

Minor Works and Services (MWS) Conditions of Contract

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1. Interpretation of Terms

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

'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*.

'Certificate of Completion' means the certificate or written approval issued by the Principal under clause 57 certifying that the Works have reached Completion.

'Completion' means the Principal 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 case 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 and if no date appears is the date on which the Principal sent the Notice of Acceptance 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.

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

'Indigenous Development Plan' means the indigenous development plan if any approved by the Principal pursuant to clause 19.

'Indigenous' with reference to a 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.

'Intellectual Property' includes all copyright and neighbouring rights, and all rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

'Lump Sum' means the total sum which will have become payable to the Contractor by the Principal upon completion of the Works.

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

'Order' means an order issued on the Contractor by the Principal, 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.

'Portion of the Works' means the Principal 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.



'Principal' means the Roper Gulf Regional Council.

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

'Project Control Plan' means the project control plan if any approved by the Principal pursuant to clause 21.

'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), 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 Principal 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.

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

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

'Variation' means any increase or decrease in the Works, any omission from the Works, any change in character or quality of the Works or any additional work.

Working Day has the meaning given in clause 28.

'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;
- 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 between the principal and the Contractor shall comprise:

- 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. Basis of Payment

The Contractor shall be paid either on a Lump Sum or a Schedule of Rates basis as stated in the Annexure. Where payment is to be made on a Lump Sum basis the sum payable shall, subject to any adjustment made pursuant to the Contract, be the Lump Sum.

Where payment is to be made on a Schedule of Rates basis the quantities in the Schedule are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out: the lower and upper limits of accuracy for each quantity are eighty five per cent (85%) and one hundred and fifteen per cent (115%) respectively of the stated quantity. When the actual quantity is greater than the upper

limit or less than the lower limit, an adjustment may be made to the rate applicable to the quantity outside the limits of accuracy. Any adjustment to the rate shall be as agreed between the Contractor and the Principal's Representative, or in the event of failure to agree, as determined by the Principal.

The Principal is not liable to pay for any unfixed plant or materials unless they are listed in the Annexure and the Contractor:

- a) provides the additional security required by the Principal;
- b) has satisfied to the Principal's satisfaction that the subject plant and materials have been paid for, are unencumbered, properly stored and protected, and clearly labelled the property of the Principal;
- c) has effected appropriate insurance in the Principal's name if required by the Principal to protect the Principal's interest in the unfixed plant and materials; and
- d) has established to the Principal's satisfaction that the relevant plant and materials have not been prematurely ordered or delivered to Site.

Upon payment to the Contractor or the incorporation of the plant and materials into the Works, whichever occurs earlier, the subject plant and materials become the unencumbered property of the Principal.

The Contract shall be on a firm price basis.

3.2. 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. Principal and Principal's Representative

The Principal may from time to time appoint a representative ('**Principal's Representative**'). The initial Principal's Representative is the person stated in the Annexure and the Principal will notify the Contractor of any change to the person appointed as its representative during the delivery of Works.

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

8. Directions

The Principal's Representative has the power to issue directions under the Contract and the Contractor shall:

- a) comply with any direction either orally or in writing issued, given or served upon the Contractor by the Principal's Representative;
- b) if a direction given by the Principal's Representative conflicts with the requirements of this Contract, immediately notify the Principal's Representative in writing of the conflict;
- c) keep the Principal's Representative informed on the state and stages of the performance of the Works; and
- d) attend any meetings as requested by the Principal's Representative from time to time.

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 Principal's Representative 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 Principal 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.

The Contractor acknowledges and agrees that no approval given by Principal's Representative to the Contractor will in any way:

- a) diminish or extinguish any of the responsibilities of the Contractor under this Contract; or
- b) affect any warranty given or required to be given by the Contractor under this Contract; or
- c) amount to a waiver by the Principal's Representative of any right of the Principal under this Contract or at law.

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 its own cost make good any such loss or damage.

The Contractor shall, unless the Contract provides otherwise, supply at its own cost and expense everything necessary for the proper completion of the Works and the proper performance of its 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 Local Government Regulations and the Principal's Procurement Policy, 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 Principal 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 Principal.

The Contractor shall notify the Principal 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 Principal.

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 Principal 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 parties acknowledge that the legal relationship between Principal and the Contractor is that of a principal and independent contractor.

The Contractor, its employees and sub-contractors thereof, in performing the Works, are not for any purpose a servant, employee, partner or joint venture of the Principal and the Contractor must not hold itself out as such.

As an independent Contractor, the Contractor must, unless otherwise provided in this Contract, exercise independent control, management and supervision over the performance of its officers, employees, agents and sub-contractors.

13. Notices

13.1. Service 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 Principal's 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 4.30pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

14. Site Rules

The Contractor, its 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 nominated in the Preliminary Clauses.

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 and Publicity

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 or ought to know 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:

- a) maintain the currency of accreditation 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.

17. Conflict of Interest

The Contractor warrants that:

- a) At the date of Contract award no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and
- b) It shall use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any sub-contractor.

The Contractor shall inform the Principal of any matter, which may give rise to an actual or potential conflict of interest of the Contractor at any time during the currency of the Contract. This information will be treated confidentially.

18. Local Content

18.1. 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 fulfil all aspects of the Local Benefit Commitment.

18.2. Use of Local Labour, Apprentices, Trainees and Supplies

Without limiting clause 18.1, 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 (as stated in the RFT).
- iii. The Contractor's level of compliance with this requirement may be taken into consideration for further Roper contracts with the Principal for a period of twelve (12) months.

18.3. Reporting to the Principal and Right of Audit

The Contractor shall, within seven (7) days of a written request by the Principal, submit a written report to the Principal detailing how it has complied or is complying with clauses 18.1 and 18.2.

The Principal 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 18. The Principal may conduct this audit itself or may engage a third party to conduct the audit on the Principal's behalf.

18.4. 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 18, the Principal may take action under clause 49.

18.5. Performance to be Reported in Contractor Performance Reports

The Contractor's compliance or non-compliance with this clause 18 will be recorded in the Contractor Performance Report to be prepared by the Principal in accordance with clause 51.

19. 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 Principal for approval. The Principal shall within a reasonable time from receipt, either approve the Indigenous Development Plan, or reject it, giving reasons for the rejections. If the Principal rejects the Contractor's Indigenous Development Plan the Contractor shall rectify the deficiencies and resubmit the Indigenous Development Plan for approval by the Principal.

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.

20. 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.

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

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.

21. Project Control Plan

Where a Project Control Plan has been specified, the Contractor will maintain and implement the Plan throughout the course of the Contract. The Principal will provide a 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 Principal for approval one copy of the Project Control Plan. The Principal shall within a reasonable time from receipt either approve the Project Control Plan, or reject it, giving reasons for the rejections. If the Principal rejects the Project Control Plan the Contractor shall rectify the deficiencies and resubmit the Project Control Plan for approval by the Principal.

22. 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 Works and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

22.1. 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.

22.2. Limitation of Liability

If specified in the Annexure, the liability of the Contractor 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 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 22.1; 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.

22.3. 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.

23. Insurances

23.1. 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) and policies shall be purchased from Principal approved insurers. Details can be found at the following web address:

<http://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 warrant to the Principal that it shall take out, and shall maintain during the currency of the Contract, a policy of insurance to cover for risks and potential liabilities arising in relation to provision and delivery of the Works including those risks accepted by the Contractor under this Contract.

The Contractor shall procure that all sub-contractors have the same level of insurance policies in place as the Contractor is required to hold under this Contract .

23.2. 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 23.

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 and in the aggregate.

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.

23.3. Lodgement of Certificates of Currency

The Contractor shall provide the Principal with copies of Certificates of Currency and summaries of coverage for all insurance policies required under clause 23 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) Business 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.

24. Time for Commencement

The Contractor shall commence the Works within the time stated in the Annexure and shall, unless otherwise specified, give at least four (4) days written notice to the Principal prior to the commencement of work.

25. Time for Completion

The Contractor shall complete the Works within the time stated in the Annexure or within such extended time as agreed to in writing by the Principal.

26. Invoicing and Payment

The Contractor must submit to the Principal a valid invoice at intervals of not less than one (1) month or as otherwise determined by the Principal, showing the value of the work carried out in performance of the Contract. The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Principal.

For the purpose of this clause 26 an invoice is valid if it:

- a) is correctly addressed and calculated in accordance with this Contract,
- b) relates only to the Works that have been delivered to the Principal in accordance with this Contract and for which the Contractor is entitled to invoice under this Contract;
- c) complies with *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- d) complies with the requirements stipulated in this Contract.

The Contractor's Tax Invoice shall include details of any Adjustments under clause titled Goods and Services Tax of the Conditions of Contract and an explanation as to how such Adjustments were calculated.

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

The Principal will make payments within thirty (30) days of receipt of a valid, compliant and undisputed invoice.

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.

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 will not be grounds to vitiate or avoid the contract.

26.1. Retention Monies

The Principal shall retain from each payment to the Contractor an amount as specified in the Annexure to the Conditions of Contract (the "**Retention Amount**").

Retention moneys shall be held by the Principal as security for the Contractor's due and proper performance of all obligations under the Contract, including the rectification of any defects.

The Principal shall release:

- 50% of the total retention upon the within thirty (30) days of issue of a Certificate of Practical Completion;

- The balance of the retention upon the expiry of the Defects Liability Period, subject to the rectification of all notified defects to the satisfaction of the Principal.

The Principal may use retention moneys to:

- Remedy any failure by the Contractor to carry out or complete the works in accordance with the Contract;
- Rectify any unaddressed errors, omissions or defects;
- Recover any amounts lawfully due from the Contractor under the Contract, including liquidated damages (if applicable).

Before using retention moneys, the Principal shall give the Contractor at least five (5) business days' written notice, specifying:

- The default or breach;
- The amount to be deducted; and
- The Contractor's right to rectify or respond within that period.

If the Contractor fails to respond or rectify within the notice period, the Principal may deduct or apply the specified amount from the retention moneys.

Retention moneys shall not accrue interest and are not required to be held in a separate account unless required by law.

The use of retention moneys does not limit the Principal's rights to pursue other remedies under the Contract or at law.

26.2. Incorrect Invoice Payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Principal to the Contractor under this Contract.

26.3. Method and Currency of Payment

Payments under this Contract may be made by electronic transfer directly to the nominated bank account of the relevant payee.

Unless otherwise agreed by the parties, all payments by the Principal to the Contractor will be made to a bank account in Australia.

All invoices from the Contractor to the Principal must be in accordance with the currency of the Lump Sum or Schedule of Rates.

27. Storage of Contractor's Material

The Contractor's materials and plant shall only be stored in the location approved by the Principal. 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.

28. 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 Principal.

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 Principal 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 Principal, 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 Principal in writing of the circumstances as early as possible.

29. Obvious Work

The Contractor shall carry out all work that a competent and experienced Contractor should reasonably have anticipated when providing the Contractor's Tender, that formed part of the Contract even though not specifically listed or detailed in the Scope of Works or Drawings if the Contractor had:

- a) inspected the Site;
- b) examined all information made available to the Contractor by the Principal with regard to the Works; and
- c) has knowledge of the provision and delivery of the type of Works to be delivered under this Contract.

30. Access to Works and Material

The Principal or any other persons authorised by the principal, 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 Principal shall give the Principal 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.

31. 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 Principal is 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.

32. 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, the Contractor must provide full particulars of the item the Contractor proposes to use to the Principal for approval and the Principal shall decide whether or not the proposed substitute may be used at its absolute discretion.

33. 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.

34. Work Health and Safety Management

34.1. Definitions

For the purposes of this clause 34

'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 34.3 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 subordinate legislation; 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.

34.2. WHS Management Plan

- a) This clause 34.2 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,
 - 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 Principal 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 Principal, 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 Principal or other person.

34.3. Appointment of Contractor as Principal Contractor

- a) This clause 34.3 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.

34.4. 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 Principal, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Contractor or any sub-contractor commences any Works; and
- f) generally comply with the requirements of the *WHS Act*.

34.5. 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 Principal before the High Risk Construction Work is carried out and at any other time requested by the Principal; 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.

34.6. Contractor's Obligations to Inform

The Contractor must keep the Principal fully informed of all health and safety matters relating to the Works and will provide the Principal 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.

34.7. 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 34 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.

34.8. Powers of Principal Regarding Work Health and Safety

If the Principal 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 34,

then, in addition to any other rights the Principal has under the Contract, the Principal 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 34.8 are the responsibility of the Contractor and the Contractor indemnifies the Principal from and against any claim, action, damage, loss, cost, charge, expense or payment which the Principal suffers, incurs or is liable arising out of or in connection with such costs, delay and disruption.

34.9. 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.

34.10. 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 Principal.

34.11. Breach by Contractor

- a) Where, in the reasonable opinion of the Principal's Representative or the Principal, the Contractor has:
 - i. where applicable, commenced the Works without having first complied with clause 34.2(b); or
 - ii. committed a breach of any of its other obligations under clauses 34.2 to 34.10, the Principal may immediately terminate this Contract by written notice to the Contractor.
- b) The remedy provided in clause 34.11(a):
 - i. applies notwithstanding any other provision of the Contract; and
 - ii. is in addition to the other remedies under this Contract.

34.12. 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.

34.13. Work in the vicinity of Natural Gas Pipelines

In accordance with the *Energy Pipelines Act 1981 (NT)*, 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.

34.14. 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.

34.15. 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.

34.16. 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.

35. Precautions in Carrying out Works

The Contractor shall and procure its sub-contractors to 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 shall and procure its sub-contractors to 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.

36. 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 Principal check with them the location of all services.

The Contractor shall immediately notify the Principal 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 Principal.

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 Principal 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 the Contractor, and has carried out its operation with reasonable care, the cost of reinstatement, diversion or other associated work may be treated as a Variation to the Contract.

37. 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 the Contractor commenced the Works excluding for fair wear and tear.

38. 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.

39. 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.

40. 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 and its sub-contractors and agents.

41. 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 its sub-contractors or agents shall be properly protected by the Contractor. If necessary protected equipment shall be able to function.

42. 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.

43. 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 unreturned key.

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

44. Variations

The Principal may direct a Variation to the Works and such direction shall not invalidate the Contract.

Within five (5) Business Days after receiving a notice of Variation, the Contractor must advise the Principal:

- a) the estimated cost or cost saving of carrying out the Variation (including any delay or disruption costs connected with the Variation); and
- b) the estimated impact that the Variation will have on the Completion Date.

The Variation shall be valued by mutual agreement between the Contractor and the Principal or failing agreement by the Principal and the Contractor at a rate or price increased or decreased accordingly.

Any works performed by or on behalf of the Contractor will not be paid by the Principal as a Variation unless the Principal or the Principal's Representative has agreed, prior to such works being performed, that the works constitute a Variation and has either:

- a) agreed the amount to be paid in respect of that Variation; or

- b) the Principal or the Principal's Representative has notified the Contractor that the Variation should proceed as stipulated and that the amount payable for the Variation will be determined later by agreement, or failing agreement, at a rate or price increased or decreased accordingly.

45. Defects Liability Period

Upon determination by the Principal 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 its 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 Principal, the Principal may, by notice in writing, take action to complete those defects outstanding by another contractor. The costs incurred by the Principal of any rectification works carried out by another contractor will be a debt due and payable from the Contractor to the Principal, which the Principal may offset or deduct from any amount payable from the Principal to the Contractor under the Contract.

46. 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 the written consent of the Principal.

47. Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the Works the Contractor shall submit to the Principal the names of its 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 Principal 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.

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.

48. Disputes

48.1. Disputes

Each party must follow the procedures in this clause 48 before starting court proceedings, other than for interlocutory relief.

48.2. 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.

48.3. 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.

48.4. 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.

48.5. 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.

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.

48.6. 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.

48.7. 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.

49. Termination

If the Contractor fails to carry on the Works at a rate of progress satisfactory to the Principal, or neglects or omits to carry out any instruction of the Principal 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 Principal may approve, or intimates that the Contractor is unwilling or unable to complete the Works, or becomes insolvent or bankrupt, or being a company goes into liquidation, the Principal 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 the Contractor 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 the Principal 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, which are the property of the Contractor and are deemed to be requisite and necessary for the purpose of any such completion.

50. Rights of Principal to Recover Monies

Without limiting the Principal's rights under any other provision in the Contract should the Principal take action pursuant to clauses 45 (Defects Liability Period) and/or 49 (Termination) or any other clause in this Contract then all losses, costs, charges, outgoings and 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.

51. Contractor's Performance Report

The Contractor agrees that upon completion of the Works or the termination of the Contract:

- a) the Principal will prepare a Contractor's Performance Report ('**Report**');
- b) the Principal shall liaise with the Contractor in completing the Report although the Principal 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.

52. 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.

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.

53. 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 this Contract.

The Contractor must and procure its sub-contractors 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 of:

- 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 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 either:

- a) return to the Principal all records containing Personal Information; or
- 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.

54. Intellectual Property

All Intellectual Property of any nature in or in relation material created, developed, modified or expanded by the Contractor (or any officer, employee, agent or sub-contractor of the Contractor) during provision of the Works will vest in the Principal upon creation, and the Contractor will have no claim to or interest of any nature in such Intellectual Property.

Immediately before Completion or earlier determination (whichever occurs first), the Contractor must deliver up (or caused to be delivered up) to the Principal all of the copyright material and works vesting in the Principal pursuant to this clause (if any).

The Contractor warrants to the Principal that it or any of its officers, employees, agents or sub-contractors will not act in any way that contravenes any of the Principal's Intellectual Property and will not use the Principal's Intellectual Property for any purpose other than in the delivery of the Works.

The Contractor indemnifies and will hold harmless the Principal against any damages, costs, claims, actions or proceedings arising from, in connection with or related to any unauthorised use of the Principal's Intellectual Property or contravention of the Principal's Intellectual Property by the Contractor (or any of its personnel).

55. Working with vulnerable persons

This clause applies if the Works or any part of the Works involves working with or contact with children, vulnerable persons and persons with disabilities.

The Contractor must and ensure that each officer, employee, agent or sub-contractor hold and maintain a copy of all required registrations, checks, clearances and any other document required for working with children, vulnerable persons and persons with disabilities before engaging or deploying officer, employee, agent or sub-contractor in the provision or delivery of the Works ("**Clearances**").

The Contractor must immediately advise the Principal of any circumstances affecting the currency or validity of any of the Contractor or any of its officers, employees, agents or sub-contractors Clearances required under this clause, including (without limitation) an interim bar, suspension, exclusion or cancellation.

The Contractor must provide evidence of its compliance with this clause to the Principal upon request.

56. Environmental Obligations

The Contractor must:

- a) ensure that the Contractor's employees, agents or sub-contractors activities do not cause or contribute to environmental damage, harm or nuisance;
- b) execute the Works in such a way that avoids unlawful pollution of the Site and its surroundings;
- c) when required by law, any bodies with competent jurisdiction or the Principal submit environmental management plans, safe work method statements and any other documents relating to the protection of the environment to the Principal for permission to proceed prior to commencing work on the Site or at other times as required; and
- d) not disturb any monitoring stations or other facilities set up in relation to environmental management (if any).

Except to the extent that it is the unavoidable result of the performance of the Works in accordance with environmental best practice, the Contractor is responsible for and must make good, any damage to the environment caused by the performance of the Works (including any unlawful pollution of the Site or its surroundings). The Contractor must:

- a) immediately report any environmental damage or pollution caused or contributed to by the performance of the Works;
- b) at its cost, clean up and make good any environmental damage or pollution of the Site and its surroundings that is contrary to law and is caused or contributed to by the performance of the Works; and
- c) comply with all directions of the Principal in relation to cleaning up and making good any environmental damage or pollution.

If the Principal:

- a) observes the Contractor or any of its employees, agents or sub-contractors failing to comply with any environmental requirement of the Site or at law; and
- b) notifies the Contractor of that failure,

then the Contractor must immediately rectify the non-compliance (and suspend any relevant Works until the non-compliance is rectified) including by removing from Site any of the Contractor's employees, agents or sub-contractors who are responsible for the non-compliance.

57. Completions of the Works

The Contractor may request that the Principal issue a Certificate of Completion when the Contractor is of the opinion that the Works have reached Completion.

Within fourteen (14) Business Days after receiving a request under this clause, the Principal must:

- a) where the Works have reached Completion, issue to the Contractor a Certificate of Completion certifying:
 - i. that the Works have reached Completion; and

- ii. the date Completion was reached; or
- b) give the Contractor written reasons why the Principal considers the Works have not reached Completion.

The issue of a Certificate of Completion to the Contractor by the Principal does not constitute approval by the Principal of any work done under this Agreement and does not affect any claim which the Principal has in respect of the carrying out of the Works by the Contractor.

58. Indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

59. Severance

If a clause or a part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable or valid, it must be read in the latter way.

If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

60. Waiver of Conditions

Except as provided elsewhere in the Contract, no provision of the Contract shall be varied, waived, discharged or released either at law or in equity except with the prior consent in writing of the Principal in each instance.