

## ADJUDICATOR'S DETERMINATION

**Matter No. 81515**

**[Adjudicator's Ref No. 46-26-01]**

IN THE MATTER of an  
Adjudication pursuant to the  
*Construction Contracts (Security of Payments) Act 2004 (NT) (the Act)*

### **BETWEEN:**

Name **[Redacted]** (APPLICANT)  
ABN **[Redacted]**  
Address **[Redacted]**

By Email to: **[Redacted]**

Name **[Redacted]** (RESPONDENT)  
ABN **[Redacted]**  
Address **[Redacted]**

By Email to: **[Redacted]**

### **ADJUDICATOR**

Barry C Green LLB BSc(Hons) FRICS MAIQS CQS MCIArb PRIAdj  
Registered Adjudicator No. 46  
7 Morwell Entrance Wand  
WA 6167

**Issued 3 June 2026**

### ADJUDICATOR'S DETERMINATION

I, Barry Christopher Green, the duly appointed adjudicator, determine the Application for Adjudication and conclude as follows:

- a. **The Respondent shall pay the Applicant the sum of \$9,623.77 (inclusive of GST), being the Applicant's fee overpayment net of the Respondent's Invoice 2470 set-off, on or before 18 June 2026.**
- b. Each party must bear its own costs, and the costs of the adjudication (refer Costs of Adjudication) shall be shared between the parties equally.
- c. I have assessed my fees at 38.5 hours at \$495.00 per hour, being \$19,057.50 (excluding GST), plus GST of \$1,905.75, being \$20,963.25 (inclusive of GST), which I apportion equally between the parties under s 46(5).
- d. Pursuant to s 46(4) and (5) of the Act, the parties are jointly and severally liable to pay the costs of the adjudication and, as between themselves, are liable to pay those costs in equal shares. The costs of the adjudication are set out in Schedule B.
- e. Under s 46(9), the Respondent shall pay the Applicant \$4,481.63 (inclusive of GST) by way of contribution to the costs of the adjudication, on or before 18 June 2026, so that those costs are borne equally between the parties.
- f. The matters that are confidential and not suitable for publication (s 38(1)(e)) are set out in Schedule B.

*Barry Green*

Signed .....

Date **3 June 2026**

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## SCHEDULE A

### 1.0 BACKGROUND

1. [Applicant name redacted] (**Applicant**) and [Respondent name redacted] (**Respondent**) entered into a consultancy agreement on 5 April 2024 (**Contract**) for project management consultancy services on the remote facilities upgrade project (**Project**).
2. The Project comprised upgrades to remote facilities, including **[Redacted]** housing, sporting and recreation facilities, against a construction budget of approximately \$6.8 million.
3. The Contract provided for a fixed fee of \$545,000 (excluding GST) payable in milestone instalments, with reimbursable disbursements at cost plus 10%.
4. The Contract was terminated for convenience on 13 January 2026, effective 13 March 2026.
5. On 19 February 2026 the Applicant issued a Notice of Payment Claim and Demand (Payment Claim No. 001/2026) for \$193,325.00 (inclusive of GST) (**Payment Claim**), asserting that fixed fees paid of \$408,750 (excluding GST) exceeded the value of services rendered of \$233,000 (excluding GST), an overpayment of \$175,750 plus GST of \$17,575.<sup>1</sup>
6. On 4 March 2026 the Respondent issued a Notice of Dispute rejecting the Payment Claim in full and asserting that:
  - a. the value of services rendered to termination was \$340,000 (excluding GST);
  - b. the difference had already been repaid by credit note CN-0101 (\$68,750 excluding GST); and
  - c. amounts were instead owing to it for disbursements (Invoice 2470) and notice-period fees.<sup>2</sup>
7. Under s 8 of the Act, a payment dispute arises if a payment claim is rejected or wholly or partly disputed, or is not paid in full. The Respondent disputed the Payment Claim in full, and a payment dispute accordingly arose (**Payment Dispute**).

### 2.0 APPOINTMENT OF ADJUDICATOR

8. The application was served on the Northern Territory Chapter of the Resolution Institute (**Prescribed Appointor**) on 29 April 2026.
9. The Prescribed Appointor appointed me under s 30(1)(a) and, under cover of a letter dated 5 May 2026, provided an electronic copy of the application.
10. As Registered Adjudicator No. 46, I accepted the appointment and, by letter to the parties dated 5 May 2026, confirmed my appointment, set out the procedural steps, requested security for my fees, and declared no material interest of the kind described in s 31.
11. The Respondent initially queried whether it had been served but did not contest service in its Response. I address and confirm valid service at section 4.2.

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<sup>1</sup> Notice of Payment Claim, para 4.

<sup>2</sup> Response, paras 3.1 and 3.3 to 3.5.

### 3.0 SUBMISSIONS FROM THE PARTIES

12. The parties served the following documents on each other and on me:
- a. the Applicant's Application for Adjudication dated 29 April 2026 (**Application**), comprising:
    - i. the adjudication application, the Notice of Payment Claim and Demand dated 19 February 2026;
    - ii. the Consultancy Agreement dated 5 April 2024; and
    - iii. Annexures 1 to 7 (the Contract, the reconciliation, supporting emails, payment records, the Notice of Termination, the Payment Claim, and inter-party correspondence including the Notice of Dispute), together with the Resolution Institute application form and the NT Registrar's notice of appointment; and
  - b. the Respondent's Response to Application for Adjudication (**Response**), comprising its submissions and annexures 1 to 18, including:
    - i. the Consultancy Agreement;
    - ii. 16 monthly progress reports;
    - iii. Invoices 2325 and 2470;
    - iv. the letter to the Applicant dated 4 February 2026;
    - v. credit note CN-0101;
    - vi. the Notice of Dispute dated 4 March 2026;
    - vii. the Tenders.net records for the **[Redacted]** sporting facility tenders;
    - viii. MRC workshop minutes; and
    - ix. the authorities relied upon.
13. I have had regard to the parties' submissions, to the Act (including the implied and prohibited provisions) and Regulations, and to the Contract under which the application arises.
14. I have read and considered the whole of each party's submissions and annexures.

### 4.0 JURISDICTION IN THIS MATTER

15. Section 33(1)(a) of the Act requires an adjudicator to dismiss the application without determining its merits if:
- (i) the contract is not a construction contract;
  - (ii) the application has not been prepared and served in accordance with section 28;
  - (iia) the dispute is also the subject of another application that has not been dismissed or determined;
  - (iii) an arbitrator, court or other body has made an order, judgment or other finding about the dispute;
- or
- (iv) it is not possible to fairly make a determination because of the complexity of the matter or because the prescribed time, or any extension of it, is insufficient.
16. I consider jurisdiction below.

#### **4.1 Is the contract a 'Construction Contract'?**

17. Section 5(1) provides that a construction contract is one under which a person (the contractor) has one or more listed obligations, including, at s 5(1)(c), an obligation to provide professional services related to construction work.
18. The construction work here (**[Redacted]** the upgrades on the housing, sporting and recreation facilities) is the construction of buildings, structures and civil works forming part of land, and is construction work within s 6(1)(c), and, as to preparatory and integral work, within s 6(1)(f).
19. Section 7(2)(a) provides that professional services are related to construction work if they relate directly to it or to assessing its feasibility, expressly including project management services. The services under the Contract (project establishment and management, scoping, procurement and tender management, and contract administration) are such services, so the Contract is of the kind described in s 5(1)(c).
20. By s 5(1A), a contract remains a construction contract even if terminated, so the termination does not affect its character. Neither party disputes the point, and I therefore find the Contract is a construction contract for the purposes of the Act.

#### **4.2 Has the Application been prepared and served correctly?**

21. Section 28(1) requires a party, within 65 working days after the dispute arises, to prepare a written application, serve it on each other party (s 28(1)(b)) and on a prescribed appointer (s 28(1)(c)(iii)), and provide any required security (s 28(1)(d)). By s 28(3), time runs from the day after the dispute arises.
22. The Payment Dispute arose on 4 March 2026. The application was served on the Respondent and the Prescribed Appointor on 29 April 2026, well within 65 working days.
23. Following my request under s 46(7), the Applicant and Respondent each provided security of \$6,000.00, a total of \$12,000.00 (inclusive of GST).
24. The application was served by email. By email of 6 May 2026 the Respondent queried whether it had received the application and asked for the full set of documents.
25. By its solicitors' email of 7 May 2026, the Applicant confirmed service by email on 29 April 2026, attaching the service email (including the secure link to the documents) as proof, and noted it had told the Prescribed Appointor on 30 April 2026 that service was complete. It invited the Respondent to identify any difficulty in access.
26. The Respondent's query was raised before it accessed the documents and was not maintained and it does not contest service in its Response. Service is therefore not in issue. In any event, I am satisfied the application was validly served on 29 April 2026, because:
  - a. email is a permissible mode of service under the Contract and the *Electronic Transactions (NT) Act 2000*;
  - b. the email went to the address from which the Respondent corresponded with me throughout, and under that Act an electronic communication is received when capable of being retrieved; I am satisfied it was retrievable on 29 April 2026, whether or not opened;

- c. providing the documents by secure link rather than as attachments does not deprive service of effect where the full set was made accessible; any deficiency in the manner of service is technical only, and I may proceed under s 33(1A), the Act having been substantially complied with;
  - d. 29 April 2026 is well within the 65 working days; and
  - e. the Respondent received the documents, engaged with the process and served a Response in time. It suffered no prejudice, and proceeding accords with the object stated in s 26.
27. The ground for dismissal in s 33(1)(a)(ii) is therefore not engaged. I am satisfied the application contains the matters required by s 28(2), including the Contract and the payment claim, and find it was prepared and served in accordance with s 28, and within time.
28. I have considered two further matters but am satisfied neither affects this conclusion. First, the Standard Terms originally named a related entity before amendment to name the Applicant.<sup>3</sup> The Respondent does not dispute that the Applicant is the proper party to the Contract, and I proceed on that basis.
29. Second, the Application in places refers to a date of “21 April 2026” and to a “90-day” period,<sup>4</sup> whereas it was in fact served on 29 April 2026 and the period prescribed by s 28(1) is 65 working days. Nothing turns on either discrepancy.

#### **4.2.1 Is the payment claim a Payment Claim for the purposes of the Act?**

30. Section 7A(1)(b) prescribes the meaning of payment claim, relevantly including a claim made “*by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract.*”
31. The Applicant is the principal, and the Payment Claim is a claim to recover fixed fees paid in excess of the value of services performed. That falls within s 7A(1)(b). The Contract having been terminated, it also falls within s 7A(1)(d) as a claim on an accrued right under a terminated contract.
32. The Applicant submits that its claim is a progress payment adjustment under s 9, said to override clauses 14 and 25 of the Contract.<sup>5</sup> I do not accept that proposition, because s 9 concerns only the contracts to which the Act applies and confers no power to value work or adjust payments. That exercise arises on the determination of liability under s 33(1)(b).
33. Any deficiency in that incorrect reliance is technical only, and I may proceed under s 33(1A). It does not defeat the existence of a valid payment claim under s 7A(1)(b).
34. I place no reliance on the characterisation of the Notice of Dispute as a “*payment schedule under section 14 of the Act*”.<sup>6</sup> Section 14 concerns prohibited provisions. The Act has no payment-schedule or deemed-debt mechanism like the NSW or Qld legislation. A failure to respond in time creates no statutory debt and does not preclude contesting the claim. The Notice of Dispute is relevant only as the rejection giving rise to the Payment Dispute under s 8.

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<sup>3</sup> Application, section 1.2; Application, para 1.3.

<sup>4</sup> Application, section 2.

<sup>5</sup> Application, section 3 and para 1.2; Notice of Payment Claim, para 4.

<sup>6</sup> Application, section 2 (also paras 1.2 and 7.3).

35. A payment claim under s 7A must also comply with any contractual requirements for making it, and I must consider whether it does following the decision in *Canstruct Pty Ltd v Floreani KC & Anor* [2024] NTSC 104 at [117] to [118], applying *K & J Burns Electrical Pty Ltd v GRD Group (NT) Pty Ltd* [2011] NTCA 1 (Olsson AJ at [236] to [238], Kelly J agreeing at [151]).
36. On the facts, the payment mechanism in cl. 13 to 15 of the Standard Terms governs the Client's payment of the Consultant and does not provide for a principal's recovery of overpaid fees. On that basis, validity rests on s 7A(1)(b) and s 7A(1)(d). The s 33(1A) deficiencies are not contractual preconditions (cf *Canstruct* at [117]).
37. I therefore find that the Notice of Payment Claim and Demand of 19 February 2026 is a payment claim for the purposes of the Act.

#### **4.2.2 When did the Payment Dispute arise for the purposes of the Act?**

38. Section 8(a) provides that a payment dispute arises if a payment claim is rejected or wholly or partly disputed, or is not paid in full when due.
39. The Payment Claim issued on 19 February 2026. The Respondent's Notice of Dispute of 4 March 2026 rejected it in full. The Payment Dispute arose on 4 March 2026.

#### **4.3 Does a Conflict of Interest exist?**

40. On accepting the appointment I confirmed I was aware of no material interest giving rise to a conflict under s 31. Having received the Response, I remain satisfied there is no conflict of interest in this matter.

#### **4.4 Is the Matter too complex to be determined?**

41. Having regard to the material, I am satisfied I can fairly determine the matter, and that it is neither too complex nor the time insufficient so as to require me to dismiss the application.

#### **4.5 Does an Order, Judgment or other finding exist?**

42. Both parties confirm there has been no order, judgment or other finding by an arbitrator, court or other body about the dispute. I am also satisfied, for s 33(1)(a)(iia), that the dispute is not the subject of any other application that has not been dismissed or determined. None of the s 33(1)(a) grounds is engaged.

#### **4.6 Response to Application for Adjudication**

43. Under s 29(1) the Respondent had 15 working days after service to prepare and serve a written response on the Applicant and me.
44. The application having been served on 29 April 2026, the Respondent served its Response on 20 May 2026, within time. I find the Response was prepared and served in accordance with s 29.

#### **4.7 Has a Payment Dispute arisen in respect of the Payment Claim?**

45. The Applicant issued the Payment Claim on 19 February 2026 and the Respondent's Notice of Dispute of 4 March 2026 rejected it in full. I am satisfied a Payment Dispute has arisen under s 8 and that I have jurisdiction to determine it on the balance of probabilities.

#### **4.8 Other Jurisdictional Considerations**

46. Two further matters arise. First, as noted at 4.2.1, this is a claim by the principal against the contractor, within jurisdiction under s 7A(1)(b) and the incorrect reliance on s 9 does not deprive me of jurisdiction to value the services and decide liability.
47. Second, the Respondent raises, by way of defence and set-off, a claim for disbursements under Invoice 2470 and for notice-period fees, and says that once these are brought to account no amount is payable to the Applicant. Section 33(1)(b) requires me to determine, on the balance of probabilities, whether any party to the payment dispute referred is liable to make a payment.
48. The payment dispute referred to me arises from the Applicant's Payment Claim, being its claim that fixed fees were overpaid and are repayable. The Respondent's answer, that disbursements remain owing under the same Contract under Invoice 2470, is raised as a defence and set-off to that claim. My task under s 33(1)(b) is to determine the dispute referred, namely whether the Respondent is liable to repay the Applicant, taking the Respondent's set-off into account. I confine this determination to the dispute referred and do not determine Invoice 2470 as a claim in the Respondent's own right.
49. Invoice 2470 was raised in the Respondent's Notice of Dispute of 4 March 2026 as the answer to the Payment Claim, the Respondent contending that once the disbursements properly owing under the Contract are brought to account no amount is payable to the Applicant.
50. It is therefore advanced as a defence and set-off within the Payment Dispute, not as a free-standing claim requiring its own application under s 28. For the same reason, no question under s 34(3)(b) arises. There being one Payment Dispute, the discretion to adjudicate two or more disputes together is not engaged.
51. Applying *Cooper & Oxley Builders Pty Ltd v Steensma* [2016] WASC 386, *ABB Australia Pty Ltd v James Engineering Pty Ltd* [2018] NTSC 91 and *James Engineering Pty Ltd v ABB Australia Pty Ltd* [2019] NTCA 7, I must take the Response into account, including any set-off raised as a defence, in determining the Applicant's entitlement under the Payment Claim. The parties are presumed to have a right of setoff unless the Contract excludes it, and it does not.
52. I deal with these matters in the Merits. Invoice 2470 was invoiced on 24 February 2026 and is pressed defensively as a set-off, which I take into account to that extent in determining the Applicant's entitlement under s 33(1)(b), and not as a claim in the Respondent's favour, consistently with *Cooper & Oxley*. The notice-period fees stand differently as they were never invoiced and never crystallised, and so raise a discrete jurisdictional question addressed at 5.5.2 below.

#### **4.9 Request for Further Submissions**

53. Under s 34(2)(a), I sought and received clarification on the manner and date of service. Each party has had a reasonable opportunity to be heard on the issues arising.
54. In accordance with s 34(1), I have acted informally and determined the matter on the application and the Response and their attachments. I am satisfied I have made a bona fide attempt to comply with the Act and have afforded the parties procedural fairness.

55. Under s 33(1), I must make this determination within the prescribed time, which s 33(3)(a) fixes as 10 working days after the date of service of the Response, subject to any extension under s 34(3)(a), failing which it is taken to be dismissed under s 33(2). The Response was served on 20 May 2026 and this determination is made on 3 June 2026, within time.

#### 4.10 The Application & Response

56. The competing positions on the value of services, which form the basis of the Payment Dispute, are summarised below (all amounts excluding GST):

Phase	Contract allocation	Respondent position	Applicant claim	In dispute
Project Establishment & Management	\$160,500	\$136,500	\$68,000	\$68,500
Scoping Upgrades	\$112,500	\$112,500	\$85,000	\$27,500
Procurement, Tender Doc. & Evaluation	\$59,500	\$51,000	\$40,000	\$11,000
Construction Management & DLP	\$212,500	\$40,000	\$40,000	Nil
<b>Total</b>	<b>\$545,000</b>	<b>\$340,000</b>	<b>\$233,000</b>	<b>\$107,000</b>

57. The Respondent also claims disbursements of \$26,676.23 (inclusive of GST) under Invoice 2470 and notice-period fees of \$20,690 (excluding GST).<sup>7</sup>

58. I consider the Application and the cross-claims below.

## 5.0 MERITS

### 5.1 The Nature of the Claim and the Valuation Exercise

59. The claim is for recovery of fixed fees paid in excess of the value of services rendered. I must determine, on the balance of probabilities, the value of the services rendered and compare it with the fixed fees received of \$408,750 (excluding GST).

60. The Applicant bears the burden under s 33(1)(b). It must establish both the specific failure relied on and a quantified reduction in value flowing from it. Assertion of incomplete performance, however detailed, is not itself evidence of reduced value.

61. In the event that part of a phase was not performed but neither party proves the precise reduction, I assess it broadly, taking the Respondent's claimed value (supported by the deliverables in evidence) as the starting point and reducing it only to the extent the Applicant establishes an unperformed obligation and consequent loss of value. Any unresolved uncertainty is resolved in favour of the lesser reduction.

<sup>7</sup> Response, paras 3.4 to 3.5; and the determination sought at para 10.1.

62. Both parties rely on documents prepared for this dispute, the Applicant on its task by task reconciliation and the Respondent on its letter of 4 February 2026.<sup>8</sup> I treat each as a party's submission, not as independent evidence of value.
63. The Contract is a fixed-fee lump sum under which milestones were not tied to completion of particular phases. The parties have nonetheless argued the dispute phase by phase, and I assess it on that footing, the burden resting on the Applicant throughout.
64. The Respondent says the milestone payments were accrued rights not divested by termination, so the Applicant must show a contractual basis for repayment, relying on *McDonald v Dennys Lascelles Ltd* (1933) 48 CLR 457 at 476 to 477 and *Crowley Australia Pty Ltd v Latitude 63 LLC* [2026] NSWSC 130.<sup>9</sup> I accept that rights unconditionally acquired are not divested by termination, but that does not defeat this claim.
65. The claim is statutory under s 7A(1)(b), which permits a principal to claim for the contractor's non-performance. The Act, not a contractual repayment mechanism, is the source of the entitlement. The principle does reinforce the standard already stated, and the Respondent's own credit note and valuation at \$340,000 accept that a reconciliation of this kind can yield a repayment.
66. The Respondent says the second milestone was triggered by an event ("*the earlier of*" one year from execution or rescoping) rather than by certified deliverables, and that the Applicant's payment of Invoice 2325 on 18 March 2025 is contemporaneous acceptance that it had crystallised.<sup>10</sup> I accept the milestones were event based and that the payment is evidence the Applicant then treated the trigger as met.
67. In accordance with s 7A(1)(b) and s 33(1)(b) of the Act, I am to value the services performed, not to decide whether a milestone trigger was met. The event-based character does not preclude that valuation. The payment is part of the evidentiary picture, relevant to scoping at 5.2.2, but not decisive of the value of services rendered.
68. The Respondent also says termination was for convenience, not for any deficiency, and invites me to weigh the Applicant's case in that light<sup>11</sup> and relies on the meeting and contemporaneous emails of 20 January 2026, directing a reset around community priorities and the program's delays, costs and scope changes.<sup>12</sup>
69. It is common ground that termination was for convenience under clause 24(b), not for cause. That is difficult to reconcile with the Applicant's case of substantial non-performance, but does not govern my task, in that, I am to value the services on the evidence of what was and was not performed, irrespective of the reason the engagement ended.

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<sup>8</sup> The reconciliation at Application, Annexure 2; the letter at Response, Annexure 5.

<sup>9</sup> Response, paras 4.3 to 4.5.

<sup>10</sup> Response, paras 4.6 to 4.11 and 6.1.

<sup>11</sup> Response, paras 2.2 and 6.2.

<sup>12</sup> Response, Annexure 4.

70. The termination for convenience therefore tempers the weight I give the Applicant's case of systemic non-performance and is consistent with my findings below that the shortfalls are modest. It does not, however, displace the phase-by-phase valuation.
71. The Applicant relies on the disproportion between 75% of the fee paid and an asserted 4.4% of construction value delivered.<sup>13</sup> I do not treat that ratio as a measure of value. As the Applicant accepts,<sup>14</sup> fees are not linear with construction value, and substantial effort falls in the pre-construction phases. The disproportion is context only and value is assessed phase by phase on the evidence.
72. Finally, this determination is made under Part 3 of the Act for the rapid, interim resolution of payment disputes. It does not finally determine the parties' rights, and either party may have the underlying dispute determined by a court on fuller evidence, which may reach a different conclusion.

## **5.2 Disputed Valuation by Phase**

### **5.2.1 Project Establishment & Management (in dispute: \$68,500)**

73. The Respondent values this phase at \$136,500 and the Applicant at \$68,000.<sup>15</sup> This is the largest single amount in dispute.
74. The Applicant's case rests on an alleged failure to provide monthly progress reports, a farewell email from a departing project manager referring to "*delays or missteps*", and an asserted pattern of limited engagement during 2025.<sup>16</sup>
75. The Respondent produced 16 monthly progress reports, together with the workplans, cashflow trackers, schedule updates, issues-and-risk registers and stakeholder records that accompanied them. The reports record the month-to-month management of the engagement, including schedule slippage, financial tracking against the grant, procurement progress and the management of community and agency stakeholders.
76. Of 18 reporting periods across the 21-month engagement, only the March and July 2025 reports are absent. The December 2024 report was, by arrangement, combined with January 2025 over the holiday period and is not a gap. The March 2025 report was not submitted, which the Respondent acknowledges and for which it has apologised. The July 2025 report was prepared but not transmitted during the August 2025 handover between the departing and incoming project managers,<sup>17</sup> each having assumed the other had sent it. The two omissions are limited in number and do not evidence a pattern of systematic non-reporting.
77. The monthly report is one deliverable within the broader project-management function, and the non-delivery of two reports is not, of itself, proof that the wider function went unperformed. In instances where a performance shortfall is established, however, I assess its value rather than disregard it, and I approach this phase by valuing each established shortfall in turn.

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<sup>13</sup> Application, paras 1.4 and 5.2.

<sup>14</sup> Application, paragraph 5.3.

<sup>15</sup> Response, para 7.7; Application, para 2.7.

<sup>16</sup> Application, paras 2.3, 2.5 and 2.10.

<sup>17</sup> Response, paras 7.2 to 7.3.

78. As to the reports, no downstream consequence has been shown to flow from either omission. Treating the monthly report as a discrete recurring deliverable and valuing each missed report at the order of \$1,250, I assess the two omissions at \$2,500.
79. The reporting obligation was not merely to transmit a document. The Scope of Works required the monthly report, provided with each invoice, to track progress against the project milestones, expressly including indigenous employment.<sup>18</sup>
80. The Applicant's material is that the indigenous-employment milestone was not being monitored or carried forward through the reporting, which is consistent with the two acknowledged reporting gaps and with the diminished engagement I find below, so I do not rest the point on the reconciliation alone.
81. I confine it to the Respondent's own monitoring and reporting function, which fell within its scope, and not to the achievement of employment outcomes on site, which depended on the contractors. This is a recurring monitoring obligation across the engagement and not a single deliverable, so I place it above the value of one report, but I confine it to the in-scope monitoring function and to the partial rather than total failure the material establishes, and I assess it at \$4,500.
82. The principal element of this phase, beyond the front-loaded establishment work, is the ongoing management of the engagement across its 21 months, and I find that management fell short of the standard for which the fee was set between about January and August 2025. The Respondent's annexures show this was not a period of inactivity. They include a **[Redacted]** Sporting Facilities Tender Evaluation Report prepared for the Applicant in June 2025, the conduct of a live tender process, and regular dealings with the funder and other agencies.<sup>19</sup>
83. I have weighed that material and do not find that the project was unmanaged. The shortfall is narrower, and rests on matters the Respondent's own evidence establishes. The two contractual monthly reports for this period were not delivered, which is admitted.
84. The Respondent's correspondence of February 2025 records that its principal was to be absent for six weeks, working intermittently and with some delay, that its nominated contact was at the same time on bereavement leave, and that conduct of the engagement was reassigned in consequence. Its project manager acknowledged in May 2025 that a clearance requirement should have been identified earlier in the process, which required remedial applications.<sup>20</sup>
85. With reference to the departing manager's reference to delays in his email of 14 August 2025, these establish that for a period the management service was delivered at a standard below that for which the fixed fee was set, even though activity continued. I do not reduce the fee for any shortfall in external

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<sup>18</sup> Scope of Works, Attachment 1 to the Consultancy Agreement; the reporting obligation is quoted at Application, para 2.1, the body of the Scope of Works not being in evidence.

<sup>19</sup> Response, Annexures 11 to 18; including the Tender Evaluation Report of 10 June 2025 prepared for the Applicant, and the 2025 tender and agency correspondence.

<sup>20</sup> [name redacted] to [name redacted], 14 May 2025, as to the clearance requirement; [name redacted] to [name redacted], 21 February 2025, as to the principal's absence and the reassignment of the engagement; Response, Annexures 11 to 18.

stakeholder or community engagement, which was outside the Respondent's scope, and which in any event the Respondent appears to have undertaken.<sup>21</sup>

86. As to quantum, the ongoing-management element is of the order of half the claimed value of this phase, around \$3,250 a month. Assessing the cumulative effect of the reduced availability, the admitted planning miss, the undelivered reports and the acknowledged delays, and allowing for the substantial management work that continued throughout, I assess that effect as equivalent to about four months of the ongoing-management value, and the diminished management at \$13,000.
87. I am not satisfied the Applicant has established a reduction of the order it claims. A reduction to \$68,000 would imply that more than half the services went unperformed, which the body of reports, workplans and trackers contradicts. The lesser-reduction principle in 5.1 governs residual uncertainty about the quantum of each component, but it does not require me to set aside shortfalls that are established or acknowledged, and the matters dealt with above are.
88. The larger reduction I make on this phase than on scoping and procurement reflects that this phase alone carries an express recurring deliverable tied to each invoice, two omissions the Respondent admits, and the responsible manager's own acknowledgement of shortcomings, none of which were present in those phases.
89. In summary of the above amounts, that being \$2,500 for the two undelivered reports, \$4,500 for the deficient monitoring of the indigenous-employment milestone, and \$13,000 for the diminished management through 2025, I assess a deduction of \$20,000.
90. I assess this phase at \$116,500 (excluding GST).

### **5.2.2 Scoping Upgrades (in dispute: \$27,500)**

91. The Respondent claims the full \$112,500.<sup>22</sup> The Applicant values the phase at \$85,000, relying on incomplete scoping of the [Community 1] recreation hall and [Community 2] and on mismanaged [Community 1] consultations.<sup>23</sup>
92. The Respondent produced substantial deliverables including site visits with photographs and condition assessments, tenure reviews, Sacred Site Clearance Certificates and leases, a functional specification for [Community 1] agreed with a regional council, an EOI to a utility authority, demand calculations and a floor plan. The outstanding [Community 1] issue was confirmation of community location, a consultation function allocated to the Applicant. [Community 2] was paused by agreement on 22 August 2025.<sup>24</sup>
93. The Applicant also relies on the failure to identify the overhead power line at the [Community 3] court footprint during scoping, the line not being found until construction.<sup>25</sup> The Respondent submits that site-

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<sup>21</sup> External stakeholder management was excluded from the Respondent's scope; Response, para 7.6, citing Attachment 1, pp 20 and 28, the body of the Scope of Works not being in evidence.

<sup>22</sup> Response, para 7.14.

<sup>23</sup> Application, paras 4.1 to 4.7.

<sup>24</sup> Response, paras 7.9 to 7.10.

<sup>25</sup> Application, para 3.8.

services risk lay with the contractor under clause 2.1.1 of the RFT, that the RFT made the line visible and named the lighting demolition, that scoping visits are condition assessments not surveys, and that no expert evidence shows a competent manager would have identified it.<sup>26</sup>

94. I accept that answer and am not satisfied the power line is established as a failure. The Respondent nonetheless claims the full allocation, though two components (confirmation of the [Community 1] location and the [Community 2] scope) remained unresolved. That incompleteness warrants a modest reduction, even though those decisions rested with the Applicant. The Applicant has not shown any larger reduction is attributable to unperformed Respondent obligations.
95. Those two open items are a limited part of an otherwise performed phase, and their incompleteness was largely outside the Respondent's control. Confirmation of the [Community 1] location was a consultation function that rested with the Applicant, and the [Community 2] scope was paused by agreement on 22 August 2025, so the greater part of any incompleteness is not attributable to the Respondent.
96. The phase allocation is \$112,500. The Applicant's reduction of \$27,500, some 24% of the phase, attributes to the Respondent decisions that in fact rested with the Applicant, and is not made out. A nil reduction would ignore that two elements of the scoping were left open at termination.
97. Confining the deduction to the residual part of those two items that the Respondent might itself have advanced, and resolving the remaining uncertainty in favour of the lesser reduction (5.1), I assess a deduction of \$10,000, being under 10% of the phase allocation.
98. I assess this phase at \$102,500 (excluding GST).

### **5.2.3 Procurement, Tender Documentation & Evaluation (in dispute: \$11,000)**

99. The Respondent values this phase at \$51,000, having reduced its claim from the \$59,500 allocation.<sup>27</sup> The Applicant values it at \$40,000, alleging tender documents were not shared before release, the housing tender drew no viable bids, and the **[Redacted]** sporting facility tenders were over budget.<sup>28</sup>
100. The non-sharing allegation is met by the evidence. The **[Redacted]** sporting facility RFT was provided to [name redacted] on 29 January 2025,<sup>29</sup> and the Housing RFT on 9 December 2024. The "no viable bids" allegation is contradicted by two bids ([a contractor] and [another contractor]) and the award to [a contractor], established by the Notice of Dispute, the progress reports recording the negotiation and award,<sup>30</sup> and payment certificate PC02 recording administration of the resulting contract at \$296,601.44 (excluding GST).<sup>31</sup>
101. The Applicant's own correspondence records the countersigned housing contract returned on 22 April 2025. Not being bound by the rules of evidence (s 34(1)), I am satisfied a competitive process was run and a contract awarded.

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<sup>26</sup> Response, para 9.4.

<sup>27</sup> Response, para 7.22.

<sup>28</sup> Application, paras 3.3 to 3.6.

<sup>29</sup> Response, Annexure 14.

<sup>30</sup> Response, Annexure 2.

<sup>31</sup> Response, Annexure 17.

102. The Tenders.net records for the original and reissued **[Redacted]** sporting facility tenders record a substantial number of suppliers and external firms downloading the documents. They evidence reach rather than bids, but do not support the contention that no viable process was run.
103. Only one allegation survives, that is, the acknowledged omission of detailed site layout drawings from the first **[Redacted]** sporting facility tender, which contributed to the over-budget first round, and even that is substantially explained by Applicant-driven changes (the tiles amendment and a late additional tenderer).<sup>32</sup>
104. The over-budget return was also foreshadowed by the Respondent's written warning of 23 May 2024 that the budgets were best-case approximations,<sup>33</sup> and is explained in the Tender Evaluation Report by the sole tenderer's limited familiarity with remote costs.<sup>34</sup> The single established deficiency is minor and largely Applicant-driven, and I do not agree that the Applicant's reduction of \$11,000 is made out. This is because it is confined to one element of a phase that otherwise ran a competitive process to award across the project's components, and its effect is largely attributable to the Applicant-driven changes and the tenderer's remote-cost unfamiliarity rather than to the Respondent.
105. Allowing for the limited residual attributable to the Respondent, and resolving uncertainty in favour of the lesser reduction (5.1), I assess a deduction of \$3,000, being around 5% of the \$59,500 allocation.
106. I assess this phase at \$48,000 (excluding GST).
107. I have also considered the Respondent's reliance on the Delay Events provisions (clauses 34 to 37),<sup>35</sup> under which it says the extended timeline was outside its control. It claimed no extension or fee adjustment under them, so they do not alter the quantum, but they are consistent with my finding that the extended procurement programme is substantially attributable to Applicant-driven changes.

#### **5.2.4 Construction Management & DLP (in dispute: Nil)**

108. Both parties value this phase at \$40,000 (excluding GST),<sup>36</sup> which I adopt.
109. For completeness, the Applicant's fifth argument relied on the [a contractor] correspondence as evidence of poor contractor management.<sup>37</sup> That relates to this agreed phase and does not affect the quantum, so I make no separate deduction.

### **5.3 Value of Services Rendered**

110. In view of the above, I find the value of the services rendered by the Respondent to the date of termination as follows (all amounts excluding GST):

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<sup>32</sup> Response, para 7.19.

<sup>33</sup> Response, Annexure 8.

<sup>34</sup> Response, Annexure 15.

<sup>35</sup> Response, para 9.3.

<sup>36</sup> Response, para 5.1; Application, para 8.

<sup>37</sup> Application, paras 6.1 to 6.7.

Phase	Value found
Project Establishment & Management	\$116,500
Scoping Upgrades	\$102,500
Procurement, Tender Documentation & Evaluation	\$48,000
Construction Management & DLP	\$40,000
<b>Total value of services rendered</b>	<b>\$307,000</b>

#### 5.4 The Overpayment

111. The fixed fees received were \$408,750 (excluding GST) and the value of services \$307,000, a gross overpayment of \$101,750. That value sits between the parties' figures. It is \$33,000 below the Respondent's \$340,000, reflecting the deductions of \$20,000, \$10,000 and \$3,000, and well above the Applicant's \$233,000, whose larger reductions are not established.
112. The Respondent has already repaid \$68,750 (excluding GST) by credit note CN-0101. The net further overpayment is \$33,000 (excluding GST). With GST of \$3,300, the amount repayable by the Respondent to the Applicant on the fee claim is \$36,300.00 (inclusive of GST).

#### 5.5 The Respondent's Cross-Claims

##### 5.5.1 Outstanding disbursements: Invoice 2470

113. The Respondent claims \$26,676.23 (inclusive of GST) under Invoice 2470 dated 24 February 2026 (due 11 March 2026) for travel, accommodation and related remote-site disbursements,<sup>38</sup> for which the Contract provides at cost plus 10%.
114. The Applicant disputes them as unsubstantiated,<sup>39</sup> but the Respondent provided schedules and receipts with its Notice of Dispute of 4 March 2026.<sup>40</sup> The Applicant's denial is unsupported by contrary material, and as the receipts correspond to the invoiced items, I am satisfied the disbursements are substantiated and available to the Respondent as a set-off.
115. I have reviewed the line-item schedule and receipts provided as Attachment 4 to the Notice of Dispute,<sup>41</sup> which correspond to the invoiced items. The Applicant's objection to "*unsubstantiated disbursements*" of \$31,517.20<sup>42</sup> was in fact directed at the earlier invoices INV2201 and INV2245, already paid and not claimed here,<sup>43</sup> and did not squarely contest Invoice 2470.
116. I am satisfied that Invoice 2470 is a valid claim under the Contract for \$26,676.23 (inclusive of GST), available to the Respondent as a set-off and I take it into account as a defence to the Applicant's claim.

<sup>38</sup> Response, paras 8.4 to 8.6.

<sup>39</sup> Application, para 7.6.

<sup>40</sup> Response, para 8.4; Annexure 7.

<sup>41</sup> Response, Annexure 7.

<sup>42</sup> Application, para 7.6.

<sup>43</sup> Response, para 8.2.

### 5.5.2 Notice-period fees

117. The Respondent claims \$20,690 (excluding GST) for work between 13 January and 13 March 2026, which it accepts was not previously invoiced.<sup>44</sup>
118. The Payment Dispute arises from the Payment Claim and the Notice of Dispute. The notice-period fees were never the subject of a payment claim, were never invoiced, and had not crystallised as part of the Payment Dispute. To determine them would be to decide a fresh claim outside the dispute referred.
119. I therefore make no determination on the notice-period fees, and the Respondent's rights in respect of them are reserved.

## 6.0 SUMMARY

120. On the findings above, the Applicant is entitled to \$36,300.00 (inclusive of GST) on the fee overpayment. The Respondent's set-off in respect of Invoice 2470, which I have found to be a valid claim of \$26,676.23 (inclusive of GST), is less than that entitlement.
121. Applied as a set-off, Invoice 2470 reduces the Applicant's entitlement but does not extinguish it. Setting the \$26,676.23 against the \$36,300.00, the net amount payable by the Respondent to the Applicant on the payment dispute referred is \$9,623.77 (inclusive of GST). The whole of Invoice 2470 is absorbed in the set-off, so no balance of it remains to be reserved.
122. The net amount payable is as follows (all amounts inclusive of GST):

Item	Amount
Fixed fee overpayment payable by Respondent to Applicant	\$36,300.00
Less: Invoice 2470 set-off, taken into account as a defence	(\$26,676.23)
<b>Net amount payable by the Respondent to the Applicant</b>	<b>\$9,623.77</b>

## 6.1 Interest

123. Section 35(1) empowers me, where a party is liable to make a payment, to award interest. Under s 35(1)(a), interest runs where the payment is overdue under the contract, in accordance with the contract. Under s 35(1)(b), interest may otherwise be awarded at up to the prescribed rate from the date the dispute arose to the date of determination.
124. Because Invoice 2470 is taken into account only as a set-off and is not determined as a sum payable to the Respondent, no interest is awarded on it.
125. The fee overpayment is not a sum overdue under the Contract, so s 35(1)(a) does not apply, and interest could arise only under the discretion in s 35(1)(b). As the overpayment was contested and crystallised only on this determination, I decline to exercise that discretion and determine the amount without interest.

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<sup>44</sup> Response, paras 3.4 and 10.1(5).

126. I determine, pursuant to s 33(1)(b), that the Respondent shall pay the Applicant the sum of \$9,623.77 (inclusive of GST), being the Applicant's fee overpayment of \$36,300.00 net of the Respondent's Invoice 2470 set-off of \$26,676.23, on or before 18 June 2026.

## **6.2 Costs of Parties to Payment Disputes**

127. Under s 36(1) the parties bear their own costs in relation to the adjudication, including the costs they are liable to pay under s 46. By s 36(2) I may order one party to pay another's costs only if satisfied they were incurred because of frivolous or vexatious conduct, or unfounded submissions.

128. I have found no such conduct or unfounded submissions, so each party must bear its own costs.

129. Pursuant to s 38(2), a copy of this determination will be given to the parties with a redacted copy being issued to the Registrar for publishing.

**SCHEDULE B**

**7.0 CONFIDENTIAL MATTERS**

130. [Redacted]

**8.0 COSTS OF ADJUDICATION**

131. [Redacted]