

Conditions of Contract – Period Contract Works and Services (PCWS)

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1 Interpretation of Terms

In these Conditions of Contract, unless the context otherwise requires:

'Agency' means a department, agency or statutory authority of the Northern Territory of Australia.

'Annexure' means the section in the RFT that details the specific requirements applicable to the Conditions of Tendering and Contract concerning the execution of the Works.

'Business Day' means any day which is not a Saturday, Sunday or a NT wide public holiday within the meaning of the *Public Holidays Act*.

'Completion' means the Superintendent has determined that the execution of the Works has reached the stage where the Works are complete except for minor omissions and/or minor defects.

'Contract' means the document, which constitutes or evidences or as the cases may be all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor concerning the execution of the Works.

'Contractor' means the legal entity that as party to the Contract is bound to execute the Works in accordance with the Contract and includes the successors and lawful assigns of the Contractor.

'Contractor's Tender' means the Tender submitted by the Contractor in response to the RFT.

'Date of Acceptance' means the date, appearing on the Notice of Acceptance or Order and if no date appears is the date on which the Principal sent the Notice of Acceptance or Order to the Contractor.

'Defects Liability Period' means the defects liability period referred to in the clause entitled 'Defects Liability Period' and stated in the Annexure.

'Documents' means all material stored by any means and produced or used by the Contractor or sub-contractors in the course of the Contract including sketches, plans, drawings, specifications, designs, estimates, calculations, reports, models, and other articles, equipment, information, files and data.

'Drawings' means the drawings referred to in the Scope of Works and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract.

'Fixed Scheduled Services' means a procurement Contract subject to specified terms and conditions where the Principal is obliged to accept and the Contractor has agreed to provide the Works according to the timetable or program set out in the Contract.

'Indigenous Development Plan' means the indigenous development plan if any approved by the Superintendent pursuant to clause 18.

'Indigenous Person' is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as Indigenous and is accepted in the community in which they live as an Indigenous person.

'Notice of Acceptance' means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of the its Tender to execute the Works.

'Order' means an order issued on the Contractor by the Superintendent, whether on paper or by electronic means, which conveys the essential details of a particular work requirement under the Contract and includes any methods of ordering the Works specifically referred to in the Contract.

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'Panel Period Contract' means Standing Offer arrangements have been entered into with more than one Contractor for the provision of Works of the same type and nature.

'Principal' means the Northern Territory of Australia. The Principal for Power and Water Contracts is the Power and Water Corporation.

'Portion of the Works' means the Superintendent has directed the Contractor to carry out particular work in accordance with the Contract, such work representing a part of the total Works required under the Contract.

'Project Control Plan' means the project control plan if any approved by the Superintendent pursuant to clause 20.

'Rate' means the rate per any section or item of the Works as stated in the Contract.

'Request for Tender (RFT)' means the document(s) containing or referring to the Conditions of Tendering and Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Preliminary Clauses, Scope of Works, Response Schedules, Drawings and any other document issued for the purposes of inviting Tenders for the Works.

'Schedule of Rates' means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the respective unit rate of payment for execution of that work and which may also include lump sums, provisional sums other sums, quantities and prices.

'Scope of Works' means the sections of the RFT detailing the technical requirements of the work to be carried out as existing at the Date of Acceptance of the Tender and any modification of such Works thereafter directed or the use of which has been permitted by the Superintendent for the purposes of the Contract.

'Site' means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract.

'Standing Offer' means the Contractor agrees to provide the Works from time to time if and when authorised by the Superintendent by the issue of an Order. The Contractor agrees that the Principal is not obliged to order a specific number of, or any, Works during the term of the Contract.

'sub-contractor' means a person other than the Contractor's employees engaged by the Contractor who provides goods, services or works to the Contractor.

'Superintendent' means the person named in the Annexure as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent for the purposes of the Contract, and notified as such in writing to the Contractor by the Principal.

'Tax Invoice' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

'Works' means the whole of the work to be executed in accordance with the Contract, including all variations and remedial work provided for by the Contract.

In the Contract, unless the contrary intention appears:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person is a reference to a natural or artificial person, including a body politic, body corporate, a partnership, joint venture (whether incorporated or unincorporated), an incorporated association, a government instrumentality, local government authority or an agency;

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- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- i) a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;
- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- l) the word "includes" in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

2 Formation of Contract

The Contract is comprised of:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Contractor's Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Preliminary clauses;
- f) Scope of Works;
- g) Drawings and Scope of Works included in the RFT;
- h) any other document expressly referred to in items (a) to (g) inclusive of this clause as forming part of the Contract.
- i) Conditions of Tendering and all other documents, other than those specified above in (a) to (g) inclusive, forming the RFT or the Contract (other than the Contractor's Tender); and
- j) the Contractor's Tender response including any Drawings,

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

3 Nature of Contract

3.1 Type of Contract

The type of Contract is stated in the Annexure.

3.2 Basis of Payment

The basis for payment will be stated in the Annexure.

Where the Contract is deemed to be on a Standing Offer basis the sum payable shall, subject to any adjustment made pursuant to the Contract, be the measured quantity of each item of the Services actually carried out at the rate set out in the Schedule of Rates.

Where the contract is deemed to be on a Fixed Scheduled Services basis, the sum payable shall be, subject to any adjustment made pursuant to the Contract, the monthly measured quantity of each item of the Services performed at the rate set out in the Schedule of Rates.

3.3 Period of Contract

The Contract is a Period Contract. The initial period of the Contract is the period stated in the Annexure. The Contract shall commence in accordance with the nomination in the Annexure, being either a specific date or the Date of Acceptance.

3.4 Contract Extension

The Principal has the right to extend the Contract for any further period(s) as stated in the Annexure. There is no obligation on the Principal to extend the Contract.

An extension to the Contract is not valid until the Principal gives the Contractor the opportunity to submit revised rates and the Principal agrees to any revised rates and notifies the Contractor in writing that the Contract is extended.

3.5 Estimated Quantities

The estimated quantities required are shown in the Schedule of Rates in the Response Schedules. Although every endeavour has been made to form an accurate estimate of requirements during the period of the Contract, the Principal does not bind itself to take the quantities stated, but reserves the right to order greater or lesser of the quantities according to requirements during that time.

If in the opinion of the Principal, specific requirements of the Agency are outside the scope and intent of the Contract, the Principal shall be free to obtain the requirements or any part of them by other means.

3.6 Price Adjustment

The basis of price adjustment if any, to the Contract Rates shall be as stated in the Annexure.

If the Contract allows for a review of the Contract Rates during the Contract period the review will be carried out as set out in the Section titled "Price Adjustment" in the RFT.

3.7 Panel Period Contract

Subject to any other provisions of the Contract, if the Contract is designated as a Panel Period Contract the following provisions will apply:

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- a) Specific Requirements with Rates:
 - i. The Principal will issue an Official Order against the established rates to the Contractor offering the best value-for-money outcome, within the required time frame.
- b) General Requirements with no Rates:
 - i. The Principal will select a Contractor in the following manner:
 - Prepare a request for quotation setting out the details of the specific Service required including deliverables, time frame for completion and assessment criteria to be applied.
 - Forward the request for quotation to a number of panel members depending on the estimated value of the particular Service:
 - If up to \$50,000 at least three panel members, if practicable
 - \$50,000 and greater all panel members.
 - ii. Selection will be based on the panellist offering the best value for money outcome within the required timeframe and against the specified selection criteria.

The Principal recognises that the panel members have been selected on the basis that they are capable of providing the Services and the opportunity for the different panel members to submit an offer for particular Services should be approximately equal over the life of the Contract.

The panel once established will remain closed for a period of twelve (12) months unless the Principal determines that owing to changed circumstances the size of the panel is inadequate. At the end of every twelve (12) months or sooner if the Principal so determines, the Principal may appoint additional contractors to the panel under the same assessment criteria contained in the RFT. The Principal will notify existing panel members of any additions to, or withdrawal from, the panel.

3.8 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the Northern Territory of Australia.

4 Entire Agreement

The Contract formed between the parties to undertake the Works constitutes the entire agreement between the parties and supersedes any previous agreements or understandings.

5 General Obligations of the Parties

Both the Principal and the Contractor will, at all times:

- a) act reasonably in performing their obligations and exercising their rights under the Contract;
- b) diligently perform their respective obligations under this Contract; and
- c) work together in a collaborative manner.

6 Principal's Responsibilities and Obligations

The Principal shall give or cause to be given to the Contractor timely instructions, decisions and information sufficient to define the requirements of the Works.

7 Superintendent and Superintendent's Representative

The Superintendent for the purposes of the Contract is as defined in the Annexure.

For the purpose of exercising some of the powers, duties, discretions and authorities, vested in him on behalf of the Principal, the Superintendent may from time to time appoint a representative

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(**'Superintendent's Representative'**). The limitations imposed on the Superintendent's Representative will be as laid down in the notice of appointment.

The Contractor shall recognise and accept notices from the Superintendent's Representative as if the Superintendent issued such. Any reference to the Superintendent within these conditions shall be deemed to be a reference to the Superintendent's Representative so far as it concerns the exercise of the Superintendent's Representative's powers by virtue of his appointment.

8 Directions

The Superintendent has the power to issue directions under the Contract and the Contractor shall comply with any direction either orally or in writing issued, given or served upon him by the Superintendent.

Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing. For the purposes of this clause the work "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Superintendent may make, give or issue pursuant to the provisions of the Contract.

Where such phrases as "as may be directed", to "approval", or "approved" or the like are used in the Contract, they shall mean that the direction and approval of the Superintendent is referred to, irrespective of any trade usage.

Also refer to the section of the RFT titled "Procedures, Calls and Payments" regarding directions to work.

9 Contractor's Responsibilities and Obligations

The Contractor shall be responsible for executing the Works in accordance with these conditions, the Drawings and Scope of Works.

The Contractor shall be liable for any loss or damage to the Works from any cause whatsoever (except loss or damage caused by any negligent act, omission or default of the Principal or employees or agents of the Principal), and shall at his own cost make good any such loss or damage.

The Contractor shall, unless the Contract provides otherwise, supply at his own cost and expense everything necessary for the proper completion of the Works and the proper performance of his obligations under the Contract.

The Contractor shall observe and comply with the requirements of all Acts of the Commonwealth of Australia Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code, and all requirements of any relevant authority, regulator or standard setting entity as shall be in force in the place affecting or applicable to the Works or the execution of the Works.

10 Contractor's Representative

The Contractor shall personally supervise the execution of the Works or have a competent representative (**'Contractor's Representative'**) acceptable to the Superintendent present on the Site at all times where the work is being carried out.

The Contractor or the Contractor's Representative shall be equipped with a mobile telephone or employ a suitable communications system acceptable to the Superintendent.

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The Contractor shall notify the Superintendent in writing of the name of the Contractor's Representative and prior to any subsequent change of the Contractor's Representative shall obtain the approval of the Superintendent.

Any direction given to the Contractor's Representative shall be deemed to be a direction issued to or served upon the Contractor.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

The Contractor or the Contractor's Representative shall have sufficient command of the English language and of Australian building and technical terminology to be able to read, converse and receive instructions in English.

11 Power to Dismiss Workers

The Superintendent may require the instant dismissal from the Works, of any agent, overseer, foreman or other person employed on the Works, or in connection with the Works, whether employed by the Contractor or not and the Contractor shall immediately comply with or ensure immediate compliance with such requirement and the Contractor shall not again employ a person so dismissed on or in connection with the Works.

12 Status of Contractor

The Contractor, its employees and sub-contractors thereof, in performing the Works, are not for any purpose a servant or employee of the Principal.

13 Notices

13.1 Services of Notices

Notice must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices set out in the Contract, as varied by any Notice given by the recipient to the sender.

The Principals address for the service of notices is nominated in the Annexure.

13.2 Effective on Receipt

Any notice given in accordance with sub-clause 13.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by post, three (3) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from a place outside Australia); and
- c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) working hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

but if the delivery, receipt or transmission is not on a Business Day or is after 4.30 pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

14 Site Rules

The Contractor, his employees and sub-contractors required to enter the Site in connection with the Works shall comply with all rules and regulations in force at the Site, including security screening through Criminal History Checks where required. Also refer to the specific Site Rules Clause in the Preliminary Clauses section of the RFT.

The Contractor is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by the appropriate Authority.

15 Confidentiality, Publicity and Media

15.1 Confidentiality

- a) For the purposes of this sub-clause 15.1 “Confidential Information” means any information or material relating to the Contract or the Works including (without limitation):
 - i. any information that by its nature is confidential;
 - ii. any information designated as confidential; and
 - iii. any information that the Contractor knows is confidential.
- b) The Contractor shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
 - i. as authorised by the Principal under the Contract or otherwise;
 - ii. to its employees or contractors, to the extent needed to perform their obligations under the Contract;
 - iii. where the disclosure is required to be disclosed by law.
- c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 15.1.

15.2 Media and Publicity

- a) The Contractor shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising for sub-contractors), award nomination, document or article for publication concerning the Contract, the Works or the Site in any media without the prior written approval of the Principal.
- b) Prior to taking any action or doing anything the Contractor shall refer:
 - i. any media enquiries concerning the Contract, the Site, the Principal or the Works to the Principal for the Principal’s written response; and
 - ii. any media requests concerning the Contract, the Site, the Principal or the Works (including, without limitation, requests to access or take photographic or video footage of the Site) to the Principal, for the Principal’s written consent, which consent may be given or withheld, in the Principal’s absolute discretion.
- c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 15.2 and obtain the Principal’s prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this sub-clause 15.2.

16 Industry Accreditation and Standards

Where applicable, the Contractor shall:

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- a) maintain the currency of accreditation, to at least the same level as held at the commencement of the Contract with Contractor Accreditation Limited during the life of the Contract; and
- b) comply with all industry standards on:
 - i. training;
 - ii. engagement, supervision and payment of sub-contractors;
 - iii. compliance measures;
 - iv. penalties; and
 - v. termination arrangements.

Options for review/extension to period contracts will not be offered unless the Contractor has current accreditation.

17 Local Content

17.1 Local Benefit Commitment

The Contractor acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.

In the Contractor's Tender, 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 the Contract (and are referred to in the clauses below as the "Local Benefit Commitment").

The Contractor shall comply with the Local Benefit Commitment.

17.2 Use of Local Labour, Apprentices, Trainees and Supplies

Without limiting clause 17.1, the Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:

- (a) use labour, including indigenous labour, available within the Northern Territory;
- (b) use the services located and obtain supplies/materials available within the Northern Territory; and
- (c) use accredited apprentices/trainees who are registered in the Northern Territory on this project in accordance with the Contract:
 - (i) In complying with the use of accredited apprentices/trainees, the Contractor may:
 - directly employ apprentices/trainees;
 - utilise group training scheme apprentices/trainees;
 - utilise sub-contractors apprentices/trainees;
 - utilise any combination of the above.
 - (ii) For contract value of \$1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Trainees.
 - (iii) The Contractor's level of compliance with this requirement will be taken into consideration for further Northern Territory Government contracts for a period of twelve (12) months.

17.3 Reporting to the Principal and Right of Audit

The Contractor shall, within seven (7) days of a written request by the Superintendent, submit a written report to the Superintendent detailing how it has complied or is complying with clauses 17.1 and 17.2.

The Superintendent may, after giving seven (7) day's written notice to the Contractor, inspect and conduct an audit of the Contractor's records to determine the Contractor's level of compliance with this clause 17. The Superintendent may conduct this audit itself or may engage a third party to conduct the audit on the Superintendent's behalf.

17.4 Failure to Fulfil Local Benefit Commitment

If the Contractor fails to fulfil or otherwise comply with the Local Benefit Commitment, or if the Contractor fails to comply with any other obligation placed on the Contractor by this clause 17, the Principal may take action under clause 46 (Termination).

17.5 Performance to be reported in Contractor Performance Reports

The Contractor's compliance or non-compliance with this clause 17 will be recorded in the Contractor Performance Report to be prepared by the Superintendent in accordance with clause 48.

18 Indigenous Development Plan

Where an Indigenous Development Plan has been specified, the Contractor will maintain and implement the Indigenous Development Plan throughout the course of the Contract.

Within fourteen (14) days of the Date of Acceptance, the Contractor shall submit one copy of the Indigenous Development Plan to the Superintendent for approval. The Superintendent shall within a reasonable time from receipt, either approve the Indigenous Development Plan, or reject it, giving reasons for the rejections. If the Superintendent rejects the Contractor's Indigenous Development Plan the Contractor shall rectify the deficiencies and resubmit the Indigenous Development Plan for approval by the Superintendent.

The Contractor shall provide timesheets with employment (hours worked) and training records for all Indigenous people engaged on the Works with all progress claims for payment.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Indigenous Development Plan within thirty (30) days of the Completion of the Contract.

19 Industry Participation Plan

Where an Industry Participation Plan has been specified, the Contractor will implement and maintain the Industry Participation Plan throughout the course of the Contract.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Industry Participation Plan within thirty (30) days of the completion of the Contract.

20 Project Control Plan

Where a Project Control Plan has been specified, the Contractor will maintain and implement the Project Control Plan throughout the course of the Contract. The Superintendent will provide a

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framework document with guide notes to assist in the preparation of the document, which should be prepared by the Contractor and not a third party.

Within fourteen (14) days of the Date of Acceptance, the Contractor shall submit to the Superintendent for approval one copy of the Project Control Plan. The Superintendent shall within a reasonable time from receipt either approve the Project Control Plan, or reject it, giving reasons for the rejections. If the Superintendent rejects the Project Control Plan the Contractor shall rectify the deficiencies and resubmit the Project Control Plan for approval by the Superintendent.

21 Liabilities

The Contractor must indemnify the Principal and employees or agents of the Principal against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person or for damage to any property arising from the carrying out or in connection with the Services and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

21.1 Reduction in Liability

The Contractor's liability to indemnify the Principal under this clause is reduced proportionately to the extent that any negligent act or omission of the Principal contributed to the relevant liability, loss, claim, action or proceeding.

21.2 Limitation of Liability

If specified in the Annexure, the liability of the Contractors in respect of each single occurrence or a series of related occurrences arising from a single cause to the extent caused or contributed by the Contractor in connection with or directly arising out of this Contract will be limited to the amount specified in the Annexure.

Unless otherwise specified, any limit on the liability of the Contractor does not apply in relation to:

- a) personal injury (including sickness and death);
- b) an infringement of Intellectual Property rights;
- c) a breach of any obligation of confidentiality, security requirement or privacy; or
- d) liability which is or would have been included in an insurance policy, but for:
 - i. the inclusion of the limit on liability under sub-clause 21.1; or
 - ii. a failure by the Contractor to fulfil its insurance obligations under the Contract or the insurance policies or due to the insolvency of the insurer for the relevant insurance.

21.3 Indemnities

The Contractor shall keep the Principal and employees or agents of the Principal indemnified against any legal liability, loss, claim, action or proceeding including (without limitation) for personal injury to, or death of any person or for damage to any property arising from the carrying out of the Works (except loss or damage caused by any negligent act, omission or default of the Principal or employees or agents of the Principal) and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

The Contractor shall indemnify the Principal at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the infringement of any patent, design, trademark or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement, used or fixed or supplied by the Contractor in connection with the carrying out of the Works.

21.4 Joint and Several Liability

Where the Contractor consists of two or more persons, this Contract shall bind them jointly and severally. In particular, any agreement, representation, warranty or indemnity by one or more persons constituting the Contractor binds all the persons constituting the Contractor jointly and severally and any agreement, representation, warranty or indemnity in favour of one or more persons constituting the Contractor is for the benefit of all the persons constituting the Contractor jointly and severally.

22 Insurances

22.1 Workers Compensation Insurance

For the purpose of this clause “worker” shall have the definition it is given in the *Return to Work Act 2015* (NT).

Before commencing the Works the Contractor shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Contractor. This cover shall comply with the *Return to Work Act 2015* (NT) of the Northern Territory and policies shall be purchased from Northern Territory approved insurers. Details can be found at the following web address: www.worksafe.nt.gov.au

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Return to Work Act 2015* (NT).

The Contractor shall ensure that all persons employed under labour hire agreements, whether by the Contractor or through a Labour Hire Firm, are appropriately covered by Workers Compensation insurance.

Self-employed Contractors must ensure that they have adequate insurance coverage in place.

The Contractor shall be responsible for ensuring that all sub-contractors have appropriate policies in place.

22.2 Public Liability Insurance

Before commencing the Works, the Contractor shall take out and shall maintain during the currency of the Contract, a Public Liability policy of insurance to cover its liabilities to third parties, including the liabilities as set out in the first paragraph of clause 21.

The Policy shall:

- a) note the Principal for its respective rights and interests;
- b) include a cross-liability clause in which the insurer accepts the term “insured” as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

The Contractor shall ensure that all sub-contractors take out Public Liability Insurance that meets the requirements of this clause.

22.3 Lodgement of Certificates of Currency

The Contractor shall provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required under clause 22 including those of any sub-contractors (including self-employed contractors and persons employed under labour hire agreements):

- a) prior to commencing the Works under the Contract;
- b) within two (2) days of a written request by the Principal;
- c) within seven (7) days after the Contractor renews an Insurance Policy; and
- d) within seven (7) days after the Contractor makes any change to an Insurance Policy.

The Contractor will not cancel any Insurance Policy, or conduct itself in a manner that brings about such a cancellation of an Insurance Policy, except with the written consent of the Principal.

23 Invoicing and Payment

The Contractor shall provide any further details in regards to the Works and/or Tax Invoice upon request by the Superintendent.

Principal shall make payments within thirty (30) days of receipt of a Tax Invoice that is not disputed.

If the Principal disputes the invoice amount the Principal shall certify the amount it believes is due for payment, which shall be paid by the Principal and the liability of the balance of the payment shall be determined in accordance with the Contract.

In certain circumstances the Superintendent may, within a reasonable time, determine the value of work so carried out and authorise payment to the Contractor. The amount of the payment will be the value of work carried out as determined by the Superintendent, less:

- a) any payments already made in respect of the work; and
- b) any other amount that the Principal may be entitled to deduct.

Within thirty (30) days after the completion of the Contract, the Contractor shall submit to the Superintendent a final statement, so endorsed, setting out all outstanding claims against the Principal, whether under the Contract, or not. If the Contractor fails to submit a final statement within thirty (30) days after he has been directed to do so by the Superintendent, the Superintendent shall assess the value of all outstanding claims and the Contractor shall not be entitled to make any claims whatsoever on the Principal thereafter.

The payment of monies pursuant to this clause shall not be taken as evidence against or as an admission by the Principal that any work has been executed in accordance with the Contract or the value thereof, but shall be taken to be payment on account only.

Failure by the Principal to pay the amount by the due date:

- a) will not be grounds to vitiate or avoid the contract; and
- b) will entitle the Contractor to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of a Tax Invoice. Interest penalties are to be calculated daily, for the period after the due date until the date payment is made by the Principal, at the ninety (90) day bank bill swap rate published on 1 June each year by the Australian Financial Markets Association. Where interest penalty period spans 1 June, the rate shall be the rate published in the year the original invoice was issued.

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The Principal will not be liable for interest penalties on any payments in respect of interest penalties.

24 Storage of Contractor's Material

The Contractor's materials and plant shall only be stored in the location approved by the Superintendent. If no storage facilities are available, it shall be the responsibility of the Contractor to provide storage facilities.

All care shall be taken to avoid inconvenience to persons occupying and visiting the Site of the Works.

25 Working Hours

The customary working hours and ordinary working days shall be those for day workers as stated in the Building and Construction Industry (NT) Award (or Electrical Engineering and Contracting Industries (NT) Award for Power and Water) or other relevant awards and no work will be performed outside of customary working hours or on other than ordinary working days without the prior approval of the Superintendent.

The working hours and working days of the Principal's supervisory personnel shall be 8.00 am to 4.30 pm Monday to Friday excluding a day that is a public holiday in the Northern Territory ('Working Day'). The Contractor shall provide at least forty-eight (48) hours written prior notice to the Superintendent of the intention to work outside the working hours and working days of the Principal's supervisory personnel.

Notwithstanding the preceding paragraphs, the Contractor may carry out work outside the customary working hours or ordinary working days without the prior approval of the Superintendent, where it is necessary in the interests of safety of the Works or where the work is required to protect life or property. In such circumstances the Contractor shall inform the Superintendent in writing of the circumstances as early as possible.

26 Obvious Work

The Contractor shall carry out all work, which obviously forms part of the Contract even though not specifically listed or detailed in the Scope of Works or Drawings.

27 Access to Works and Material

The Superintendent or any other persons authorised by him, shall have free and uninterrupted access at all times to the Works and during working hours to any workshop or premises not on the Site of Works where materials may be in preparation or stored for the purpose of the Contract.

The Contractor if so required by the Superintendent shall give the Superintendent all particulars as to the mode and place of manufacture of any of the materials proposed to be used in connection with the Contract and shall facilitate inspection of the materials.

28 Materials and Workmanship

All material used in the Works and the standards of workmanship shall conform to the provisions of the Contract. In the absence of such provisions that material or standard of workmanship shall be of a kind that is fit for its purpose and is consistent with the nature and character of the Works.

Any material not otherwise specified shall be new and, where applicable material and workmanship shall be in accordance with the relevant standard of Standards Australia. If the Superintendent is

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of the opinion that any material or the work, whether fixed or not, is unsatisfactory he may direct its replacement, removal or correction at the Contractor's expense.

29 Proprietary Items

Where items are specified as being a particular maker's brand, trade name or catalogue number then unless specifically stated to the contrary, it is not intended to give any preference to the manufacturer or brand mentioned wherever a proprietary item is specified.

If the Contractor proposes to use a substitute proprietary item, he must provide full particulars of the item he proposes to use to the Superintendent for approval and the Superintendent shall decide whether or not the proposed substitute may be used.

30 Connection of Services

Unless otherwise specified the Contractor is responsible for connection of all water, drainage, sewerage, gas and electricity services to the Works and the Contractor shall apply for all relevant permits and pay all associated fees and/or charges which are levied by the appropriate Authority.

31 Work Health and Safety Management

31.1 Definitions

For the purposes of this clause 31:

'Construction Project' has the meaning given to it in the *WHS Act*;

'High Risk Construction Work' has the meaning given to it in the *WHS Act*;

'Plant' means any machinery, equipment, appliance, container, implement, tool or any component thereof and anything connected or fitted thereto;

'Principal Contractor' means a person authorised to have management and control of the Site for the purposes of the Works and who is appointed by the Principal under clause 31.3 as a principal contractor for the purposes of the *WHS Act*;

'Safe Work Method Statement' has the meaning given to it in the *WHS Act*;

'Structure' has the meaning given to it in the *WHS Act*;

'Substance' means any natural or artificial substance, whether solid, liquid, gas or vapour;

'WHS Act' means the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* and includes subordinate legislation made under that Act including regulations and approved codes of practice as well as any amendment, re-enactment or replacement of such Act ; and

'WHS Management Plan' means a health and safety management plan or system in respect of workplace health and safety matters in connection with the Works.

31.2 WHS Management Plan

- a) This clause 31.2 only applies where the Works comprise a Construction Project.
- b) Prior to commencing any Works at the Site the Contractor must prepare a WHS Management Plan and provide it to the Principal.
- c) The Contractor must:
 - i. for the duration of the Contract, provide:
 - the Principal; and
 - each person who is to carry out construction work in connection with the Works,

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- any further information in relation to the WHS Management Plan that may be requested of the Contractor, including allowing those parties to inspect the WHS Management Plan at their request;
 - ii. maintain the WHS Management Plan throughout the course of the Contract;
 - iii. carry out the Works in accordance with the WHS Management Plan;
 - iv. review and, as necessary, revise the WHS Management Plan and provide any such revised plan to the Principal and to each person who is to carry out work in connection with the Works (including sub-contractors); and
 - v. keep a copy of the WHS Management Plan until the Works to which it relates have reached completion, or for at least two years after a notifiable incident occurs in connection with the Works, whichever is the latter.
- d) The WHS Management Plan must address all those matters required to be covered in a WHS Management Plan as specified in the *WHS Act*.
- e) The Contractor will not be relieved from compliance with any of its obligations under the Contract or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
- i. any direction by the Superintendent concerning the WHS Management Plan or the Contractor's compliance or non-compliance with the WHS Management Plan;
 - ii. any audit or other monitoring by the Principal or its nominee of the Contractor's compliance with the WHS Management Plan; or
 - iii. any failure by the Superintendent, or anyone else acting on behalf of the Principal, to detect any defect in or omission from the WHS Management Plan including where any such failure arises from any negligence on the part of the Superintendent or other person.

31.3 Appointment of Contractor as Principal Contractor

- a) This clause 31.3 only applies where the Works comprise a Construction Project.
- b) On and from the Date of Acceptance, the Principal appoints and the Contractor accepts such appointment as the Principal Contractor for the Works for the purposes of the WHS Act and the Contractor must:
- i. discharge the duties imposed on a Principal Contractor by the *WHS Act* in respect of carrying out the Works;
 - ii. accept that, as Principal Contractor, the Contractor is the person responsible for the control and management of the Site and the Works at all times until Completion;
 - iii. ensure that any sub-contract entered into contains enforceable obligations requiring the sub-contractor to comply with the *WHS Act* and cooperate and comply with any direction of the Contractor in relation to work health and safety matters.

31.4 General Obligations

The Contractor must:

- a) carry out a risk assessment in relation to all of the Works;
- b) carry out the Works safely and manage the risk of harm to persons or property;
- c) ensure that it complies with any statutory requirement that requires a person to be authorised, licensed, supervised or to have prescribed qualifications or experience or that requires a workplace, Plant, Substance or design, or work (or class of work) to be authorised or licensed;
- d) put in place and maintain suitable emergency management procedures relevant to the Works; and
- e) if requested by the Superintendent, 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 Superintendent before the Contractor or any sub-contractor commences any Works; and
- f) generally comply with the requirements of the *WHS Act*.

31.5 High Risk Construction Work

Where the Works include or comprise High Risk Construction Work, the Contractor will ensure that:

- a) any person carrying out high risk construction work is licensed in accordance with the *WHS Act*;
- b) before the work is carried out, a Safe Work Method Statement is prepared in respect to the High Risk Construction Work in accordance with the *WHS Act*, and that a copy of the Safe Work Method Statement is:
 - i. provided to the Superintendent before the High Risk Construction Work is carried out and at any other time requested by the Superintendent; and
 - ii. kept at the area of the Site where the High Risk Construction Work is being or is to be carried out;
- c) the High Risk Construction Work is carried out in accordance with the Safe Work Method Statement.

31.6 Contractor's Obligations to Inform

The Contractor must keep the Superintendent fully informed of all health and safety matters relating to the Works and will provide the Superintendent with a copy of any incident notification provided to NT WorkSafe under the *WHS Act* at the same time or as soon as practicable after such notification is made to NT WorkSafe.

31.7 Right of Principal to Monitor and Audit

The Principal or its nominee may, at any time, monitor, inspect or audit the performance of the Contractor in relation to its compliance with the WHS Management Plan and this clause 31 generally and the Contractor must allow the Principal or its nominee access to the Site, the WHS Management Plan and any relevant documents or activities so as to enable such monitoring, inspection or audit to occur.

31.8 Powers of Superintendent Regarding Work Health and Safety

If the Superintendent considers that there is:

- a) a risk of injury to people or damage to property arising from the Works; or
- b) an unsafe or potentially unsafe practice or breach of the requirements of this clause 31,

then, in addition to any other rights the Principal has under the Contract, the Superintendent may:

- c) direct the Contractor to change its manner of working; or
- d) suspend the performance of the Works associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

All costs and delay and disruption caused by any action taken under this clause 31.8 are the responsibility of the Contractor.

31.9 Works Involving Asbestos

If the Works include Works Involving Asbestos (as that term is defined in the *WHS Act*) the Contractor must ensure that it, its employees and its sub-contractors comply with all requirements of the *WHS Act* applicable to Works Involving Asbestos.

31.10 Design, Manufacture and Installation Safety Matters

Where the Contract requires the Contractor to design, install or manufacture all or part of the Works, (including management or supervision of a design, installation or manufacture component) the Contractor must ensure that it and its consultants and sub-contractors comply with the *WHS Act* and ensure that any Structure, Plant or Substance it designs, installs or manufactures (or manages the design, installation or manufacture of, as the case may be) is, so far as is reasonably practicable, designed, installed or manufactured without risk to the health and safety of persons who will use, occupy, construct, handle or carry out any activity at or in the vicinity of the Structure, Plant or Substance (as the case may be). In particular, the Contractor must:

- a) implement a risk management process to ensure that any hazards associated with the design, installation or manufacture are identified, assessed and, as far as reasonably practicable, eliminated or minimised;
- b) consult, cooperate and coordinate with others who may contribute to the safe design, installation or manufacture of the Structure, Plant or Substance including the Principal, sub-contractors and end users;
- c) maintain appropriate records regarding the design process and the risk management process, including the results of any calculation, analysis, testing or examination, risk assessment and any conditions to ensure the Structure, Plant or Substance is safe, and provide such records to:
 - i. the Principal and each person who is provided with the design or Structure, Plant or Substance (as the case may be); and
 - ii. any other person who uses, occupies, constructs, handles or carries out any activity at or in the vicinity of the Structure, Plant or Substance (as the case may be) on request;
- d) provide the Principal with any information it requests that is relevant to the design, installation or manufacture of any Plant, Structure or Substance; and
- e) on completion of the design, installation or manufacture, provide a report to the Principal detailing the health and safety aspects of the design, Structure, Plant or Substance (as the case may be) which includes information about any identified or potential hazards, hazardous substances used in the design, installation or manufacture, access problems or any handling risks associated with the design, installation or manufacture. Such report will be in a form approved by the Superintendent.

31.11 Breach by Contractor

- a) Where, in the reasonable opinion of the Principal or the Superintendent, the Contractor has:
 - i. where applicable, commenced the Works without having first complied with clause 31.2(b); or
 - ii. committed a breach of any of its other obligations under clauses 31.2 to 31.10, the Principal may immediately terminate this Contract by written notice to the Contractor.
- b) The remedy provided in clause 31.11(a):
 - i. applies notwithstanding any other provision of the Contract; and
 - ii. is in addition to the other remedies under this Contract.

31.12 Work in the vicinity of Power and Water Corporation Assets

Prior to commencing work in the vicinity of any sewerage system, high voltage cable or power line or other high voltage structure, the Contractor shall contact Power and Water Corporation and obtain and become cognisant with written guidelines or procedures setting out safe practices for working in or adjacent such hazardous areas.

Whilst working in the vicinity of sewerage systems, high voltage cables or power lines or other high voltage structures the Contractor shall follow all directions and instructions issued by Power and Water Corporation.

31.13 Work in the vicinity of Natural Gas Pipelines

In accordance with the *Energy Pipelines Act*, the Contractor shall obtain the written approval of the operator of the pipeline before commencing any of the following activities in the vicinity of high-pressure natural gas pipelines:

- a) Any activities within the pipeline right-of-way, which involve construction of any kind including:
 - i. excavation for drains, pipelines or sewers;
 - ii. excavation for buried utilities or services;
 - iii. construction or maintenance of roads or tracks;
 - iv. boring of holes for fence posts or installation of power/telephone poles;
 - v. any survey or exploration work involving excavation, explosives or vibration.
- b) Any nearby construction activities that is likely to affect the right-of-way, such as re-routing surface water flows, construction of high voltage lines, or erection of large metal structures.
- c) Any passage of heavy vehicles and equipment over the pipeline other than on public roads.

Whilst working in the vicinity of natural gas pipelines the Contractor shall follow all directions and instructions issued by the operator of the pipeline.

31.14 Fire Precautions

The Contractor shall take all necessary precautions to ensure that no fire hazard is created through the carrying out of the Works.

Where a fire alarm is activated due to actions of the Contractor or his sub-contractors, resulting in a call out of the Fire Service, the Contractor will be required to pay for the subsequent call out fee.

31.15 Scaffolding and Excavation

All scaffolding and excavation must conform to the *WHS Act*. The Contractor is to provide all ladders and scaffolding necessary to carry out the Works.

31.16 Disabled Access

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

32 Precautions in Carrying Out Works

The Contractor and sub-contractors shall comply with all requirements under Acts, regulations, by-laws, orders and rules and other special requirements of proper Authorities concerning storage, transport and use of materials, plant, equipment; work processes and safety precautions.

The Contractor and sub-contractors shall observe all rules and regulations in force in the area where the Works are to be carried out.

Where any current Australian standard published by Standards Australia is appropriate to storage, transport and use of materials, plant and equipment, to work processes or to safety precautions, the provisions of such standard shall be observed except if it conflicts with any statutory or special requirements of proper Authority in which case the latter shall apply.

In the absence of any such statutory or special requirements or relevant Australian Standard, the Contractor and all sub-contractors shall ensure that suitable procedures are observed and all proper care is taken.

33 Damage to Services

The Contractor shall contact the officer-in-charge of the area that includes the work Site, or his representative, before work commences and in company with the Superintendent check with them the location of all services.

The Contractor shall immediately notify the Superintendent and the officer-in-charge of the area, in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area.

The Contractor shall render any assistance required in connection with any such incident, but otherwise work in that vicinity shall be stopped immediately and not recommenced until instructions are received from the Superintendent.

Where the service is indicated on the drawing and/or in the Scope of Works, or is evident on the Site, or has been pointed out by the officer-in-charge of the area or by the Superintendent or by a representative of either, the Contractor shall be liable for the cost of any necessary repairs.

Where the Contractor encounters any services, details of which are not given in the drawings and/or Scope of Works and which are not evident on the Site or which have not been pointed out to him, and has carried out his operation with reasonable care, the cost of reinstatement, diversion or other associated work may be paid as an extra to the Contract.

34 Care of Work and Cleaning Up

The Contractor shall keep the Works clean and tidy as they proceed and regularly remove from the Site rubbish and surplus material arising from the execution of the Works. On Completion of the Works the Contractor shall clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind and shall leave the Site of the Works, existing structures and areas adjacent thereto in as good a state of repair as they were in when he commenced the Works excluding for fair wear and tear.

35 Protection and Provision for Traffic

The Contractor shall provide all necessary lights, barriers, flags and the like to ensure the safety of all persons, vehicles and animals.

36 Protection for Occupants

Where work is carried out in occupied or partially occupied premises the Contractor shall arrange the execution of the Works to minimise nuisance to the occupants. The occupants are to be protected against fumes, dust, dirt, noise or other nuisance.

37 Protection of Property

The Contractor shall take all necessary precautionary measures to protect all property against loss, theft or damage resulting from the activities of the Contractor, sub-contractors and agents.

38 Protection of Equipment

All equipment, whether supplied under the Contract or existing at the Site and surroundings, likely to be damaged or affected by ingress or deposit of foreign matter resulting from the Contractor's operations or those of sub-contractors or agents shall be properly protected by the Contractor. If necessary protected equipment shall be able to function.

39 Strong Wind Precautions

The Contractor shall ensure that unfinished work, equipment, sheds, hoardings, materials and any other movable items on the Site, are protected, stored, or secured to the extent necessary to ensure that in strong wind conditions they will not be a danger to persons or property because of collapse, movement or any other cause.

40 Custody of Keys – Power and Water Corporation Assets

Where applicable, the Contractor will be provided with keys for the purposes of accessing Power and Water Corporation assets.

The Contractor must not label the keys with the name of the asset or make duplicate keys and shall take all care to prevent theft or loss of the keys.

All keys issued to the Contractor shall be returned at the Completion of the Contract. Failure to return keys within seven (7) days of the Contract Completion occurring will incur a fee of \$100.00 per key.

The cost of replacing lost or stolen keys shall be at the Contractor's expense and if the Superintendent so determines shall include the cost of replacing or re-keying master locks.

41 Variations

The Superintendent may direct a variation to the Works and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the Superintendent or failing agreement by the Superintendent and the Contract Rate or price increased or decreased accordingly.

42 Defects Liability Period

Upon determination by the Superintendent that the Works have been satisfactorily completed, the Defects Liability Period, if any, shall commence. The Contractor shall maintain the Works for the Defects Liability Period stated in the Annexure and shall make good at his own expense all defective workmanship or materials and all damage, loss or injury to the Works occasioned by faulty workmanship or materials. If the Contractor fails to make good any defects within a reasonable time or within the time stipulated in a direction given by the Superintendent, the Superintendent may, by notice in writing, take action to complete those defects outstanding at the Contractor's expense.

43 Assignment

The Contractor shall not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract without consent of the Principal. Such consent shall not be unreasonably withheld.

44 Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the Works he shall submit to the Superintendent the names of his proposed sub-contractors the nature and value of the work, which it is intended they undertake, their CAL Registration Number (if applicable) and seek the written approval of the Superintendent in respect of them. No sub-contractor shall be employed in connection with the Works unless such approval is first obtained. Such approval shall not be unreasonably withheld.

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If Contractor Accreditation is applicable to work to be sub-contracted under the Contract the Contractor shall ensure that all sub-contractors and their sub-contractors for any part of the Works valued at over \$100,000 are accredited by Contractor Accreditation Limited to an appropriate category/group/sub-group and rating.

Any sub-contract shall be in writing and contain the provision that progress payments to the sub-contractor shall be made within fourteen (14) days after the Contractor has received payment from the Principal.

Any approval by the Principal to engage a sub-contractor for any part of Works shall not relieve the Contractor from any of its liabilities under the Contract. The Contractor shall be fully liable to the Principal for the work of the sub-contractor or any employee or agent of the sub-contractor.

45 Disputes

Each party must follow the procedures in this clause before starting court proceedings, other than for interlocutory relief.

45.1 Notice of Dispute

Any party to this Contract who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

45.2 Meeting of Parties

Within five (5) Business Days of the provision of the written notice, a nominated representative of each of the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute.

45.3 Appointment of Mediator

If the dispute is not resolved within five (5) Business Days of the parties meeting (or within such further period as the parties agree is appropriate) then one or both parties may nominate a mediator to determine the dispute.

If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the dispute.

The parties will bear the costs of the mediator equally.

45.4 Appointment of Independent Expert

If the dispute is not resolved within twenty (20) Business Days after the appointment of the mediator (or within such further period as the parties agree is appropriate) then one or both parties may nominate an independent expert to determine the dispute.

If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an independent expert to determine the dispute.

The expert must not be the same person as the mediator.

The parties will bear the costs of the independent expert's determination equally, unless the independent expert determines otherwise.

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The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

45.5 Decision of Independent Expert

The decision of the independent expert is absolute and final and will bind the parties accordingly and this Contract will be deemed to be amended to incorporate the terms of the independent expert's decision.

The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.

45.6 Continuation of Work during Disputes

During disputes and until such time that work under the Contract are completed, the Contractor must, at all times, continue to fulfil its obligations under the Contract and comply with all directions given to it by the Principal in accordance with the provision of the Contract, provided that such directions do not touch upon the subject matter of the dispute in respect of which written notice has been given in accordance with this clause.

46 Termination

46.1 Termination by Mutual Agreement

Either party may terminate the Contract by giving sixty (60) days written notice to the other party.

Termination of the Contract under this sub-clause shall not relieve the Principal or the Contractor of their respective rights and obligations under the Contract up to and including the date of any such termination.

46.2 Termination due to Default or Bankruptcy

If the Contractor fails to carry on the Works at a rate of progress satisfactory to the Superintendent, or neglects or omits to carry out any instruction of the Superintendent in respect of the Works or fails to complete the whole of the Works within the period specified for completion or such extended time as the Superintendent may approve, or intimates that he is unwilling or unable to complete the Works, or becomes insolvent or bankrupt, or being a company goes into liquidation, the Superintendent may, by notice in writing either:

- a) terminate the Contract whereupon all sums of money which may remain in the hands of the Principal together with all materials on or about the Site which are the property of the Contractor and have been provided by him for the purpose of carrying out the Works may be forfeited to the Principal and on being so forfeited shall become vested in or become payable to the Principal; or
- b) take the Works wholly or partly out of the control of the Contractor, or any other person in whose control or possession the Works or part of them may be, and complete the same by any other means he so decides. The Principal may take possession of and permit other persons to use any materials, plant or other things on or about the site of the Works that are the property of the Contractor and are deemed to be requisite and necessary for the purpose of any such completion.

47 Rights of Principal to Recover Monies

Without limiting the Principal's rights under any other provision in the Contract should the Superintendent take action pursuant to clause "Defects Liability Period" and/or "Termination" sub-clause 46.2(b) or any other clause in this Contract then all losses, costs, charges, outgoings and

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expenses incurred or sustained by the Principal in completing the Works or rectifying any breach of the Contractor under this Contract will be deemed to be a liquidated debt due to the Principal by the Contractor and will be deducted and set off from any monies that may then or may thereafter become due to the Contractor whether under this Contract or any other Contract whatsoever between the Principal and the Contractor and if the monies are less than the amounts so deductible then the amount of the deficiency shall be a liquidated debt due by the Contractor to the Principal.

Without prejudice to any other rights available to the Principal to recover such a liquidated debt the Principal may demand payment for and recover such liquidated debt against any bank guarantee, guarantee or other security that the Contractor may have given to or in favour of the Principal pursuant to this Contract or any other Contract whatsoever between the Contractor and the Principal.

48 Contractor's Performance Report

The Contractor agrees that every twelve (12) months, upon completion of the Works or the termination of the Contract:

- a) the Superintendent will prepare a Contractor's Performance Report ('**Report**');
- b) the Superintendent shall liaise with the Contractor in completing the Report although the Superintendent reserves the ultimate right to complete the Report (other than the contractor's comments); and
- c) the Principal will use and/or release the Report to Contractor Accreditation Limited and be entitled to release the report to any other department of the Commonwealth or any State or Territory.

The Contractor agrees that neither the Contractor nor any other person shall have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation and use of the Report.

49 Goods and Services Tax

For the purposes of this Clause unless the context otherwise requires:

'**GST**' means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999* ('**Act**') and any related *Tax Imposition Act* and 'New Tax System Changes' has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999* ('**TPA**'). Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

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

'**Input Tax Credit**' has the meaning it bears in the Act;

'**Recipient**' '**Entity**' and '**Supplies**' have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

- a) "**Entity**" shall also mean Contractor;
- b) "**Recipient**" shall also mean Principal;
- c) "**Supplies**" shall also mean the Works.

'**Adjustment**' means each form of adjustment to consideration provided for in this clause.

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The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming this Contract.

The Contractor shall provide the Recipient with a tax invoice and/or adjustment notes in relation to the supply prior to an amount being paid by the Recipient under this Contract, and shall do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply.

Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract 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 that applies at the date of formation of this Contract.

50 Privacy

For the purposes of this Clause unless the context otherwise requires:

'Act' means the *Information Act (NT)*;

'Privacy Laws' means the Act; and the Information Privacy Principles set out in the Act or any "code of practice" approved under the Act that applies to any of the parties to this Contract.

'Personal Information' means all information about a person that is "personal information" as defined in the Act, which is collected and/or handled by any of the parties in connection with The Contractor agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Contractor were a public sector organisation.

The Contractor is to collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling its obligations under this Contract.

The Contractor is not to disclose Personal Information without the written authority of the Principal, and in any event disclosure is to be in accordance with the Privacy Laws. The Contractor is to immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

The Contractor is to ensure that any employees, agents or sub-contractors, and any other person who may have access to Personal Information held by the Contractor, are aware of the obligations of the Contractor under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.

The Contractor is to take all reasonable measures to ensure that Personal Information is protected from misuse, loss, unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

The Contractor is to develop, and obtain the written approval of the Principal:

- a) policies for the management of personal information; and
- b) complaint handling procedures.

Each party is to immediately notify the other when a complaint is received. The Contractor acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.

The Contractor must not transfer Personal Information outside the Northern Territory without the prior approval of the Principal. The Contractor, in respect to Personal Information, is to

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immediately notify the Principal where the Contractor becomes aware of a breach of this clause or the Privacy Laws.

The Contractor indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Contractor under this Contract.

When this Contract expires or is terminated, the Contractor must, at the Principal's discretion:

- a) either return to the Principal all records containing Personal information;
- b) retain any material containing Personal Information in a secure manner as approved by the Principal; or
- c) destroy or delete any Personal Information.

This sub-clause will survive the expiration or termination of this Contract.