direct a Variation**

- (a) The Principal's Representative may give a direction to the Contractor to carry out a Variation.
- (b) A direction to carry out a Variation is only valid if given or confirmed in writing by the Principal's Representative and the mere issue of a direction by the Principal's Representative does not entitle the Contractor to any additional payment unless the direction gives rise to a Variation.
- (c) The Principal's Representative may give a direction to the Contractor to omit Work from the Contract. Any omitted Works may be carried out by another contractor if required by the Principal's Representative concurrent with the Contractor carrying out the Contractor's Activities. The Principal's Representative will make an Adjustment in accordance with clause 21.4 for any omitted Works directed under this clause 28.2(c). Except to the extent stated in clause 21.4(a), clause 28.5 will not otherwise apply to a Variation for omitted Works.

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**28.3 Variation Notice**

- (a) If:
- (i) the Principal's Representative gives a direction to the Contractor; and
  - (ii) the Contractor considers that the implementation of the direction will give rise to a Variation,
- the Contractor must give Notice to the Principal's Representative that the Contractor considers that the direction is a Variation:
- (iii) 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; and
  - (iv) prior to commencing or carrying out any Works that are the subject of the direction or proposed Variation.
- (b) The Contractor's Notice must set out:
- (i) the Contractor's reasons for its opinion that the direction will give rise to a Variation;
  - (ii) the Contractor's estimate of any increase or decrease in the Contractor's scope of Works resulting from the direction;
  - (iii) the Contractor's estimate of any impact on the Date for Practical Completion of the Works; and
  - (iv) the Contractor's estimate of any adjustment to the Contract Price resulting from any increase or decrease in the Contractor's scope of the Works.
- (c) The Contractor's compliance with Notice requirements set out in clause 28.3(a)(iv) and clause 28.3(b) is a precondition to the Contractor's entitlement to make any claim in relation to a Variation directed by the Principal's Representative.

**28.4 Effect of Variations on Contract Price**

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

**28.5 Value of Variations**

The Parties agree that, subject to clause 28.2(c), 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 28.5(a) does not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner in which a Variation is to be valued, then those rates or provisions will apply;

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- (c) if clauses 28.5(a) and 28.5(b) do not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner of valuing work performed under this Contract, then those rates or provisions will apply; or
  - (d) if clauses 28.5(a), 28.5(b) and 28.5(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.

## **28.6 Daywork**

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

## **29 DEFECTS AND DEFECT LIABILITY PERIOD**

### **29.1 Rectification Works during Defects Liability Period**

- (a) The Contractor must correct all Defects which existed on or prior to the Date of Practical Completion or become apparent during the Defects Liability Period.
- (b) At any time prior to the expiry of the Defects Liability Period for the Works, the Principal's Representative may, in respect of any Defect which existed on or prior to the Date of Practical Completion or becomes apparent during a Defects Liability Period, give the Contractor a written direction specifying the Defect or omission and requiring that the Defect be rectified by the Contractor.
- (c) If the Contractor fails to rectify Defects within 5 Business Days after the Contractor receives a direction from the Principal's Representative in accordance with clause 29.1(b) or such longer period stated in the direction, then:
  - (i) the Principal's Representative may, exercising an absolute discretion, have the rectification works carried out by another contractor; and
  - (ii) the cost incurred of such rectification works will be a debt due to the Principal from the Contractor.

### **29.2 Defects Liability Period**

The Defects Liability Period is stated in Item 21.

### **29.3 Extension of Defects Liability Period**

If:

- (a) the Principal's Representative gives the Contractor a direction under clause 29.1; 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).



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## **30 WARRANTIES**

### **30.1 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:
  - (i) the Works will be performed in a proper and workmanlike manner and in accordance with all requirements of the Principal as set out in the Scope of Works and this Contract;
  - (ii) it has all necessary resources available to it, including financial resources and access to labour and materials, to undertake its obligations under this Contract; and
  - (iii) the Works will be done with due diligence and expedition and within the times stated in this Contract.
- (b) The Contractor acknowledges that the Principal has entered into this Contract in reliance on the representations and warranties given in this clause 30.1.

### **30.2 Warranties Remain Unaffected**

The Contractor agrees that the warranties it gives under clause 30.1 remain unaffected and the Contractor will bear all liability and responsibility in accordance with this Contract despite any review by or on behalf of the Principal, any direction by the Principal's Representative or any Variation.

## **31 TERMINATION**

### **31.1 Right to damages not prejudiced**

If a Party breaches or repudiates this Contract, nothing in this clause 31 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.

### **31.2 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. proceed with the Works with due expedition and without delay and otherwise at a rate of progress satisfactory to the Principal's Representative;
    - B. use materials or standards of work required by this Contract;
    - C. perform the Contractor's design obligations (if applicable) in accordance with the requirements of this Contract;

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- D. provide Security required under clause 6;
  - E. provide evidence of insurance as required by clause 7;
  - F. safely protect any person or property;
  - G. supply everything necessary for the proper performance of this Contract;  
or
  - H. comply with any reasonable directions of the Principal's Representative under this Contract; or
- (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; or
  - (v) knowingly providing documentary evidence containing an untrue statement.
- (b) A Notice to show cause must state:
- (i) that it is a Notice under clause 31.2(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 31.3;
  - (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.

### **31.3 Notice of Termination**

- (a) If the Contractor fails to show reasonable cause by the stated date and time set out in the Notice to show cause, the Principal may by written Notice to the Contractor:
  - (i) step-in and take out of the Contractor's hands all or part of the Works remaining to be completed under this Contract, and suspend any further payment to the Contractor, until the time when clause 31.3(a)(ii) applies; or

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- (ii) terminate this Contract for default of the Contractor.
- (b) If this Contract is terminated under clause 31.3(a)(ii), the Principal may complete all or part of the Works taken out of the Contractor's hands and may, without payment of compensation to the Contractor:
- (i) take possession of, and use, such of the Contractor's Plant, Equipment and Work Materials and other things on or in the vicinity of the site that was used or intended to be used by the Contractor for the Works;
  - (ii) contract with the Contractor's consultants and subcontractors; and
  - (iii) take possession of, and use, the Contractor's Project Documents,
- as are reasonably required by the Principal to facilitate completion of the Works taken out.
- (c) If the Principal exercises its step-in rights, the Contractor must co-operate fully with the Principal and its Personnel and provide all necessary assistance, including giving the Principal access to the Contractor's premises, Plant, Equipment and Work (on reasonable terms), and all Project Documents.
- (d) If the Principal is reasonably satisfied that the Contractor is capable of recommencing to carry out the Works in accordance with this Contract after the Principal has exercised its step-in rights, the Principal may, but is not obliged to, cease to exercise its step-in rights after the relevant event of default has been rectified.

#### **31.4 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 31.4 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 31.4 are additional to any rights and remedies including any accrued rights and remedies under this Contract. They may be exercised even if there has been no breach of this Contract.

### **32 INDEMNITIES**

#### **32.1 Indemnities**

- (a) The Contractor indemnifies the Principal against any Claim for Loss or damage (including legal costs on a full indemnity basis) which the Principal is liable for in respect of:
  - (i) any negligent acts or omissions by the Contractor;
  - (ii) death, disease or illness (including mental illness) of, or personal injury to persons;
  - (iii) loss of, or damage to, any real or personal property (including property belonging to the Principal or for which it is responsible); and

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- (iv) any Loss or damage suffered by the Principal as a result of any breach of this Contract by the Contractor,

to the extent that any Claim or Loss or damage arises in any way in connection with:

- (v) the Works;
  - (vi) the performance or non-performance by the Contractor of its obligations under the Contract; or
  - (vii) access by the Contractor or its Personnel of any of them to the Site.
- (b) The Contractor will not be obliged to indemnify the Principal in respect of any Claim, Loss or damage to the extent that the Claim, Loss or damage is caused by:
    - (i) any negligent or unlawful act or omission or wilful misconduct of the Principal;
    - (ii) a breach of this Contract by the Principal;
  - (c) The reference to the Principal in clauses 32.1(a) and 32.1(b) includes its directors, officers and employees.

### **32.2 Indemnity Provisions**

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

## **33 DISPUTE RESOLUTION**

### **33.1 Notice of Dispute**

- (a) If a Dispute arises in respect of any fact, matter or thing arising out of, or in any way in connection with the Works or this Contract, or either Party's conduct before this Contract, the dispute or difference must be determined in accordance with the procedure in this clause 33.
- (b) Where such a Dispute or difference arises, either Party may give a Notice to the Principal's Representative and the other Party specifying:
  - (i) the Dispute or difference;
  - (ii) particulars of the Party's reasons for being dissatisfied; and
  - (iii) the position which the Party believes is correct

**(Notice of Dispute).**

### **33.2 Principal Determination**

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

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### **33.3 Senior Executive Meeting**

If the Principal's Representative has submitted its determination in relation to the Dispute to the Parties under clause 33.2 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 33.2, escalate the Dispute or difference to be the subject of a good faith negotiation at a meeting. Senior Executives of the Parties must meet within 10 Business Days of a Party escalating the Dispute.

### **33.4 Expert Determination**

- (a) If, within 10 Business Days of the meeting between the Principal's Senior Executive and the Contractor's Senior Executive, or within 20 Business Days of the date of the Principal's Representative's decision under clause 33.2, the Dispute or difference is not resolved, either Party may refer the Dispute or difference to determination by an expert in accordance with this clause 33.4.
- (b) The expert determination under this clause 33.4 is to be conducted by an independent industry expert appointed by the Prescribed Appointer.
- (c) The Prescribed Appointer, before appointing an independent industry expert, make reasonable enquiries as to whether the independent industry expert will be restricted from accepting the appointment.
- (d) If the Prescribed Appointer nominated under this clause 33.4:
  - (i) is unavailable;
  - (ii) declines to appoint an expert;
  - (iii) does not respond within 10 Business Days to the Party's request that it conduct the appointment; or
  - (iv) does not appoint an expert within 10 Business Days of the Party's request that it conduct the appointment,

the Principal may appoint another Prescribed Appointer for the purposes of this clause 33.4.

### **33.5 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

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necessary, if any, determined in his or her absolute discretion. The independent expert may amend a draft determination prior to making a final determination;

- (v) provide a final determination within 50 Business Days of appointment; and
  - (vi) keep confidential all information coming to his or her knowledge by reason of the appointment and the performance of his or her duties.
- (b) A person appointed as an independent expert acts as an expert and is deemed not to be an arbitrator and the law relating to arbitration, including the *Commercial Arbitration (National Uniform Legislation) Act*, which does not apply to the independent expert or a determination or the procedures by which the independent expert may reach a determination.
- (c) The independent expert's decision is final and binding on the Parties.
- (d) Each Party must bear its own costs in relation to the dispute save that the cost of the independent expert and any advisers to the independent expert is borne by the Parties equally.

### **33.6 Continuation of Works**

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

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

### **33.7 Injunctive relief**

Nothing in this clause 33.7 will prejudice the right of a Party to institute proceedings to seek injunctive or urgent declaratory relief.

### **33.8 Survival of clause**

Clause 33 survives termination of this Contract.

## **34 PRIVACY AND SECURITY REQUIREMENTS**

### **34.1 Privacy**

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

- (a) comply with:
  - (i) the *Privacy Act 1988* (Cth);
  - (ii) the Information Privacy Principles under the *Information Act* (NT);
  - (iii) all other applicable Legislative Requirements relating to privacy that may be applicable during the Term;

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- (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 34.1(a);
- (c) not use any such Personal Information for any purpose, except where and to the extent expressly authorised by the Principal in writing, in which case the Contractor must use such Personal Information under this Contract;
- (d) restrict access to any such Personal Information to employees of the Principal and any subcontractors or consultants who need to access the Personal Information to fulfil the Contractor's obligations under this Contract, where and to the extent expressly approved in writing by the Principal;
- (e) promptly notify the Principal in writing of any request made for access to any such Personal Information by an individual to whom that information relates; and
- (f) cooperate with the Principal in the resolution of any complaint under, or relating to, any of the Legislative Requirements, codes or policies referred to in clause 34.1(a).

## **34.2 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 34.2(a).
- (c) The Contractor must comply with any specific security requirements in the performance of the Contractor's obligations under this Contract as provided for in the Scope of Works.
- (d) The Contractor must promptly provide the Principal with written Notice of any security weaknesses or incidents:
  - (i) that have impacted or may impact the Works; and
  - (ii) in connection with the performance of the Contractor's obligations under this Contract.

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- (e) Within 5 Business Days of giving any Notice under clause 34.2(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.

## **35 CONFIDENTIALITY**

- (a) Subject to the provisions of clauses 35(b) and 35(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 35(a) if, but only to the extent, it can demonstrate that:
  - (i) such disclosure is required by applicable Legislative Requirement or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
  - (ii) the Confidential Information was lawfully in its possession prior to its disclosure by the other Party (as evidenced by written records);
  - (iii) the Confidential Information was independently developed by that Party; or
  - (iv) the Confidential Information has come into the public domain other than as a result of a breach of this Contract or any other obligation of confidence,
  - (ii) provided that any such disclosure must not be made without prior consultation with the Party the Confidential Information relates to and, in the case of disclosures under clause 35(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on the Principal under this clause 35 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;



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- (iii) to a Minister or Cabinet, or to the Legislative Assembly of the Northern Territory of Australia;
  - (iv) to a committee of the Legislative Assembly of the Northern Territory of Australia;
  - (v) to any public-sector agency (whether of the Northern Territory of Australia, a State, other Territory or the Commonwealth) for the purposes of benchmarking or any other government business or government initiative, provided that as far as reasonably practicable information that is identifiable as related to this Contract or the Contractor will not be made public by the Principal; and
  - (vi) in accordance with any licence rights granted under this Contract.
- (d) Each Party may for the purposes contemplated by this Contract, disclose the Confidential Information of the other Party to its personnel and its professional advisers, auditors, bankers and insurers, provided that such persons have first been directed by the disclosing Party to keep it confidential.
- (e) A Party must promptly give Notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the Confidential Information of the other Party and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

## **36 INTELLECTUAL PROPERTY**

### **36.1 Contract Material**

- (a) Where Item 22 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 22 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.

### **36.2 Existing Material**

This clause 36.2 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.

### **36.3 Licences**

- (a) The Contractor grants to, or must obtain for, the Principal a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence (including the right to sub-licence) to use, copy,

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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.

#### **36.4 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.

#### **36.5 Moral Rights**

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

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

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

### **37 PUBLICITY**

#### **37.1 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.

#### **37.2 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.

#### **37.3 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.

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**38 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 38(b), a Notice must be sent to each Party in accordance with the details set out in the Contract Details, as updated from time to time.
- (b) A Notice may be sent by email if the relevant Notice is signed by an authorised person, scanned and attached as a PDF or other readable format to an email and sent to the receiving Party's Email Service Address.
- (c) Any Notice is regarded as given and received:
  - (i) if sent by mail 3 Business Days after it is posted; and
  - (ii) if sent by email:
    - A. when the sender receives an automated message confirming delivery, if sent after 5pm or on a day that is not a Business Day, Notice will be effective at 9am on the following Business Day; or
    - B. 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed and provided that, if sent after 5pm or on a day that is not a Business Day, Notice will be effective at 9am on the following Business Day,whichever happens first.
- (d) Where there is a dispute in relation to the provision of a Notice by email, the sender must disclose copies of electronic records or logs to the other Party evidencing that the relevant email has been sent from its IT systems.

**39 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 provision of Works under this Contract, including attending training from time to time as reasonably required by the Principal;
  - (ii) provide the 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

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- (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 overtime (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 reasonable 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 Works are provided 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).

## **40 GENERAL**

### **40.1 Liability for Indirect or Consequential Losses**

- (a) Subject to clause 40.1(b), neither will be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise, nor will they be entitled to make any Claim, under or in connection with this Contract for any Consequential Loss, even if such Party has been advised of the possibility of such Consequential Loss.
- (b) Unless otherwise specified, any limit on the liability of the Contractor under this Contract does not apply in relation to:

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- (i) personal injury (including sickness and death) for which the Contractor is legally liable;
  - (ii) an infringement of Intellectual Property Rights for which the Contractor is legally liable;
  - (iii) a breach of any obligation of confidentiality, security requirement or privacy for which the Contractor is legally liable;
  - (iv) liability to the extent that the Contractor has an entitlement to recover insurance proceeds in respect of that liability under an insurance policy which the Contractor is required by this Contract to effect and maintain up to the limits of insurance coverage set out under this Contract, less any policy deductible paid by the Contractor under such insurance policy; or to the extent a liability is of a nature that would have been recoverable under an insurance policy but for a failure by the Contractor to fulfil its insurance obligations under this Contract; or
  - (v) the Principal's entitlement to Claim against the Contractor for:
    - A. any direct Loss or damage;
    - B. any amounts expressly provided for under this Contract; and
    - C. any costs of repairing or completing the Works, which includes:
      - (I) costs of any other party engaged by the Principal for this purpose, including any contractors or consultants;
      - (II) costs of implementing any reasonably necessary temporary works;
      - (III) administrative costs and expenses, including for management and staff time; and
      - (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 31.3(a)(ii).
  - (vi) the Contractor's liability for liquidated damages under clause 26.1; or
  - (vii) fraud, reckless conduct or wilful misconduct.

#### **40.2 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 or undertakings, 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.

#### **40.3 Amendment**

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

#### **40.4 Waiver**

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

#### **40.5 Governing Law**

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

#### **40.6 Assignment and Novation**

- (a) The Principal may assign, novate, transfer, or otherwise dispose of any or all of the Principal's rights and/or obligations under this Contract to any PWC Entity or 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 consent must not be unreasonably withheld).
- (c) The Contractor must pay all fees and reasonably incurred by the Principal in connection with any consent sought under clause 40.6(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

#### **40.7 Severability**

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

#### **40.8 The Principal as trustee for its Personnel**

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

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#### 40.9 Contractor as trustee

If the Contractor has entered into this Contract as trustee of a trust (the **Trust**), the Contractor:

- (a) enters into this Contract personally and in its capacity as trustee;
- (b) warrants that:
  - (i) the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettle the Trust, and no date or event has occurred for the vesting of the assets of the Trust;
  - (ii) it is the only trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Contractor under this Contract;
  - (iii) the trust deed of the Trust discloses all of the terms of the Trust;
  - (iv) it has power under the trust deed of the Trust to enter into and observe its obligations under this Contract and has formed the view that it is prudent to enter into this Contract;
  - (v) it has in full force and effect the authorisations necessary to enter into this Contract, perform obligations under this Contract and allow this Contract to be enforced;
  - (vi) it is not in material default under the trust deed of the Trust and is not aware of any action proposed to terminate the Trust;
  - (vii) the entry into and the performance of this Contract is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;
  - (viii) it has a right to be indemnified fully out of the assets of the Trust concerning all of the obligations and liabilities incurred by it under this Contract, the assets of the Trust are sufficient to satisfy that right in full, and it has not released or disposed of its equitable lien over the assets of the Trust; and
  - (ix) it has disclosed to the Principal full particulars of the Trust and of any other trust or fiduciary relationship affecting the assets of the Trust, and has given the Principal a complete, up to date copy of the Trust Deed;
- (c) makes the warranties in clause 40.9(b) on the Commencement Date and on the last Business Day of each month after that date; and
- (d) must give the Principal promptly on written request:
  - (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trust; or
  - (ii) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust and the trustee of the Trust.

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#### **40.10 Costs of Contract**

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

#### **40.11 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.

#### **40.12 Special Conditions**

The Parties agree to be bound by any Special Conditions.

#### **40.13 Taxes other than GST and Duties**

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

#### **40.14 Rights and Remedies Not Affected**

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

#### **40.15 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.



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#### **40.16 Time for making Claims**

Any Claim by the Contractor for additional time, a Variation, additional Direct costs or any other compensation or remedy must be provided to the Principal's Representative in writing:

- (a) strictly in compliance with the periods specified under this Contract; or
- (b) 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.

#### **41 INTERPRETATION**

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

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- (h) A reference to 'indemnify' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any Loss, damage, Claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against. This means that if the person indemnified suffers any Loss or must pay any money (whether or not it is actually paid) because of an indemnified event the Party giving that indemnity must pay the amount of Loss or the amount of liability to the indemnified Party. If it does not, the indemnified Party can recover the amount as a debt due.
- (i) A debt due becomes due and payable at the time specified in this Contract, or if no time is specified, it is payable on demand.
- (j) If there is any inconsistency between a clause of this Contract and a provision of a Schedule, the clause of this Contract will prevail.
- (k) Without limiting any express provisions of this Contract to the contrary, if anything to be done under this Contract falls on a day, which is not a Business Day, then it must be done on the next Business Day.
- (l) Where examples of a general term are given (whether or not using words such as 'includes' or 'including'), the use of the examples is without limitation to the general term and otherwise 'includes' or 'including' means includes or including without limitation.
- (m) Where a plan or drawing is referred to, it is a reference to the plan or drawing in its proper scale and its most recent version.
- (n) In the event of any conflict or inconsistency between the terms and conditions of this Contract, the terms and conditions or documents listed earlier below prevail to the extent of such conflict or inconsistency, and the provisions or documents listed later below are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency:
- (i) the Order/s (if any);
  - (ii) the Special Conditions;
  - (iii) the Contract Details;
  - (iv) the terms and conditions of this document in clauses 1 to 42(inclusive);
  - (v) Schedule 3 – Design Documents;
  - (vi) the Notice of Acceptance;
  - (vii) Schedule of Rates;
  - (viii) Scope of Works;
  - (ix) any other documents referred to in the above documents as forming part of this Contract; and
  - (x) any schedules, annexures, appendices or other documents (if any) attached to or referred to in this Contract.

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## 42 DEFINITIONS

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

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

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

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

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

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

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

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

**Business Days** means any day which is not a Saturday or a Sunday or a public holiday in 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 24.3 when the Works reach Practical Completion.

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

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

**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 28 of this Contract.

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**Conditions Precedent** means the conditions set out in clause 2.2.

**Confidential Information** means information that:

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

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

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

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

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

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

**Contract** means this contract, consisting of the documents listed in clause 41(n).

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

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

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

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

in respect of the Works required under this Contract, adjusted for Provisional Sums (by deducting the relevant Provisional Sum where Provisional Sum Work is deleted from the Contract, or in accordance with clause 23.2 where relevant Provisional Sum Works is directed to be performed), and including the sum as referred to or otherwise calculated in accordance with an Order for any ongoing Works required under clauses 1.2(b) or 1.2(c).

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

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

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

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

and where Item 22 provides that Contract Materials will be owned by the Contractor, Contractor IPR includes Contract Materials.

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

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

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

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

**Contractor's Tender** means the Contractor's tender in response to the Principal's request for tender for the Works, 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.

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**Date for Practical Completion** means the date specified in Item 19 as the date by which the Contractor is required to reach Practical Completion in relation to the Works and as adjusted under this Contract.

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

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

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

**Defects Liability Period** means the period specified in Item 21, which commences on the Date of Practical Completion.

**Design Documents** means those:

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

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

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

**Email Service Address** means:

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

**Environmental Incident** means:

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

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

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**Further Term** means the period specified in Item 8.

**Good Industry Practice** means:

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

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

- (a) those provisions will be incorporated by reference into this Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved in accordance with clause 41(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 Business Days per month (not cumulative) for the months of May to September and 10 Business Days per month (not cumulative) for the months of October to April.

**Initial Term** means the period specified in Item 7.

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

**Insolvency Event** means any of the following events:

- (a) the Contractor informs the Principal in writing, or creditors generally, that the Contractor is insolvent or is financially unable to proceed with this Contract;
- (b) a writ of execution, instalment order, garnishee order, mareva injunction or similar order or process is made, levied or issued against the Contractor or in relation to any assets of the Contractor;
- (c) in the case of a corporation:

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

**Intellectual Property Rights** means:



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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.

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

**Law** includes:

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

**Legislative Requirement** includes:

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

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

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

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**Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

**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.

**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-Reliance Information** means any information (whether written or otherwise) not forming part of the Contract that is 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.

**Notice** has the meaning set out in clause 38.

**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.

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

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

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

**Payment Claim** means a claim by the Contractor falling within clause 21.5.

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**Payment Statement** means a document issued by the Principal's Representative under clause 21.6.

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

**Personnel** includes, in relation to a Party:

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

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

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

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

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

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

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

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

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

and where Item 22 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) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority; and
- (c) ionising radiation by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Personnel.

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

**Principal Supplied Materials** means the Principal Supplied Materials listed in Item 15 (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 Works.

**Project Documents** includes:

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

**Project Plans** means the documents required to be provided by the Contractor as set out in item 9 and otherwise in accordance with the relevant requirements in the Scope of Works.

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**Provisional Sum** means a rate or lump sum amount specified in Item 18 as a Provisional Sum for the Provisional Sum Work.

**Provisional Sum Work** means the Works referred to in Item 18 for which a 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 Works.

**PWC Entity** means:

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

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

**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.

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

**Schedule of Rates** means if Item 17 specifies that there is a Schedule of Rates, the prices, fees and charges for the Works are provided for in Schedule 4.

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

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

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

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

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

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

**Statutory Requirements** means all:

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

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

**Suspension** means a suspension of the Works directed by the Principal under clause 25 of this Contract.

**Term** includes the Initial Term and any Further Term.

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

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

**Variation** means, 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.

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

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

**Works** where the context requires means:

- (a) the physical works which the Contractor must:
  - (i) design, if Item 14 requires; and
  - (ii) commission, complete and hand over to the Principal in accordance with this Contract,

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as set out in the Scope of Works or an Order, and

- (b) all things or tasks which are necessary, or may be necessary, for the Contractor to do to comply with this Contract (including under any Orders) and includes the Works, Variations, remedying any Defects and all Plant, Equipment and Work.

## **SCHEDULE 1 – SPECIAL CONDITIONS**

### **1 APPOINTMENT AS PRINCIPAL CONTRACTOR FOR WORK HEALTH AND SAFETY**

Where Item 23 applies, the Contractor is to have full control of the entire site for the Works, with responsibility for the delivery of all Works at the site as a principal contractor:

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



**SCHEDULE 2 – SCOPE OF WORKS**

[Insert Scope of Works]

**SCHEDULE 3 – DESIGN DOCUMENTS**

[Insert detailed list or actual drawings]

**SCHEDULE 4 – SCHEDULE OF RATES**

[Insert Schedule of Rates]

**SCHEDULE 5 – LUMP SUM BREAKDOWN**

[Insert Lump sum Breakdown]