Conditions of contract

KATHERINE
TOWN COUNCIL

Contract

Zimin Drive Shared Pathway

Construction

T25-04

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EXECUTED AS AN AGREEMENT

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of Katherine Town Council in accordance with the Council's local laws and in the presence of:

)

)

)

Signature of witness)

) Chief Executive Officer

)

) Date: / /

Name of witness (block letters))

)

Date: / /

EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)

SIGNED for and on behalf of the *Contractor* in accordance with its Constitution and Section 127 of the *Corporations Act 2001* in the presence of:

)

)

)

Signature of witness)

) Director

)

)

Name of witness (block letters))

) Director/Secretary

Date: / /

Date: / /

EXECUTION BY CONTRACTOR (WHERE CONTRACTOR IS NOT A CORPORATION)

SIGNED for and on behalf of the *Contractor* by its authorised representative in the presence of:

)

)

)

Signature of witness)

) Signature

)

)

Name of witness (block letters))

) Name of authorised representative

Date: / /

Date: / /

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1. Construction of Contract

The Contract shall be governed by and construed with reference to the laws for the time being in force in the Northern Territory.

All prices and sums of money and all payments made under the Contract shall be in Australian currency and payments shall be made at the place named in the Annexure.

All communication between the Principal, the Superintendent and the Contractor shall be in the English language.

All measurements of physical quantities shall be in Commonwealth legal units of measurement within the meaning of the *National Measurement Act 1960* (Commonwealth) as amended from time to time.

2. Interpretation

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires -

Annexure means the document entitled 'Annexure to the Conditions of Contract' which is annexed to and forms part of the Contract;

Bill of Quantities means a document named therein by the Principal as a Bill of Quantities issued to tenderers by the Principal stating estimated quantities of work to be carried out;

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

Conditions of Contract means the conditions of contract in this document entitled 'Conditions of Contract';

Constructional Plant means all plant, motor vehicles, appliances and things (including scaffolding, formwork and the like) of whatsoever nature used or in use in or about the execution of the Works but does not include materials, plant, equipment or other things intended to form or forming part of the Works;

Contract means the document which constitutes or evidences, 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 as listed in clause 6;

Contractor means the person who as a party to the Contract is bound to execute the Works and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns;

Contract Sum means

a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the execution of the work by the Contractor and the performance of the obligations of the Contractor under the Contract;

b) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the products of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;

c) where payment is to be made on a lump sum and a Schedule of Rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions which may be required to be made pursuant to the Contract;

Date of Acceptance of Tender means the date which appears upon the Notice of Acceptance and if no date appears is the date on which the Principal sent the Notice of Acceptance accepting the Contractor's tender or upon the acceptance in writing by either party of an offer (including a counter-offer) for the execution of the work under the Contract and the performance of the obligations of the Contractor under the Contract;

Defects Liability Period means the defects liability period as defined in clause 56.1;

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

Final Contract Sum means the total sum which, subject to the provisions of the Contract, will become payable to the Contractor by the Principal upon Practical Completion of the Works and the performance of the obligations of the Contractor under the Contract;

Indigenous with reference to a person, is a person of Australian Aboriginal or Torres Strait Islander descent who identifies as Indigenous and is accepted in the community in which the person lives as an Indigenous person;

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

Industry Participation Plan means the industry participation plan if any approved by the Superintendent pursuant to clause 19;

Month means calendar month;

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;

Practical Completion is that stage in the execution of the Works when:

a) the Works or a Separable Part of the Works, as the case may be, are complete except for minor omissions and minor defects:
    i. which do not prevent the Works or that Separable Part of the Works from being reasonably capable of being used for its intended purpose, and
    ii. in relation to which the Superintendent determines that the Contractor has reasonable grounds for not promptly rectifying them, and
    iii. rectification of which will not prejudice the convenient use of the Works or of that Separable Part of the Works, and
b) those tests which are required by the Contract to be carried out and passed before the Works or the Separable Part of the Works, as the case may be, are handed over to the Principal have been carried out and passed, and
c) such documents and other information required under the Contract which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works have been supplied;

Priced Bill of Quantities means the Bill of Quantities priced and lodged by the Contractor with the Superintendent and approved by the Superintendent as to rates;

Principal means the Principal stated in the Annexure;

Request for Tender (RFT) means the request for tender inviting offers to complete the Works and includes all conditions, annexures, schedules, attachments and addenda;

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 rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, contingency sums, other sums, quantities and prices;

Separable Part of the Works means a part of the Works specified in the Specification or Drawings as a separable part;

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;

Special Conditions means any applicable special conditions of contract specified as taking precedence over these Conditions of Contract to the extent of any inconsistency;

Specification means the Specification for the Works to be carried out as existing at the Date of Acceptance of Tender and any modification of such Specification thereafter directed or the use of which has been permitted by the Superintendent pursuant to his powers in that behalf contained in the Contract;

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

Superintendent's Representative means a person appointed in writing from time to time by the Superintendent pursuant to clause 40;

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

Temporary Works means the Works on the Site (other than Constructional Plant) which are required for the execution of the Works but which do not form part of the Works to be handed over to the Principal;

WHS Act means the *Work Health and Safety (National Uniform Legislation) Act* and includes any amendment, re-enactment or replacement of it;

WHS Regulations means the *Work Health and Safety (National Uniform Legislation) Regulations* and includes any amendment, re-enactment or replacement of them;

Works means the whole of the work to be executed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract is to be handed over to the Principal;

Work Site means a workplace within the terms of the WHS Act or the WHS Regulations;

Work under the Contract means the work which the Contractor is or may be required to execute under the Contract and includes all variations, remedial work, Constructional Plant and Temporary Works.

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 the Contract;

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 Business Day, the action shall be done no later than the end of the next Business 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 specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Date of Acceptance of Tender and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;

j) the word 'includes' in any form is not a word of limitation;

k) a reference to a clause includes a reference to a sub-clause of that clause; and

l) 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.

3. Nature of Contract

3.1. Description

The Contractor shall be paid either on a lump sum basis or on a Schedule of Rates basis or partly on a lump sum basis and partly on a Schedule of Rates basis as stated in the Annexure.

Sub-clause 3.3 shall apply to payments on a lump sum basis and sub-clause 3.4 shall apply to payments on a Schedule of Rates basis.

3.2. Adjustment for Rise and Fall in Costs

Unless otherwise stated in the Annexure, the Contract shall not be subject to adjustment for rise and fall in costs.

If stated in the Annexure, adjustments for rise and fall in costs will be calculated as specified in the Annexure. Such calculations will not provide for adjustment to more than ninety percent (90%) of the Contract Sum.

3.3. Lump Sum

a) Where payment is to be made on a lump sum basis the Contractor shall execute the Works and perform its obligations under the Contract and the sum payable by the Principal to the Contractor shall be the lump sum accepted by the Principal adjusted by any additions or deductions pursuant to the Contract.

b) A Bill of Quantities shall not form part of the Contract except to the extent provided for in the Contract.

3.4. Schedule of Rates

3.4.1. Moneys Payable

Where payment is to be made on a Schedule of Rates basis the Contractor shall execute the Works and perform its obligations under the Contract and the Principal shall pay the Contractor for the measured quantity of each section or item of work actually carried out under the Contract at the rate set out in the Schedule of Rates as adjusted by any additions or deductions pursuant to the Contract.

The rates and lump sums in the Schedule of Rates are deemed to include the cost of the whole of the Works, services and other incidentals associated with or necessary for the execution of the Works and the performance of the obligations of the Contractor under the Contract. Where a section or item does not appear in the Schedule of Rates the cost thereof shall be deemed to be included in the rate or price for the section or item associated with that section or item but where there is no section or item associated with that section or item the cost thereof shall be deemed to be included in the rates or prices generally. Where any section or item in the Schedule of Rates is unpriced by the Contractor all costs applicable to that section or item shall be deemed to be included elsewhere in the Schedule of Rates.

An order shall not be required to be given by the Superintendent by reason of the actual quantity of a section or item being greater than or less than the quantity shown in the Schedule of Rates for that section or item.

3.4.2. Quantities

The quantities in the Schedule of Rates issued by the Principal are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out.

3.4.3. Adjustment of Rate

For the purpose of this sub-clause, the lower and upper limits of accuracy of each quantity in the Schedule of Rates, unless specifically stated otherwise, are eighty-five percent (85%) of the stated quantity and one hundred and fifteen percent (115%) of the stated quantity respectively.

If the actual quantity of a section or item of work carried out proves to be greater than the upper limit or less than the lower limit of the limits of accuracy, either party to the Contract may notify the other party to the Contract in writing that he considers that in respect only of quantities greater than the upper limit or less than the lower limit of the limits of accuracy an adjustment in the rate for that section or item should be made, setting forth his reasons therefore. Any adjustment to the rate shall be as agreed between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent PROVIDED, HOWEVER, that if the actual quantity is greater than the upper limit of the limits of accuracy, the Superintendent may direct that the portion of the section or item of work which is greater than that upper limit shall be carried out by the Contractor as day work and payment will be made as day work under sub-clause 59.3.

For the avoidance of doubt, an adjustment of rates under this clause 3.4 is not a variation for the purposes of clause 59.

4. Bill of Quantities

4.1. Lodgement

Where a Bill of Quantities was issued to tenderers by the Principal, the Contractor shall lodge with the Superintendent a priced copy of that Bill of Quantities on or before the expiration of the time for lodgement set out in the Annexure, or within such further time as the Superintendent may direct.

Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to payment under the Contract until such time as he has lodged his priced copy of the Bill of Quantities.

4.2. Pricing

All items included in a Bill of Quantities shall be priced and extended by the Contractor and the prices as extended shall, on addition, equal the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates.

Any errors in extension or addition or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by the Principal or the Contractor in the priced copy of the Bill of Quantities lodged by the Contractor or in the Priced Bill of Quantities shall be corrected in a manner agreed to between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent so that the total of all items in the Priced Bill of Quantities continues to equal the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates.

4.3. Errors in Quantities

If it is shown to the satisfaction of the Superintendent that the Priced Bill of Quantities is in error in that it:

a) contains an incorrect quantity in relation to any item included therein and the extent of the error exceeds five per centum of the value of that item as shown therein or $2,000; or

b) contains an item which should not have been included therein; or

c) omits an item which should have been included therein then:

    i. in a case of (a) where the item is deficient in quantity or in the case of (c) - upon application in writing to the Superintendent by the Contractor; or

    ii. in a case of (a) where the item is excessive in quantity or in the case of (b) - upon notification in writing to the Contractor by the Superintendent;

the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates shall, except when the value of the error is less than $400, be adjusted by such amount as is required to correct the error, determined in the manner provided by sub-clause 59.2 for the valuation of variations as if the correction were a variation under sub-clause 59.1.

The Priced Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the Drawings and Specifications as existing at the Date of Acceptance of Tender, measured in accordance with the method of measurement evidenced by the Contract.

If the description of the work associated with an item in the Priced Bill of Quantities is repeated in another item because of a difference in the location of the work or the method of measurement of the work, or if the quantity of an item in the Priced Bill of Quantities is multiplied in a trade or other summary, the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates shall be adjusted by an amount determined by the Superintendent who shall take into account the aggregation of the descriptions associated with those items or the multiplication of those quantities, as the case may require.

5. Security, Retention Moneys and Other Performance Undertakings

5.1. Purpose

Security, retention moneys and performance undertakings shall, when the same or any of them are required, be provided and given for the purpose of ensuring the due and proper performance of the Contract and of satisfying the obligations of the Contractor under the Contract.

5.2. Provision of Security

The Contractor shall provide security in accordance with this clause 5 and in the amount set out in the Annexure.

5.3. Form of Security

The security shall be in the form of either an unconditional bank guarantee approved by the Principal and issued by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) or an unconditional performance bond approved by the Principal and issued by an approved issuing entity which meets the minimum criteria for such issuing entities as determined by the Principal. If the security is not transferable by delivery it shall be accompanied by an executed transfer thereof to the Principal and the costs and expenses (including all stamp or other duties) of and incidental to the said transfer shall be borne and paid by the Contractor.

5.4. Time for Lodgement of Security

The security shall be lodged by the Contractor with the Principal within fourteen (14) days after the Date of Acceptance of Tender or within such further time as is approved in writing by the Principal.

Failure on the part of the Contractor to lodge the security within the time so allowed is to be deemed to constitute a breach going to the root of the Contract so that notwithstanding anything to the contrary in the Contract:

a) if it so elects the Principal may give to the Contractor a notice in writing that the Principal treats himself as discharged from all further obligations on his part under the Contract; and

b) the Principal may do one or all of the following:

   i. institute proceedings in any court of competent jurisdiction to recover any damages that the Principal may have sustained by reason of the breach; and

   ii. exercise all or any other rights or remedies conferred on him whether at common law or under the provisions of the Contract including, without limitation, suspending payments to the Contractor or cancelling the Contract.

5.5. Conversion of Security

If the Principal becomes entitled to exercise all or any of his rights under the Contract in respect of the security the Principal may convert into money the security that does not consist of money. The Principal shall not be liable for any loss occasioned by such a conversion.

5.6. Retention Moneys

Any retention moneys will be retained by the Principal from moneys due under progress certificates issued by the Superintendent pursuant to sub-clause 61.1.

5.7. Reduction of Security and Retention Moneys

There shall be no reduction of security at issue of a certificate of practical completion.

5.8. Release of Security and Retention Moneys

The Principal shall account to the Contractor for the security and any retention moneys as provided in sub-clause 61.8, subject to the rights of the Principal under the Contract.

5.9. Interest on Security

Interest will not be payable by the Principal on any cash security or on the cash proceeds of any security converted into money pursuant to sub-clause 5.5 or on any retention moneys.

5.10. Deed of Guarantee, Undertaking and Substitution

Where the Contractor is a corporation that is a subsidiary of another corporation or is a corporation that is related to another corporation, the Contractor shall, if so requested in writing by the Principal, lodge with the Principal within fourteen (14) days after the Date of Acceptance of Tender a deed of guarantee, undertaking and substitution for the performance of the obligations and the discharge of the liabilities of the Contractor under the Contract in a form approved in writing by the Principal, duly executed by the Contractor and that other corporation.

For the purpose of this sub-clause:

a) a corporation is a subsidiary of another corporation if, under the Act of the State or the Act of the Territory under which the first-mentioned corporation is incorporated or registered, it is to be deemed to be, for the purposes of that Act or a subsidiary of that other corporation; and

b) a corporation is related to another corporation if, under the Act of the State or the Act of the Territory under which the first-mentioned corporation is incorporated or registered, it and the other corporation are to be deemed to be, for the purpose of that Act related to each other.

5.11. Commencement of Work

Notwithstanding that possession of the Site has been given to the Contractor and unless otherwise permitted by the Superintendent, the Contractor must not commence work on Site until it has:

a) provided security as required by sub-clause 5.4; and

b) shown evidence of insurance in accordance with clause 33.

6. Formation of the Contract

The Contract is formed upon the issue of the Notice of Acceptance.

The Contract is comprised of:

a) the Conditions of Contract and any Special Conditions;

b) the Notice of Acceptance;

c) the Request for Tender including (without limitation) preliminary clauses contained therein;

d) the Annexure;

e) the Contractor's tender in response to the Request for Tender; and

f) any other document expressly referred to a document listed in items a) to e) 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) the Conditions of Contract;

c) Annexure;

d) Notice of Acceptance;

e) preliminary clauses;

f) Specifications (including Drawings);

g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract.

h) Conditions of Tendering referenced in the RFT and all other documents, other than those specified above in (a) to (g) inclusive, forming the Request for Tender or the Contract (other than the contractor's tender in response to the Request for Tender); and

i) the Contractor's tender response to the Request for Tender including any drawings contained in the Contractor's tender response,

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

7. Service of Notices

7.1. Meaning of "Notice"

For the purposes of this clause 7 a "Notice" is any written notice that:

a) a party is required to serve on, give or issue to the other party under the Contract;

b) a party may serve on, give or issue to the other party under the Contract.

7.2. Service of Notices on Contractor

Subject to clause 41 any Notice which is to be or may be issued or given to or served upon the Contractor under the Contract shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is hand delivered, sent by prepaid post or by electronic means to the Contractor at the address of the Contractor stated in the tender of the Contractor for the Works or at such other address as is notified in writing by the Contractor to the Principal.

7.3. Service of Documents on Principal or Superintendent

Any Notice which is to be or may be issued or given to or served upon the Principal or the Superintendent under the Contract shall be deemed to be sufficiently issued or given to or served upon the Principal or the Superintendent, as the case requires, if it is hand delivered, sent by prepaid post, electronic means, or facsimile to the Principal or the Superintendent at the address of the Principal or of the Superintendent stated in the Annexure.

7.4. Service Effective on Receipt

Any Notice given in accordance with sub-clause 7.2 or 7.3 is taken to be received (or at a later time specified in the Notice):

a) if hand delivered, on delivery;

b) if sent by post, three (3) Business Days after the date of posting; and

c) if sent by electronic transmission, on receipt by the sender of a transmission report from the dispatching 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 document;

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

8. Documents Generally and Drawings and Specification

8.1. Discrepancies in Documents

The several documents which constitute or evidence the Contract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all. Any ambiguity, discrepancy or inconsistency shall be explained by the Superintendent upon reference thereof in writing to him by the Contractor or on discovery thereof by the Superintendent, who shall thereupon direct the Contractor as to the interpretation to be followed. If the Contractor finds any such ambiguity, discrepancy or inconsistency, it shall immediately refer it in writing to the Superintendent.

Minor items not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the Works shall be supplied and executed by the Contractor without adjustment to the Contract Sum.

8.2. Drawings and Specification

The Drawings, if any, and the Specification represent generally the forms, dimensions and descriptions of work to be carried out. The Contractor shall make allowance for slight variations in dimensions shown on Drawings which may be caused by unavoidable inequalities in the sizes of materials and any such variations shall be as agreed upon between the Contractor and the Superintendent or, failing such agreement, as decided by the Superintendent. Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

Drawings made to larger scales and those showing details of particular parts of any work shall be taken as correct in preference to those made to smaller scales and for more general purposes.

8.3. Documents to be Supplied by Principal and Superintendent

Except as otherwise provided in the Contract, the Principal shall issue, or cause to be issued, to the Contractor an electronic copy of the Drawings, Specification, Bill of Quantities (if any) and other information required by the Contract to be supplied to the Contractor by the Principal.

The Superintendent shall, if requested in writing by the Contractor at a reasonable point in the progress of the Works, supply to the Contractor such additional drawings and other information as the Superintendent shall decide are necessary for the execution of such work and such additional drawings or other information so supplied by the Superintendent to the Contractor shall be deemed to be part of the original documents which constitute or evidence the Contract.

All documents supplied to the Contractor under this clause 8.3 shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. Such documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Works.

8.4. Documents to be Supplied by Contractor

The Contractor shall supply to the Superintendent an electronic copy, and any such number of printed copies as may be specified in the Contract, of such Drawings and other information as he is required by the Contract to so supply, together with such further copies as the Contractor requires for his own use.

If the Superintendent considers that such Drawings and other written information are suitable for use for the purposes of the Contract, he shall give the Contractor permission so to use them. The copy supplied for retention by the Superintendent shall remain the property of the Principal.

Notwithstanding the grant of permission to use any such Drawings or other information referred to in the preceding paragraph of this sub-clause the Contractor shall be bound to carry out and complete the Works strictly in accordance with the Contract. Permission for the use of any such Drawings or other information shall not relieve the Contractor from full responsibility for the correctness of such Drawings or other information except in so far as any error in or omission from such Drawings or other information has been caused by an error in or omission from any information which the Principal has provided, or caused to be provided, to the Contractor or which the Superintendent has provided to the Contractor for the purposes of the Contract.

8.5. Availability of Documents

During the execution of the Works one complete set of the Drawings, Specification and other information issued or supplied by the Principal, the Superintendent and the Contractor shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

9. Design

9.1. Design to be Prepared by Contractor

a) The Contractor must:

   i. design the parts of the Works which the Contract expressly or impliedly requires it to design;

   ii. ensure that its design complies with the Contract;

   iii. provide the design it prepares to the Superintendent for his or her permission to use the design; and

   iv. ensure that it has completed its design and the Superintendent has given permission to use its design by the time set out in the Contract, or as otherwise directed by the Superintendent.

b) for the purposes of 9.1(a)(iii) the Contractor must provide its design in an electronic format and, any such number of hard copies as directed by the Superintendent.

c) in accordance with the requirements set out in the Contract or as directed by the Superintendent.

9.2. Superintendent to Give Permission to Use Design

a) The Superintendent must reject or give his permission to use the design provided by the Contractor or any resubmitted design within a reasonable time of submission by the Contractor.

b) Where the design is rejected by the Superintendent, the Contractor must submit an amended design to the Superintendent and must not commence construction of the part of the Works to which the design applies until the Superintendent gives his or her permission to use the design.

9.3. Contractor's Design Warranty

The Contractor warrants that any design which it prepares:

a) will be fit for its intended purpose; and

b) complies with:

   i. all statutory requirements, the Building Code of Australia, and all relevant standards of Standards Australia;

   ii. the requirements of the Contract or, to the extent that the standard is not prescribed, a standard consistent with best industry standard for designs of a nature similar to that required for the Works; and

   iii. any direction of the Superintendent; and

c) has been the subject of the Superintendent's permission under sub-clause 9.2.

9.4. Prior Design Work

a) The Contractor acknowledges that it is aware that work may have been carried out upon the design of the Works and if so this design work is included in the Request for Tender or will be provided to the Contractor at a later date by the Superintendent.

b) Despite this, the Contractor agrees to comply with its obligations to complete the Works as required by this Contract and for this purpose (but without limiting the generality of the foregoing) it acknowledges that there may be errors in the design documents included in the Request for Tender or later provided to the Contractor and that any errors or any work required to overcome the errors will not constitute a variation under the Contract;

c) the Principal will not be liable upon any claim arising out of or in connection with any such errors; and

d) the Contractor will at its cost:

   i. provide any further details required to enable it to complete the design and construction of the Works; and

   ii. perform any additional work required to overcome any errors in the design documents included in the Request for Tender or provided to the Contractor by the Principal.

9.5. No Duty to Review

a) The Superintendent owes no duty to the Contractor to review the design submitted by the Contractor for errors, omissions or compliance with the Contract.

b) No comments on, reviews or rejection of or permission to use the design by the Superintendent will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

10. Assignment and Sub-Contracting

10.1. Assignment

The Contractor shall not, without the prior written approval of the Principal and except on such terms and conditions as are determined in writing by the Principal, assign, mortgage, charge or encumber the Contract or any part thereof or any benefit or moneys or interest hereunder.

10.2. Sub-contracting

a) The Contractor shall not sub-contract the whole of the Works. The Contractor shall not sub-contract any part of the Works unless:

   i. the Contractor has made prior application in writing to the Principal giving full particulars of the part of the Works he wishes to sub-contract and of the proposed Sub-Contractor and he has obtained the written approval of the Principal, which approval shall not be unreasonably withheld, to the application; or

   ii. the Contractor is specifically authorised by the Contract to sub-contract that part of the Works under the Contract.

b) All sub-contracts for the Works entered into by the Contractor must be in writing and contain the provision that progress payments to the Sub-Contractor shall be made within fourteen (14) days after the issuing of the Tax Invoice to the Contractor.

c) All sub-contractors, and their sub-contractors, for any part of the Works valued at $100,000.00 or greater must be accredited by Contractor Accreditation Limited (CAL) to a category/group/sub-group, and rating commensurate with the type and value of the Works to be performed.

10.3. Contractor's Responsibility

a) An approval to sub-contract any part of the Works given by the Principal in pursuance of sub-clause 10.2 shall not relieve the Contractor from any of his liabilities or obligations under the Contract.

b) Notwithstanding any such approval to sub-contract the Contractor shall be liable to the Principal for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

11. Nominated Sub-contractors

11.1. Nomination by Principal

Where provisional sums are included in the Contract (whether so described or described as prime-cost sums or as prime-cost items or otherwise) as sums payable to persons to be nominated or selected in writing by the Principal to supply and fix, or to supply or fix, materials or goods or to carry out work on the Site:

a) All sums which, pursuant to any contract between the Contractor and any person so nominated or selected, become actually payable in respect of any such provisional sum shall be paid by the Contractor to such person in the manner provided by sub-clause 11.4 and all specialists or others who have been so nominated or selected by the Principal are hereby declared to be sub-contractors employed by the Contractor and are referred to in this clause as Nominated Sub-contractors, provided that no Nominated Sub-contractor shall be employed upon or in connection with the Works against whom the Contractor shall make any objection which the Principal decides to be reasonable. Any objection to a nomination or selection shall be made by the Contractor by notice in writing served upon the Principal within fourteen (14) days after notice in writing of the nomination or selection has been given by the Principal to the Contractor; otherwise the right to object shall be deemed to have been waived.

b) Neither the provisions contained in this clause nor the exercise of any of the powers contained herein nor anything else contained in these Conditions of Contract shall render the Principal in any way liable to any action, suit or other proceeding or any claim or demand for payment of provisional sums by a Nominated Sub-contractor.

c) where the Contractor in the ordinary course of his business directly carries out the type of work for which provisional sums are included in the contract sum, the Contractor, provided he has intimated in writing to the Principal his desire to do so, shall be permitted to tender for the same or any of them without prejudice to the Principal's right to reject the lowest or any tender. If the Contractor's tender is accepted he shall not sub-contract the work without the approval of the Superintendent.

11.2. Directions of Superintendent

The Superintendent shall give to the Contractor, and in sufficient time to prevent delay being occasioned in the progress of the Works, all necessary directions regarding the performance of the work and the selection and supply therefore of the materials or goods referred to in sub-clause 11.1.

11.3. Contractor to Enter into a Contract with Nominee

The Contractor shall, within one Month after notice in writing of the nomination or selection of a Nominated Sub-contractor has been given by the Principal to the Contractor or within such further time as is approved in writing by the Principal, enter into a sub-contract with the Nominated Sub-contractor which binds the Nominated Sub-contractor to observe, perform and comply with all the provisions of the Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the work to be carried out or the materials or goods to be supplied and fixed or supplied or fixed by the Nominated Sub-contractor as if all the said provisions of the Contract were severally set out in the sub-contract. The Contractor shall, as soon as practicable after he has entered into the sub-contract with the Nominated Sub-contractor, notify the Principal in writing of the date on which he entered into that sub-contract.

The nomination or selection by the Principal shall not relieve the Contractor of any of his liabilities or obligations under the Contract.

Notwithstanding any such nomination or selection the Contractor shall be liable to the Principal for the acts, defaults and neglects of any Nominated Sub-contractor or any employee or agent of the Nominated Sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

The sub-contract between the Contractor and the Nominated Sub-contractor shall allow the Nominated Sub-contractor to lodge security in a form provided by sub-clause 5.3 and shall provide that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract between the Contractor and the Principal by virtue of clause 5.

11.4. Payment of Nominated Sub-contractor

Where a payment to the Contractor includes an amount for materials or goods supplied and fixed, or supplied or fixed, or work carried out by a Nominated Sub-contractor, the Contractor shall, within seven (7) days after receiving that payment, pay to the Nominated Sub-contractor an amount equal to the amount included as aforesaid unless the Contractor satisfies the Superintendent that, under the terms of his sub-contract with the Nominated Sub-contractor, the whole or part of that amount is not immediately payable by him to the Nominated Sub-contractor. In the latter event any part of that amount which is immediately payable shall be paid by the Contractor to the Nominated Sub-contractor within the seven (7) days aforesaid and the balance or, if none of that amount is immediately payable as aforesaid, the whole of that amount shall be paid by the Contractor to the Nominated Sub-contractor within seven (7) days after its becoming payable to the Nominated Sub-contractor under the terms of the sub-contract.

11.5. Contractor to Furnish Proof of Payment to Nominated Sub-contractor

Notwithstanding the giving of a progress certificate by the Superintendent pursuant to sub-clause 61.1 in respect of any work carried out, the Contractor shall not be entitled to a progress payment or a final payment, as the case may be, in respect of the Works unless the Contractor furnishes to the Superintendent proof satisfactory to the Superintendent that all amounts which have accrued due and payable by the Contractor to any Nominated Sub-contractor in accordance with the last preceding sub-clause have been duly paid.

The Superintendent may, before the issue of the final certificate pursuant to sub-clause 61.8, direct the Contractor to produce to the Superintendent proof satisfactory to the Superintendent that all amounts accrued due and payable to Nominated Sub-contractors have been duly paid.

11.6. Right of Principal to Pay Nominated Sub-contractor Direct

If the Contractor does not furnish proof satisfactory to the Superintendent in accordance with the first paragraph of the last preceding sub-clause, the Principal may pay to the Nominated Sub-contractor the whole or any part of such amount as is required to be so paid by the Contractor under sub-clause 11.4 and any moneys so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 3.

11.7. Balance of Payment to be made to Contractor

Where payment is made by the Principal to a Nominated Sub-contractor in accordance with the last preceding sub-clause, the Contractor shall be entitled to be paid, by way of progress payment or final payment, as the case may be, in respect of the work referred to in sub-clause 11.5 an amount, if any, equal to the amount he would have received had he complied with sub-clause 11.4, less the amount paid by the Principal to the Nominated Sub-contractor under the last preceding sub-clause.

11.8. Bankruptcy of Nominated Sub-contractor

Where a Nominated Sub-contractor:

a) being a person, commits an act of bankruptcy or presents against himself or has presented against him a petition in bankruptcy or a sequestration order is made against him or he enters into any scheme of arrangement or any composition with his creditors or executes as a debtor a deed of arrangement or a deed of assignment; or

b) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or which may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver and Manager is appointed to carry on its business for the benefit of its creditors or any of them;

and, as a consequence thereof, the contract between the Contractor and the Nominated Sub-contractor is terminated or is disclaimed or is rescinded by an order of a Court, whether pursuant to its terms or to the provisions of the legislation relating to bankruptcy or to the liquidation or official management of companies the Principal may, on written notification by the Contractor and provision of proof of termination, disclaimer or rescission of contract satisfactory to the Principal, make a further nomination or selection.

A further nomination or selection (if made) shall be made in accordance with the provisions of this clause 11.8 and if the cost of the work is necessarily increased or decreased because of the further nomination or

selection, the amount of such increase or decrease shall be taken into account in determining the Final Contract Sum.

If the Principal makes a further nomination or selection of a Nominated Sub-contractor pursuant to the provisions of this sub-clause, any moneys whether by way of security or retention which by virtue of the terms of the contract between the Contractor and the original Nominated Sub-contractor are forfeited or are liable to become forfeited to the Contractor, shall be taken into account in determining the Final Contract Sum.

12. Adjustment of Provisional Sums and Provisional Quantities

12.1. Adjustment of Provisional Sums

In the event of the amount included in the Contract in respect of any provisional sum (whether so described or described as prime-cost sums or as prime-cost items or otherwise) not being expended or being greater or less than the amount directed in writing by the Principal to be expended by the Contractor against the provisional sum, the amount unexpended or the amount of the difference, as the case may be, shall be certified by the Superintendent and shall be taken into account in determining the Final Contract Sum.

Where any adjustment is made pursuant to the preceding provisions of this sub-clause, that adjustment, unless the Superintendent otherwise determines, shall not include any amount on account of profit to or attendance on the part of the Contractor. Any variation to the work to which the provisional sum relates shall be dealt with in accordance with clause 59.

12.2. Adjustment of Provisional Quantities

If, in respect of any work for which a provisional quantity is included in the Contract, the Superintendent directs that a greater or lesser quantity than the provisional quantity shall be carried out, or that no work shall be carried out, the value of the difference between the provisional quantity and the quantity carried out pursuant to that direction, calculated at the rate for that work stated in the Contract, shall be certified by the Superintendent and shall be taken into account in determining the Final Contract Sum.

12.3. Sums Specified to be Nett Cost

Provisional sums as defined in sub-clause 11.1 with respect to materials or goods to be supplied are to be taken to be the nett cost to the Contractor (disregarding any deduction of cash discount for prompt payment) to the point of delivery indicated in the Specification. The Contractor is responsible for all other costs, including costs of carriage and fixing.

12.4. Principal's Right to Expend Provisional Sums

If the Principal does not nominate or select pursuant to sub-clause 11.1 a person to supply and fix, or to supply or fix, materials or goods or to carry out work on the Site in respect of a provisional sum referred to in that sub-clause the Principal may contract with or arrange with such persons as he may determine to carry out any work or to supply and fix, or to supply or fix, any materials or goods included in that provisional sum. If the Principal pursuant to the preceding provisions of this sub-clause expends any amount, the sum included in the Contract in respect of the relevant item shall not be included in the Final Contract Sum, or if the work carried out or materials or goods supplied and fixed, or supplied or fixed, is part only of the provisional sum, then the sum to be included in the Final Contract Sum shall be determined by the Superintendent.

13. Contractor to Inform Himself

The Contractor shall be deemed to have -

a) examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these Conditions of Contract and the Special Conditions (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and

b) examined all information relevant to the risks, contingencies and other circumstances having an effect on his tender and which is obtainable by the making of reasonable enquiries; and

c) examined the Site and its surroundings; and

d) satisfied himself as to the correctness and sufficiency of his tender for the Works and that his price covers the cost of complying with all his obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract.

Failure by the Contractor to do all or any of the things he is deemed to have done under this clause will not relieve the Contractor of his liability to perform and complete the Contract in accordance with the terms and conditions thereof.

14. Royalties, Patent and other Industrial Property Rights and Fees

Unless otherwise provided for in the Contract, all payments (whether or not accrued due and payable at the date of the Contract) for royalties and patent rights, registered designs, trademarks or names, copyright and other protected rights and all fees then or thereafter to become payable for or in connection with any land, matter or thing used or required to be used in performance of the Contract or to be supplied under the Contract, shall be the responsibility of the Contractor and shall be paid by him to those to whom and at the time at which they become payable.

The Contractor shall indemnify the Principal against any action, suit, proceeding or claim or demand, in respect of all costs or expenses arising whether directly or indirectly from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, trade mark or name, copyright or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing of or working, or any arrangement used or fixed or supplied by the Contractor for the purposes of the Contract.

The indemnity shall not cover any infringement or alleged infringement of any letters patent, registered design, trade mark or name, copyright or other protected right:

a) due to the use of the Works or part thereof otherwise than in accordance with the Contract; or

b) resulting of necessity from the Contractor's compliance with the Contract unless;

   i. the Principal has clearly indicated that such compliance will result in an infringement if the appropriate permission or licence is not obtained from the person lawfully able to grant the same; or

   ii. the Contractor was aware at any time prior to compliance that such compliance would result in an infringement.

In the event of any claim or demand being made or action, suit or proceeding being brought against the Principal in respect of any matters covered by the indemnity, the Principal shall immediately notify the Contractor in writing thereof, and the Contractor shall, with the assistance of the Principal, if the Contractor makes a request in writing for such assistance, but at the sole expense of the Contractor, conduct any litigation that may arise therefrom and all negotiations for the settlement of the claim,

demand, action, suit or proceeding. The Contractor shall not make any settlement or consent to any judgment order or verdict against the Principal without first obtaining the Principal's written consent thereto.

The Principal shall not make any admission in relation to any claim, demand, action, suit or proceeding against the Principal with respect to any matter covered by the indemnity unless within seven (7) days after the date of the receipt by it of the notification in writing from the Principal referred to in the preceding paragraph of this clause the Contractor fails to open negotiations for the settlement of the claim, demand, action, suit or proceeding or to take all necessary and proper steps to defend any claim, demand, action, suit or proceeding.

The Superintendent may, before the issue of the final certificate pursuant to sub-clause 61.8, direct the Contractor to furnish to the Superintendent a signed statement or a statutory declaration that all payments and all fees referred to in the first paragraph of this clause have been paid or satisfied.

15. Requirements of Statutes and Subordinate Legislation

15.1. Complying with Statutory Requirements

The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State or Acts of the Territory in which the Works or any part thereof is carried out and with the requirements of all regulations, by-laws, orders and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Works or the execution of the Works.

Without limiting the generality of the foregoing paragraph, the Contractor shall comply with all work health and safety and workers compensation legislation, licensing and registration requirements, Codes of practice and standards established or promulgated by any relevant authority or regulator or standard setting entity (including but not limited to those prescribed in the *Fair Work Act 2009 (Commonwealth*) as shall be in force in the place affecting or applicable to the Works or the execution of the Works.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Superintendent specifying the departure from such provisions which he considers necessary to comply with such requirements and the reasons therefore, and applying for instruction thereon. The Superintendent shall, as soon as practicable after receiving the Contractor's written notice, give to the Contractor such lawful instructions as he thinks fit and the Contractor shall comply with those instructions.

15.2. Industry Accreditation Standards

Where applicable, the Contractor shall:

a) maintain the currency of the required accreditation with Contractor Accreditation Limited (CAL) 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.

15.3. Compliance with Standards and Codes

Where the Contract requires the Contractor to comply with any standard, that standard shall, unless otherwise specified, be that which is current at the closing date for the Request for Tenders.

If, subsequent to the award of the Contract, any such standard or code is amended, the Superintendent may direct that the Contractor comply with such amendments and the cost to the Contractor of such compliance will be dealt with under clause 58 of this Contract.

15.4. Notices and Fees

The Contractor shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith.

15.5. Surrender of Documents Evidencing Approval of Authorities

Prior to the issue of the certificate of Practical Completion for the Works, or upon demand in writing by the Principal or the Superintendent at any time and from time to time, the Contractor shall surrender to the Principal any documents in his possession issued by or evidencing the approval of public or other authorities in connection with the Works.

16. 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.

17. Local Content

17.1. Local Benefit Commitment

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

In the Contractor's tender response to the Request for 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 the Contract. These promises and commitments form part of the Contract (and are referred to in the clauses below as the "Local Benefit Commitment").

The Contractor shall comply with the Local Benefit Commitment.

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

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

a) use labour, including indigenous labour, available within the Northern Territory;

b) use the services located and obtain supplies/materials available within the Northern Territory; and

c) use accredited apprentices/trainees who are registered in the Northern Territory on this project in accordance with the Contract:

   i. In complying with the use of accredited apprentices/trainees, the Contractor may:

      A. directly employ apprentices/trainees;

      B. utilise group training scheme apprentices/trainees;

      C. utilise sub-contractor's apprentices/trainees;

      D. utilise any combination of the above.

   ii. For contracts with a value of $1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the schedule of minimum number of trainees.

   iii. For a period of twelve (12) Months the Contractor's level of compliance with this requirement will be taken into consideration for further Northern Territory Government contracts.

17.3. Reporting to the Principal and Right of Audit

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

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

17.4. Failure to Fulfil Local Benefit Commitment

If the Contractor fails to fulfil or otherwise comply with the Local Benefit Commitment, or if the Contractor fails to comply with any other obligation placed on the Contractor by this clause17, the Principal may take action under clause 64 (Default or Bankruptcy of Contractor).

17.5. Performance to be reported in Contractor Performance Reports

The Contractor's compliance or non-compliance with this clause 17 will be recorded in the Contractor Performance Report to be prepared by the Superintendent in accordance with clause 69.

18. Indigenous Development Plan

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

Within fourteen (14) days of the Date of Acceptance of Tender, the Contractor shall submit one copy of the Contractor's proposed indigenous development plan to the Superintendent for approval. The Superintendent shall within a reasonable time from receipt of the Contractor's proposed indigenous development plan, either approve it or reject it, giving reasons in the case of rejection. If the Superintendent rejects the Contractor's proposed indigenous development plan the Contractor shall address the reasons for rejection and submit the Contractor's prevised proposed indigenous development plan for approval by the Superintendent.

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

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

19. Industry Participation Plan

Where an industry participation plan has been specified in the Annexure, 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 of Tender, the Contractor shall submit one copy of the Contractor's proposed industry participation plan to the Superintendent for approval. The Superintendent shall within a reasonable time from receipt of the Contractor's proposed industry participation plan either approve it or reject it, giving reasons in the case of rejection. If the Superintendent rejects the Contractor's proposed industry participation plan the Contractor shall address the reasons for rejection and submit the Contractor's prevised proposed industry participation plan for approval by the Superintendent.

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 completion of the Contract.

This clause is intended to operate in addition to (and not in limitation of) clause 17 (Local Content).

20. WHS Accreditation Scheme for Commonwealth building work

20.1. Definitions

For the purpose of this clause 20:

a) **Act** means the *Federal Safety Commissioner Act 2022* (Cth) and includes regulations made under the Act; and

b) **WHS Accreditation Scheme** means the Work Health and Safety Accreditation Scheme referred to in section 43 of the Act.

Other terms used in this clause 20 that are defined in the Act carry the same meaning as the Act.

20.2. General

If stated in the Annexure, the Contractor must be an 'accredited person' under the WHS Accreditation Scheme and must maintain accreditation and remain compliant with all conditions and requirements of such accreditation for the term of the Contract.

The Contractor must notify the Principal of any breach or suspected breach of this clause 20.2 as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

20.3. Responsibility Not Affected

Accreditation under the WHS Accreditation Scheme does not relieve the Contractor from any other obligations under the Contract or otherwise arising out of or in connection with the Works.

20.4. Records

The Contractor must maintain adequate records of its accreditation under the WHS Accreditation Scheme and promptly provide the Principal with those records on request.

20.5. Access to Site, Construction Sites and other Places

The Contractor acknowledges the powers and functions of the Federal Safety Commissioner and its authorised officers under the Act (including Federal Safety Officers) and will ensure that it and its subcontractors comply with any lawful exercise of compliance powers by the Federal Safety Commissioner or its authorised officers under the Act, including but not limited to powers to enter premises, inspect work, interview persons and require production of records or documents.

20.6. Subcontracting

Notwithstanding any other provision of this Contract, the Contractor may only enter into a subcontract for 'building work' in connection with the Works where the subcontract requires the subcontractor to comply with the Contractor's accreditation requirements.

21. Confidentiality

a) For the purposes of this clause 21 "Confidential Information" means any information or material relating to the Contract or the Works including (without limitation):
    i. any information that by its nature is confidential;
    ii. any information designated as confidential; and
    iii. any information that the Contractor knows is confidential.

b) The Contractor shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
    i. as authorised by the Principal under the Contract or otherwise;
    ii. to its employees or contractors, to the extent needed to perform their obligations under the Contract;
    iii. where the disclosure is required to be disclosed by law.

c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause 21.

22. Privacy

For the purposes of this clause 22 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.

a) The Contractor agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Contractor were a public sector organisation.

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

c) 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.

d) 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.

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

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

    i. policies for the management of personal information; and

    ii. complaint handling procedures.

g) 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.

h) 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.

i) 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.

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

    i. either return to the Principal all records containing Personal information;

    ii. retain any material containing Personal Information in a secure manner as approved by the Principal; or

    iii. destroy or delete any Personal Information.

k) This clause will survive the expiration or termination of this Contract.

23. 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 or publication 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 clause 23 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 clause 23.

24. Protection of Persons and Property

The Contractor shall provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and provide and maintain all watching and traffic flagging lawfully required by any public or other authority or necessary for the protection of the Works or of other property or for the safety and convenience of the public and others and shall remove the same when no longer required.

The Contractor shall avoid obstruction or damage to roadways and footpaths, drains and water-courses and public utilities and other services on or adjacent to the Site which are visible or the location of which can be ascertained by the Contractor from the appropriate authority or from the Contract and shall have any obstruction removed immediately and at its own cost shall have made good all damage caused by it, its employees, agents or sub-contractors or the employees of any such agents or sub-contractors. In the event of the Contractor's failure to do so, the Principal may have the remedial work carried out and the cost incurred shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

The Contractor shall avoid interference with or damage to property on or adjacent to the Site and shall provide temporary protection for and shall repair and reinstate all damage caused thereto by it, its employees, agents or sub-contractors or the employees of any such agents or sub-contractors, either directly or indirectly.

The Contractor shall prevent nuisance to the owners, tenants or occupiers of properties adjacent to the Site and to the public generally.

25. Care of the Works

25.1. Liability of the Contractor to Date of Practical Completion of the Works

From the commencement of the Contract to the date of Practical Completion of the Works (as defined in sub-clause 61.3) the Contractor shall be solely liable for the care of the Works, the Temporary Works and all materials, Constructional Plant and other things that are brought on to the Site by or on behalf of the Contractor or any of his sub-contractors for the purpose of carrying out the Works or that are entrusted to him by the Principal for that purpose.

The Contractor shall at his own cost make good to the satisfaction of the Superintendent any loss of or damage to the Works, the Temporary Works or the aforesaid materials, Constructional Plant and other things resulting from any cause whatsoever (save and except the excepted risks as defined in sub-clause 25.2) when such making good is necessary for the satisfactory completion of the Works. When so ordered by the Superintendent any such loss or damage caused by any of the excepted risks as defined in sub-clause 25.2 shall be made good by the Contractor as a variation to the Contract and dealt with pursuant to clause 59.

If a certificate of Practical Completion is issued for a Separable Part of the Works pursuant to sub-clause 61.3, then the Contractor's liability for the care of that Separable Part of the Works as defined above shall cease on the date of Practical Completion of that Separable Part of the Works, except for its liability during the Defects Liability Period for that Separable Part of the Works, or for any operational maintenance period specified in the Contract for that Separable Part of the Works, as stated in sub-clause 25.3.

Nothing contained in this sub-clause shall relieve the Contractor of his responsibilities or liabilities under clause 27.

25.2. Excepted Risks

For the purposes of clause 25.1, the excepted risks are:

a) Any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal.

b) Any risk specifically excepted in the Specification.

c) War, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority.

d) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion or nuclear fuel not caused by the Contractor or its employees or agents or sub-contractors.

25.3. Liability of the Contractor after Date of Practical Completion

a) After the date of Practical Completion of the Works or a Separable Part of the Works the Contractor shall, subject to the provisions of paragraphs (b), (c) and (d) respectively in this sub-clause 25.3, indemnify and keep indemnified the Principal against all loss or damage to the Works or the Separable Part of the Works or to the relevant Temporary Works arising out of or resulting directly or indirectly from any negligent act or omission of the Contractor or any sub-contractor or any employee or agent of the Contractor or out of any default of the Contractor under the Contract; and for the purposes of this sub-clause the word "default" shall be construed, but without restricting its generality of meaning, as including faulty design, workmanship or materials.

b) If a certificate of Practical Completion is issued for the Works and no certificate of Practical Completion has been issued for any Separable Part of the Works, the indemnity shall extend to the Works and the Temporary Works during the period commencing on the date of Practical Completion of the Works and ending on the day on which the Defects Liability Period for the Works, or the operational maintenance period specified in the Contract for the Works, as the case may be, expires.

c) If a certificate of Practical Completion is issued for a Separable Part of the Works the indemnity shall extend to that Separable Part of the Works during the period commencing on the date of Practical Completion of that Separable Part of the Works and ending on the day on which the Defects Liability Period for that Separable Part of the Works, or the operational maintenance period specified in the Contract for that Separable Part of the Works, as the case may be, expires.

d) If a certificate of Practical Completion is issued for the Works and a certificate of Practical Completion has been issued for a Separable Part of the Works, the indemnity shall, without limiting or affecting the indemnity applicable in relation to the Separable Part of the Works, extend to the Works and the Temporary Works other than the Separable Part of the Works.

26. Insurance of the Works

Before commencing the Works, the Contractor shall take out an insurance policy to cover his liabilities as set out in clause 25 against any loss of or damage resulting from any cause whatsoever to the Works, the Temporary Works and all materials and other things that are brought on to the Site by or on behalf of the Contractor or any of his sub-contractors for the purpose of carrying out the Works or that are entrusted to him by the Principal for that purpose; and for the purpose of this clause 26 the expression "materials and other things" shall be construed, but without restricting its generality of meaning, as including Constructional Plant (unless otherwise insured to the satisfaction of the Superintendent).

The insurance cover may exclude:

a) the cost of making good fair wear and tear or gradual deterioration but not the loss or damage resulting therefrom;

b) the cost of making good faulty design, workmanship and materials but not the loss or damage resulting therefrom;

c) consequential loss of any kind, but not loss of or damage to the Works;

d) damages for delay in completing or for the failure to complete work;

e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;

f) loss or damage resulting from the excepted risks (b) and (c) defined in sub-clause 25.2.

g) The insurance cover shall extend to the Contractor's liabilities and obligations as set out in sub-clause 25.3.

Unless otherwise specified elsewhere in the Contract, and subject to such reductions as are appropriate having regard to the next succeeding paragraph, the insurance cover shall be for an amount not less than the Contract Sum to which shall be added a further sum not less than the total of the respective amounts stated in the Annexure for the value of materials to be supplied by the Principal for the purpose of the Works and the assessments for insurance purposes of architects', engineers' and surveyors' fees and of costs of demolition and removal of debris relating to and necessarily incurred in the reinstatement of loss or damage to the Works.

The insurance policy shall cover the Principal, the Contractor, the Superintendent and all sub-contractors employed from time to time in relation to the Works for their respective rights, interests and liabilities and unless otherwise specified elsewhere in the Contract, shall be effected with an insurer or insurers approved in writing by the Principal, which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor's liabilities and obligations respectively stated in sub-clause 25.3 cease.

27. Property Damage and Public Risk

Subject to the next succeeding paragraph of this clause 27, the Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal (other than the Works and the Temporary Works or a Separable Part of the Works but including existing property in or upon which the Works is being carried out) and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the construction or maintenance of the Works by the Contractor or its employees, agents or sub-contractors and also from any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding.

The Contractor shall not, under the last preceding paragraph of this clause, be rendered liable for or in respect of personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or for or in respect of any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

28. Liability

28.1. Limitation of Liability

The Contractor's liability to indemnify the Principal under this Contract 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.

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 will be limited to the amount specified in the Annexure.

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 this clause; 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.

28.2. 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

29. 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 26.

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 (subject always to the overall sum insured not being increased thereby);

c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence;

d) include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that he may have or acquire against all or any of the persons comprising the insured;

e) unless otherwise specified in the Contract, be effected with an insurer or insurers approved in writing by the Principal and in terms approved in writing by the Principal, which approvals shall not be unreasonably withheld; and

f) be maintained during the currency of the Contract.

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 29.

30. Professional Indemnity Insurance

If specified in the Annexure and before commencing the Works the Contractor must take out a professional indemnity insurance policy to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its sub-contractors in carrying out the Works and the Contractor's design obligations in the amount specified in the Annexure.

31. Accident or Injury to Employees

The Contractor shall indemnify and keep indemnified the Principal against liability for all loss or damage resulting from personal injury to or the death of (other than such injury or death resulting from any breach by the Principal of any of the provisions of the Contract or any negligent act or omission of the Principal, the Superintendent, or the employees, professional consultants or agents of the Principal) the Contractor or any sub-contractor or any employee or agent of the Contractor or of any sub-contractor occurring during the currency of the Contract and arising out of or in connection with the execution of the Works or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at common law or under any statute.

32. Workers Compensation

For the purpose of this clause "worker" shall have the definition it is given in the *Return to Work Act 2015*.

Before commencing Works, the Contractor shall take out and shall maintain for the duration of the Contract appropriate workers compensation insurance cover that complies with the *Return to Work Act* 2015. Insurance cover shall be purchased from Northern Territory approved insurers. Details can be found on the web site of NT WorkSafe:

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*.

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 should ensure that they have appropriate insurance coverage in place.

The Contractor shall be responsible for ensuring that all sub-contractors have appropriate insurance policies, and, upon request, shall provide to the Principal copies of all insurance documents, including those of any sub-contractors (including self-employed Contractors and persons employed under labour hire agreements).

33. Inspection and Provisions of Insurance Policies

Before commencing the Works and whenever requested in writing at any time and from time to time thereafter so to do by the Principal, the Contractor shall produce evidence to the satisfaction and approval in writing of the Principal of the insurances effected and maintained by the Contractor and its sub-contractors for the purposes of clauses 26, 29, 30, and 32 or any of them.

If, after being requested in writing by the Principal so to do, the Contractor fails to produce evidence of compliance with his insurance obligations under clauses 26, 29, 30, and 32 or any of them which is to the satisfaction and approval of the Principal, the Principal may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66, or the Principal may refuse payment upon any certificate until evidence of compliance with his insurance obligations under clauses 26, 29, 30, and 32 or any of them is produced by the Contractor to the satisfaction and approval of the Principal.

The Contractor shall ensure that each policy of insurance effected as required by clauses 26, 29, 30, and 32 or any of them shall contain provisions acceptable to the Principal that will:

a) require the insurer, whenever the insurer gives to or serves upon the Contractor or a sub-contractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Principal in writing that the notice has been given to or served upon the Contractor or the sub-contractor; and

b) provide that a notice of claim given to the insurer by the Principal or the Contractor or a sub-contractor shall be accepted by the insurer as a notice of claim given to the insurer by the Principal and the Contractor or by the Principal and the sub-contractor, as the case may require.

The Contractor shall, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by clauses 26, 29, 30, and 32 and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. The Contractor shall take such steps as are necessary or appropriate to ensure that a sub-contractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the sub-contractor, take in relation to the Principal the like action to that which the Contractor is required to take under this paragraph.

The effecting of insurance as required by clauses 26, 29, 30, and 32 or any of them shall not in any way limit the liabilities or obligations of the Contractor under other provisions of the Contract.

34. Work Health and Safety

34.1. Definitions

For the purposes of this clause:

Construction Work carries the meaning that the WHS Regulations ascribe to it and includes the construction and completion of the Works together with any other construction work to which the WHS Act or WHS Regulations apply which is carried out by the Contractor, sub-contractors or sub-subcontractors on the Work Site during the term of the Contract;

Principal Contractor carries the meaning that the WHS Regulations ascribe to it and includes a person who is appointed or taken to be the principal contractor for the Construction Work;

a) Without limiting or in any way affecting the Contractor's obligations under the Contract, on and from the Date of Acceptance of Tender the Principal appoints and the Contractor accepts such appointment as the Principal Contractor for the Construction Work and the Contractor must:

i. strictly comply with the WHS Act and the WHS Regulations and do all things necessary and in a manner which ensures that both the Contractor and the Principal satisfy their obligations under the WHS Act and the WHS Regulations;

ii. accept that, as Principal Contractor, the Contractor is the person responsible for the control and management of the Construction Work at all times until the Construction Work is completed pursuant to the terms of the Contract;

iii. ensure that it satisfies its obligations under the WHS Act and WHS Regulations as they apply to other persons (e.g. employees of sub-contractors);

iv. immediately comply with directions on safety issued by any relevant authority or by the Principal under the Contract;

v. on and from the Date of Acceptance of Tender, to the extent permitted by law, indemnify the Principal against any loss, expense, liability or damage suffered or incurred by the Principal which may arise as a result of any breach by the Contractor of the WHS Act, the WHS Regulations or of this clause;

vi. ensure that any sub-contract entered into for the Works or any part of the Works contains enforceable obligations requiring the sub-contractor to:

A. comply with the Contractor's obligations in sub-paragraphs (i), (iii) and (iv) as if the sub-contractor were the Contractor (except that the sub-contractor will not be appointed or accept any appointment as the Principal Contractor for the Construction Work);

B. acknowledge the appointment of the Contractor as the Principal Contractor and the person responsible for the control and management of the Construction Work at all times until the Construction Work has reached Practical Completion;

C. not interfere with, disturb, impede or obstruct the carrying out by the Contractor of its obligations as Principal Contractor;

D. cooperate and comply with any direction of the Contractor; and

E. ensure that any sub-subcontract entered into for the Works or any part of the Works contains enforceable obligations requiring the sub-subcontractor to comply with sub-paragraph (iv) as if the sub-subcontractor were the Contractor.

b) Where there is any inconsistency or ambiguity between this clause 34 and the WHS Act or the WHS Regulations, the WHS Act and the WHS Regulations will prevail.

c) The Contractor is authorised by this clause to exercise such of the Principal's authority as is necessary to enable the Contractor to discharge the responsibilities imposed on it under this clause 34 and under the WHS Act and the WHS Regulations. If the Contractor becomes aware that the authority is not sufficient for this purpose, the Contractor must immediately provide detailed written notice to the Superintendent.

35. Work Health and Safety Management

Without limiting any other provision of this Contract, the Contractor shall ensure that its employees, agents, sub-contractors and their employees or agents comply with the requirements of the *WHS Act*, the WHS Regulations, the Building Code of Australia, Australian Standards, and the requirements of Power and Water Corporation or any other relevant water, sewerage, electricity, gas or other utility infrastructure owner or operator, in so far as they are applicable to the carrying out of the Works.

The Contractor shall make itself aware of all potential hazards and of all safety requirements relating to the Works.

35.1. Definitions

For the purposes of this clause 35:

Construction Project has the meaning given to it in the WHS Regulations.

High Risk Construction Work has the meaning given to it in the WHS Regulations;

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 sub-clause 35.3 as a principal contractor for the purposes of the WHS Regulations;

Safe Work Method Statement has the meaning given to it in the WHS Regulations;

Structure has the meaning given to it in the WHS Regulations;

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

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.

35.2. WHS Management Plan

a) This sub-clause 35.2 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,

      with 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 later.

d) The WHS Management Plan must address all those matters required to be covered in a WHS Management Plan as specified in the WHS Act.

e) The Contractor will not be relieved from compliance with any of its obligations under the Contract or from any of its liabilities whether under the Contract or otherwise according to law as a result of:

   i. any direction by the Superintendent concerning the WHS Management Plan or the Contractor's compliance or non-compliance with the WHS Management Plan;

ii. any audit or other monitoring by the Principal or its nominee of the Contractor's compliance with the WHS Management Plan; or

iii. any failure by the Superintendent, or anyone else acting on behalf of the Principal, to detect any defect in or omission from the WHS Management Plan including where any such failure arises from any negligence on the part of the Superintendent or other person.

35.3. Appointment of Contractor as Principal Contractor

a) This sub-clause 35.3 only applies where the Works comprise a Construction Project.

b) On and from the Date of Acceptance of Tender, 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 Practical 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.

35.4. General Obligations

The Contractor must:

a) carry out a risk assessment in relation to the Works;

b) carry out the Works safely and manage the risk of harm to persons or property;

c) ensure that it complies with any statutory requirement that requires a person to be authorised, licensed, supervised or to have prescribed qualifications or experience or that requires a workplace, Plant, Substance or design, or work (or class of work) to be authorised or licensed;

d) put in place and maintain suitable emergency management procedures relevant to the Works and

e) if requested by the Superintendent, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Superintendent before the Contractor or any sub-contractor commences any Works; and

f) generally comply with the requirements of the WHS Act.

35.5. High Risk Construction Work

Where the Works comprises High Risk Construction Work, the Contractor will ensure that:

a) any person carrying out high risk construction work is licensed in accordance with the WHS Act;

b) before the work is carried out, a Safe Work Method Statement is prepared in respect to the High Risk Construction Work in accordance with the WHS Act, and that a copy of the Safe Work Method Statement is:

i. provided to the Superintendent before the High Risk Construction Work is carried out and at any other time requested by the Superintendent; and

ii. kept at the area of the Site where the High Risk Construction Work is being or is to be carried out;

c) the High Risk Construction Work is carried out in accordance with the Safe Work Method Statement.

35.6. Contractor's Obligations to Inform

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

35.7. 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 35 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.

35.8. Powers of Superintendent Regarding Work Health and Safety

If the Superintendent considers that:

a) there is a risk of injury to people or damage to property arising from the Works; or

b) there is an unsafe or potentially unsafe practice or breach of the requirements of this clause 35,

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

   i. direct the Contractor to change its manner of working; or

   ii. suspend the performance of the Works associated with the unsafe practice or breach, and not lift the suspension until the Site 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 sub-clause 35.8 are the responsibility of the Contractor.

35.9. 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, an installation or manufacture of a 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 will:

a) implement a risk management process to ensure that any hazards associated with the design, installation or manufacture are identified, assessed and, as far as reasonably practicable, eliminated or minimised;

b) consult, cooperate and coordinate with others who may contribute to the safe design, installation or manufacture of the Structure, Plant or Substance including the Principal, sub-contractors and end users;

c) maintain appropriate records regarding the design process and the risk management process, including the results of any calculation, analysis, testing or examination, risk assessment and any conditions to ensure the Structure, Plant or Substance is safe, and provide such records to:

i. the Principal and each person who is provided with the design or Structure, Plant or Substance (as the case may be); and

ii. any other person who uses, occupies, constructs, handles or carries out any activity at or in the vicinity of the Structure, Plant or Substance (as the case may be) on request;

d) provide the Principal with any information it requests that is relevant to the design, installation or manufacture of any Plant, Structure or Substance; and

e) on completion of the design, installation or manufacture, provide a report to the Principal detailing the health and safety aspects of the design, Structure, Plant or Substance (as the case may be) which includes information about any identified or potential hazards, hazardous substances used in the design, installation or manufacture, access problems or any handling risks associated with the design, installation or manufacture. Such report will be in a form approved by the Superintendent.

35.10. Breach by Contractor

a) Where, in the reasonable opinion of the Principal or the Superintendent, the Contractor has:

i. where applicable, commenced the Works without having first complied with sub-clause 35.2; or

ii. committed a breach of any of its other obligations under sub-clauses 35.2 to 35.9, the Principal may immediately terminate this Contract by written notice to the Contractor.

b) The remedy provided in paragraph a):

i. applies notwithstanding any other provision of the Contract; and

ii. is in addition to the other remedies under this Contract.

35.11. 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 to 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.

35.12. Work in the Vicinity of Natural Gas Pipelines

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

a) Any activities within the pipeline right-of-way that 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 which are likely to affect the right-of-way, such as re-routing surface water flows, construction of high voltage lines, or erection of large metal structures.

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.

35.13. Asbestos

Where the Contractor removes, repairs and/or renovates products containing asbestos, it must do so in accordance with the National Code of Practice for the Safe Removal of Asbestos, 2nd Edition [NOHSC:2002(2005)] and NT WorkSafe Information Bulletins published by NT WorkSafe.

In accordance with the *WHS Act* and (Regulations) the Contractor shall obtain necessary approval before commencing any work on or with products that contain asbestos; evidence of approval shall be presented to the Superintendent before commencing work.

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.

35.14. 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 its sub-contractors, resulting in a call out of the fire service, the Contractor will be required to pay for the subsequent call out fee.

35.15. 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.

35.16. 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 forewarning of the Works.

36. Damage to Services

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

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

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

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

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

37. Protection against Dust, Debris, Water and the Like

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 dust, dirt, noise or other nuisance. Installed equipment is to be protected against damage by dust, dirt, shock or other cause. Appropriate measures are to be taken to afford such protection.

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.

38. 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.

39. Superintendent

The Works shall be executed in accordance with the Contract and in accordance with any directions of the Superintendent pursuant to the provisions of the Contract.

For the purposes of this clause the word 'direction' includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Superintendent may make, give or issue pursuant to the provisions of the Contract.

Any direction which may be or is given to the Contractor by the Superintendent pursuant to the provisions of the Contract may, unless the Contract expressly provides otherwise, be given either orally or in writing. When any such direction is in the first instance given orally the Superintendent shall as soon as practicable after it is so given confirm it in writing addressed to and issued or given to or served upon the Contractor.

40. Superintendent's Representative

The Superintendent may from time to time in writing appoint persons named by him as Superintendent's Representatives to exercise such of the powers, duties, discretions and authorities vested in him as he may think fit and shall give notice to the Contractor of the name and address of each person so appointed and the extent of the powers, duties, discretions and authorities exercisable by that person.

The Superintendent shall not at any time appoint more than one person to exercise a particular power, duty, discretion or authority vested in him.

A Superintendent's Representative may, from time to time in writing, appoint one or more persons to be his or her nominees, to exercise a particular power, duty, discretion or authority, exercisable by the Superintendent's Representative. A Superintendent's Representative shall give notice to the Contractor in writing of the name of any person so appointed as a nominee and particulars of the power, duty, discretion or authority to be exercised by such person as a nominee.

Upon receipt of any notice given to the Contractor by the Superintendent or the Superintendent's Representative pursuant to this clause 40, the Contractor shall recognise and accept each person so appointed as lawfully entitled to exercise for the purposes of the Contract the powers, duties, discretions and authorities referred to in the notice.

An appointment under this clause 40 does not prevent the exercise of a power, duty, discretion or authority by the Superintendent and the Superintendent may at any time revoke any such appointment by notice to the Contractor.

Where the word 'Superintendent' is used in this Contract, it shall, so far as concerns the powers, duties, discretions and authorities exercisable by the Superintendent's Representative by virtue of his appointment under this clause 40, be deemed to include a Superintendent's Representative.

41. Contractor's Representative

The Contractor shall personally superintend the execution of the Works or have during the currency of the Contract a competent representative acceptable to the Principal present on the Site at all times during which any activities relating to the execution of the Works are taking place and if required by the Superintendent at such other times and at such other places at or in which any activities relating to the execution of the Works are taking place.

The contractor's representative shall have sufficient command of the English language and of Australian construction and technical terminology to be able to read, converse and receive instructions in English.

The Contractor shall notify the Superintendent in writing of the name of his representative on the Site and of the name of any other representative at any other place in which any activities relating to the execution of the Works are taking place, and of any subsequent changes. Any direction as defined in clause 39 shall:

a) if given to the representative on the Site in respect of the execution of the Works on the Site be deemed to be a direction issued or given to or served upon the Contractor in respect of the execution of the Works on the Site; or

b) if given to the representative at any other place in respect to the execution of part of the Works in that place shall be deemed to be a direction issued or given to or served upon the Contractor in respect to the execution of that part of the Works at that place.

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

In the absence from the Site of the Contractor and his representative, the Superintendent may take such action as he considers necessary to prevent loss of or damage to the whole or any part of the Works or to any property or to prevent personal injury to any person. The cost of any action so taken by the Superintendent shall, if the Superintendent determines that the action is of a kind that the Contractor would have been liable to take at his own expense if he or his representative had not been absent, be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

Any action taken by the Superintendent under this clause shall not relieve the Contractor of any of his liabilities or obligations under the Contract.

42. Control of Contractor's Employees and Sub-Contractors

The Contractor shall employ and ensure that its sub-contractors employ in connection with the Works only such persons as are careful, skilled and experienced in their respective trades and callings.

The Superintendent may object to and direct the Contractor to remove or have removed from the Site or from any activity connected with the Works within such time as the Superintendent directs any person

employed by the Contractor or by any sub-contractor who, in the opinion of the Superintendent, misconducts himself or is incompetent or negligent in the performance of his duties; and the Contractor shall comply with such direction any such person shall not be employed on the Site or on activities connected with the Works without the prior approval of the Superintendent.

43. Site

43.1. Possession of Site

The Principal shall on or before the expiration of the time stated in the Annexure give to the Contractor possession of sufficient of the Site to enable him to commence work in accordance with sub-clause 54.1, and thereafter to execute the Works in accordance with the requirements of the Contract.

Notwithstanding that the Superintendent has granted possession of Site to the Contractor, it shall be the Contractor's responsibility to obtain all permits necessary to commence work on the Site.

Should any delay take place in giving the Contractor such possession of the Site the delay shall be deemed not to constitute a breach of contract but shall be a ground for an extension of the time for completion pursuant to sub-clause 54.4.

Possession of the Site shall confer on the Contractor a right only to such use and control as shall be necessary to enable it to execute the Works in accordance with the Contract; but the Principal may at any time after reasonable notice take possession of any portion of the Site for the purpose of carrying out any other work or for any purpose whatsoever. The Contractor shall permit the execution of work by sub-contractors, artists, tradesmen and other persons engaged by the Principal or the Superintendent whose names have been previously notified to the Contractor by the Superintendent and shall fully co-operate with the sub-contractors, artists, tradesmen and other persons so engaged by the Principal or the Superintendent and with the Principal and shall carefully co-ordinate his own work with that being carried out or to be carried out by such sub-contractors, artists, tradesmen and other persons or by the Principal.

43.2. Extra Land Required by Contractor

The Contractor shall procure for himself and at his own cost the occupation or use of or relevant rights over any land in addition to the Site which he may deem requisite or necessary for the execution of the Works or for the purposes of the Contract and shall, as a condition precedent to the issue of the final certificate, if so required by the Superintendent, provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner or occupier of and from other persons having an interest in such land.

43.3. Access to Work

The Contractor shall at all reasonable times give to the Principal and to the Superintendent and to any other persons authorised in writing by the Principal or by the Superintendent access to the Works and shall provide every reasonable facility necessary for the supervision, examination and testing of any work or materials for the Contract at any place where any such work is being or is to be carried out or materials are being prepared.

In addition to the requirements under sub-clause 20.5 the person nominated in the clause titled "Specific Site Conditions" in the preliminary clauses of the Request for Tender or his appointed representative, is authorised to enter the Site for the purposes of administering the site rules for persons engaged for the purpose of undertaking Works within a specified site.

43.4. Delivery of Materials to or Work on Site before Possession

Until possession of the Site is given in accordance with sub-clause 43.1, no materials shall be delivered to or work performed on the Site by or on behalf of the Contractor unless approval is given by the Superintendent.

43.5. Use of Site by Contractor

The Contractor shall not without the prior written approval of the Principal or unless the Contract so provides, use the Site or permit or suffer the Site to be used for camping or any residential purpose.

43.6. Finding of Minerals, Fossils and Relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site during the execution of the Works shall as between the parties be and remain the property of the Principal and the Contractor, immediately upon the discovery thereof, shall take precautions to prevent the loss or removal of or damage to any such article or thing and notify the Superintendent of its discovery. The extra costs, if any, incurred by the Contractor in taking such precautions which the Superintendent determines were reasonable shall be borne by the Principal.

43.7. 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 date 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 Superintendent so determines shall include the cost of replacing or re-keying master locks.

44. Setting Out of the Works

44.1. Information to be Supplied to Contractor

The Superintendent shall supply the information necessary to enable the Contractor to set out the Works and shall provide the Contractor with such survey marks as are specified in the Contract, or if not so specified, as the Superintendent determines to be necessary for setting out the Works.

44.2. Contractor to Set Out the Works

Subject to the last preceding sub-clause, the Contractor shall at his own expense set out the Works correctly in accordance with the Contract and shall provide all instruments and materials necessary for that purpose.

44.3. Care of Survey Marks

The Contractor shall preserve and maintain in their true positions all survey marks referred to in sub-clause 44.1.

Should any survey mark be disturbed or obliterated, the Contractor shall immediately notify the Superintendent and shall, unless the Superintendent otherwise determines, rectify such disturbance or obliteration to the satisfaction of the Superintendent. Unless the disturbance or obliteration has been caused by the Principal, his employees or agents, the cost of rectification shall be borne by the Contractor.

44.4. Errors in Setting Out

If at any time during the progress of the Works, any error is discovered in the position, level, dimensions or alignment of any part thereof, the Contractor shall immediately on his discovery of the error notify the Superintendent and shall, unless the Superintendent otherwise directs, rectify the error. Unless the error has been caused by incorrect data issued by the Superintendent, the cost of rectification shall be borne by the Contractor.

The Superintendent may check the setting out of the Works by the Contractor but the fact that the Superintendent may have carried out such checks shall not relieve the Contractor of any responsibility for the correct setting out of the Works.

44.5. Survey Mark

The term "survey mark" used in this clause means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark used or intended to be used for the purpose of setting out, checking or measuring the Works.

45. Materials, Labour and Constructional Plant

45.1. Provision of Materials, Labour and Constructional Plant

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

45.2. Constructional Plant

All Constructional Plant shall comply with the requirements in relation thereto of the relevant laws in operation in the State or Territory in which the Works is being carried out.

45.3. Contractor not to Remove Materials or Designated Constructional Plant

No Constructional Plant that is from time to time designated in writing by the Superintendent and no materials shall be removed from the Site without the prior written approval of the Superintendent, which approval shall not be unreasonably withheld where they are no longer immediately required for the proper completion of the Works.

45.4. Manufacture and Supply of Materials

The Contractor shall give the Superintendent upon request full particulars of the mode and place of manufacture and source of supply and the performance capacities and such other information as the Superintendent considers necessary in respect of any of the material, machinery or other equipment to be used in connection with the Contract. The Contractor shall before he arranges manufacture off site of any works or fabricated material to be used in connection with the Contract give the Superintendent reasonable written notice of his intention to do so.

46. Materials and Work

46.1. Quality of Materials and Work

Materials used in the Works and standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of any such provision in the Contract in respect of any material or standard of workmanship that material or standard of workmanship, as the case may be, shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works.

Unless otherwise specified in the Contract, any materials to be incorporated in the Works shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant standard of Standards Australia.

46.2. Australian Standards Mark

When any manufactured product, required by the Specification to comply with an Australian Standard, is offered as complying with that Standard by virtue of its being marked "Approved to Australian Standard" under a licensing scheme of Standards Australia, then either:

a) The product may be accepted by the Superintendent as meeting the requirements of the Australian Standard; or

b) The Superintendent, before accepting the product as complying with the Australian Standard, may require some or all of the tests set out in the Australian Standard to be done and passed and may require inspection of manufacture by his representative.

Such acceptance will not cancel any provision of the Specification that the product meets requirements other than those of the Australian Standard.

Before acceptance under (a) above, the Superintendent may require from the Contractor written evidence that the product was manufactured during the currency of the relevant licence of Standards Australia.

46.3. Proprietary Items

A proprietary item shall be any item specified by naming one or more of the following: manufacturer, supplier, installer, trade name, brand name, catalogue or reference number and the like.

The specification of a proprietary item shall not necessarily imply exclusive preference for the item so identified, but shall be deemed to indicate the required properties of the item, such as type, quality, appearance, finish, method of construction, performance and the like.

A similar alternative item having the required properties may be offered for approval. The Superintendent may in his absolute discretion approve or reject the alternative. No claim shall arise from any rejection, nor unless otherwise agreed, shall adoption of an alternative be ground for any claim for variation to cost or time.

When offering an alternative for approval, provide all available technical information and any other relevant information requested by the Superintendent. If so requested obtain and submit reports on relevant tests by an independent testing authority.

The offer should also state whether the use of the alternative will require alteration to any other part of the Works. If the alternative is approved, the Contractor will be responsible for and carry out any such alteration without extra charge.

46.4. Protection of Materials

The Contractor at its own cost provide adequate storage and protection for all materials so as to preserve their quality and fitness for the Works.

46.5. Materials or Work not Complying with the Contract

The Superintendent may, at any time before the issue of the final certificate pursuant to sub-clause 61.8, reject any material or work which is not in accordance with the Contract and may direct its replacement, correction or removal whether it has been the subject of a payment or not and such rejection or direction shall be made or given as soon as practicable after the discovery by the Superintendent of its non-compliance with the Contract. If the Superintendent directs the Contractor to replace or correct any material or work, the Contractor shall commence the work of replacement or correction within seven (7) days after the receipt by him of the direction and shall complete the work promptly and to the satisfaction of the Superintendent. If the Superintendent directs the Contractor to remove from the Site any material which is not in accordance with the Contract, the Contractor shall do so promptly. All such replacements, corrections and removals shall be at the Contractor's cost.

If the Contractor fails to comply with the preceding paragraph of this sub-clause 46.5 the Principal may have the work of replacement, correction or removal carried out by other persons and the cost incurred by the Principal in having the Works so carried out shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

47. Connection of Services

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

48. Joining Up

Where the method of joining up of work is not otherwise specified, the joining of all old and new work and the cutting away in connection therewith shall be carried out in a manner approved by the Superintendent and made good in all trades to match existing adjacent work.

49. Examination and Testing of Materials and Work

49.1. Materials and Work to be Subject to Examination and Testing

The Superintendent may at any time and from time to time direct that any materials or work to be used in or forming any part of the Works and specified in the direction shall be examined or tested or shall be examined and tested.

Where a Superintendent gives any such direction the Contractor shall promptly prepare and make available for examination or testing or, as the case may be, examination and testing the materials or work specified in the said direction and shall give the Superintendent prompt notice that the same are so available.

49.2. Covering up of Work

Where the Contract provides or the Superintendent directs that any part of the Works shall not have further work placed thereon or shall not be covered up or put out of view without the prior approval of the

Superintendent, that part of the Works shall not have further work placed thereon or be covered up or put out of view without that approval.

49.3. Opening Up for Examination and Testing

The Superintendent may at any time and from time to time before the issue of the final certificate pursuant to sub-clause 61.8, direct the Contractor to open up or pull down for examination or testing or for examination and testing any part of the Works.

The Contractor shall comply promptly with such a direction and, when the Superintendent has completed his examination or testing or his examination and testing, as the case may be, shall reconstruct and make good to the satisfaction of the Superintendent the part of the Works so opened up or pulled down.

If the part of the Works referred to in the first paragraph of this sub-clause 49.3 has been covered up or put out of view in contravention of a provision of the Contract or in contravention of a direction given by the Superintendent pursuant to sub-clause 49.2 or is found by the Superintendent not to be in accordance with the Contract, the whole of the cost of opening up, pulling down, reconstruction and making good shall be borne by the Contractor.

If the part of the Works referred to in the first paragraph of this sub-clause 49.3 has not been covered up or put out of view in contravention of a provision of the Contract or in contravention of a direction given by the Superintendent pursuant to sub-clause 49.2 and it is found to be in accordance with the Contract, the whole of the cost of opening up, pulling down, reconstruction and making good shall be borne by the Principal.

49.4. Testing

Unless otherwise provided for in the Contract, testing shall be carried out by the Superintendent or by a testing authority approved by him. Subject to the provisions of this clause, the costs of tests which are carried out by the Superintendent and the costs of tests that are not provided for in the Contract but are carried out by a testing authority employed by the Contractor at the direction of the Superintendent shall be borne by the Principal. The cost of all other tests shall be borne by the Contractor.

49.5. Representation at Tests

The Superintendent and the Contractor shall have the right to be present at or to have a representative present at all tests. Each shall give the other reasonable notice of and facilitate the attendance of that other or his representative at tests which are carried out by or on behalf of the person giving the notice. If any test is carried out other than in the presence of the Superintendent or his representative the Superintendent may reject the result of that test and may direct that the test be repeated. The costs of such a repeat test shall be borne by the Contractor except where the rejection arises from the non-attendance of the Superintendent or his representative at a test in respect to which reasonable notice has been given to the Superintendent pursuant to this sub-clause in which case the costs of the repeat test shall be borne by the Principal. If a test is carried out by the Superintendent or his representative without reasonable notice having been given to the Contractor and the Superintendent orders that the test be repeated the costs of the repeat test shall be borne by the Principal.

For the purposes of this sub-clause 49.5, the word 'test' shall include the taking of samples and specimens and the preparation of materials and work for testing. Where in pursuance of this sub-clause 49.5 the costs of a repeat test are to be borne by the Principal, such costs shall include the costs of packing and handling samples and specimens and transporting them to the place where they are to be tested.

49.6. Cost and Preparation of Samples and Specimens

Except as otherwise provided in sub-clause 49.5, the cost of taking samples and specimens and preparing materials and work for testing and the cost of packing, handling and transporting them to the place where they are to be tested shall, in respect of all tests specified by the Contract, be borne by the Contractor.

49.7. Principal's Right to Use the Works before Testing

If the Contractor fails to carry out within the time prescribed by the Contract, or where there is no time prescribed by the Contract within a reasonable time after a direction pursuant to sub-clause 49.3 is given to or served upon it, any test including a test of the completed Works which is required to be carried out by it and which is a test the passing of which would under the Contract be followed by the issue of a certificate of Practical Completion, the Principal may carry out the test and may take samples and specimens and prepare materials and work for testing or give the Contractor seven (7) days' notice in writing of his intention to use the Works.

Any amounts expended by the Principal in carrying out the test or taking samples and specimens or preparing materials and work for testing shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66. At the expiration of the period of notice referred to in this sub-clause the Principal may use the Works and, provided he uses the Works in a proper and normal manner, the Works shall remain at the Contractor's risk until the expiration of the Defects Liability Period or any operational maintenance period, as the case may be, referred to in clause 56.

49.8. Re-Testing of Work Failing under Test and Altered, Renewed or Replaced

If under a test any part of the Works fails to fulfil the requirements of the Contract, tests on the remedial work of that part and tests on all other parts of the Works affected by the remedial work shall be repeated in accordance with the requirements of the Contract. The costs of such repeat tests shall be borne by the Contractor.

50. 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 other relevant awards and no work will be performed outside of customary working hours or on other than ordinary working days without the prior approval of the Superintendent.

The working hours and working days of the Principal's supervisory personnel shall be 8.00 am to 4.30pm on Business Days. The Contractor shall provide at least forty-eight (48) hours written prior notice to the Superintendent of the intention to work outside the working hours and working days of the Principal's supervisory personnel.

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

51. Programming of the Works

51.1. Construction Programme

If the Contract neither includes nor requires the Contractor to supply a construction programme showing the dates by which or the times within which the various stages or parts of the Works are to be executed or completed, the Superintendent may direct the Contractor to supply to him such a construction programme. The Contractor shall, within the time stated in the direction, supply to the Superintendent such a construction programme and the Contractor shall, subject to clause 53, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to sub-clause 51.2.

Where the Contract neither includes nor requires the Contractor to supply a construction programme and the Superintendent has not directed the Contractor to supply to him such a construction programme the Contractor may, within a reasonable time after the Date of Acceptance of Tender, supply a construction programme showing the dates by which or the times within which the various stages or parts of the Works are to be executed or completed. If such a construction programme is supplied by the Contractor he shall, subject to clause 53, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to sub-clause 51.2.

51.2. Deviation from Construction Programme

The Superintendent may from time to time direct a deviation from a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under sub-clause 51.1 and, in any such event, the Superintendent may direct the Contractor to supply to him a further construction programme. The Contractor shall, within the time stated in any such direction, supply such a further construction programme.

Any such further construction programme shall have effect and be subject to the same conditions as if it were a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under sub-clause 51.1.

The supply of a construction programme or of a further construction programme under this clause 51 shall not relieve the Contractor of any of his obligations under the Contract.

51.3. Order of Work

If a construction programme has not been provided pursuant to any preceding provision of this clause the Superintendent shall have full power to direct in what order and at what time the various stages or parts of the Works shall be performed.

51.4. Extra Costs

The Contractor shall not be entitled to any extra cost resulting from:

a) a deviation from a construction programme directed by the Superintendent pursuant to sub-clause 51.3; or

b) a direction given by the Superintendent pursuant to sub-clause 51.3

unless the need for the deviation or the direction was due to an act, default or omission of the Principal or the Superintendent.

52. Time and Performance Schedule

If specified in the Annexure the Contractor shall execute the Works to Practical Completion of each Separable Part of the Works specified in the Annexure within the times nominated. The times so nominated shall commence on and from the Date of Acceptance of Tender.

Liquidated damages for delays and the Defects Liability Period/s shall be as specified in the Annexure.

53. Progress and Suspension of the Works

53.1. Rate of Progress

The Contractor shall proceed with the Works at a rate of progress and in a manner satisfactory to the Superintendent.

53.2. Suspension by Superintendent

Where the suspension of the whole or any part of the Works becomes necessary:

a) because of an act, default or omission of:
    i. the Principal or an employee or professional consultant or agent of the Principal; or
    ii. the Contractor or an employee or agent of the Contractor; or
    iii. a sub-contractor or an employee or agent of that sub-contractor; or
b) for the protection or safety of:
    i. the employees or agents of the Contractor or of a sub-contractor or the employees, professional consultants or agents of the Principal or any other person concerned in the performance of the whole or any part of the Works; or
    ii. the executed work or any part of the executed work; or
    iii. the public or any property;

the Superintendent shall order the Contractor to suspend the progress of the whole or any part of the Works specified in the order for such time or times as the Superintendent may think fit.

53.3. Suspension by Contractor

Should the Contractor wish to suspend the progress of the whole or any part of the Works it shall in writing notify the Superintendent and explain the reasons for the suspension. The Superintendent shall thereupon, if he thinks it necessary or reasonable so to do, grant permission for a suspension of the whole or any part of the Works for such time or times as he may think fit.

53.4. Recommencement of Work

The Superintendent shall, when the reason for any suspension no longer exists, direct the Contractor to recommence work on the whole or on the relevant part of the Works and the Contractor shall comply with the direction promptly.

53.5. Cost of Suspension

The extra cost, if any, of completing the Works incurred by the Contractor by reason of any suspension under sub-clause 53.2 or sub-clause 53.3 shall be borne and paid for by the Contractor PROVIDED HOWEVER that if the suspension is due to an act, default or omission of the Principal or an employee,

professional consultant or agent of the Principal the Contractor shall be entitled to payment of the amount of any extra cost of completing the Works incurred by him that is attributable to such an act, default or omission.

53.6. Effect of Suspension

The suspension of the progress of the whole or any part of the Works under this clause 53 shall not affect the obligation of the Contractor to execute the Works to Practical Completion of the Works or a Separable Part of the Works within the period or by the date stated in the Annexure with reference to sub-clause 53.2 or within any extended time allowed by the Superintendent pursuant to sub-clause 53.4.

54. Times for Commencement and Completion

54.1. Time for Commencement of Work on the Site

Subject to clause 43 and save as otherwise provided in the Contract, the Contractor shall commence the Works on the Site within fourteen (14) days after the Principal has given to the Contractor possession of enough of the Site for the commencement of the Works, or within such further time as may be approved by the Superintendent, and thereafter the Contractor shall execute the Works in accordance with the Contract.

The Contractor shall before commencing work on the Site give the Superintendent notice in writing of the commencement of not less than seven (7) days or of such lesser period as may be acceptable to the Superintendent.

54.2. Time for Completion of the Works

The Contractor shall execute the Works to Practical Completion of the Works within the period or by the date stated in the Annexure or within any extended time granted or allowed by the Superintendent pursuant to sub-clause 54.4.

Where the Contract specifies that a Separable Part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date fixed by the Contract for the Practical Completion of the Works the Contractor shall execute that Separable Part of the Works to Practical Completion within the period or by the date so specified in the Annexure or within any extended time granted or allowed by the Superintendent in relation thereto pursuant to sub-clause 54.4.

Upon the date of Practical Completion of the Works or a Separable Part of the Works the Contractor shall deliver up the Works or that Separable Part of the Works to the Principal.

54.3. Use of Partly Completed Works

The Principal shall have the right to use or occupy any part of the Works that the Superintendent certifies to be usable notwithstanding that that part of the Works or some other part of the Works has not been completed. The use or occupation in a proper and normal manner of any part of the Works by the Principal under this sub-clause 54.3 shall not limit or affect the Contractor's rights and obligations under the Contract.

54.4. Extension of Time for Completion

Where the Contractor is delayed in the execution of the Works by any cause arising out of any breach of the provisions of the Contract by the Principal or out of any other act or omission on the part of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or by any other cause (except a cause arising out of any breach of the provisions of the Contract or any other act

or omission on his own part or on the part of his employees, agents or sub-contractors or their employees or agents) which he considers to be such as to justify an extension of the time fixed by the Contract for Practical Completion of the Works, the Contractor shall, if it desires to claim an extension of time for Practical Completion of the Works, give to the Superintendent not later than twenty eight (28) days after the cause of delay arose, notice in writing of its claim for an extension of time for Practical Completion of the Works, together with a statement of the facts on which the claim is based.

If the Superintendent determines that the cause of the delay is such as to justify an extension of time for Practical Completion of the Works, the Superintendent shall grant the Contractor such extension of time for Practical Completion of the Works as the Superintendent thinks fit and shall, as soon as practicable after he has granted that extension of time, notify the Contractor thereof.

If the Superintendent determines that the cause of the delay is not such as to justify an extension of time for Practical Completion of the Works, the Superintendent shall, as soon as practicable thereafter notify the Contractor of that determination.

Notwithstanding that the Contractor has not given notice of a claim for an extension of time for Practical Completion of the Works pursuant to this sub-clause 54.4, the Superintendent may, at any time and from time to time and for any reason he thinks sufficient, by notice addressed to the Contractor extend the time for Practical Completion of the Works by nominating a date specified in the notice as the date for Practical Completion of the Works and the date so specified in the notice shall, for the purpose of the Contract, be deemed to be the date for Practical Completion of the Works.

Where the Contract specifies that a Separable Part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date provided for Practical Completion of the Works the provisions of this sub-clause 54.4 shall apply to and with respect to the extension of time for Practical Completion of that Separable Part of the Works; and for that purpose references in this sub-clause 54.4 to the Works shall be read as references to that Separable Part of the Works.

Any extension or extensions of time granted or allowed by the Superintendent pursuant to this sub-clause 54.4 may be granted or allowed at any time before the issue of the final certificate.

No claim for extra costs incurred by the Contractor by reason of or as a result of or arising from the exercise by the Superintendent of the power to grant or allow any extension of time under this sub-clause 54.4 shall be entertained by the Principal unless the need for the extension of time was due to any breach of the provisions of the Contract by or any other act or omission on the part of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal.

54.5. Liquidated Damages for Delay in Completion

If the Contractor fails to reach Practical Completion of the Works or of a Separable Part of the Works, as the case may be, within the relevant time referred to in sub-clause 54.2 or within any extended time granted or allowed pursuant to sub-clause 54.4, the Contractor shall be liable to the Principal, by way of pre-estimated and liquidated damages and not as a penalty, for the amount or amounts stated or referred to in the Annexure for every week and a proportionate part of that amount or of those amounts for every part of a week that shall elapse after that time or the extended time until the whole of the Works or the Separable Part of the Works, as the case may be, has been executed to Practical Completion or taking over or cancellation under sub-clause 64.1 occurs, whichever is the sooner and that amount or those amounts shall be respectively a debt or debts due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

Where the Principal has used or occupied any part of the Works pursuant to sub-clause 54.3, the amount of pre-estimated and liquidated damages for which the Contractor is liable to the Principal by virtue of this sub-clause 54.5 may be reduced to an amount determined by the Superintendent and notified by him to the Contractor.

55. Cleaning Up by Contractor

The Contractor shall keep the Works clean and tidy as it proceeds, and regularly remove from the Site rubbish and surplus material arising from the execution of the Works including any work performed during the Defects Liability Period for the Works or during any operational maintenance period for the Works specified in the Contract. Within fourteen (14) days after the Date of Practical Completion of the Works, including tests on completion, the Contractor shall remove all buildings, workshops, Temporary Works, Constructional Plant and equipment which he may have constructed or brought on the Site for carrying out the Works except such as are required by the Contractor for the purpose of performing work during the Defects Liability Period for the Works or during any operational maintenance period for the Works specified in the Contract, and which with the approval of the Superintendent remain on the Site. All buildings, workshops, Temporary Works, Constructional Plant and equipment required by the Contractor for the purpose of performing work during the Defects Liability Period for the Works or during any operational maintenance period for the Works specified in the Contract shall be removed by the Contractor on completion of that work and he shall ensure that, within fourteen (14) days after the completion of that work, the Site is left clean and tidy and free of rubbish and surplus material.

If the Contractor fails to comply with any obligation imposed on him by this clause 55 the Principal may, after giving notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

56. Defects Liability

56.1. Times of Commencement and Periods

If a certificate of Practical Completion is issued for the Works and no certificate of Practical Completion has been issued for any Separable Part of the Works, the Defects Liability Period for the Works shall commence on the date of Practical Completion of the Works and shall end on the day on which the Defects Liability Period for the Works set forth in the Annexure expires.

If a certificate of Practical Completion is issued for a Separable Part of the Works, the Defects Liability Period for that Separable Part of the Works shall commence on the date of Practical Completion of that Separable Part of the Works and shall end on the day on which the Defects Liability Period for that Separable Part of the Works specified in the Annexure expires.

If a certificate of Practical Completion is issued for the Works and a certificate of Practical Completion has been issued for a Separable Part of the Works, the Defects Liability Period for the Works shall extend to those parts of the Works other than that Separable Part of the Works referred to in the last preceding paragraph.

If, pursuant to sub-clause 54.3, the Principal has used or occupied a part of the Works, the Defects Liability Period for that part of the Works shall commence on the day on which the Principal commenced to use or occupy that part of the Works.

56.2. Contractor's Responsibility

Any minor omissions and minor defects of the kind referred to in the definition of Practical Completion in clause 2 which existed at the commencement of a Defects Liability Period shall be rectified by the Contractor as soon as possible.

Any omissions and defects referred to in the preceding paragraph of this sub-clause 56.2 that are not rectified by the Contractor and any other defects which become apparent during a Defects Liability Period

under normal use of the Works or of a Separable Part of the Works and which are due to any cause, including design, workmanship or materials for which the Contractor is responsible shall be rectified by the Contractor when directed to do so by the Superintendent who, in that direction, shall state the minor omissions or minor defects or in what respect the Works or the Separable Part of the Works are otherwise defective and the date by which rectification shall be completed, but no such direction shall be given by the Superintendent later than fourteen (14) days after the expiration of that Defects Liability Period.

If any omission or defect is not rectified within the time stipulated in the direction given by the Superintendent the Principal may rectify the omission or defect at the Contractor's expense but without prejudice to any other rights that the Principal may have against the Contractor in respect of that omission or defect and the cost incurred by the Principal in so rectifying the omission or defect shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

Notwithstanding the provisions of this sub-clause 56.2, the Contractor shall not be responsible for the effects of fair wear and tear during a Defects Liability Period.

56.3. Remedial Work by Contractor

If it becomes necessary for the Contractor under sub-clause 56.2 to execute any remedial work the provisions of the Contract relating to the Works shall apply to the remedial work as if it were the Works and the Defects Liability Period for such remedial work shall be the Defects Liability Period that applies, by virtue of sub-clause 56.1, to the Works or, as the case may be, to the Separable Part of the Works on which the remedial work was executed and shall commence on the day on which the remedial work is completed, but the Superintendent may approve, in respect of any remedial work, a shorter Defects Liability Period.

56.4. Tests on Remedial Work

If any remedial work is of such a character as may affect the efficiency of the Works the Superintendent may, within one Month after completion of that remedial work, notify the Contractor that further tests are to be made in accordance with clause 49. The costs of such further tests shall be borne by the Contractor.

56.5. Contractor's Rights of Entry and Test

Until the final certificate is issued in accordance with sub-clause 61.8 the Contractor and each of his duly authorised representatives whose names have been previously communicated in writing to the Superintendent shall for the purposes of carrying out any remedial work or making any tests or inspecting the working records of the Works and taking notes therefrom and subject to the approval and requirements of the Superintendent have the right of entry in so far as it may be necessary for all or any of those purposes at his own risk and cost and at all reasonable times to the Works.

Any action taken by the Contractor for any of the purposes expressed in this sub-clause 56.5 shall not disrupt or inconvenience the normal activities of the occupants of the Works.

56.6. Use of the Works by Principal

Subject to sub-clauses 56.5 and 64.3 and to any restrictions on the use of the Works that the Superintendent may determine to be necessary for the execution of remedial work by the Contractor, the Principal and any person or persons authorised by the Principal in that behalf shall have the full, free and unrestricted use of the Works without interference on the part of the Contractor during a Defects Liability Period or during any operational maintenance period specified in the Contract and such use of the Works by the Principal and any person or persons so authorised by him shall not relieve the Contractor from any liability or obligation under the Contract.

57. Warranties

The Contractor shall obtain warranties as specified in the Contract and shall ensure that the Principal will have the benefit of the warranties. The Contractor shall ensure that the Principal will have the benefit of any warranties specified in the Contract that are obtained by the sub-contractors of the Contractor.

58. Urgent Repairs

If, at any time during the currency of the Contract, the Superintendent determines that any remedial, protective, repair or other like work is urgently necessary to prevent loss of or damage to the Works or to any property or to prevent personal injury to or the death of any person the Superintendent shall, as soon as practicable thereafter, notify the Contractor of that determination and the Contractor shall carry out the work immediately on receipt of that notice and if the Contractor is unable or unwilling at once to do the work the Principal may, by his own or other workmen, do such work as the Superintendent may determine to be necessary. If the work so done by the Principal is work which the Superintendent determines to be work that the Contractor was liable to do at its own expense under the Contract all costs and charges properly incurred by the Principal in doing the work shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

59. Variations

59.1. Variations to the Work

If, at any time during the progress of the Works, the Superintendent determines that the form, quality or quantity of the Works should be varied, the Superintendent may order the Contractor to do all or any one or more of the following things -

a) increase, decrease or omit any part of the Works;

b) change the character or quality of any material or work;

c) change the levels, lines, positions or dimensions of any part of the Works;

d) execute additional work.

No variation shall be made by the Contractor without an order by the Superintendent.

No variation shall invalidate the Contract, but the value of the variation shall be taken into account in determining the Final Contract Sum. Each variation shall be valued in accordance with sub-clause 59.2 and, unless otherwise directed by the Superintendent, such valuation shall be determined before the work to which the variation relates is commenced.

59.2. Valuation of Variations

A variation shall be valued in accordance with the rates included in the Priced Bill of Quantities, Schedule of Rates or in any other schedule of prices with the provision that a percentage addition of six per cent (6%) will be applied to the net value of the variation, whether the variation is for the addition or omission of works, if and in so far as the Superintendent determines that those rates are applicable to the variation.

Where the Superintendent determines that the rates included in the Priced Bill of Quantities or Schedule of Rates or in a schedule of prices do not apply to a variation, the rate or price payable for the variation shall be determined by agreement between the Contractor and the Superintendent, but if the Contractor and the Superintendent fail to agree on the rate or price the Superintendent shall determine such rate or price as he considers reasonable or he may direct that the variation shall be carried out as day work.

This clause is not applicable to adjustments to the quantities in a Schedule of Rates contract under clause 3.4.3 where the quantity change is within the lower and upper limits of accuracy.

59.3. Day work

If the Superintendent directs that any work be carried out as day work, the Contractor shall record each day in a manner to be approved by the Superintendent the particulars of all resources used by the Contractor for the execution of the day work. At intervals of one Month or at such shorter intervals as the Superintendent directs the Contractor shall furnish to the Superintendent his claim for payment in writing, together with these records and all time sheets, wages sheets, invoices, receipts and other vouchers that are necessary to support his claim. The Superintendent shall determine the amount to be paid to the Contractor in respect of each claim and in making his determination shall have regard to the following -

a) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;

b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under paragraph (a);

c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the Works in accordance with such hiring rates and conditions as may be agreed upon between the Superintendent and the Contractor or, in the absence of such an agreement, in accordance with such rates and conditions as may be determined by the Superintendent;

d) the amounts paid for services, sub-contracts and professional fees;

e) the actual cost to the Contractor at the Site of all materials supplied and required for the Works;

f) a charge agreed upon between the Superintendent and the Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of such an agreement, a charge determined by the Superintendent.

The amounts payable for day work shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

60. Responsibility for and Notice of Measurement

The measurement of work as required for the purposes of the Contract shall be the responsibility of the Superintendent. The Superintendent shall give reasonable notice to the Contractor of his intention to measure work and the Contractor shall, if so directed by the Superintendent, be represented at and assist in the taking of measurements. If the Contractor is not represented at the time appointed by such notice for the taking of measurements the Superintendent may proceed in his absence and the measurements taken by the Superintendent shall be binding on the Contractor.

A record of the measurements shall be kept by the Superintendent and shall, on request by the Contractor, be made available to him.

61. Certificates and Payments

61.1. Progress Certificates and Progress Payments

The Contractor must submit to the Superintendent a valid invoice every Month showing the value of the Works carried out in performance of the Contract and incorporated in the Works. For the purpose of this clause 61 an invoice is valid if it:

a) is correctly addressed and calculated in accordance with this Contract,

b) relates only to the Services 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; and*

d) complies with the requirements stipulated in this Contract.

The Contractor's Tax Invoice shall include details of any adjustments under clause 59 and an explanation as to how such adjustments were calculated. The Contractor shall provide any further details in regards to the Works or any claim for payment upon request by the Superintendent.

The Principal may issue a progress certificate and make payments within twenty (20) days of receipt of an undisputed invoice valued less than $1 million. The Principal will make payments within thirty (30) days of receipt of an undisputed invoice valued $1 million or more.

The amount of the progress payment will be the total gross value shown in the progress certificate less:

a) any retention moneys as provided in the Annexure;

b) any progress payment already made in respect of work covered by that progress certificate;

c) any other amount that the Principal may be entitled to deduct from the moneys due under that progress certificate; and

d) any debt or monies due from the Contractor to the Principal under or by virtue of any provision of this Contract.

The payment of moneys under a progress certificate shall not be taken as evidence against or as an admission by the Principal that any work or item of work specified in any progress certificate has been constructed or executed or of the value thereof or of any work having been constructed or executed in accordance with the Contract, but shall be taken to be payment on account only.

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

a) will not be grounds to vitiate or avoid the contract; and

b) will entitle the Contractor to make a claim for interest on the late payment.

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

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

61.2. Payment for Materials, Plant and Equipment

Payment in advance for the provision by the Contractor of materials, plant and equipment for incorporation in the Works may be made by the Principal and in accordance with this clause in respect of any item approved from time to time by the Superintendent.

Payment in advance equal to the value (as determined by the Superintendent) of the materials, plant and equipment provided by the Contractor for incorporation into the Works will be made by the Principal upon application in writing to the Superintendent by the Contractor and subject to the following conditions:

a) the Superintendent is satisfied that the material, plant or equipment has not been prematurely delivered to the Site or place of storage and has been stored and protected in a location and manner that is appropriate and adequate having regard to its nature.

b) the Contractor has lodged with the Principal security by way of an undertaking in a form approved by the Principal, and given by an entity approved by the Principal under which the entity undertakes to be responsible to pay the Principal on demand a sum equal to the amount of any advance payments that from time to time have been made by the Principal and have not been taken into account in the making of progress payments.

c) the amount of the payments in advance that have been made by the Principal and have not been taken into account in the making of progress payments shall not at any time exceed a sum equal to security lodged with the Principal under this Clause.

A payment in advance made as aforesaid shall be accepted as having been made at the express request of the Contractor and the making of the payment shall not:

a) import the implication that the materials, plant or equipment in respect of which the advance is made is satisfactory and will subsequently be accepted by the Superintendent as being in accordance with the Contract when built, fixed or installed into the Works;

b) prejudice the right of the Superintendent to reject or direct the removal of any material, plant or equipment, whether fixed or not, that is not in accordance with the Contract.

61.3. Certificates of Practical Completion

When the Superintendent is satisfied that Practical Completion of the Works or of a Separable Part of the Works has been reached he shall issue to the Contractor a certificate of Practical Completion for the Works or for that Separable Part of the Works which shall state the date of Practical Completion of the Works or of that Separable Part of the Works, which date shall, for the purposes of the Contract, be known as the date of Practical Completion of the Works or of that Separable Part of the Works.

61.4. Payment on Certificate of Practical Completion

Subject to clause 66, where the Contractor has supplied to the Superintendent all the information required to be supplied by him under the Contract in relation to the Works or in relation to a Separable Part of the Works, as the case may require, the Principal shall without undue delay after the issue of the certificate of Practical Completion for the Works or for that Separable Part of the Works, as the case may be, pay to the Contractor by way of a progress payment all moneys then payable in terms of the Contract for the Works or for that Separable Part of the Works.

Notwithstanding the preceding paragraph of this sub-clause 61.4, if at the time when the Superintendent issues a certificate of Practical Completion for the Works or for a Separable Part of the Works there are in relation to the Works or that Separable Part of the Works minor omissions or minor defects of the kind referred to in the definition of Practical Completion in clause 2 the Principal may withhold from the moneys payable to the Contractor pursuant to that certificate of Practical Completion such amount as the Superintendent determines is the cost of rectifying those omissions or defects. As and when an omission or defect is rectified by the Contractor the Superintendent shall issue a progress certificate in respect of the omission or defect.

61.5. Correction of Certificates

The Superintendent may, by any certificate, correct any error which has been discovered in any previous certificate, or may modify any previous certificate, other than a certificate of Practical Completion or the final certificate, which has been issued by him.

61.6. Effect of Certificates

The issue of a progress certificate or a certificate of Practical Completion issued pursuant to this clause shall not constitute approval of any work or other matter in respect of which it is issued nor shall it be

taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Superintendent, nor shall any such certificate negate or prejudice any of the rights, powers and remedies of the Principal or the Superintendent.

The issue of the final certificate issued pursuant to sub-clause 61.8 shall constitute conclusive evidence that all Works has been finally and satisfactorily executed by the Contractor except in so far as it is determined in accordance with clause 65 or is proved in any proceedings in a court of competent jurisdiction that the said final certificate is, in any particular, erroneous by reason of -

a) fraud, dishonesty or deliberate concealment, on the part of the Contractor or any of his sub-contractors or of any of the employees or agents of the Contractor or of any of his sub-contractors, relating to the Works or any part thereof or to any matter dealt with in the said final certificate; or

b) any defect, including any omission, in the Works or any part thereof which reasonable inspection at the time of the issue of the said final certificate would not have disclosed; or

c) any accidental or erroneous inclusion or exclusion of any work, materials, goods or figure in any computation, or any arithmetical error in any computation.

61.7. Final Statement by Contractor

The Superintendent may, before the issue of the final certificate pursuant to sub-clause 61.8, direct the Contractor to furnish to the Superintendent a final statement of all the Contractor's claims against the Principal whether under the Contract or otherwise and no claim which is not included in that final statement shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the Works. The final statement shall be endorsed 'Final Statement' by the Contractor.

If the Contractor fails to furnish to the Superintendent the final statement within twenty-eight days after he has been directed so to do by the Superintendent, the Superintendent shall assess the value of the Works and subject to sub-clause 61.8, shall issue the final certificate and no claim shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the Works.

61.8. Final Certificate and Return of Security

When the Works have been finally and satisfactorily executed and the Contractor has fulfilled all his other obligations under the Contract, the Superintendent shall issue to the Contractor a final certificate.

Within twenty-eight days after the final certificate has been issued and the Contractor, if so directed by the Superintendent, has furnished the Superintendent with a release of all claims against the Principal, whether arising under or by virtue of the Contract or otherwise, the Principal shall pay to the Contractor all amounts then payable, including any retention moneys then held by the Principal, and shall return to the Contractor the security or such part of it as the Principal is then holding.

62. Payment of Workmen's Wages and Allowances

62.1. Statement of Wages and Allowances Paid or Unpaid

Save as in this clause otherwise provided, before paying any moneys to the Contractor under the Contract the Principal may require the Contractor to make and deliver to the Principal a statutory declaration that all workmen who are or at any time have been engaged on the Works have been paid in full all amounts which have become payable to them by virtue of their employment on the Works as wages and allowances of every kind required to be paid by or under any statute, or subordinate legislation, or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial

tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the Works is being or has been carried out and to the latest date at which such wages and allowances are payable. However when any wages or allowances which have become payable remain unpaid payment will be made by the Principal to the Contractor upon receipt of a statutory declaration made by the Contractor in which is set out details and amounts of such unpaid wages or allowances but sufficient money to satisfy such unpaid wages and allowances may be withheld from any money which may be then payable or thereafter become payable to the Contractor until he supplies a further statutory declaration that all such wages and allowances have been paid.

62.2. Failure of Contractor to Pay Wages and Allowances

If the wages or allowances referred to in sub-clause 62.1 of any workman who is employed or has been employed on the Works remain unpaid, the Principal may, upon the production to him of satisfactory evidence of a judgment or order of a court of competent jurisdiction in respect thereof, pay the amount of the judgment or order including any costs awarded thereby to the workman concerned and any amount so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

63. 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* (**"the 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* (**"the 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: "**Entity**" shall also mean Contractor; "**Recipient**" shall also mean Principal; "**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 the Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming the 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 the 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 the 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 the Contract.

64. Default or Bankruptcy of Contractor

64.1. Procedure on Default of Contractor

If the Contractor defaults in the performance or observance of any covenant, condition or stipulation in the Contract or refuses or neglects to comply with any direction as defined in clause 39 but being one which either the Principal or the Superintendent is empowered to give, make, issue or serve under the Contract and which is issued or given to or served or made upon the Contractor by the Principal in writing or by the Superintendent in accordance with clause 39, the Principal may suspend payment under the Contract and may call upon the Contractor, by notice in writing, to show cause within a period specified in the notice why the powers hereinafter contained in this clause 64 should not be exercised.

The notice in writing shall state that it is a notice under the provisions of this clause and shall specify the default, refusal or neglect on the part of the Contractor upon which it is based.

If the Contractor fails within the period specified in the notice in writing to show cause to the satisfaction of the Principal why the powers hereinafter contained should not be exercised the Principal, without prejudice to any other rights that he may have under the Contract against the Contractor, may:

a) take over the whole or any part of the work remaining to be completed and for that purpose and in so far as it may be necessary exclude from the Site the Contractor and any other person concerned in the performance of the Works; or

b) cancel the Contract, and in that case exercise any of the powers of exclusion conferred by sub-paragraph (a) of this paragraph.

If the Contractor notifies the Superintendent in writing that he is unable or unwilling to complete the Works, or to remedy the default, refusal or neglect stated in the notice in writing referred to in the first paragraph of this sub-clause 64.1, the Principal may act in accordance with the provisions of sub-paragraph (a) or sub-paragraph (b) of the last preceding paragraph, as it thinks fit.

64.2. Duration of Suspension of Payment

If the Principal suspends payment under sub-clause 64.1 the suspension of payment may be continued until the default, refusal or neglect stated in the said notice has been remedied or the direction has been complied with.

64.3. Engagement of Others

If the Principal elects to exercise the power conferred on him by sub-paragraph (a) of the third paragraph of sub-clause 64.1 he may complete the whole or any part of the work remaining to be completed and for that purpose may let a contract or contracts for the work remaining to be completed or, as the case may be, for any part of that work or may employ any person or persons other than the Contractor to carry out that work or, as the case may be, the part of that work.

The Principal may take possession of and permit other persons to use any materials, Constructional Plant and other things on or about the Site which are owned by the Contractor and as are requisite and necessary for the purposes of any such contract or any such employment.

The Contractor shall have no right to any compensation or allowance for any action taken by the Principal pursuant to this sub-clause other than a right to require the Principal to maintain in good working order the Constructional Plant referred to in the preceding paragraph.

On completion of the Works all Constructional Plant and the surplus of the materials and other things so taken possession of will be handed over to the Contractor, but without payment or allowances for the fair wear and tear they may have sustained in the meantime PROVIDED HOWEVER, that if there is a deficiency as referred to in sub-clause 64.4 and if the Contractor fails to make good that deficiency, the Principal may retain in his possession the said Constructional Plant, materials and other things until the deficiency is made good pursuant to the provisions of sub-clause 64.4.

64.4. Adjustment of Costs on Completion of the Works

On completion of the Works in accordance with the Contract the Superintendent will ascertain the cost of the Works to the Principal, comprising payments to the Contractor and all losses, costs, charges and expenses incurred by the Principal in carrying out the whole or any part of the Works completed by him pursuant to sub-clause 64.3 and any sum or sums payable or due to the Principal as liquidated damages under the Contract and he will certify such amount to the Principal. A certificate signed by the Superintendent stating the cost of the Works to the Principal shall be prima facie evidence of the matters stated in the certificate.

Should the amount so certified be greater than the amount which would have been paid to the Contractor if the whole of the Works had been completed by him, the difference between the two amounts shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 66.

64.5. Preservation of Rights of Principal

No action taken by the Principal under sub-clause 64.2 or sub-clause 64.3 shall invalidate the Contract or prejudice any of the rights, powers and remedies of the Principal, whether under the provisions of the Contract or otherwise.

64.6. Cancellation of Contract

If the Contract is cancelled under sub-clause 64.1 or under any other provision of the Contract it shall be deemed cancelled as from the date when notice of cancellation in writing under the hand of the Principal is served upon the Contractor, or upon any official receiver, trustee in bankruptcy, liquidator, official of provisional liquidator, official manager, or receiver or receiver and manager of the Contractor or of the business of the Contractor.

On such cancellation of the Contract all or any sums of money which may be in the hands of the Principal in respect of the Contract and are not then payable to the Contractor under or pursuant to any provision of the Contract, and the whole or part of any security, including cash lodged or retained for the due and proper performance of the Contract and all or any sums of money named in the Contract as liquidated damages which have accrued due to the Principal may be declared by the Principal to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in the Principal.

On such cancellation of the Contract all moneys which have been previously paid together with all moneys then payable under or pursuant to any provision of the Contract to the Contractor shall be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of the Contract.

64.7. Bankruptcy of Contractor

If the Contractor:

a) being a person, commits an act of bankruptcy or presents against himself or has presented against him a petition in bankruptcy or a sequestration order is made against him or he enters into any

Scheme of Arrangement or any composition with his creditors or executes as a debtor a deed of arrangement or a deed of assignment; or

b) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver and Manager is appointed to carry on its business for the benefit of its creditors or any of them;

the Principal may exercise the power conferred on him by sub-paragraph (a) or (b) of sub-clause 64.1 as he may elect.

65. Settlement of Disputes

65.1. Disputes

Each party must follow the procedures in this clause 65 before starting court proceedings, other than for interlocutory relief.

65.2. 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.

65.3. 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.

65.4. Superintendent

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 submit the matter in writing, specifying with detailed particulars the matter at issue, to the Superintendent for decision.

65.5. Appointment of Mediator

If either party is dissatisfied with the decision of the Superintendent in accordance with clause 65.4, then a party may, within five (5) Business Days of the notice of the Superintendent's decision (or within such further period as the parties agree is appropriate), nominate a mediator to mediate 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.

65.6. 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.

65.7. Decision of Independent Expert

The decision of the independent expert is absolute and final and will bind the parties accordingly and the 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.

65.8. Continuation of Work during Disputes

During disputes and until such time that Works 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 65.

66. Right of Principal to Recover Moneys

Without limiting the Principal's rights under any other provision in the Contract, any debt due from the Contractor to the Principal under or by virtue of any provision of the Contract may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal whether under this Contract or under any other Contract whatsoever between the Contractor and the Principal, including any retention monies held by the Principal, and, if such moneys are insufficient for this purpose, then from the Contractor's security held under or given pursuant to the Contract or any other Contract whatsoever between the Contractor and the Principal. Nothing in this clause 66 shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

67. 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.

68. Notification of Claims

The Principal shall not be liable upon any claim by the Contractor in respect of any matter arising out of the Contract unless the claim together with full particulars thereof, is lodged in writing with the Principal not later than twenty-eight days after the date of the occurrence of the events or circumstances on which the claim is based or written notice of intention to make the claim specifying the nature of the claim is

lodged with the Principal within that time and the claim, together with full particulars thereof, is lodged in writing with the Principal before the issue of the final certificate.

69. Contractor's Performance Report

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

a) the Superintendent will prepare a contractor's performance report ('Report');

b) the Superintendent shall liaise with the Contractor in completing the Report although the Superintendent reserves the ultimate right to complete the Report (other than the Contractor's comments); and

c) the Principal will release the Report to Contractor Accreditation Limited and be entitled to release the Report to any department of the Northern Territory of Australia, 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.

Annexure

All payments made under the Contract shall be made at: (clause 1)	
The Principal is: (clause 2)	Katherine Town Council
The Superintendent shall be: (clause 2)	Chief Executive Officer
The Basis of Payment shall be: (clause 3.1)	Lump Sum
Adjustment for Rise & Fall is: (clause 3.2)	Not subject to adjustment
The time for lodgement of the priced copy of the Bill of Quantities is: (clause 4.1)	28 days, if applicable
The amount of the security is: (clause 5.2)	5% of the contract sum, withheld at 10% from each invoice until the 5% limit is reached
The address of the Principal for service of documents is: (clause 7.3)	29 Crawford St, Katherine, NT, 0850
The address of the Superintendent for service of documents is: (clause 7.3)	29 Crawford St, Katherine, NT, 0850
An Indigenous Development Plan is: (clause 18)	Required in accordance with per RFT - Part B1 - Specification
An Industry Participation Plan is: (clause 19)	Not required

Accreditation under the WHS Accreditation Scheme is: (clause 20.2)	Required
The value of materials to be supplied by the Principal is: (clause 26)	Not Applicable
The assessment for insurance purposes of architects', engineers' and surveyors' fees is: (clause 26)	Original Fee Basis, if applicable
The assessment for insurance purposes of the costs of demolition and removal of debris is: (clause 26)	Original Fee Basis, if applicable
Limitation of Liability (clause 28)	Not Applicable
The amount of Public Liability Insurance shall be not less than: (clause 29)	$20,000,000.00
The amount of Professional Indemnity Insurance shall be not less than: (clause 30)	$5,000,000 per applicable consultant
The time for giving possession of the Site is: (clause 43.1)	1st March 2027
The time for Practical Completion of the Works shall be: (clause 54.2)	25th June 2026
and, for each Separable Part of the Works:	No Separable Parts
Liquidated Damages for the Works shall be: (clause 54.5)	Not Applicable

and, for each Separable Part of the Works:	No separable parts
The Defects Liability Period for the Works shall be: (clause 56)	24 months
and, for each Separable Part of the Works:	
The amount of retention moneys is: (clause 61.1)	The security will be 5% of the contract value, as per clause 5.2, and will be held as retention moneys. 50% (2.5% of the contract value) of the retention may be claimed by the contractor immediately upon practical completion of the works 50% (2.5% of the contract value) of the retention may be claimed by the contractor upon completion of the defects liability period

Time and Performance Schedule			
Separable Part	Time for Completion (Weeks)	Liquidated Damages ($ per Week)	Defects Liability (Weeks)
N/A	N/A	N/A	N/A

Listed in order of precedence, the specifications, schedules and other documents which form this contract are	1. T25-04 – RFT – Part C – Contract.pdf (executed) 2. T25-04 – RFT – Part B2 – Zimin – Construction Drawings – Rev E.pdf 3. T25-04 – RFT - Part B1 – Zimin - Specification.pdf 4. T25-04 – RFT – Part A – Tender Information and Conditions.pdf 5. T25-04 – RFT – Part E – Return Schedules – Pricing.xlsx (filled in) 6. T25-04 – RFT – Part D – Return Schedules – Written.docx (filled in)