

Conditions of Contract

Provision of Asset Maintenance Services

Version February 2018

CITY OF
GOLDCOAST.

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1 Definitions

1.1 In these Conditions of Contract:

Abatement means an abatement, if any, specified in the Contract Header.

Alternative Maintenance Services has the meaning given in Clause 5.2.

Approved Expenses means the Contractor's expenses specified in the Contract Header (if any) and any additional expenses which have been approved by the Principal in accordance with Clause 23 prior to any expenditure being incurred by the Contractor.

Assets means any assets owned by the Principal, or assets otherwise specified in the Contract Header which are not owned by the Principal, on which the Contractor is to perform the Maintenance Services and includes all materials, goods, spare parts and consumables supplied and, if relevant, installed in the performance of the Maintenance Services.

Bonus means a bonus, if any, specified in the Contract Header.

Business Day means between 8am and 5pm on a day which is not:

- (a) a Saturday or Sunday;
- (b) a public holiday, bank holiday or special holiday in the place in which the Site is located; or
- (c) a day occurring on or within the period of 22 December to 10 January.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract, the Maintenance Services or either Party's conduct under the Contract before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence), including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- (a) for the payment of money (including damages);
- (b) for an adjustment to the Price or Approved Expenses;
- (c) for delay, disruption, acceleration or other time-based claim;
- (d) for adjustment to performance against the KPIs or the application of any Abatement (including any adjustment to any Abatement).

Commencement Date means:

- (a) the date or dates specified in the Contract Header;
- (b) the date agreed in writing between the Parties; or
- (c) if neither of the above apply, the date on which the Contractor executes the Contract Header.

Completion means that stage of the Maintenance Services when:

- (a) the Maintenance Services are complete except for minor Defects:
 - (i) that do not prevent the Assets from being safely, lawfully and conveniently used in accordance with all requirements of the Principal;
 - (ii) which the Principal determines, in its absolute discretion, that the Contractor has acceptable reasons for not having rectified; and
 - (iii) the rectification of which will not affect the convenient and safe use of the Assets;
- (b) all tests that the Contract requires to have been carried out as a requirement of Completion have been carried out and have achieved the required results;
- (c) documents and other information relating to the Completion of the Maintenance Services or any other obligations of the Contractor which the Contract requires, or which the Principal requires, to be provided to the Principal, have been provided to the Principal;

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- (d) the Contractor has removed all rubbish and surplus material from the Site relating to the Maintenance Services and has cleaned the Site;
- (e) the Contractor has provided all certificates, permits, consents and approvals required by Legislative Requirements for use, occupation and operation and maintenance of the Assets which are the responsibility of the Contractor under the Contract; and
- (f) the Contractor has satisfied any other requirements referred to in the Contract to achieve the stage of Completion.

Completion Date means the date or dates specified in the Contract Header, if any, by which:

- (a) the Maintenance Services must achieve Completion; or
- (b) a nominated part of the Maintenance Services must achieve Completion,

as adjusted in accordance with Clauses 11 and 42.

Conditions of Contract means these terms and conditions in these Conditions of Contract and includes the Special Conditions of Contract as specified in the Contract Header and the Additional Conditions of Contract in Schedule 4 of the Contract Header.

Confidential Information means the contents of the Contract and any other Document or information obtained by the Contractor in the course of or in connection with performing the Maintenance Services.

Conflict of Interest means a commercial or professional interest of interest, either real, perceived, anticipated or identified as a risk or as a possibility of arising, identified by either Party in respect to the performance of the Maintenance Services (either under obligations and rights arising under the Contract or any other arrangement or agreement, with the Contractor or with others, either past, current or in the future).

Consent means prior written consent.

Consequential Loss means, to the extent that the loss is an indirect loss, any loss of revenue, loss of profit, loss of business opportunity, loss of contract, loss of opportunity to earn profit or revenue, loss arising from damage to goodwill or reputation, loss of anticipated savings, loss arising from business interruption or loss arising from credit rating.

Consumer Price Index means the applicable Consumer Price Index published by the Australian Bureau of Statistics.

Contract means:

- (a) the contract constituted by the Documents specified in Clause 3.2;
- (b) the contract constituted by the Documents specified in Clause 4.5; or
- (c) the contract constituted by the Documents specified in Clause 5.5.

Contract Header means the Document of that name which is executed by the Parties.

Contract Term means, subject to earlier termination of the Contract in accordance with Clause 44:

- (a) the term specified in the Contract Header; and
- (b) any extension of that term under Clause 6.2.

Contractor means the entity specified in the Contract Header, including any executor, administrator, permitted successor, permitted assignee or Personnel of the Contractor.

Council Contract Representative means the Principal's Nominated Representative specified in the Contract Header (if any) to exercise the functions of the Principal relating to the Contract or other person from time to time appointed in writing by the Principal to be the Council Contract Representative and Notified as such to the Contractor by the Principal.

Defect means any part of the Maintenance Services which does not strictly comply with the requirements of the Contract or is otherwise unsatisfactory to the Principal and includes any omissions.

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Defects Liability Period means the period specified in the Contract Header, if any, that commences on:

- (a) if the Contract Header sets out one or more Completion Dates, then Completion (as determined by the Principal's Nominated Representative acting reasonably); or
- (b) if the Contract Header states that the Contractor is to perform the Maintenance Services for a Contract Term, then the expiry of the Contract Term.

Deviations means the deviations to the Principal's Requirements or these Conditions of Contract and any additional terms and conditions agreed between the Principal and Contractor, as specified in the Contract Header.

Document includes a document in any media or format.

Existing Contract Material means any material or Document that:

- (a) exists at the Commencement Date; or
- (b) is produced after the Commencement Date, independently of the Contract.

Force Majeure means an event or circumstance, or combination of events and circumstances, which is beyond the reasonable control of the Party affected (**Affected Party**) which causes or results in default or delay in the performance by the Affected Party of any of its obligations under the Contract and which the Affected Party could not have reasonably been expected to have prevented, avoided or overcome exercising Good Industry Practice but does not include:

- (a) any occurrence which results from the act or omission of the Affected Party or any of its Personnel;
- (b) mechanical or electrical breakdown or failure of plant or equipment;
- (c) any failure by the Affected Party to reach agreement with any third party necessary to enable the Affected Party to perform its obligations under the Contract;
- (d) a lack of, or an inability to use, money or available funds for any reason;
- (e) strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing affecting only:
 - (i) the Affected Party;
 - (ii) where the Contractor is the Affected Party, its Personnel; and
 - (iii) where the Contractor is the Affected Party, the Maintenance Services or the Site;
- (f) any event of Force Majeure which causes or results in default or delay in the performance of any off-Site activities or work; or
- (g) any other event or circumstance the risk of which is borne by the Contractor pursuant to the Contract.

Good Industry Practice means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and contractors in Australia with respect to the Maintenance Services, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, experienced, competent and skilled contractor for a project of a similar nature to the Maintenance Services.

GST has the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means any of the following events:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Contractor;

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- (b) the Contractor is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth);
- (c) an application or order is made for the liquidation of the Contractor or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Contractor, otherwise than for the purpose of an amalgamation or reconstruction;
- (d) the Contractor ceases to carry on business;
- (e) the Contractor or the Contractor's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth); or
- (f) anything analogous to the events described in the paragraphs (a) to (e) above occur.

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

in writing means either by letter or email.

Invitation to Offer means the invitation to offer issued by the Principal inviting Offers for the Maintenance Services.

Key Personnel means the Personnel of the Contractor specified in the Contract Header.

KPIs means the key performance indicators specified in the Contract Header, as may be amended under Clause 20.

KPI Evaluation Period means the period specified in the Contract Header.

Legislative Requirements includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of the Contract, the Maintenance Services or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the performance of the Maintenance Services or the Site;
- (c) Australian Standards and any other relevant standards (including New Zealand Standards and, where an Australian and New Zealand Standards do not exist, the International Standards (ISO)); and
- (d) fees and charges payable in connection with the foregoing.

Maintenance Services means the services specified in the Contract Header, the Principal's Requirements, any Alternative Maintenance Service and any additional services necessary to be carried out in order for the Principal to receive the full benefit of the services specified. For the purposes of the Contract, 'services' includes:

- (a) the supply and, if relevant, installation of materials, goods, spare parts and consumables; and
- (b) the carrying out of any work or the provision of any item, including Defects rectification and rectification of any defects in the Asset.

Moral Rights Owner means an owner of moral rights under the *Copyright Amendment (Moral Rights) Act 2000* (Cth) in relation to the Maintenance Services.

New Contract Material means any material or Document that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Maintenance

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Services, and in which there are newly created Intellectual Property Rights, and which specifically excludes Existing Contract Material.

NGER Legislation means any Legislative Requirement which introduces:

- (a) a tax or levy on the emission of greenhouse gases, energy produced or energy consumed;
- (b) any requirement or condition of a licence, permit, governmental consent or approval with respect to the production or omission of, or, to reduce, limit, cease, prevent, offset, remove or sequester greenhouse gas omissions; or
- (c) any trading scheme relating to the emission of greenhouse gases,

for the purpose of reducing, or reducing the growth of, the emission of greenhouse gases, energy produced or energy consumed, and which the Contractor can demonstrate to the satisfaction of the Principal, affects the Contractor's costs of performing the Maintenance Services or affects the Principal's obligations.

Nominated Providers means the suppliers stated in the Contract Header (if any).

Non Principal Contractor Site means those parts of the Site (if any):

- (a) described in the Contract Header to be a Non Principal Site (if any);
- (b) directed by the Principal's Nominated Representative to be a Non Principal Contractor Site at any time before or after they are made available to the Contractor under the Contract; or
- (c) which have previously been handed over to the Principal following Completion of the Maintenance Services within or upon those parts of the Site.

Notice means a notice, consent or communication given in accordance with Clause 45.

Offer means the offer submitted by the Contractor in response to the Invitation to Offer.

Party means each of the Principal and the Contractor.

Payment Claim has the meaning given to in Clause 22.2.

Payment Claim Date means the date set out in the Contract Header.

Performance Guarantee means the performance guarantee which must be provided by the Contractor to the Principal in accordance with Clause 26.

Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld) and includes information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personnel means any officer, employee, agent, subcontractor, supplier or consultant of a Party, but the Principal's Personnel do not include the Contractor or the Contractor's Personnel and the Contractor's Personnel do not include the Principal or the Principal's Personnel.

Policies and Plans means all requirements, policies, procedures, guidelines, rules and plans of the Principal as may be from time to time, including those set out or referenced in the Contract Header.

Price means the price set out in clause 2 of the Contract Header, worked out as follows:

- (a) if the Principal accepted a lump sum price in the Contract Header or the Schedule of Rates, that amount;
- (b) if the Principal accepted rates, the sum ascertained by calculating the products of the rates in the Schedule of Rates and the corresponding quantities of the Maintenance Services actually and properly performed; or
- (c) if the Principal accepted both lump sums and rates, the aggregate of the sums referred to in the above paragraph,

but including any additions or deductions which may be required to be made under the Contract.

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Principal means the Gold Coast City Council ABN 84 858 548 460, a local government within the meaning of the *Local Government Act 2009* (Qld).

Principal Contractor Site means those parts of the Site:

- (a) not comprising any Non Principal Contractor Site; or
- (b) described in the Contract Header to be a Principal Contractor Site (if any).

Principal's Nominated Representative means either the Superintendent or the Council Contract Representative, as specified in the Contract Header.

Principal's Requirements means the specification detailing the description of the Principal's requirements as specified in Invitation to Offer: Section 4 forming part of the Contract.

Program means a program for the performance of the Maintenance Services as described in Clause 40.

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld).

Quality Assurance System means the Contractor's system which establishes the qualities and performance of the Maintenance Services, including all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Maintenance Services items and audit and other critical issues relating to quality assurance.

Qualifying Cause means:

- (a) subject to Clause 17, a delay caused by any act, default or omission of the Principal or the Principal's Personnel (who are not employed by the Contractor) in the Principal's capacity as a party to the Contract;
- (b) a Force Majeure Event occurring prior to the Completion Date; or
- (c) any cause stated in the Contract Header that is outside the reasonable control of the Contractor and its Personnel and occurring prior to the Completion Date or the expiry of the Contract Term (as the case may be).

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Request for Alternative Maintenance Services means a request issued by the Principal to the Contractor in accordance with Clause 5.

Request for Maintenance Services means a request issued by the Principal to the Contractor in accordance with Clause 4.

Schedule of Rates means the schedule of either or both a lump sum fee and rates set out or referenced in Annexure 1 of the Contract Header. If the Schedule of Rates omits an item which should have been included, the item is deemed to have been included in other items in the Schedule of Rates and the Contractor will have no right to Claim in connection with the omission.

Security Deposit means the approved unconditional and irrevocable undertaking given by an approved financial institution which must be provided by the Contractor to the Principal in accordance with Clause 27.

Security Interest has the meaning given in the *Personal Property Securities Act 2009* (Cth).

Site means the land or other places specified in the Contract Header, where the Maintenance Services is to be performed, and such other land or other places that the Principal makes available to the Contractor in connection with the Maintenance Services.

Superintendent means the Principal's Nominated Representative specified in the Contract Header to be the Superintendent (if any) for the purposes of the Contract or any other person from time to time appointed in writing by the Principal to be the Superintendent and Notified as such in writing to the Contractor by the Principal.

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

2 Interpretation

- 2.1 In these Conditions of Contract, the table of contents and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Conditions of Contract.
- 2.2 The following rules apply in interpreting these Conditions of Contract, unless the context otherwise requires:
- (a) words importing a gender include the other gender;
 - (b) words in the singular include the plural and vice versa;
 - (c) all dollar amounts refer to Australian currency;
 - (d) a reference to any legislation or to a provision of legislation, (including subordinate legislation) is to that legislation as amended, re-enacted, consolidated or replaced;
 - (e) a reference to an entity or person includes an individual, corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - (f) a reference to a Party or any other Document or agreement includes the Party's executors, administrators, liquidators, successors, permitted substitutes and permitted assigns;
 - (g) a reference to a clause, schedule, attachment or annexure is a reference to a clause of, and a schedule, attachment or annexure to, these Conditions of Contract and references to these Conditions of Contract include any schedules, attachments or annexures;
 - (h) if a day on or by which a Party must do something under these Conditions of Contract is not a Business Day, then the Party must do it on or by the next Business Day;
 - (i) if any word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (j) a reference to a clause is a reference to all of its sub-clauses;
 - (k) a Document or agreement (including a reference to the Contract), or a provision of a Document or agreement, is a reference to that Document, agreement or provision as amended, supplemented, varied, replaced or novated;
 - (l) a schedule, attachment or annexure forms part of the Document to which it is attached;
 - (m) a reference to 'month' means calendar month;
 - (n) no rule of construction or interpretation applies to the Principal's disadvantage on the basis that the Principal prepared these Conditions of Contract or because the Principal relies on a provision of these Conditions of Contract as a reason (if required) for any action or inaction on its part or to protect itself; and
 - (o) whenever the words 'include', 'included' or 'including' (or similar expressions) are used, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative.

3 Formation of 'One-Off' Contract

- 3.1 This Clause 3 will only apply if the Contract Header has been completed to confirm that this Clause 3 applies.
- 3.2 The following Documents constitute the entire Contract between the Principal and Contractor:
- (a) the Contract Header (including agreed Deviations);
 - (b) these Conditions of Contract;
 - (c) Principal's Requirements;
 - (d) Offer (to the extent accepted under the Contract Header); and
 - (e) any other Document, in whole or in part, stated in the Contract Header.

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- 3.3 In the event of any ambiguity, discrepancy or inconsistency between the Documents specified in Clause 3.2, it will be resolved and interpreted according to the descending order of precedence in Clause 3.2, so that Documents listed first take priority over those that follow.
- 3.4 If the order of precedence in Clause 3.2 cannot resolve the ambiguity, discrepancy or inconsistency, then the Principal will Notify the Contractor of the interpretation to be followed and the Contractor must comply with that Notification and will have no Claim against the Principal in connection with that Notification.
- 3.5 The Contract embodies the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings between the Principal and Contractor, whether oral or in writing, relating to the subject matter of the Contract. To the extent permitted by law, any representation, agreement, statement or understanding made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in the Contract.

4 Formation of Preferred Supplier Arrangement

- 4.1 This Clause 4 will only apply if:
- (a) the Contract Header states that the Contractor offers to perform the Maintenance Services for a Contract Term; and
 - (b) the Contract Header has been completed to confirm that this Clause 4 applies.
- 4.2 During the Contract Term, the Contractor offers to perform the Maintenance Services as and when requested by the Principal.
- 4.3 If the Principal requires the Contractor to perform the Maintenance Services during the Contract Term, it will issue a Request for Maintenance Services to the Contractor.
- 4.4 On receipt of a Request for Maintenance Services under Clause 4.3, the Contractor will be bound to perform the Maintenance Services described in the Request for Maintenance Services and a contract will come into effect between the Principal and the Contractor.
- 4.5 The following Documents constitute the entire Contract between the Principal and Contractor for all Contracts under Clause 4.4:
- (a) the Request for Maintenance Services issued by the Principal;
 - (b) the Contract Header (including agreed Deviations);
 - (c) these Conditions of Contract;
 - (d) Principal's Requirements;
 - (e) Offer (to the extent accepted under the Contract Header); and
 - (f) any other Document, in whole or in part, stated in the Contract Header.
- 4.6 In the event of any ambiguity, discrepancy or inconsistency between the Documents specified in Clause 4.5, it will be resolved and interpreted according to the descending order of precedence in Clause 4.5, so that Documents listed first take priority over those that follow.
- 4.7 The Contract embodies the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings between the Principal and Contractor, whether oral or in writing, relating to the subject matter of the Contract. To the extent permitted by law, any representation, agreement, statement or understanding made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- 4.8 Despite any other provision of the Contract, the Principal is not required to issue any Requests for Maintenance Services (or any minimum value or type of Maintenance Services) to the Contractor at all during the Contract Term, and may itself perform or procure from other contractors, services that are the same or similar to the Maintenance Services during the Contract Term.

5 Framework arrangement

- 5.1 This Clause 5 will only apply if the Contract Header has been completed to confirm that Clause 4 applies.
- 5.2 Without limiting Clause 4, if the Principal requires the Contractor to perform maintenance services of a kind that are not generally described in the Contract Header (**Alternative Maintenance Services**) during the Contract Term, it may request (and must request prior to the issue of any Request for Alternative Maintenance Services) the Contractor to submit a written proposal for the Alternative Maintenance Services (**Proposal Request**).
- 5.3 As soon as reasonably practicable and in any event within five Business Days after receipt of a Proposal Request, the Contractor must provide the Principal with a written proposal for the Alternative Maintenance Services the subject of the Proposal Request on the basis of the terms of the Contract, and setting out for agreement with the Principal the proposed terms of the Request for Alternative Maintenance Services to be issued by the Principal (**Proposal**).
- 5.4 The Principal may accept a Proposal by issuing, within 90 days after receipt of a Proposal (or a longer period as the parties may agree in writing) (**Validity Period**), a Request for Alternative Maintenance Services that is consistent with the Contractor's Proposal, or if the parties have agreed variations to the Contractor's Proposal, consistent with the agreed variations.
- 5.5 On receipt of a Request for Alternative Maintenance Services under Clause 5.4, the Contractor will be bound to provide the Alternative Maintenance Services described in the Request for Alternative Maintenance Services and a contract will come into effect between the Principal and the Contractor comprising the Documents in Clause 4.5.
- 5.6 Notwithstanding any other provision of the Contract:
- (a) the Principal is not obliged to issue any Requests for Alternative Maintenance Services the subject of a Proposal Request or Proposal;
 - (b) the Contractor is not obliged to accept any Requests for Alternative Maintenance Services that are not received within the Validity Period or that is not consistent with the Contractor's Proposal and any agreed variations; and
 - (c) the Principal is not required to issue any Requests for Alternative Maintenance Services (or any minimum value or type of Alternative Maintenance Services) to the Contractor at all during the Contract Term, and may itself perform or procure from other contractors, services that are the same or similar to the Alternative Maintenance Services during the Contract Term.

6 Timeframes

- 6.1 If the Contract Header states that the Contractor is to perform the Maintenance Services for a Contract Term, then the Contractor must commence the Maintenance Services on the Commencement Date and, subject to Clause 6.2, cease the Maintenance Services on the last day of the Contract Term.
- 6.2 The Principal may, in its absolute discretion, extend the Contract Term for the period stipulated in the Contract Header by giving Notice to the Contractor prior to the expiry of the Contract Term. If the Contract Term is extended in accordance with this Clause 6.2, then the terms and conditions of the Contract will continue to apply during the extended Contract Term.
- 6.3 If the Contract Header sets out one or more Completion Dates, then the Contractor must achieve Completion of the relevant part of the Maintenance Services by the applicable Completion Date.
- 6.4 The Contract applies to any of the Maintenance Services that the Contractor carried out before the Contract Header was executed by the Parties.

7 Principal-Supplied Information

- 7.1 In this clause “**Principal-Supplied Information**” means any information (whether documented or otherwise) supplied or made available to the Contractor by or on behalf of the Principal before or after the date of accepting the Offer (even where such documents have been included in the Principal’s Requirement, which have been included for identification purposes only). Principal-Supplied Information does not include information in documents forming part of the Contract in accordance with Clauses 3, 4 and 5 (as applicable).
- 7.2 The Contractor agrees:
- (a) unless the Principal expressly agrees otherwise in writing, any Principal-Supplied Information:
 - (i) has been or will be provided only for the Contractor's convenience; and
 - (ii) has not been and will not be relied upon by the Contractor for any purpose (including entering into the Contract or performing its obligations under the Contract);
 - (b) the Principal does not:
 - (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to, the Principal-Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract);
 - (c) the Principal will not be liable to the Contractor in contract, tort, equity, under statute or otherwise arising from or in connection with the Principal-Supplied Information, the provision of the Principal-Supplied Information or the non-provision of any other information by the Principal; and
 - (d) the Contractor will not be entitled to any extension of time, adjustment to the Price or other claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Principal-Supplied Information.

8 Contractor’s General Warranties

- 8.1 Without limiting any other obligation under the Contract, the Contractor represents and warrants to the Principal that:
- (a) carefully examined and acquired actual knowledge of the contents of the documents forming the Contract and any other information made available in writing by the Principal for the purpose of entering into the Contract;
 - (b) it has carefully considered what is required for the Maintenance Services before entering into the Contract, and it has and will maintain at all times the necessary experience and qualifications, and an appropriately qualified, experienced and trained workforce, to perform the Maintenance Services;
 - (c) it has made its own investigation and assessment of the work, risks, contingencies and other circumstances involved in performing the Maintenance Services, including in relation to the Site and its surroundings, and it has reviewed all information that the Principal has made available to it, and that otherwise obtainable by making reasonable enquiries, in relation to the Maintenance Services, including the Site and its surroundings, and it assumes complete responsibility for performing the Maintenance Services in accordance with the Contract;
 - (d) it is satisfied as to the correctness and sufficiency of its Offer for the Maintenance Services and that the Price and Approved Expenses covers the cost of complying with all the obligations under the Contract; and

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- (e) it has the necessary authority and power to enter into the Contract and to perform the obligations under it.

8.2 The Contractor acknowledges that the Principal relied on the representations and warranties made in Clause 8 when it entered into the Contract and is repeated when each Request for Maintenance Services or Request for Alternative Maintenance Services, if applicable, is issued.

9 Contractor's General Obligations

9.1 The Contractor agrees to perform the Maintenance Services, and perform all of its other obligations in accordance with the Contract.

9.2 The Contractor must:

- (a) perform the Maintenance Services and perform all of its other obligations:
 - (i) with due care, skill and diligence, and Good Industry Practice;
 - (ii) in a thorough, competent and professional manner in accordance with relevant professional principles and standards; and
 - (iii) in accordance with all Legislative Requirements and applicable Policies and Plans;
- (b) must maintain, and ensure its Personnel maintains, at the cost of the Contractor and its Personnel, any licences, accreditations, certificates or registrations the Contractor or its Personnel are required to possess by any Legislative Requirements in order to perform the Maintenance Services;
- (c) supply all labour, plant, tools, equipment, appliances, consumables, spare parts and other property the Contractor requires to fulfil its obligations under the Contract;
- (d) if it learns of anything that may affect, or has affected, the scope or suitability of the Maintenance Services, or learns of any Defects, then it must promptly Notify the Principal of that as soon as possible, and to the extent possible include in the Notice details of the relevant matter and its cause;
- (e) co-ordinate the performance of the Maintenance Services with the Principal and its Personnel and otherwise consult regularly with the Principal;
- (f) perform the Maintenance Services with due expedition and without delay; and
- (g) Notify the Principal if the Contractor believes that anything may delay the progress of the Maintenance Services (such Notice to include details of the estimated extent of the delay and the cause); and
- (h) without limiting its other obligations under the Contract, apply Good Industry Practice to avoid, mitigate and overcome the effects of any delays to the carrying out of the Maintenance Services.

9.3 Without limiting any other obligation under the Contract, the Contractor represents and warrants to the Principal that:

- (a) the Maintenance Services will:
 - (i) strictly comply with all applicable requirements of the Contract;
 - (ii) be performed by appropriately qualified and trained Personnel;
 - (iii) comply with all Legislative Requirements (including any Legislative Requirements introduced or varied before Completion or the expiry of the Contract Term (as the case may be));
 - (iv) comply with applicable Policies and Plans; and

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- (v) be fit for the purposes set out in, and reasonably inferred from, the Contract;
 - (b) all documentation, plans, records and other information that the Contractor is required to provide to the Principal will be legible, unambiguous, and if applicable, free of any software virus and in a software format directed by the Principal; and
 - (c) that all materials, goods, spare parts and consumables used by it to perform, or supplied as part of, the Maintenance Services will:
 - (i) conform precisely in quality, quantity, specification, and in all other respects with the requirements of the Contract and any samples of the materials, goods, spare parts and consumables inspected and approved by the Principal;
 - (ii) be of merchantable quality;
 - (iii) be free from all liens, charges, encumbrances and other Security Interests of any kind;
 - (iv) be capable of safe use and operation;
 - (v) be fit for the purpose for which they are to be used;
 - (vi) be free from Defects in composition, materials and workmanship;
 - (vii) be new except to the extent expressly agreed otherwise in the Contract Header; and
 - (viii) comply with the National Construction Code performance requirements
- 9.4 Any plant, tools, equipment, appliances, spare parts and other property provided by the Contractor to be used in or in connection with the Maintenance Services must:
- (a) be maintained in good working order;
 - (b) comply with all Legislative Requirements;
 - (c) not represent a safety or security hazard; and
 - (d) be used, operated and maintained in accordance with all applicable manuals, manufacturer's requirements and Good industry Practice.
- 9.5 If the Principal considers that plant, tools, equipment, appliances, materials, goods, spare parts, consumables and other property provided by the Contractor to be used in or in connection with the Maintenance Services do not comply with Clause 9.3(c), the Principal may order it to be removed from the Site.
- 9.6 The Contractor's liability and obligations under or in connection with the Contract are in no way affected by the Principal's comment on or approval of any aspect of the Maintenance Services (or failure to do so).
- 9.7 Risk in the materials, goods, spare parts and consumables passes to the Principal upon Completion. The Contractor indemnifies the Principal against any loss of or damage to the materials, goods, spare parts and consumables from delivery, use or installation until Completion.
- 9.8 Title in the materials, goods, spare parts and consumables passes to the Principal on the earlier of delivery or payment for the relevant materials, goods, spare parts or consumables. If, prior to delivery, title to the materials, goods, spare parts or consumables passes to the Principal, the Contractor must set the relevant materials, goods, spare parts or consumables aside and clearly mark them as being the property of the Principal, in a manner reasonably required by the Principal.
- 9.9 The Principal (by itself or by its agents) may at any time, whether at the Contractor's premises or facilities, the Site or any other place where the Maintenance Services are being performed, carry out any tests to ensure they comply with the Contract.

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- 9.10 The Contractor must give the Principal's Nominated Representative, and any other persons authorised in writing by the Principal, reasonable access to any premises or facilities occupied by the Contractor or its Personnel to inspect or test any Maintenance Services (including any materials, goods, spare parts and consumables).
- 9.11 The Principal's Nominated Representative, and any other persons authorised in writing by the Principal, must, when attending the Contractor's premises or facilities, comply with all reasonable rules, directions, and procedures as Notified by the Contractor, including those relating to workplace health and safety that are in effect at the premises or facilities.
- 9.12 On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Maintenance Services identified in the inspections or tests.
- 9.13 Costs in connection with the testing pursuant to Clause 9.9 will be paid by the Principal except where the Contract otherwise provides or the test is required because of, or reveals a failure of, the Contractor to comply with the Contract
- 9.14 Without prejudice to the Contractor's obligations under the Contract, the Contractor must procure in favour of the Principal, the full benefit of all guarantees and warranties that are capable of being offered to the Contractor, from any third parties in respect of the Maintenance Services (including any plant, tools, equipment, appliances, materials, goods, spare parts, consumables and other property used or installed in the performance of the Maintenance Services). If required by the Principal, the Contractor must procure the assignment of these guarantees or warranties to the Principal.
- 9.15 The Contractor:
- (a) must comply with sections 199 and 200 of the *Local Government Act 2009* (Qld); and
 - (b) must at all times act in the best interests of the Principal.

10 Nominated Provider

- 10.1 The Contractor must use the Nominated Providers to obtain any labour, plant, tools, equipment, appliances, consumables, spare parts and other property of the type stated in the Contract Header when performing the Maintenance Services.
- 10.2 Despite any other provision of the Contract, the Principal may nominate new or different Nominated Providers from time to time, and will advise the Contractor by Notice of any change to the Nominated Providers.
- 10.3 Any change in the nomination of Nominated Providers by the Principal will be considered a variation under Clause 42 to the extent that such variation causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given such nomination.

11 Delays and Extensions of Time

- 11.1 This Clause 11 will only apply if the Contract Header sets out one or more Completion Dates.
- 11.2 Subject to Clause 11.3, the Contractor will only be entitled to an extension of time to the Completion Date where:
- (a) the Maintenance Services are delayed by any Qualifying Cause which will prevent the Contractor from achieving Completion by the Completion Date;
 - (b) the Maintenance Services are not concurrently delayed (in whole or to the extent of any part) by a cause that is not a Qualifying Cause;
 - (c) within 5 Business Days after the commencement of the Qualifying Cause, the Contractor gives written Notice to the Principal setting out the Qualifying Cause, the particular activities that are delayed and the extension of time to the Completion Date that is claimed; and

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- (d) if the delay continues beyond the extension of time claimed by the Contractor under Clause 11.2(c), the Contractor gives the Principal an updated Notice every 5 Business Days that satisfies the requirements in Clause 11.2(c) until the delay ends.
- 11.3 Provided that the requirements of Clause 11.2 are satisfied, the Principal will determine (acting reasonably) the period of the delay to the Maintenance Services caused by the Qualifying Cause referred to in a Notice given by the Contractor under Clause 11.2 and extend the Completion Date by that period. If an extension of time is granted, the Principal will Notify the Contractor of the revised Completion Date.
- 11.4 The Principal may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for the benefit of the Principal and may be exercised in its absolute discretion, even if the Contractor is not entitled to an extension of time or has not Claimed an extension of time.
- 11.5 If the Contractor does not make any Claim for an extension of time within the time or in the form specified in Clause 11.2, the Contractor is not entitled to an extension of time, or to later Claim an extension of time, for that delay.
- 11.6 Any principle of law or equity (including those which might otherwise entitle the Contractor to relief and the "prevention principle") which might otherwise cause the Completion Date to be set at large and liquidated damages unenforceable, will not apply.
- 11.7 For the avoidance of doubt, a delay caused by any act or omission of the Principal or the Principal's Personnel or any failure by the Principal to comply with this Clause 10 will not cause the Completion Date to be set at large.
- 11.8 Notwithstanding any delays to the carrying out of the Supply or any extension of time granted, nothing in this Clause 11 extends the Contract Term or will entitle the Contractor to an extension of the Contract Term.

12 Liquidated Damages

- 12.1 Clauses 12.2, 12.3 and 12.5 will only apply if:
 - (a) the Contract Header sets out one or more Completion Dates; and
 - (b) the Contract Header specifies a rate for liquidated damages.
- 12.2 If the Contractor fails to achieve Completion by the Completion Date, the Contractor will be liable to the Principal for liquidated damages at the rate stated in the Contract Header (if any) for every day after the Completion Date up to and including the date upon which Completion is achieved by the Contractor (as determined by the Principal's Nominate Representative acting reasonably) or the date that the Contract is terminated pursuant to Clause 44.3, whichever is sooner.
- 12.3 The Principal and the Contractor agree that all liquidated damages which may be payable by the Contractor to the Principal pursuant to this Clause 11.6:
 - (a) are a genuine pre-estimate of the damages likely to be suffered by the Principal if the Contractor does not achieve Completion by the Completion Date;
 - (b) do not limit the Principal's other rights under the Contract or at law for any other breach of the Contract; and
 - (c) do not relieve the Contractor from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion.
- 12.4 If the Contract Header does not provide for any liquidated damages, or the liquidated damages are for any reason found to be void or unenforceable, the Contractor indemnifies the Principal for damages at common law for the Contractor's failure to achieve Completion by the Completion Date.

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- 12.5 Except to the extent that the Contract otherwise expressly provides, the Contractor will not be entitled to any additional payment or to any Claim as a result of the granting of an extension of time or a Qualifying Cause.

13 Force Majeure

- 13.1 If a Party is prevented in whole or in part from carrying out its obligations under the Contract as a result of Force Majeure, it must promptly Notify the other Party accordingly. The Notice must:
- (a) specify the obligations it cannot perform;
 - (b) fully describe the event of Force Majeure;
 - (c) estimate the time during which the Force Majeure will continue; and
 - (d) specify the measure proposed to be adopted to remedy or abate the Force Majeure.
- 13.2 Subject to the Notice being provided under Clause 13.1, and to the extent the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended.
- 13.3 The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure notified under Clause 13.1 must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as the event of Force Majeure ceases.
- 13.4 Where the Party affected is the Contractor, the Contractor must, at its cost, reschedule the Maintenance Services to minimise the effects of any delay.
- 13.5 An event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of such event, nor does it affect the obligation to pay money in a timely manner which arose prior to the occurrence of such event.
- 13.6 The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure notified under Clause 13.1 must take all action reasonably practicable to mitigate any loss suffered by a Party or a third party as a result of its failure to carry out its obligations under the Contract.
- 13.7 Suspension of a Party's obligations under Clause 13.2 does not affect the Completion Date (if applicable) or the Contractor's obligation to achieve Completion by the Completion Date (if applicable), but the cause of the suspension may be grounds for an extension of time to the extent expressly provided for under Clause 10.
- 13.8 If an event of Force Majeure notified under Clause 13.1 affects either Party's performance of its material obligations (subject to Clause 13.5) for no less than three consecutive months, the Contract may be immediately terminated by the Principal by written notice to the Contractor and Clause 44.2 will apply as if the Contract was terminated for the convenience of the Principal and the Contractor will not have any other Claim arising out of the termination.

14 Principal's Nominated Representative

- 14.1 The Principal's Nominated Representative is:
- (a) the primary liaison and point of contact between the Principal and the Contractor in relation to the administration of the Contract;
 - (b) responsible for monitoring and evaluating the Contractor's performance under the Contract and otherwise ensuring the Contractor's compliance with all applicable Legislative Requirements; and
 - (c) not authorised either actually or ostensibly to amend or vary the Contract or enter into any contract on behalf of the Principal, except under Clause 5.

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- 14.2 If a Council Contract Representative is specified in the Contract Header:
- (a) the Council Contract Representative is:
 - (i) authorised to act on behalf of the Principal in discharging the Principal's functions under the Contract (including acting as the assessor, valuer or certifier in respect of any matter under the Contract which requires an assessment, valuation or certification by the Principal), except to the extent expressly provided otherwise in the Contract or in any Notice issued by the Principal; and
 - (ii) an agent of the Principal and carries out all functions as such; and
 - (b) the Contractor must:
 - (i) liaise with and report to the Council Contract Representative about the Maintenance Services;
 - (ii) attend all meetings with, or provide briefings to, the Council Contract Representative, as required by the Principal from time to time;
 - (iii) give any Notice that the Contractor is required to give to the Principal under the Contract to the Council Contract Representative; and
 - (iv) promptly comply with any request or direction given by the Council Contract Representative, in accordance with the Contract, about the Maintenance Services.
- 14.3 If a Superintendent is specified in the Contract Header:
- (a) the Principal will ensure that at all times there is a Superintendent for the purposes of the Contract;
 - (b) the Superintendent authorised to act on behalf of the Principal in discharging the Principal's functions under the Contract;
 - (c) the Principal will endeavour to ensure that the Superintendent performs reasonably and in good faith its assessment, valuation or certification functions; and
 - (d) the Superintendent carries out all of its functions, other than its assessment, valuation or certification functions, as an agent of the Principal.
- 14.4 The Principal will Notify the Contractor of any change in the identity of the Principal's Nominated Representative.

15 Directions

- 15.1 The Principal may issue directions to the Contractor in respect of anything under the Contract.
- 15.2 If a direction is given to the Contractor by a representative (including employee or agent) of the Principal other than the Principal's Nominated Representative, the Contractor must promptly confirm the direction with the Principal's Nominated Representative before acting upon it unless:
- (a) the direction is for urgent action;
 - (b) the direction relates to the Principal exercising other rights of the Principal under the Contract; or
 - (c) the Principal has provided the direction in writing and notified that confirmation with the Principal's Nominated Representative is not required.
- 15.3 Directions by the Principal may be given in writing or given orally and later confirmed in a Notice. If the Contractor requests confirmation of an oral direction, the Contractor will not be required to comply with an oral direction until such time as the oral direction has been confirmed in a Notice.

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- 15.4 Subject to clause 16.2, the Contractor must comply with any direction of the Principal within the time nominated, or if no time is nominated, as soon as reasonably possible. Except where expressly provided in the Contract, the Contractor has no Claim arising from or in connection with any direction.

16 Personnel

- 16.1 The Contractor must:
- (a) ensure the Key Personnel are engaged in the performance of the Maintenance Services in the respective capacities set out in Contract Header;
 - (b) not replace, reallocate to another role, allow to delegate any part of the Maintenance Services, or remove from the Maintenance Services, any Key Personnel without the Consent of the Principal; and
 - (c) give prompt Notice to the Principal of any circumstances arising where the Key Personnel will be required to be replaced; and
 - (d) only replace the Key Personnel:
 - (i) in circumstances of death, serious illness, change of employment, request by the Principal or with the Consent of the Principal; and
 - (ii) by promptly replacing them with others (having equivalent qualifications, skill and experience) approved in writing by the Principal.
- 16.2 The Principal may by Notice direct the Contractor to have removed, within a stated time, from the Site or from any activity in respect to the Maintenance Services, any of the Contractor's Personnel employed on the Maintenance Services (including Key Personnel) who, in the Principal's opinion, is incompetent, negligent or guilty of misconduct or for any other reason Notified to the Contractor by the Principal.
- 16.3 The Contractor must ensure its Personnel comply with the requirements of the Contract.
- 16.4 If the Services constitute 'building work' for the purposes of the QBCC Act, the Contractor must supervise and manage the Maintenance Services (including any Maintenance Services performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- 16.5 The Contractor acknowledges that it is responsible for industrial relations involving its Personnel, and the Contractor must continue to perform its obligations under the Contract despite the existence of an industrial dispute. The Contractor must keep the Principal fully informed of any disputes with or demands by its Personnel or their representatives and any other circumstances which could result in industrial actions affecting the Site or any part of the Maintenance Services.

17 Site Matters

- 17.1 The Principal will give the Contractor sufficient access to the Site to reasonably enable the Contractor to perform that part of the Maintenance Services required to be performed on the Site. The Contractor may only use the Site for the purpose of performing that part of the Maintenance Services required to be performed on the Site.
- 17.2 The Contractor may not have exclusive access to the Site or any part of it and must coordinate that part of the Maintenance Services required to be performed on the Site with activities of the Principal, the Principal's Personnel and any other contractors (**Separate Contractors**).
- 17.3 The Contractor must:

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- (a) permit the concurrent execution of work on the Site by any Separate Contractors, and provide reasonable access for, and co-operate with such persons in the execution of that work to the extent necessary;
- (b) ensure that all of the Maintenance Services, the completion of which is necessary to allow any Separate Contractor to commence work, has been completed,

and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Contractor or that part of the Maintenance Services required to be performed on the Site by any person on the Site (including Separate Contractors).

17.4 The Contractor must avoid any disruptions or inconvenience to:

- (a) the usual and safe operations of the Site; or
- (b) the users of the Site,

except to the extent expressly permitted by the Contract.

17.5 The Contractor must:

- (a) regularly remove from the Site all rubbish and debris arising from the performance of the Maintenance Services;
- (b) immediately remove from the Site any surplus plant and equipment belonging to the Contractor or its Personnel, that is used in performance of the Maintenance Services, but which is not intended to be transferred to the Principal; and
- (c) keep the relevant parts of the Site clean and secure at all times.

17.6 Subject to any Legislative Requirements that require otherwise, the Contractor must only access the Site, and perform any part of the Maintenance Services required to be performed on the Site, during the hours of work set out in the Contract Header unless directed otherwise by the Principal.

18 Protection of people and property and urgent protection

18.1 The Contractor must identify and locate all existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) on the Site before performing any of the Maintenance Services.

18.2 The Contractor must take all necessary steps to:

- (a) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of the Principal and work previously performed at the Site by another party;
- (b) prevent harm to any persons on or near the Site;
- (c) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
- (d) prevent nuisance and unreasonable noise and disturbance on or near the Site.

18.3 If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must:

- (a) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of the Principal; and
- (b) indemnify the Principal for any damage, loss, cost or expense suffered by the Principal in connection with the damage, harm, interference, nuisance or disturbance.

18.4 If loss or damage occurs to the Assets during the period in which the Contractor is performing the Maintenance Services, the Contractor must, at its own cost and risk, rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal or the Principal's Personnel.

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- 18.5 If the Contractor fails to comply with its obligations in Clauses 18.3(a) or 18.4, the Principal may perform those obligations itself or through others and all costs, damages and expenses incurred by the Principal in performing those obligations will become a debt due and payable to the Principal from the Contractor.
- 18.6 If urgent action is necessary to protect the Assets, other property or people, and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the costs incurred by the Principal in performing those obligations will become a debt due and payable to the Principal from the Contractor. If time permits, the Principal must give the Contractor prior Notice of the intention to take action pursuant to this Clause 18.6.

19 Defects in Maintenance Services

- 19.1 Without limiting the Principal's rights, at any time before Completion or the expiry of the Contract Term (as the case may be), and otherwise during the Defects Liability Period (if applicable):
- (a) the Contractor must, at its own cost and risk, promptly make good any:
 - (i) Defects that it becomes aware of; and
 - (ii) if directed by the Principal, loss or damage to any property resulting from either Defects or other breaches of its obligations under the Contract; and
 - (b) the Principal may:
 - (i) direct the Contractor to make good (by any one or more of repair, replacement or re-performance, as determined by the Principal) any Defects, at the Contractor's own cost and risk, and within a reasonable time nominated by the Principal; and
 - (ii) if the Contractor fails to carry out and complete a direction in accordance with the Clause 19.1(b)(i), perform that Maintenance Services itself or retain others to perform that Maintenance Services on its behalf and the costs of doing so will be a debt due and payable from the Contractor to the Principal.
- 19.2 Any repairs or replacement materials, goods, spare parts and consumables provided by the Contractor will be subject to the same warranties as the original materials, goods, spare parts and consumables, from the date of repair or replacement and the Defects Liability Period will recommence from the date of repair or replacement.
- 19.3 The Contractor is not relieved from any of its obligations under the Contract as a result of the Principal exercising its rights under Clause 18.

20 KPIs, Bonus and Abatements

- 20.1 This Clause 20 will only apply if the Contract Header has been completed to confirm that this Clause 20 applies.
- 20.2 The Contractor must:
- (a) ensure its accounts, records, timesheets and other Documents in respect of all matters relating to the Contract are maintained in accordance with Good Industry Practice and enable the Principal (or its nominee) to evaluate the performance of the Contractor against the KPIs, but the Contractor acknowledges that the Principal will not be obliged to adopt the conclusions in those records; and
 - (b) provide the Principal with a report summarising its performance against the KPIs during the relevant KPI Evaluation Period (**KPI Report**) in time for the meeting referred to in Clause 20.3.

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- 20.3 Within 5 Business Days after the end of each KPI Evaluation Period, or at such other time as the Principal reasonably directs, the Contractor must meet with the Principal's Nominated Representative (**Evaluation Meeting**) to:
- (a) discuss any relevant matters relating to the Maintenance Services or any other aspects of the Contract;
 - (b) discuss all initiatives that could improve the process for measuring and evaluating the Contractor's performance under the Contract;
 - (c) evaluate the Contractor's performance against the KPIs during the KPI Evaluation Period (having regard to any impacts upon the performance of the Maintenance Services arising from an act or omission of the Principal or the Principal's Personnel as Notified by the Contractor in any Claim);
 - (d) review the KPIs and consider any other key performance indicators which may be useful and accurate in evaluating the performance of the Contractor under the Contract for the following KPI Evaluation Period; and
 - (e) review the latest KPI Report and discuss whether any variations could usefully be made for the next KPI Evaluation Period.
- 20.4 Despite anything in the Contract to the contrary, the Contractor will not be entitled to any Bonus if, during the KPI Evaluation Period in which it would have satisfied the KPIs applicable to achieving the Bonus, it was in default of any obligation in the Contract or is subject to an Insolvency Event.
- 20.5 Following the Evaluation Meeting, the Principal will Notify the Contractor in writing (**Results Notice**) of:
- (a) the Bonus or Abatement, if any, that has been incurred as a result of the Contractor's performance against the KPIs during the KPI Evaluation Period most recently completed (with the Principal having regard and acting reasonably to any impacts upon the performance of the Maintenance Services arising from an act or omission of the Principal or the Principal's Personnel as Notified by the Contractor in any Claim); and
 - (b) any changes to the KPIs that were agreed with the Contractor, not to be unreasonably withheld, during the Evaluation Meeting and that are to apply for the new KPI Evaluation Period.
- 20.6 If the Results Notice states that the Contractor:
- (a) has incurred an Abatement, then it will be indebted to the Principal, at the time of issue of the Results Notice, of the applicable Abatement; and
 - (b) has earned a Bonus, then the Contractor will be entitled to claim payment of the Bonus in its next Payment Claim.
- 20.7 If the Contract Header does not provide for any Abatement, or the Abatement is for any reason found to be void or unenforceable, the Principal may recover damages at common law for the Contractor's failure to achieve the relevant KPI.
- 20.8 The KPIs that apply for the new KPI Evaluation Period will be the preceding KPIs, as revised by the Results Notice (if applicable), and any revisions will apply from the beginning of the new KPI Evaluation Period (even if that is retrospective).
- 20.9 The Parties' rights and obligations, whether under the Contract or otherwise, in relation to the Maintenance Services or the Contract, will not be affected by any changes to the KPIs, payment of any Bonus or Abatement, or the Contractor's performance as against the KPIs, except as expressly set out in this Clause 20.

21 Price Adjustments

- 21.1 Where the Price is stipulated as 'Fixed' in the Contract Header, the Contractor must perform the Maintenance Services, and perform all of its other obligations under the Contract, for the fixed priced

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amount specified in the Contract Header, which may only be adjusted as provided for in the Contract (other than this Clause 21).

- 21.2 Where the Price is stipulated as 'Firm' in the Contract Header, and the Contract Header states that the Contractor is to perform the Maintenance Services for a Contract Term, and the Principal extends the Contract Term in accordance with Clause 6.2, the amount payable to the Contractor for the extended Contract Term will be calculated on the same basis as the Price unless the Parties agree in writing on all applicable changes to the Price.
- 21.3 The Contractor must provide documentary evidence in writing to support of any price adjustment under Clause 21.2, that is being sought by the Contractor to apply to the extended Contract Term, including:
- (a) movements in the relevant published Consumer Price Index as it affects the Maintenance Services, if specified in Response Form: Pricing Structure, Discounts and Rebates;
 - (b) other factors as it affects the Maintenance Services, if specified in Response Form: Pricing Structure, Discounts and Rebates;
 - (c) any variation in any tax, duty or charge as it affects the Maintenance Services; and
 - (d) any other information which the Principal may reasonably require.

22 Payment

- 22.1 The Price and Approved Expenses will be payable in the manner specified in Response Form: Price Submission and Response Form: Pricing Structure, Discounts and Rebates.
- 22.2 Subject to Clause 22.6, the Contractor must submit to the Principal's Nominated Representative at the address in the Contract Header, on the Payment Claim Date, its claims for payment (**Payment Claim**) for those parts of the Maintenance Services properly performed since the last Payment Claim Date, and for those Approved Expenses properly incurred since the last Payment Claim Date, less any amounts to which the Principal may deduct, withhold or set-off and less any amounts not due and payable under the Contract, which must include:
- (a) the Contract number;
 - (b) any Request for Maintenance Services or Request for Alternative Maintenance Services number and item numbers pertaining to the Request for Maintenance Services or Request for Alternative Maintenance Services (if applicable);
 - (c) the details of Maintenance Services performed and claimed in the Payment Claim;
 - (d) the name of the Principal's Nominated Representative;
 - (e) the calculations substantiating the amount which it claims (and if the Price for the Maintenance Services is based on hourly rates, details of the hours spent by the Contractor's Personnel in performing the Maintenance Services);
 - (f) any discounts that are provided by the Contractor;
 - (g) itemised Approved Expenses claimed; and
 - (h) any other information which the Principal may reasonably require.

The Principal will be entitled to specify the format of Payment Claims.

- 22.3 The Principal's Nominated Representative will assess the Payment Claim and issue the Contractor a payment schedule stating the amount of the Payment Claim which in the opinion of the Principal's Nominated Representative (having regard to Clauses 22.6, 22.7 and 24), is payable by the Principal (**Payment Schedule**) within 10 Business Days of the receipt of a Payment Claim. The Payment Schedule must also state:
- (a) the Payment Claim to which the Payment Schedule applies; and
 - (b) if the amount in the Payment Schedule is less than that in the Payment Claim, the reasons why.

- 22.4 At any time before Completion or the expiry of the Contract Term (as the case may be), and otherwise up to the expiry of the Defects Liability Period (if applicable), the Principal's Nominated

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Representative may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule or previous payment.

- 22.5 Subject to Clauses 22.6, 22.7 and 24, the Principal will pay the Contractor, or the Contractor will pay to the Principal, as the case may be, the amount of the Payment Schedule within 5 Business Days of the date of the Payment Schedule. Any payment by the Principal is on account only, and is not evidence that the Maintenance Services have been performed in accordance with the requirements of the Contract.
- 22.6 The Contractor will not be entitled to claim payment for any part of the Maintenance Services that is Defective.
- 22.7 Without limiting the Principal's other rights, a Payment Claim Date will not occur unless the Contractor has:
- (a) returned a signed copy of the Contract Header;
 - (b) fully complied with its obligations to provide the Performance Guarantee in accordance with Clause 26 and the Security Deposit in accordance with Clause 27;
 - (c) provided certificates of currency in accordance with Clause 37.5; and
 - (d) provided the Principal with a statutory declaration (in the form set out in Schedule 1), 1 Business Day prior to the submission of the Payment Claim, which states that no wages or other monies are due and owing by the Contractor to its Personnel up to and including the date of the statutory declaration and which is not misleading or deceptive in any way.
- 22.8 The Contractor must not charge, or pass on to, the Principal any fees, costs or charges associated with the use of a corporate credit card or electronic facility.

23 Reimbursement of Approved Expenses

- 23.1 Provided that any Claim for Approved Expenses is submitted in accordance with Clause 22, the Principal will, subject to Clauses 22 and 24, reimburse the Contractor for the Approved Expenses incurred by the Contractor in performing the Maintenance Services, provided that:
- (a) the Approved Expenses are incurred:
 - (i) at the request of the Principal; and
 - (ii) with the Consent of the Principal;
 - (b) the cost claimed is the out of pocket cost to the Contractor, exclusive of any profit, overhead or other margin or mark up; and
 - (c) the Contractor provides to the Principal Tax Invoices or other supporting documentation substantiating that the Approved Expenses have been necessarily and properly incurred.
- 23.2 For the avoidance of doubt, the Principal will not be liable to reimburse the Contractor for expenses other than the Approved Expenses, unless the Contractor has obtained the Consent of the Principal.

24 General right of set-off by the Principal

- 24.1 The Principal may set off against and deduct from any monies due to the Contractor, any debt, costs, damages, loss or expense due to or claimed by the Principal from the Contractor whether or not the debt, costs, damages, loss or expense arises by way of contract, tort, damages, debt, restitution or otherwise, and whether or not the factual basis giving rise thereto arises out of the Contract, any other contract, or is independent of any contract.
- 24.2 If no monies are due to the Contractor, or if the monies due to the Contractor are insufficient to discharge the debt, costs, damages, loss or expense, the Principal may have recourse to any Security Deposit provided in accordance with Clause 27.

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24.3 Nothing in this Clause 24 will affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.

25 Goods and Services Tax (GST)

25.1 In this Clause 25, the terms 'Progressive or Periodic Supply', 'Recipient', 'Recipient Created Tax Invoice', 'Supplier', 'Supply' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

25.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Price and Approved Expenses).

25.3 If the Contract Header has been completed to confirm that this Clause 25.3 applies, the Parties agree that for a Taxable Supply made by the Contractor as Supplier under the Contract, the Recipient will issue a Recipient Created Tax Invoice.

25.4 If the Contract Header has been completed to confirm that Clause 25.3 applies, the Contractor and the Recipient confirm that:

- (a) both Parties are registered for GST;
- (b) if either Party deregisters for GST, they will Notify the other Party immediately;
- (c) the Recipient will issue a Recipient Created Tax Invoice in respect of the Supply made by the Contractor; and
- (d) the Contractor will not issue a Tax Invoice in respect of the Supply made by the Contractor.

25.5 If the Contract Header has been completed to confirm that Clause 25.3 applies, the Recipient agrees to comply with the applicable requirements imposed by the Australian Taxation Office for it to be able to issue a Recipient Created Tax Invoice for that Supply.

25.6 If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Contractor an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply; and
- (b) if:
 - (i) If the Contract Header has been completed to confirm that Clause 25.3 applies, the Recipient must give the Contractor a Recipient Created Tax Invoice; or
 - (ii) otherwise, the Contractor must give the Recipient a Tax Invoice for the Supply.

25.7 For clarity, the GST payable under Clause 25.6 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

25.8 Where a Tax Invoice is given by the Contractor, the Contractor warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

25.9 Where a Supply is made under or in connection with the Contract is a Progressive or Periodic Supply, Clause 25.6 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

25.10 Where the Principal is obliged under any Legislative Requirements to withhold any amount on account of tax or other imposts from any amount payable to the Contractor under or in connection with the Contract unless certain conditions are satisfied, the Principal may withhold the amount required to be withheld under the Legislative Requirement until the Principal is satisfied in its reasonable opinion that all the relevant conditions have been satisfied.

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- 25.11 The Parties agree to exchange with each other such information as may be necessary to enable each Party to accurately assess its rights and obligations under Clause 25.10.

26 Performance Guarantee

- 26.1 If the Contractor is a corporation that has a Related Body Corporate, the Contractor must, if specified in the Contract Header, or if requested by the Principal before the Completion Date or the expiry of the Contract Term (as the case may be), provide the Principal, within 10 Business Days of the date of the Contact or receipt of the Principal's request (as the case may be), a Performance Guarantee, executed by the Related Body Corporate nominated by the Principal.
- 26.2 The Performance Guarantee must be in a form approved by the Principal.
- 26.3 The Performance Guarantee will be held by the Principal as security for the due and proper performance of all obligations of the Contractor under the Contract.
- 26.4 A claim by the Principal against the Performance Guarantee will not release the Contractor from its obligations under the Contract.
- 26.5 All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this Clause 26 must be met by the Contractor.

27 Security Deposit

- 27.1 The Contractor must, if specified in the Contract Header, or if requested by the Principal before the Completion Date or the expiry of the Contract Term (as the case may be), provide the Principal, within 10 Business Days of the date of the Contact or receipt of the Principal's request (as the case may be), a Security Deposit in the form of an unconditional and irrevocable undertaking for the amount specified in the Contract Header or, if not so specified, then the amount specified by the Principal (which must not exceed 5% of the Price).
- 27.2 The Security Deposit must be in a form and issued by a financial institution approved by the Principal.
- 27.3 The Security Deposit will be held by the Principal as security for the due and proper performance of all the obligations of the Contractor under the Contract.
- 27.4 The Principal may have recourse to the Security Deposit (including to moneys obtained by conversion of the Security Deposit):
- (a) where the Principal has express right of recourse under the Contract or at law;
 - (b) for any amount due which remains unpaid after the time for payment, or where there is no time for payment specified, remains unpaid after 5 Business Days after demanding payment; or
 - (c) for any amount bona fide claimed by the Principal under or in connection with the Contract (whether liquidated or otherwise) which remains unpaid after 5 Business Days after demanding payment.
- 27.5 If the Principal has recourse to the Security Deposit at any time, the Contractor must, within 10 Business Days of the Principal having recourse to the Security Deposit, reinstate the Security Deposit to the amount specified in the Contract Header or, if not so specified, then the amount specified by the Principal under Clause 27.1.
- 27.6 The Contractor must not take any steps to injunct or otherwise retrain any issuer of the Security Deposit from paying the Principal pursuant to the Security Deposit or the Principal from taking any steps for the purposes of making a demand under the Security Deposit or receiving payment under the Security Deposit.

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- 27.7 The Contractor agrees that the Principal, whilst exercising its rights in accordance with this Clause 27, will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor.
- 27.8 Subject to any rights it may have under the Contract, the Principal will release the Security Deposit to the Contractor where the Contractor has fully performed and discharged all of its obligations under the Contract (other than the obligations as specified in Clause 52.12, which will survive the termination of the Contract) or upon termination of the Contract in accordance with Clause 44.1 or 44.3.
- 27.9 All charges incurred by the Contractor in obtaining, maintaining and releasing the Security Deposit in accordance with this Clause 27 must be met by the Contractor.
- 27.10 If the Security Deposit provided in accordance with this Clause 27 will expire prior to the date upon which the Principal is required to release the Security Deposit, the Contractor must give to the Principal, at least 10 Business Days before the expiry date of that Security Deposit, a substitute Security Deposit (stamped if required by law) in exactly the same terms and for the same amount as the Security Deposit which is to expire, except that:
- (a) the expiry date on the substitute Security Deposit must not be before the date that is 12 months from the date of issue of the substitute Security Deposit; and
 - (b) if an amount has been drawn under the expiring Security Deposit, for an amount of the remaining balance of that Security Deposit.
- 27.11 Clause 27.10 will separately apply (and will continue to apply) if the substitute Security Deposit will expire prior to the date upon which the Principal is required to release the Security Deposit, except in circumstances where the Security Deposit expires due to the fact that the approved financial institution has paid the aggregate amount or the balance of the Security Deposit outstanding to the Principal. If the Contractor does not comply with Clause 27.10 or this Clause 27.11, the Contractor agrees that, without limiting the Principal's other rights under the Contract, the Principal may immediately call on and have recourse to the Security Deposit provided in accordance with this Clause 27.

28 Commissions, incentives and collusion

- 28.1 The Contractor must not, and must ensure that its Personnel do not, give or offer anything to the Principal, the Principal's Personnel (including any Councillor), or to a parent, spouse, child or associate of the Principal or the Principal's Personnel, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Principal's actions in relation to the Contract.
- 28.2 The Contractor represents and warrants to the Principal that:
- (a) its Offer was not prepared (and any variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract with the Principal) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not submit an offer (or request a variation) to the Contract;
 - (iv) the submission of an offer (or a request for variation) that is non conforming with the terms of the Contract;
 - (v) the quality, quantity or Principal's Requirements of Maintenance Services; or

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- (vi) the terms of the Offer (or variation) or a competitor's offer (or variation);
 - (b) except with the Consent of the Principal (which may be refused or given in the Principal's absolute discretion):
 - (i) it has not offered or provided any consideration or other benefit directly or indirectly, or entered into any contract, arrangement or understanding to provide any consideration or benefit directly or indirectly, to any competitor (including any contractor under a similar contract with the Principal) arising from or in connection with its Offer or the Contract;
 - (ii) it has not received any consideration or other benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any consideration or other benefit directly or indirectly, from any competitor (including any contractor under a similar contract with the Principal) arising from or in connection with its Offer or the Contract; and
 - (iii) it will not offer, provide or receive any consideration or other benefit directly or indirectly, or enter into any contract, arrangement or understanding to provide any consideration or benefit directly or indirectly, to any competitor (including any contractor under a similar contract with the Principal) arising from or in connection with its Offer or the Contract;
 - (c) it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any consideration or other benefit, whether directly or indirectly, to any trade, industry or other association (above the published standard fee) relating in any way to the Contract, nor has it provided, nor will it provide, any such consideration or other benefit;
 - (d) at the time of entering into the Contract, the Contractor, the Contractor's Personnel and the Contractor's Related Body Corporates), including the directors and senior management of any of them, are not, and have never been, subject to legal proceedings relating to improper or anti-competitive conduct in Australia or overseas; and
 - (e) the Contractor will Notify the Principal immediately upon becoming aware that the Contractor, the Contractor's Personnel or the Contractor's Related Body Corporates), including a director or member of senior management of any of them, becomes subject to legal proceedings relating to improper or anti-competitive conduct in Australia or overseas by disclosing (at a minimum):
 - (i) the names of the parties to the legal proceedings;
 - (ii) the case number;
 - (iii) the general nature of the legal proceedings; and
 - (iv) the outcome or current status of the legal proceedings.
- 28.3 The Contractor acknowledges that the Principal relied on the representations and warranties made in Clause 28.2 when it entered into the Contract and is repeated when each Request for Maintenance Services and Request for Alternative Maintenance Services, if applicable, is issued.
- 28.4 If the Principal discovers at any time before Completion or the expiry of the Contract Term (as the case may be) that the Contractor has breached Clause 28.1 or 28.2, the Principal may, in addition to the Principal's other rights and remedies, elect to suspend the Contract in accordance with Clause 43 or terminate the Contract in accordance with Clause 44.3.

29 Conflict of Interest

- 29.1 The Contractor warrants that, at the time of entering into the Contract, neither the Contractor nor any of its Personnel have, or are likely to have, any Conflict of Interest that could be expected to affect the performance of the Contractor's obligations under the Contract.
- 29.2 If a Conflict of Interest arises, or there is in the minds of either Party a real, perceived, anticipated or identified risk of a Conflict of Interest arising, or risk of a Conflict of Interest arising before Completion or the expiry of the Contract Term (as the case may be), then Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Principal.
- 29.3 The Contractor must:
- (a) ensure that its Personnel do not engage in any activity or obtain any interest which may conflict with either the interests of the Principal or the Contractor's obligations under the Contract; and
 - (b) immediately give Notice to the Principal of any Conflict of Interest relating to the activities or interests of any of its Personnel.
- 29.4 Upon receipt of a Notice in accordance with Clauses 29.2 or 29.3, or upon the Principal otherwise identifying a real, perceived, anticipated or identified Conflict of Interest, the Principal may:
- (a) direct the Contractor as to how to manage the Conflict of Interest and the Contractor must comply with that direction;
 - (b) suspend the Contract in accordance with Clause 43; or
 - (c) terminate the Contract in accordance with Clause 44.3.
- 29.5 If the Principal does not terminate the Contract in accordance with Clause 44.3, the Contractor must give Notice to the Principal when the Conflict of Interest, or risk of the Conflict of Interest, is resolved.

30 Design

- 30.1 This Clause 30 will only apply if the Maintenance Services includes the completion of any design, specification and documentation.
- 30.2 If the Contractor is required to carry out any design work (including the development of design, documentation of design or re-design) as part of the Maintenance Services, then:
- (a) any design work produced by the Contractor must be fit for the purpose stated in or implied in the Contract (including the Principal's Requirements); and
 - (b) the Contractor must effect and maintain a professional indemnity and liability policy of insurance in accordance with Clause 37.1(c).
- 30.3 The Contractor must ensure that any consultants which are involved in the design work:
- (a) liaise with the Principal when it requires to ensure that the design work complies with the Principal's Requirements and the requirements of the Contract. The involvement of the Principal does not affect, in any way, the Contractor's obligations under the Contract; and
 - (b) effect and maintain a professional indemnity and liability policy of insurance on the same terms, and for the same duration, as the Contractor under Clause 30.2(b).
- 30.4 The Contractor must obtain the written approval of the Principal for all design documents produced by the Contractor at least 10 Business Days before those documents are required for the performance of the Maintenance Services shown or described in those documents, and must not proceed with any work under design documents produced by the Contractor until it has obtained approval for those documents from the Principal.

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- 30.5 The Principal may either approve or reject, with written reasons, any draft design documents. If the Principal rejects draft design documents, the Contractor must resubmit those documents (amended in accordance with the Principal's written reasons for rejection) within 5 Business Days after receiving the rejection. The Contractor must continue to resubmit any draft in accordance with this Clause 30.5 until the draft design documents are approved by the Principal.
- 30.6 The Parties agree that:
- (a) the Principal is not required to check the design documents for errors, omissions or compliance with the Contract;
 - (b) the purpose of the Principal giving its consent, approval or direction about the design documents is to give the Principal an opportunity to monitor the progress of the design and the Contractor's compliance with the Contract; and
 - (c) the Principal's approval or rejection of, or comment on, any design documents (or failure to do so) does not affect in any way the Contractor's obligations to complete the Maintenance Services in accordance with the Contract or otherwise relieve the Contractor from any of its obligations under the Contract.
- 30.7 The Contractor has no Claim in relation to the rejection of any draft design documents which do not comply with Principal's Requirements and the requirements of the Contract.

31 Intellectual Property Rights and Moral Rights

- 31.1 Title to, and ownership of, Intellectual Property Rights in all New Contract Material will, upon its creation, vest in the Party specified in the Contract Header or, if not so specified, then the Principal.
- 31.2 If title to, and ownership of, Intellectual Property Rights in the New Contract Material vests in the Principal:
- (a) the Principal grants to the Contractor a paid up, non-exclusive, irrevocable licence to use the New Contract Material for the performance of the Maintenance Services;
 - (b) the Contractor must ensure that the New Contract Material is used, copied, supplied or reproduced only for the purposes of performing the Maintenance Services; and
 - (c) upon the expiry or termination of the Contract (or some earlier date if required by the Principal), the Contractor must provide the Principal, in a format specified by the Principal, all New Contract Material (including copies).
- 31.3 If title to, and ownership of, Intellectual Property Rights in the New Contract Material vests in the Contractor:
- (a) the Contractor grants to the Principal, and must ensure that the person legally entitled to do so grants to the Principal, and must do all reasonable things necessary to give effect to the grant to the Principal of, no less than a paid-up, non-exclusive, fully assignable, irrevocable, perpetual licence (including the right to sub-licence) to use and copy the New Contract Material (from the time it is first prepared or used) for any purpose in connection with:
 - (i) the Principal's use, exploitation, modification or maintenance of the Assets or disposal or sale of the Assets; or
 - (ii) the Principal's use or exploitation (whether commercially or otherwise) for any other purpose, if specified in the Contract Header; and
 - (b) the licence will continue after, and for the avoidance of doubt survives, the termination of the Contract (and whether the termination is for the default of either Party, for convenience or for any other reason).
- 31.4 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants to the Principal, and must ensure that the person legally entitled to do so grants to

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the Principal, and must do all reasonable things necessary to give effect to the grant to the Principal of, no less than a paid up, non-exclusive, fully assignable, irrevocable, perpetual licence (including the right to sub-licence) to use and copy the Existing Contract Material for any purpose in connection with:

- (a) the Principal's use, exploitation, modification or maintenance of the Assets or disposal or sale of the Assets; or
- (b) the Principal's use or exploitation (whether commercially or otherwise) for any purpose, if specified in the Contract Header.

The licence will continue after, and for the avoidance of doubt survives, the termination of the Contract (and whether the termination is for the default of either Party, for convenience or for any other reason).

- 31.5 The Principal retains the Intellectual Property Rights in any material provided to the Contractor.
- 31.6 The Contractor must procure that each Moral Rights Owner irrevocably and in a legally binding manner consents to acts or omissions of the Principal in relation to the Maintenance Services (including the modification of the product of the Maintenance Services) which might otherwise infringe the Moral Rights Owner's rights under the *Copyright Amendment (Moral Rights) Act 2000* (Cth). The form of any consent which the Contractor proposes to obtain in accordance with this Clause 31.6 must first be approved by the Principal.
- 31.7 The Contractor must provide all reasonable assistance requested by the Principal in relation to any communication between the Principal and a Moral Rights Owner in relation to the Moral Rights Owner's consent referred to in Clause 31.6.
- 31.8 The Contractor releases and indemnifies the Principal against all claims and any costs, expenses, losses, damages, liabilities and other amounts of any kind whatsoever suffered or incurred by the Principal arising out of any failure by the Contractor to obtain the consent of a Moral Rights Owner as required under Clause 31.6.

32 PPSA

- 32.1 If the Principal determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing Documents, getting Documents completed and signed, and supplying information) as the Principal may reasonably require for the purposes of:
 - (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (b) enabling the Principal to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or
 - (c) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- 32.2 The Contractor waives each right to receive any Notice from the Principal under the PPSA (including notice of a verification statement) that can be waived.
- 32.3 Except as expressly agreed in writing to the contrary, the Contractor:
 - (a) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Contractor; and
 - (b) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.
- 32.4 The Contractor must:

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- (a) promptly Notify the Principal if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest in the product of the Maintenance Services:
 - (i) owned by the Principal;
 - (ii) supplied or to be supplied by the Contractor to the Principal; or
 - (iii) in which the Principal has an interest;
- (b) give the Principal any information reasonably required by the Principal in relation to any such Security Interest or claim; and
- (c) on request by the Principal, use best endeavours to ensure that the third party:
 - (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - (ii) subordinates any such Security Interest to the interest of the Principal, by an agreement in form and substance satisfactory to the Principal.

32.5 Without limiting Clauses 32.3 and 32.4, at any time when title to or ownership of any the product of the Maintenance Services, is passed to the Principal, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.

32.6 The Contractor must ensure that each subcontract has, for the benefit of the Principal, a clause that reflects this Clause 32.

32.7 Without limiting Clause 33, neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

33 Confidentiality

33.1 Except to the extent expressly provided by this Clause 33, the Contractor must not, and must ensure that its Personnel do not, use or disclose any Confidential Information without the Consent of the Principal.

33.2 The Contractor may only disclose Confidential Information:

- (a) to its Personnel who have a need to know, and only to the extent each needs to know, in order for the Contractor to perform the Maintenance Services, provided that such Personnel have agreed in writing to maintain the confidentiality of the Confidential Information before any disclosure to them;
- (b) where required by law; or
- (c) where the Contract expressly requires disclosure to a third party.

33.3 If Confidential Information is disclosed under Clause 33.2, the Contractor must ensure that the person to whom the information is disclosed is made aware of its confidential nature and the obligations restricting its use and disclosure.

33.4 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

33.5 The Contractor must immediately Notify the Principal if the Contractor becomes aware of any unauthorised disclosure or use of Confidential Information.

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- 33.6 Promptly upon request at any time by the Principal, or upon the expiry or termination of the Contract, the Contractor must provide the Principal with:
- (a) any Confidential Information (including copies);
 - (b) any item in respect of which Intellectual Property Rights are held by the Principal; and
 - (c) any property, including Documents or records belonging to the Principal or relating to the Maintenance Services,
- in the Contractor's power, possession or control, in the form requested by and to the satisfaction of the Principal.
- 33.7 Subject to Clause 33.6, the Contractor must destroy its files and any copy (but not the original) of any Documents or records belonging to the Principal or relating to the Maintenance Services held in its file in accordance with usual business practice and any applicable Legislative Requirements.

34 Privacy and Personal Information

- 34.1 If the Contractor collects or has access to Personal Information in order to perform the Maintenance Services, the Contractor must:
- (a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
 - (b) not use Personal Information other than in connection with performing the Maintenance Services, unless required or authorised by law;
 - (c) not disclose, or transfer outside of Australia, Personal Information without the Consent of the Principal, unless required or authorised by law;
 - (d) ensure that its Personnel do not access, use or disclose Personal Information other than in connection with performing the Maintenance Services;
 - (e) ensure that its Personnel who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause 34;
 - (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a Document containing an individual's Personal Information and to privacy complaints; and
 - (g) comply with such other privacy and security measures as the Principal reasonably requires from time to time.
- 34.2 In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**) provided or to be provided by the Contractor in connection with the Maintenance Services (whether as part of its tender or otherwise), the Contractor warrants to the Principal:
- (a) the Contractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the Privacy Act) is provided; and
 - (b) the Contractor has or will within the time required by the Privacy Act ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - (i) in relation to disclosure of Personal Information to the Principal, the Principal's Nominated Representative and any consultant of the Principal requiring the information for the purposes set out in Clause 34.2(b)(ii); and
 - (ii) disclosing that the entities referred to in Clause 34.2(b)(i) will use the Personal Information for the purposes of reviewing and assessing matters relevant to the work under the Contract from time to time.
- 34.3 The Contractor will comply with the provisions of the Privacy Act in relation to any Personal Information provided to the Contractor by the Principal, the Principal's Nominated Representative and any consultant of the Principal.

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- 34.4 The Contractor must, if specified in the Contract Header, or if requested by the Principal, obtain from its Personnel performing the Maintenance Services, an executed deed of privacy in a form acceptable to the Principal.
- 34.5 The Contractor must immediately Notify the Principal on becoming aware of any breach of this Clause 34.

35 Liability

- 35.1 Subject to Clause 35.4, the Contractor's total aggregate liability to the Principal under the Contract is limited to the sum set out in the Contract Header.
- 35.2 Subject to Clause 35.3 and 35.4, in no event will either Party be liable to the other (in contract, under an indemnity, for debt, in tort including negligence, under statute or otherwise according to law or in equity) for any Consequential Loss arising out of or in any way in connection with the Contract, the Maintenance Services or the Parties' conduct (including breach of contract and any other acts or omissions, whether before, on or after the date the Contract Header is signed by both Parties).
- 35.3 Clause 35.2 does not apply to limit any liability of the Contractor (including incurring any Abatement) arising under or pursuant to Clauses 11.6 and (if applicable).
- 35.4 Without limiting Clause 35.3, Clauses 35.1 and 35.2 does not limit the Contractor's liability:
- (a) arising under or pursuant to an indemnity provided by the Contractor in Clause 36 or elsewhere in the Contract;
 - (b) in respect of liability which:
 - (i) cannot be limited at law;
 - (ii) is due to the Contractor's deliberate breach of the Contract, wilful misconduct, fraud or criminal conduct by it or any of its Personnel; or
 - (iii) arises in connection with the Contractor's abandonment of its obligations under the Contract;
 - (c) for any breach of Clauses 28, 31, 34 and 39;
 - (d) for loss of or damage to third party property and claims by any third party against the Principal in respect of personal injury or death or loss of, or damage to, any other property arising out of or as a consequence of the performance of the Maintenance Services;
 - (e) to the extent the Contractor is paid or indemnified, or is entitled to be paid or indemnified, for the liability by an insurer under an insurance policy required by the Contract;
 - (f) to the extent the Contractor would have been entitled to be indemnified for that liability by an insurer under an insurance policy required by the Contract, but for a failure by the Contractor to effect and maintain the insurance policy as required by the Contract; and
 - (g) to the extent that (ignoring the application of Clauses 35.1 and 35.2), the Contractor is entitled to recover that liability from any other third party, or would have been entitled to recover that liability but for any act or omission of the Contractor,

and those liabilities will not be included in any calculation of the Contractor's total aggregate liability under Clause 35.1.

36 Indemnity

- 36.1 The Contractor releases, discharges and indemnifies the Principal and its Personnel (**Indemnified Persons**) from and against any Claim, expenses, losses and damages which may be brought against or made upon or incurred by any of them in connection with:
- (a) any negligent or unlawful act or omission of the Contractor or its Personnel;

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- (b) any breach of the Contract by the Contractor;
- (c) any loss of or damage to real or personal property caused or contributed to by the Contractor or its Personnel;
- (d) personal injury or death caused or contributed to by the Contractor or its Personnel;
- (e) a breach of any Legislative Requirement by the Contractor or its Personnel; or
- (f) the infringement of the Intellectual Property Rights of any third party by the Contractor or its Personnel,

except to the extent caused by the negligent or unlawful act or omission of the Indemnified Persons.

- 36.2 Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the Parties. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under the Contract. A Party must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in the Contract.

37 Insurance

- 37.1 Before commencing any part of the Maintenance Services, the Contractor must, at its own cost, take out and maintain the following insurances, until Completion or the expiry of the Contract Term (as the case may be), to cover its obligations under the Contract:
- (a) Public liability insurance for the amount specified in the Contract Header for each and every claim or, if not so specified, then \$10,000,000;
 - (b) Workers compensation insurance (Workcover) as required by law;
 - (c) Professional indemnity insurance for the amount specified in the Contract Header for each and every claim, which must be maintained from the Commencement Date to six years after the latter of Completion or the expiry of the Contract Term (as the case may be) or termination of the Contract, unless otherwise specified in the Contract Header;
 - (d) third party comprehensive motor vehicle insurance; and
 - (e) any other insurances specified, and for the amounts specified, in the Contract Header.
- 37.2 The Contractor may, at its own cost, effect any additional insurance it considers necessary in connection with the Maintenance Services.
- 37.3 The Contractor warrants to the Principal that, if it is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld), it will take out and maintain the minimum level of insurance as specified in the Contract Header.
- 37.4 The insurances required under Clause 30.2(b) (if applicable) and Clause 37.1 must be effected and maintained with an insurer that is authorised and licensed to operate in Australia, and otherwise on terms and conditions that a prudent and competent contractor would insure with and obtain, as the case may be (taking into account the Contractor's obligations and liabilities under or arising out of the Contract).
- 37.5 The Contractor must provide a certificate of currency for each insurance policy required under Clause 30.2(b) (if applicable) and Clause 37.1 prior to commencing any part of the Maintenance Services and at any time upon request by the Principal.
- 37.6 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance required under Clause 30.2(b) (if applicable) and Clause 37.1 will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Principal's rights under the Contract.
- 37.7 If any insurance policy required by Clause 30.2(b) (if applicable) and Clause 37.1 is materially modified or cancelled, the Contractor must immediately Notify the Principal.
- 37.8 The Contractor must pay any excesses and deductibles for claims made under any policy of insurance effected by the Principal or the Contractor, which relate to the Contractor or the Maintenance Services.

38 Work Health and Safety

38.1 In this Clause 38, the terms:

- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld);
- (b) 'Regulation' means the *Work Health and Safety Regulation 2011* (Qld);
- (c) 'Workplace', 'Inspector', 'Notifiable Incident', 'Principal Contractor' and 'Regulator' have the same meaning as in the Act.

38.2 From the date that the Contractor has access to the Site:

- (a) subject to Clause 38.2(c), the Principal appoints the Contractor as the Principal Contractor in respect of the Maintenance Services;
- (b) the Contractor accepts appointment under Clause 38.2(a);
- (c) the Maintenance Services in respect of which the Contractor is appointed Principal Contractor under Clause 38.2(a) includes:
 - (i) all work under the Contract (other than work under the Contract carried out upon Non Principal Contractor Site); and
 - (ii) all works (whether or not work under the Contract) carried out or to be carried out upon Principal Contractor Site (including works carried out by separate contractors); and
- (d) the Principal authorises the Contractor to:
 - (i) assume management and control of the Principal Contractor Site; and
 - (ii) carry out and discharge the duties given to the Principal Contractor under Chapter 6 of the Regulation,for the period during which the Contractor is the 'person in control' of the Principal Contractor Site (as referred to in Clause 38.5), unless and to the extent that such authorisation is withdrawn by the Principal in writing prior to the end of that period.

38.3 To the extent that there is design work involved in the Maintenance Services, the Contractor will consult with the Principal and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable.

38.4 The Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out.

38.5 The Contractor is for the purposes of the Act and Regulation the 'person in control' of the site and all things on the site:

- (a) from the date that the Contractor has access to the Site until:
 - (i) if Clause 3 applies, the date of Completion;
 - (ii) if Clause 4 applies, the expiry of the Contract Term or earlier Completion of the Maintenance Services; or
 - (iii) if Clause 5 applies, the expiry of the Contract Term or earlier Completion of the Alternative Maintenance Services; and

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- (b) during the time of, and for so long as that part of the Site is affected by, the carrying out of work under the Contract during the Defects Liability Period.

38.6 The Contractor must:

- (a) perform the Maintenance Services in a safe manner;
- (b) take all reasonable care to provide and maintain a Workplace free of accidents and injuries, including performing the Maintenance Services in a way that is without risk to the health, safety and welfare of any person;
- (c) comply with all Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (d) comply with all Policies and Plans relating to workplace health and safety;
- (e) at all times have documented safe work practices and procedures for the Maintenance Services;
- (f) ensure that there are processes in place to identify, assess and proactively control risks at the Workplace at which the Maintenance Services are being performed;
- (g) cooperate with and do all of the things that are necessary to enable the Principal to comply with all Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (h) attend any inductions or such other safety meetings required by the Principal;
- (i) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
- (j) provide its Personnel with personal protective equipment, information, instruction, training and supervision to ensure their own health and safety, and to ensure that their acts or omissions do not adversely affect the health and safety of other persons while performing the Maintenance Services;
- (k) provide, when requested by the Principal, evidence of its compliance with the requirements of any Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (l) provide, when requested by the Principal, information about, and verification of, the safety systems in a Workplace at which the Maintenance Services are being performed, including site specific safe work practices, policies and procedures and how compliance with the safety system is audited and monitored;
- (m) immediately Notify the Principal of any accidents involving the Contractor's Personnel and, within 1 Business Day, give the Principal a detailed report of the circumstances and consequences of the accident;
- (n) immediately Notify the Principal if, as a result of the Maintenance Services, the Contractor is required to report a Notifiable Incident to a Regulator;
- (o) take all reasonable practicable steps to secure the area where the Notifiable Incident occurred until an Inspector arrives at the area or any earlier time that an Inspector directs;
- (p) immediately Notify the Principal if an Inspector or any delegate or union representative enters or attends a Workplace in relation to a workplace health and safety matter where the Maintenance Services is being performed; and
- (q) cooperate in any investigations relating to Workplace incidents.

38.7 Without limiting any other obligation under the Contract, if material that might contain asbestos or other hazardous substance is discovered, the Contractor must:

- (a) immediately Notify the Principal; and
- (b) comply with all applicable obligations and restrictions imposed by any applicable Legislative Requirements.

38.8 The Contractor must, at the times specified in the Contract Header, and at any time upon request by the Principal, provide all assistance and access to its offices, Personnel and records to enable the Principal (which may be the Principal's staff or external contractors) and any government agency to conduct audits on the Contractor's compliance with its obligations under this Clause 38, the Policies

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and Plans and any Legislative Requirements relating to workplace health and safety (including the Act and Regulations). If any non-conformance is detected, the Contractor must immediately rectify the non-conformance at its own cost.

38.9 The Contractor must Notify the Principal once the non-conformance has been rectified.

39 Environmental requirements

39.1 Whilst carrying out any of its obligations under the Contract, the Contractor must:

- (a) comply with all obligations under Legislative Requirements in respect of the protection of the environment, including but not limited to the *Environmental Protection Act 1994* (Qld);
- (b) comply with and implement, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while performing the Maintenance Services comply with and implement, all applicable Policies and Plans relating to the environment;
- (c) perform the Maintenance Services in a manner so as to avoid unlawful pollution of the Site and its surroundings; and
- (d) allow the Principal and its agents access to the Site for environmental monitoring.

39.2 The Contractor is responsible for, and must make good, any damage to the environment caused by the performance of the Maintenance Services (including any unlawful pollution of the Site or its surroundings). The Contractor must comply with all directions of the Principal in respect of the cleaning up that pollution.

39.3 The Contractor must, at any time upon request by the Principal, provide all assistance and access to its offices, Personnel and records to enable the Principal (which may be the Principal's staff or external contractors) and any government agency to conduct audits on the Contractor's compliance with its obligations under this Clause 39, the Policies and Plans and any Legislative Requirements relating to the environment. If any non-conformance is detected, the Contractor must immediately rectify the non-conformance at its own cost.

39.4 The Contractor must Notify the Principal once the non-conformance has been rectified.

39.5 The Contractor acknowledges that the Principal is, or may become, subject to NGER Legislation. The Contractor shall provide all reasonable assistance to the Principal to enable it to comply with its obligations under NGER Legislation, including, but not limited to:

- (a) keeping and maintaining for a period of 7 years, accurate records of:
 - (i) the amount of greenhouse gases directly emitted; and
 - (ii) the amount of energy (including diesel, electricity or other fuels) used, in performing any of its obligations under the Contract; and
- (b) allowing the Principal access to those records and provide a copy of those records to the Principal upon request,

and all of the Contractor's costs of performing these obligations are deemed to be included in the Price.

40 Programming

40.1 The Contractor must comply with the timing and sequencing in any Program provided to the Contractor by the Principal.

40.2 If requested by the Principal, the Contractor must:

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- (a) prepare a Program for the performance of the Maintenance Services that is in accordance with the scope of the Maintenance Services, applicable requirements elsewhere in the Contract and the requirements of the Principal; and
 - (b) provide the Program to the Principal for approval as is directed by the Principal.
- 40.3 Without limiting or affecting its obligations and liabilities, the Contractor must comply with the approved Program.
- 40.4 The Contractor must promptly update or revise the Program at its own cost and resubmit it to the Principal if the Principal directs it to do so because the Program:
- (a) does not comply with Clause 40.2(a); or
 - (b) no longer reflects the current status of the Maintenance Services due to a delay (however caused), extension of time (if applicable), variation or a change in the sequence of performance of the Maintenance Services.
- 40.5 The Parties agree that:
- (a) the Principal is not required to check the Program for errors, omissions or compliance with the Contract;
 - (b) the purpose of the Principal giving its consent, approval or direction about the Program is to give the Principal an opportunity to monitor the progress of the Maintenance Services and the Contractor's compliance with the Contract; and
 - (c) the Principal's approval or rejection of, or comment on, any Program (or failure to do so) does not affect in any way the Contractor's obligations to complete the Maintenance Services in accordance with the Contract or otherwise relieve the Contractor from any of its obligations under the Contract.

41 Resolution of Disputes

- 41.1 If any dispute between the Parties arises from or in connection with the Contract (whether before or after termination of the Contract) (**Dispute**), the Parties agree to resolve it in the manner set out in this Clause 41, and a Party may not commence court proceedings concerning the Dispute unless the Party has complied with this Clause 41 or the Party seeks urgent injunctive or declaratory relief.
- 41.2 A Party claiming that a Dispute has arisen must Notify the other Party of the Dispute and specify the nature of the claim (**Dispute Notice**).
- 41.3 A Party served with a Notice of Dispute may give a written response to the Notice of Dispute to the other Party within 28 days of the receipt of the Notice.
- 41.4 Within 42 days of service of a Notice of Dispute, or within 14 days of the receipt a written response to the Notice of Dispute, whichever is the earlier, the Parties must confer at least once to attempt to resolve the Dispute. At any such conference, each Party must be represented by a person having authority to agree to a resolution of the Dispute.
- 41.5 If the Dispute is not resolved under Clause 41.4 within 56 days after the date of the Dispute Notice, then either Party may refer the Dispute to mediation in accordance with, and subject to, the Resolution Institute's Mediation Rules. The Parties must agree on the identity of the mediator, failing which, a mediator must be appointed by the Chairman of the Queensland Chapter of the Resolution Institute. The place of mediation will be the Gold Coast. Each Party will bear its own costs and share equally the costs of the mediator or the process of mediation.
- 41.6 If the Dispute is not resolved under Clause 41.5 within 30 days of the appointment of a mediator, or the Parties do not submit the Dispute to mediation within 70 days after the date of the Dispute Notice, either Party may commence litigation.

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- 41.7 Each Party must continue to perform its obligations under the Contract despite the existence of a Dispute.

42 Variation

- 42.1 The Principal may, at any time before Completion or the expiry of the Contract Term (as the case may be), direct the Contractor by Notice to:
- (a) accelerate or delay the progress of, or change the sequence of, the Maintenance Services or any part of it;
 - (b) increase, decrease or omit any part of the Maintenance Services (including an omission for the purpose of performing that part of the Maintenance Services itself or engaging a third party to do so), or perform additional maintenance services; or
 - (c) change the nature or quality of, or method of performing, the Maintenance Services,
- (**Variation**) provided that any Variation for the performance of additional services is within the general scope of the Contract.
- 42.2 The Contractor must not vary any part of the Maintenance Services except as directed in writing by the Principal or approved in writing by the Principal in accordance with Clause 42.1.
- 42.3 The valuation of any Variation may be agreed to by the Parties in writing, including how much the Contractor is entitled to charge the Principal for the Variation or, alternatively, the basis on which the Contractor will calculate the amounts that it may charge the Principal. Unless agreed, the valuation will be made under Clause 42.5.
- 42.4 Within 5 Business Days of receiving a direction for a Variation, and before carrying out the Variation, the Contractor must provide the Principal with a detailed quotation for the Variation supported by measurements or other evidence of cost.
- 42.5 Where the Contract provides for a valuation to be made under this Clause 42, and the Parties have not already agreed on the value of a Variation, the Principal's Nominated Representative will determine (acting reasonably) the value of the Variation as follows:
- (a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices will be used; and
 - (b) to the extent that the preceding clause 42.5(a) does not apply, reasonable rates or prices will be used.
- 42.6 Except as provided in this Clause 42, the Contractor has no Claim against the Principal arising out of or in connection with any Variation.
- 42.7 If the Contractor is of the opinion that any direction is a Variation even though it was not expressed as such, the Contractor must, within 3 Business Days of receiving the direction, and before giving effect to the direction, Notify the Principal of its opinion. If the Contractor fails to give the Notice required by this Clause 42.7, the Contractor will not be entitled to make any Claim with respect to the Principal's direction.
- 42.8 Despite any other provision of the Contract, the Contractor will not be entitled to any Claim, if a direction is given or a Variation directed which results from:
- (a) performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Maintenance Services;
 - (b) any Defect;
 - (c) the Contractor being in breach of the Contract; or
 - (d) any negligence or any default of the Contractor or its Personnel.

43 Suspension

- 43.1 The Principal may, at any time and for any reason, direct the Contractor to suspend the performance of the Maintenance Services or any part thereof by Notice to the Contractor for the following reasons:
- (a) any act, default or omission of the Contractor or its Personnel;
 - (b) the protection or safety of any person or property; or
 - (c) the convenience of the Principal.
- 43.2 If the Principal issues a direction under Clause 43.1, the Contractor must immediately comply with that direction, and must immediately take all steps possible to minimise any amounts payable by the Principal under Clause 43.4;
- 43.3 The Principal may at any time direct the Contractor to resume the performance of the Maintenance Services or any part thereof by Notice to the Contractor, and the Contractor must promptly comply with such a direction at its cost.
- 43.4 If the suspension is due to a matter referred to in Clause 43.1(c) or due to a breach of contract or negligence of the Principal or its Personnel:
- (a) the Contractor's costs related to the suspension will be valued under Clause 42.5 and added to the Price; and
 - (b) the Contractor may Claim an extension of time under Clause 11.6 (if applicable).
- 43.5 The Contractor will not be entitled to Claim if the suspension occurs because of a matter referred to under Clause 43.1(a) or 43.1(b).

44 Termination

- 44.1 The Principal may, in its absolute discretion, at any time terminate the Contract, in whole or in part, for its convenience (including where there has been no default or insolvency of the Contractor) by giving 30 days Notice to the Contractor.
- 44.2 If the Contract is terminated in accordance with Clause 44.1, or in the event the Contract becomes frustrated at law, the Contractor:
- (a) must immediately take all steps possible to minimise any amounts payable by the Principal under this Clause 44.2;
 - (b) will, subject to the clause 44.2(c), be entitled to be paid in accordance with the Contract for:
 - (i) any part of the Maintenance Services properly completed in accordance with the Contract up to the date of termination (on the basis of a prorata of the Price, as determined by the Principal's Nominated Representative (acting reasonably)); and
 - (ii) its direct, necessary and reasonably incurred actual costs and expenses caused by the termination under Clause 44.1 only; and
 - (c) the Principal will not be liable to the Contractor for any Consequential Loss or payment greater than the amount that the Principal would have paid to the Contractor had the Contract been completely performed.
- 44.3 The Principal may, without limiting its rights at law, immediately terminate the Contract by Notice to the Contractor if the Contractor:
- (a) fails to provide the Performance Guarantee in accordance with Clause 26 or the Security Deposit in accordance with Clause 27;
 - (b) gives Notice in accordance with Clauses 29.2 or 29.3 or the Principal otherwise identifies a real, perceived, anticipated or identified risk of a Conflict of Interest arising from the Contractor performing the Maintenance Services;

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- (c) breaches any part of Clauses 28, 33, 34 or 37;
- (d) is subject to an Insolvency Event;
- (e) breaches any applicable Legislative Requirements;
- (f) is unable to perform any part of the Maintenance Services which requires a licence under a Legislative Requirement because it has failed, refused or been unable to obtain a licence of the appropriate class under the Legislative Requirement, or its licence has been cancelled or suspended;
- (g) fails to comply with a written Notice from the Principal or any other direction properly given, within the timeframe required by the Principal;
- (h) breaches a term of the Contract, and that breach cannot be remedied; or
- (i) breaches any term of the Contract, and fails to remedy that breach within 5 Business Days of being directed by written Notice to do so by the Principal.

44.4 If the Contract is terminated in accordance with Clause 44.3, the Principal will not be liable to make any further payment to the Contractor for the Maintenance Services.

44.5 Upon termination of the Contract under Clause 44.1 or 44.3, the Contractor must immediately, or on such later date as specified in the Notice of termination:

- (a) cease performing the Maintenance Services;
- (b) assign or novate in favour of the Principal, or any person nominated by the Principal, any subcontracts or rights under any subcontracts entered into or obtained by the Contractor in connection with the performance of the Maintenance Services;
- (c) terminate any other outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of the Principal;
- (d) remove from the Site any plant, equipment, tools, appliances and other property and items belonging to the Contractor or the Contractor's Personnel, and remove any rubbish or debris and leave the whole of the Site in a clean and safe condition; and
- (e) deliver to the Principal the parts of the Maintenance Services performed by the Contractor up to the date of termination.

44.6 Termination of the Contract will not affect or prejudice any rights or liabilities of the Parties that accrued prior to termination.

45 Notices

45.1 A Notice under the Contract is only effective if:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given by hand to that Party's address, sent by registered mail to that Party's address or sent by email to that Party's email address (unless the sender receives a computer generated report that the email was not successfully sent, within two hours after the email being sent).

45.2 A Notice delivered under Clause 45.1 is given and received:

- (a) if it is hand delivered or sent by email by 5.00pm (local time in the place of receipt) on a Business Day, on that day;
- (b) if it is hand delivered or sent by email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by post, 5 Business Days after posting;

45.3 A Party's address and email address are those set out in the Contract Header, or as one Party may Notify the other of a change of such address or email address.

46 Right to Information and Disclosure

- 46.1 The *Right to Information Act 2009* (Qld) (**RTI Act**) provides members of the public with a legally enforceable right to access Documents held by Queensland Government agencies (including local governments).
- 46.2 The RTI Act requires Documents to be disclosed upon request, unless the Documents are exempt or, on balance, disclosure is contrary to the public interest.
- 46.3 Information provided by the Contractor in connection with the Contract is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 46.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor in connection with the Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Principal. The Principal cannot guarantee that any information provided by the Contractor in connection with the Contract will be protected from disclosure under the RTI Act.
- 46.5 The Contractor must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused. The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to the Contractor concerning the content or effect of the RTI Act.
- 46.6 Despite any other provision of the Contract, the Principal is entitled to publish on the Principal's website, or by any other means, the following details for a period of 12 months from the date of this Contract:
- (a) the name and address of the Contractor;
 - (b) the price or value of the Contract including any variations or Approved Expenses;
 - (c) a description of the Maintenance Services; and
 - (d) the Commencement Date.

47 Notification of Claim

- 47.1 The Principal will not be liable upon any Claim unless:
- (a) where the requirements for notification of the Claim are prescribed elsewhere in the Contract, the Contractor has strictly complied with those requirements; or
 - (b) where the requirements for notification of the Claim are not prescribed elsewhere in the Contract, the Contractor has given the Principal Notice of the Claim within 5 Business Days of the first occurrence of the events or circumstances on which the Claim is based.
- 47.2 Notice under Clause 47.1(b) must be in writing and include:
- (a) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (b) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (c) details of the quantum of the Claim showing the calculations and their bases.
- 47.3 Failure by the Contractor to comply with this Clause 47 will be an absolute bar to making, and being entitled to, the Claim.

48 Quality Assurance

- 48.1 The Contractor must:

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- (a) implement and perform the Maintenance Services in accordance with the Quality Assurance System; and
- (b) allow the Principal and its nominees access to the Contractor's Quality Assurance System at all reasonable times for the purposes of quality monitoring and auditing.

48.2 The Contractor's implementation of, or compliance with, the Quality Assurance System does not relieve the Contractor of its obligations under the Contract.

49 Inspection and Information

49.1 The Contractor must keep the Principal fully informed in respect to all aspects of the Maintenance Services.

49.2 The Contractor must keep and maintain proper and accurate accounts, records, timesheets and other Documents in respect of all matters relating to the Contract in accordance with Good Industry Practice, including best business and accounting principles, as well as full details of any costs and expenditures properly incurred by the Contractor in the performance of the Maintenance Services.

49.3 At all reasonable times, the Principal (by itself or by its agents) will have the right to inspect and review the performance of the Maintenance Services and the accounts, records, timesheets and other Documents created by the Contractor in the performance of the Maintenance Services, including those referred to in the Contract, at:

- (a) the Site;
- (b) the Contractor's premises; and
- (c) at the premises of any of the Contractor's Personnel,

and on request by the Principal, the Principal may itself (or may require the Contractor to) take or arrange for copies of any such accounts, records, timesheets and other Documents to be taken for its use. The Contractor must provide all assistance required for the purposes of this Clause 49.3.

49.4 The obligations in this Clause 49 will continue for a period of 7 years from the expiry or termination of the Contract, whichever occurs first.

50 Subcontracting

50.1 The Contractor must not subcontract, or allow a subcontractor to subcontract, any part of the Maintenance Services without the Consent of the Principal, which may not be unreasonably withheld.

50.2 The Contractor must, with a request for the Principal's Consent under Clause 50.1, Notify the Principal which part of the Maintenance Services is to be subcontracted and the name and address of the proposed subcontractor. The Contractor must also give the Principal any other information which the Principal reasonably requests, including the proposed subcontract without prices.

50.3 The Principal may impose conditions on any Consent given under Clause 50.1. No Consent given by the Principal will relieve the Contractor from any of its liabilities or obligations under the Contract, and the Contractor will be vicariously liable to the Principal for the acts, defaults and omissions of subcontractors, and employees and agents of subcontractors, as if they were those of the Contractor.

51 Assignment/Transferability of the Contract

51.1 The Contractor must not, without the Consent of the Principal, and except on such terms and conditions as are determined in writing by the Principal, novate the Contract or assign, in whole or in part, the Contract or any payment or other right, benefit or interest under or in respect of the Contract.

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- 51.2 The Principal may, at any time, by giving Notice to the Contractor, novate the Contract or assign, in whole or in part, the Contract or other right, benefit or interest under or in respect of the Contract to any person identified in the Notice.
- 51.3 If Clause 51.2 applies:
- (a) the Contractor must execute any Document reasonably required by the Principal to affect its rights under Clause 51.2 (including a deed of assignment in the form provided by the Principal), and return it to the Principal within 5 Business Days of receiving the relevant Document; and
 - (b) the Contractor acknowledges and agrees that from the date of any Notice given by the Principal pursuant to Clause 51.2, any assignment by the Principal takes effect as if the assignee had been originally named as a party to the Contract in place of the Principal.

52 General Provisions

- 52.1 The relationship of the Parties under the Contract is one of principal and independent contractor and the Contractor is not by virtue of the Contract in a partnership or joint venture with, or an officer or employee of, the Principal, and the Contractor must not represent itself, or allow itself to be represented, as a partner, joint venturer, officer or employee of the Principal.
- 52.2 The Contract may only be amended by written agreement between the Parties.
- 52.3 The Contract (including the Contract Header) may be executed in any number of counterparts. All counterparts together make one instrument.
- 52.4 The rights and obligations of the Parties under the Contract do not merge on completion of any transaction contemplated by it.
- 52.5 Without limiting Clause 33, the Contractor must not, and must ensure that its Personnel do not, make any public announcement or advertisement in any medium in relation to the Contract or the Maintenance Services without the Consent of the Principal.
- 52.6 Any failure by a Party at any time to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a Party to the other, will not constitute a waiver of the Party's rights. No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the Party granting the waiver. A waiver by a Party of a breach of any part of the Contract will not be a waiver of any subsequent breach of the same part or a waiver of a breach of any other part of the Contract.
- 52.7 The Contract is governed by, and construed in accordance with, the laws of Queensland, except that the *Sale of Goods (Vienna Convention) Act 1986* (Qld) and section 68 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) does not apply to the Contract or the Maintenance Services. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 52.8 If any part of the Contract is determined to be invalid, unlawful or unenforceable for any reason, then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the Contract and the remaining parts of the Contract will continue to be valid and enforceable to the maximum extent permitted by law.
- 52.9 The Contractor must do all things reasonably necessary to give effect to the Contract and the transaction contemplated by it (including all things reasonably required by the Principal).
- 52.10 The Principal will provide the assistance described in the Contract Header (if any) to the Contractor.
- 52.11 If the Contractor is a joint venture, consortium, partnership or made up of more than one person, a reference to the Contractor is a reference to both persons and:

Conditions of Contract - Asset Maintenance Services

- (a) an obligation and liability of those persons is joint and several;
- (b) any rights of those persons may only be exercised jointly; and
- (c) any reference to the Contractor is to each of those persons separately so that any promise, representation or warranty is given by each of them separately.

52.12 The following clauses (and any other clauses which, by their nature, are capable of surviving) will survive the expiry or termination of the Contract:

- Clause 1 Definitions
- Clause 2 Interpretation
- Clause 30 Intellectual Property Rights and Moral Rights
- Clause 33 Confidentiality
- Clause 34 Privacy and Personal Information
- Clause 35 Liability
- Clause 36 Indemnity
- Clause 46 Right to Information and Disclosure
- Clause 52.5 No Advertising
- Clause 52.6 Waiver
- Clause 52.7 Governing Law.

Schedule 1

Statutory Declaration – Payment Claim (Clause 22.7)

CONTRACT NO.: <To be completed>

NAME OF PROJECT: <To be completed>

QUEENSLAND)
TO WIT)

I, of.....

in the State of Queensland, do solemnly and sincerely declare that

- a) I am the <Declarant’s Status> for <Name and ACN of Contractor> (Contractor) engaged by the Gold Coast City Council to carry out the Supply known as Contract No.<To Be Completed> (Works) and I am duly authorised to make this declaration on the Contractor’s behalf.
- b) All workers (including all workers employed by Subcontractors) who at any time have been engaged under the Contract have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to date of this declaration in respect of their engagement on the work under the Contract.
- c) All subcontractors, suppliers and consultants of the Contractor have been paid all that has been claimed by them up to the date of this declaration in respect of their part of the work under the Contract other than in respect of the following amounts for the following reasons:

Amount in dispute <To be completed>	Reason <To be completed>
--	-----------------------------

- d) The Contractor:
 - i) has included in each Payment Claim submitted to the date of this statutory declaration; and
 - ii) will include in the Payment Claim to which this statutory declaration relates, details of the value (calculated in accordance with the Contract including Clause 22.2(e)) of all work under the Contract done as at the date of the relevant statutory declaration and the details of all other moneys then due to the Contractor, pursuant to the provisions of the Contract, as at the date of the relevant statutory declaration.
- e) All subcontractors and any sub-subcontractors performing work under the Contract have been approved by the Superintendent in accordance with Clause 50 of the Contract.
- f) The Contractor has informed all subcontractors and any sub-subcontractors performing work under the Contract of the existence of the *Building and Construction Industry Payments Act 2004* (Qld) (BCIPA) and the *Subcontractors’ Charges Act 1974* (Qld) (if applicable).
- g) The Contractor has no knowledge of any actual or threatened lodgment by any subcontractor of:
 - i) a subcontractors charge under the *Subcontractors’ Charges Act 1974* (Qld) which has not been withdrawn; or
 - ii) a notice to suspend under sections, 19, 20 or 30 of BCIPA, other than in respect of the following:
- h)
The Contractor has complied with all of its insurance requirements under the Contract including under Clause 37 of the Contract.
- i) The Contractor has in place all necessary certificates, licences, consents, permits and other approvals that are required for the Contractor to perform its obligations under the Contract and those certificates, licences, consents, permits and other approvals are fully paid for.
- j) if the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme (Scheme) applies to the Contract, as specified in the Contract Header, the Contractor has complied with all conditions of the Scheme and the performance requirements in the National Construction Code, including in relation to building materials, up to date of this declaration.

AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING THE SAME TO BE TRUE, AND BY VIRTUE OF THE PROVISIONS OF THE “OATHS ACT OF 1867 (Qld)”.

Signed _____ Date _____

Taken and Declared before me, at _____)

this _____ day of _____ 20 _____)

Council of the City of Gold Coast

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CITY OF
GOLDCOAST.