

## Conditions of Contract for Short Form Asset Maintenance

### DEFINITIONS

In the Contract:

**'Assets'** means any assets owned by the Principal, or assets otherwise specified in the Quotation Form 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.

**'Business Day'** means a day which is not:

- a Saturday or Sunday;
- a public holiday, bank holiday or special holiday in the place in which the Site is located; or
- 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:

- for the payment of money (including damages);
- for an adjustment to the Price; or
- for delay, disruption, acceleration or other time-based claim.

**'Commencement Date'** means:

- the date or dates specified in the Quotation Form; or
- the date agreed in writing between the parties.

**'Completion'** means the stage when:

- the Maintenance Services are complete, except for minor Defects that the Principal considers will not, and the rectification of which will not, prevent or impair the normal and safe use and occupation of the Assets and Site;
- the Contractor has cleaned the Site and removed all rubbish and surplus material;
- the Contractor has provided all certificates, permits, consents and approvals required by the Legislative Requirements for use, occupation and operation and maintenance of the Assets which are the responsibility of the Contractor under the Contract;
- any documents or 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; and
- any other conditions which the Contract requires be satisfied prior to Completion, have been satisfied by the Contractor.

**'Completion Date'** means the date or dates the specified in the Quotation Form, if any, by which:

- the Maintenance Services must achieve Completion; or
- a nominated part of the Maintenance Services must achieve Completion, as may be adjusted by Clause A.19.

**'Conditions of Contract'** means these Conditions of Contract for Short Form Asset Maintenance, copies of which can be located on the Principal's website at [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au).

**'Contract'** means the legally binding agreement between the Principal and the Contractor, comprising the documents specified in the Quotation Form.

**'Contractor'** means the party stated in the Quotation Form (initially referred to as the 'Tenderer') and responsible for carrying out and completing the Maintenance Services in accordance with the Contract.

**'Contract Term'** means, subject to earlier termination of the Contract in accordance with Clause A.26:

the term specified in the Quotation Form (if any); and  
any extension of that term under Clause A.2.2.

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

**'Defects Liability Period'** means the period stated in the Quotation Form and which commences on:

- if the Quotation Form sets out one or more Completion Dates, the date that Completion of the Maintenance Services is achieved by the Contractor (as determined by the Superintendent acting reasonably); or
- if the Quotation Form states that the Contractor is to perform the Maintenance Services for a Contract Term, the expiry of the Contract Term.

**'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.

**'Insolvency Event'** means any of the following events:

- 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;
- 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);
- 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;

- the Contractor ceases to carry on business;
- 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
- anything analogous to the events described in paragraphs (a) to (e) occurs.

**'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.

**'Latent Condition'** means physical conditions of the Asset which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time if the Contractor had:

- examined all information made available in writing by the Contractor for the purpose of the Contract;
- examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contract and obtainable by the making of reasonable enquiries; and
- inspected the Asset, Site and its surroundings,

but excludes any Excepted Latent Conditions identified in the Quotation Form.

**'Legislative Requirements'** includes

- 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;
- certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Contract;
- Australian Standards and any other relevant standards; and
- fees and charges payable in connection with the foregoing.

**'Lump Sum Fixed Fee'** means a single fee that includes all costs associated with the Maintenance Services as set out in the Quotation Form.

**'Milestone'** means those parts of the Maintenance Services (if any) that are nominated in the Quotation Form;

**'Milestone Amount'** means the amount specified for each Milestone as nominated in the Quotation Form for the relevant Milestone;

**'Milestone Completion'** of a Milestone is achieved when the Milestone has been fully completed in accordance with the Contract (without defects), as certified by the Principal's Nominated Representative;

**'Milestone Completion Acceptance Notice'** has the meaning given to it in Clause A.1;

**'Milestone Partial Acceptance Notice'** has the meaning given to it in Clause A.37.2(e);

**'Milestone Payment Amounts'** has the meaning given to it in Clause A.37.2(d);

**'Maintenance Services'** means the services, work and obligations to be performed by the Contractor and otherwise described in the Principal's Requirements as varied from time to time in accordance with Clause A.20. For the purposes of the Contract, 'services' includes:

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

**'Nominated Providers'** means the suppliers stated in the Quotation Form (if any).

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

- described in the Quotation Form to be a Non Principal Site (if any);
- directed by the Superintendent to be a Non Principal Contractor Site at any time before or after they are made available to the Contractor under the Contract; or
- which have previously been handed over to the Principal following Practical Completion of the Works within or upon those parts of the Site

**'Notice'** means a notice, consent or communication given in accordance with Clause A.41.

**'Payment Claim'** has the meaning given to in Clause A.35.1.

**'Payment Claim Date'** means the later of the date worked out as follows:

- the last Business Day of each month for Maintenance Services done to the 25<sup>th</sup> day of that month; and
- the date of satisfaction of the last preconditions to be satisfied under Clause A.35.8.

**'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 and plans of the Principal as may be from time to time, including any Policies and Plans set out or referenced in the Quotation Form.

**'Price'** means the sum stated in the Quotation Form and comprises either a Lump Sum Fixed Fee or a Schedule of Rates or a combination of these.

**'Principal'** means the Gold Coast City Council ABN 84 858 548 460 of 8 Karp Court, Bundall Queensland 4217.

**'Principal Contractor Site'** means those parts of the Site:

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- (a) not comprising any Non Principal Contractor Site; or  
(b) described in the Quotation Form to be a Principal Contractor Site (if any).
- 'Principal's Requirements'** means the specifications or document referred to in the Quotation Form detailing the description of the Principal's requirements under the Contract.
- 'Program'** means a program for the performance of the Maintenance Services as described in Clause A.18.
- 'Qualifying Cause'** means
- (a) subject to Clause A.15.2, 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 Latent Condition (if the Quotation Form has been completed to confirm that Clause A.21 applies); or  
(c) any cause stated in the Quotation Form that is outside the reasonable control of the Contractor.
- '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 and audit and other critical issues relating to quality assurance.
- 'Quotation Form'** means the completed Short Form Asset Maintenance Quotation Form which is executed by the parties to the Contract.
- 'Schedule of Rates'** means the schedule of either or both lump sum prices and rates set out or referenced in the Quotation Form.
- 'Security Interest'** has the meaning given in the *Personal Property Securities Act 2009* (Cth)
- 'Site'** means the site stated in the Quotation Form.
- 'Superintendent'** means the person stated in the Quotation Form as the Superintendent or other person from time to time appointed in writing by the Principal to the Superintendent and notified as such in writing to the Contractor by the Principal.

### Interpretation

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;  
(b) headings are, in the interpretation of the Contract, to be disregarded;  
(c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Contract and references to this Contract include any schedules or annexures;  
(d) a reference to a party to the Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;  
(e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;  
(f) a reference to a document or agreement (including a reference to the Contract) is to that document or agreement as amended, supplemented, varied or replaced;  
(g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;  
(h) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;  
(i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;  
(j) wherever the words 'include', 'included' or 'including' (or similar expressions) are used in the Contract, 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;  
(k) no provision of the Contract is to be construed against the interests of the Principal because the Principal prepared or relies on the Contract; and  
(l) the review, perusal, comment by the Principal of any document or information submitted by the Contractor does not relieve the Contractor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Contractor.

If the Contractor finds any ambiguity, discrepancy or inconsistency between or within any document comprising the Contract, it must immediately Notify the Principal describing the ambiguity, discrepancy or inconsistency. If the order of precedence in the Quotation Form cannot resolve the ambiguity, discrepancy or inconsistency, the Principal will then Notify the Contractor of the interpretation to be followed, the Contractor must comply with any such direction and the Contractor will not be entitled to Claim as a result of any ambiguity, discrepancy or inconsistency in the Contract or any Notification by the Principal.

### A. Conditions Of Contract For Short Form Asset Maintenance

#### A.1 Governing Law

The Contract will be governed by and construed in accordance with the law of Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

#### A.2 Timeframes

- A.2.1 If the Quotation Form 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 A.2.2, cease the Maintenance Services on the last day of the Contract Term.
- A.2.2 The Principal may, in its absolute discretion, extend the Contract Term for the period stipulated in the Quotation Form 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 A.2.2, then the terms and conditions of the Contract will continue to apply during the extended Contract Term.

- A.2.3 If the Quotation Form 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.
- A.2.4 The Contract applies to any of the Maintenance Services that the Contractor carried out before the Quotation Form was executed by the parties.
- A.3 Performance Of Maintenance Services**
- A.3.1 The Contractor must perform the Maintenance Services in accordance with the Contract.
- A.3.2 The Contractor warrants that the Maintenance Services will:
- (a) match the description in the Contract;  
(b) be performed with skill, care and diligence;  
(c) be performed by appropriately qualified and trained Personnel;  
(d) comply with all relevant Legislative Requirements; and  
(e) be fit and suitable for any purpose expressed in the Contract or which the Principal has made known to the Contractor, or in the absence of such expressed purpose, be fit for the purposes for which services of the same kind as the Maintenance Services are commonly procured.
- A.3.3 The Contractor warrants that all materials, goods, spare parts and consumables used by it to perform, or supplied as part of, the Maintenance Services will:
- (a) 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;  
(b) be new (unless expressly stated otherwise) and of merchantable quality;  
(c) be free from all liens, charges, encumbrances and other Security Interests of any kind;  
(d) be capable of safe use and operation;  
(e) be fit for the purpose for which they are to be used;  
(f) be free from Defects in composition, materials and workmanship; and  
(g) comply with the National Construction code performance requirements.
- A.3.4 The Contractor must maintain, and ensure its Personnel maintains, at its cost, 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.
- A.3.5 The Contractor must, except to the extent stated to the contrary in the Contract, supply all labour, plant, tools, equipment, appliances, consumables, spare parts and other property the Contractor requires to fulfil its obligations under the Contract.
- A.3.6 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 applicable manuals, manufacturer's requirements and Good Industry Practice.
- A.3.7 If the Principal considers that plant, tools, equipment, appliances, spare parts and other property provided by the Contractor to be used in or in connection with the Maintenance Services do not comply with Clause A.3.6, the Principal may order it to be removed from the Site.
- A.3.8 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 the time of delivery, use or installation until Completion.
- A.3.9 Title in the materials, goods, spare parts and consumables passes to the Principal on the earlier of the time 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.
- A.3.10 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.
- A.3.11 The Contractor must give the Superintendent, 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).
- A.3.12 The Superintendent, 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

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by the Contractor, including those relating to workplace health and safety that are in effect at the premises or facilities.

A.3.13 On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Maintenance Services identified in the inspections or tests.

A.3.14 Costs in connection with the testing pursuant to Clause A.3.10 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

**A.4 Nominated Providers**

A.4.1 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 Quotation Form when performing the Maintenance Services.

A.4.2 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.

A.4.3 Any change in the nomination of Nominated Providers by the Principal will be considered a variation under Clause A.20 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

**A.5 Warranties**

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.

**A.6 Personnel**

A.6.1 The Contractor must supervise and manage the performance of 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 *Queensland Building and Construction Commission Act 1991* (Qld) (to the extent that it applies).

A.6.2 The Principal may by Notice direct the Contractor to have removed, within a stated time, from the Site or from any activity of the Maintenance Services, any person or subcontractor employed on the Maintenance Services 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.

A.6.3 The Contractor must ensure its Personnel comply with the requirements of the Contract.

A.6.4 The Contractor acknowledges that it is responsible for industrial relations involving its Personnel. 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.

**A.7 Security**

A.7.1 Clause A.7 will only apply if the Quotation Form has been completed to confirm that Clause A.7 applies.

A.7.2 The Contractor must, within five Business Days of the execution of the Quotation Form, provide the Principal with two unconditional undertakings (which must be in a form approved by the Principal), each equal to 50% of the maximum percentage specified in the Quotation Form, and given by a financial institution approved by the Principal.

A.7.3 Except to the extent permitted law, the Principal may have immediate recourse to the security to satisfy any loss, expense or damages the Principal may incur or suffer as a consequence of any act or omission of the Contractor in connection with the Contract or the Maintenance Services.

A.7.4 Subject to any rights it may have under the Contract, the Principal must:

- (a) if the Quotation Form states that the Contractor is to perform the Maintenance Services for a Contract Term, and the Quotation Form states that no Defects Liability Period applies to the Contract, then within 20 Business Days of the expiry of the Contract Term, release any security held by the Principal as at the date of expiry of the Contract Term;
- (b) if the Quotation Form states that the Contractor is to perform the Maintenance Services for a Contract Term, and the Quotation Form states that a Defects Liability Period applies to the Contract, then:
  - (i) within 20 Business Days of the expiry of the Contract Term, release 50% of the security held by the Principal as at the date of expiry of the Contract Term; and
  - (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by the Principal as at the date of expiry of the Defects Liability Period;
- (c) if the Quotation Form sets out one or more Completion Dates, and the Quotation Form states that no Defects Liability Period applies to the Contract, then within 20 Business Days of Completion be achieved by the Contractor (as determined by the Superintendent acting reasonably), release any security held by the Principal as at the date of Completion; and

(d) if the Quotation Form sets out one or more Completion Dates, and the Quotation Form states that a Defects Liability Period applies to the Contract, then:

- (i) within 20 Business Days of Completion be achieved by the Contractor (as determined by the Superintendent acting reasonably), release 50% of the security held by the Principal as at the date of Completion; and
- (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by the Principal as at the date of expiry of the Defects Liability Period.

**A.8 Price**

A.8.1 In consideration of the proper performance of the Maintenance Services by the Contractor, the Principal will pay the Contractor the Price.

A.8.2 The Price and any rates to be applied in calculating the Price (together with any additions or deductions expressly provided for by the Contract):

- (a) includes all costs, expenses, fees and charges incurred by the Contractor in performing all its obligations under the Contract;
- (b) includes payment for any items or work which are reasonably inferred or are reasonably necessary for the proper performance of the Maintenance Services;
- (c) includes the Contractor's profit, attendance, preliminaries, site allowances, supervision, on-site and off-site overheads in connection with the performance of all of its obligations under the Contract; and
- (d) will not be subject to any rise and fall or other adjustment for any reason except to the extent expressly provided by the Contract.

A.8.3 If the Price comprises a Schedule of Rates, and 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 Claim in connection with the omission.

**A.9 Principal-Supplied Information**

A.9.1 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 the Quotation Form.

A.9.2 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.

**A.10 Superintendent**

A.10.1 The Principal will ensure that at all times there is a Superintendent for the purposes of the Contract.

A.10.2 Unless otherwise Notified by the Principal to the Contractor, the Superintendent has the authority to act on behalf of the Principal in discharging the Principal's functions under the Contract. This includes 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.

A.10.3 The Principal will endeavour to ensure that the Superintendent performs reasonably and in good faith its assessment, valuation or certification functions.

A.10.4 The Superintendent carries out all of its functions, other than its assessment, valuation or certification functions, as an agent of the Principal.

A.10.5 The Contractor must comply with any directions of the Superintendent.

A.10.6 Any Notice that the Contractor is required to give to the Principal under the Contract must be given to the Superintendent.

A.10.7 The Principal will Notify the Contractor of any change in the identity of the Superintendent.

A.10.8 The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent's Representative will be delegated the same function at the same time. The appointment of a Superintendent's

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- Representative will not prevent the Superintendent from exercising any function.
- A.10.9 The Superintendent must forthwith notify the Contractor in writing of:
- the appointment and the name of any Superintendent's Representative and the functions delegated to the Superintendent's Representative; and
  - the termination of the appointment of a Superintendent's Representative.
- If the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent must terminate the appointment.
- A.11 Directions**
- A.11.1 The Principal may issue directions to the Contractor in respect of anything under the Contract.
- A.11.2 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:
- the direction is for urgent action;
  - the direction relates to the Principal exercising other rights of the Principal under the Contract; or
  - the Principal has provided the direction in writing and notified that confirmation with the Principal's Nominated Representative is not required.
- A.11.3 Directions by the Principal may be given in writing or given orally and later confirmed by 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 writing.
- A.11.4 Subject to clause A.11.2 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.
- A.11.5 The Contractor must attend all meetings requested by the Principal to openly discuss all matters relevant to the Maintenance Services and their progress.
- A.12 Work Health And Safety**
- A.12.1 In this Clause A.12, the terms:
- 'Act' means the Work Health and Safety Act 2011 (Qld);
  - 'Regulation' means the Work Health and Safety Regulation 2011 (Qld);
  - 'Workplace', 'Inspector', 'Notifiable Incident', 'Principal Contractor' and 'Regulator' have the same meaning as in the Act.
- A.12.2 If the Price is \$250,000 or more, from the date that the Contractor has access to the Site (unless notified in writing by the Principal):
- subject to Clause A.12.2(c), the Principal appoints the Contractor as the Principal Contractor in respect of the Maintenance Services;
  - the Contractor accepts appointment under Clause A.12.2(a);
  - the Maintenance Services in respect of which the Contractor is appointed Principal Contractor under Clause A.12.2(a) includes:
    - all services under the Contract (other than services under the Contract carried out upon the Non Principal Contractor Site); and
    - all services (whether or not services under the Contract) carried out or to be carried out upon the Principal Contractor Site (including works carried out by separate contractors); and
  - the Principal authorises the Contractor to:
    - assume management and control of the Principal Contractor Site; and
    - 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 A.12.5), unless and to the extent that such authorisation is withdrawn by the Principal in writing prior to the end of that period.
- A.12.3 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.
- A.12.4 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.
- A.12.5 If the Contractor is Principal Contractor under Clause A.9.2(a), the Contractor is for the purposes of the Act and Regulation the 'person in control' of the site and all things on the site:
- from the date that the Contractor has access to the Site until the date of Practical Completion; and
- 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.
- A.12.6 The Contractor must:
- attend any inductions, tool box talks or such other safety meetings required by the Principal;
  - 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;
  - comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other Legislative Requirement in connection with health and safety;
  - comply with all Policies and Plans relating to workplace health and safety;
  - take all reasonable care to provide and maintain a workplace free of accidents and injuries;
  - without limiting Clause A.12.7, 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; and
  - cooperate in any investigations relating to workplace incidents.
- A.12.7 If a Notifiable Incident occurs at the Workplace at which the Maintenance Services are being performed, the Contractor must:
- immediately notify the Regulator and the Principal of the Notifiable Incident; and
  - take all reasonably 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.
- A.12.8 Without limiting any other obligation under the Contract, the Act, the Regulation or any other Legislative Requirement, if material that might contain asbestos or other hazardous substance is discovered the Contractor must:
- immediately notify the Principal; and
  - comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant Legislative Requirement.
- A.12.9 The Contractor must provide all assistance and access to its officers, Personnel and records to enable the Principal and any government agency to conduct audits on the Contractor's compliance with the Contractor's obligations under this Clause A.12, the Policies and Plans and any Legislative Requirements relating to health and safety. If any non-conformance is detected, the Contractor must immediately rectify the non-conformance at its own cost.
- A.12.10 The Contractor must Notify the Principal once the non-conformance has been rectified.
- A.12.11 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.
- A.13 Environmental Management**
- The Contractor must comply with the requirements of the *Environmental Protection Act 1994* (Qld) and any other Legislative Requirement in connection with protection of the environment and implement and maintain measures to preserve and protect the natural environment on and adjacent to the Site.
- A.14 Protection Of Persons And Property**
- A.14.1 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.
- A.14.2 The Contractor must take all necessary measures to:
- 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);
  - prevent harm to any persons on or near the Site;
  - avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
  - prevent nuisance and unreasonable noise and disturbance on or near the Site.
- A.14.3 If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must, at its own cost, remedy the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of the Principal.
- A.14.4 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 expense, rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal or the Principal's Personnel.
- A.14.5 If the Contractor fails to comply with its obligations in Clause A.14.3 or A.14.4, the Principal may perform those obligations itself or through others and all costs, damages and expenses incurred by the Principal in

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- performing those obligations will become a debt due and payable to the Principal from the Contractor.
- A.15 Access And Coordination**
- A.15.1 The Principal will give the Contractor sufficient access to the Site to perform the Maintenance Services. The Contractor may only use the Site for the purpose of performing the Maintenance Services.
- A.15.2 The Contractor will not have exclusive access to the Site or any part of it and must:
- (a) inform itself of the parties that may be affected by the performance of the Maintenance Services;
  - (b) coordinate the Maintenance Services with activities of the Principal, the Principal's Personnel and any other contractors to avoid disruptions to other parties; and
  - (c) advise the Principal of any unavoidable disruptions that may occur.
- A.15.3 The Contractor acknowledges that it has allowed in the Price and is not entitled to any Claim arising from the impact of any interference caused to the Contractor or the Maintenance Services by any person on the Site.
- A.16 Cleaning Of Site**
- A.16.1 The Contractor must keep that part of the Site to which it has access clean and tidy and regularly remove from the Site rubbish and surplus material created by it or its Personnel.
- A.16.2 As a pre-requisite to achieving Completion, the Contractor must remove from the Site all 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.
- A.17 Time For Commencement**
- A.17.1 The Contractor must:
- (a) commence the Maintenance Services on the Commencement Date;
  - (b) perform the Maintenance Services at the Site during the working hours stated in the Quotation Form unless expressly directed otherwise by Notice from the Principal; and
  - (c) proceed with the Maintenance Services with due expedition and without delay and in accordance with any directions of the Principal.
- A.17.2 The Principal may, in its absolute discretion, extend the Commencement Date.
- A.18 Programming**
- A.18.1 The Contractor must comply with the timing and sequencing in any Program provided to the Contractor by the Principal.
- A.18.2 If requested by the Principal, the Contractor must:
- (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.
- A.18.3 Without limiting or affecting its obligations and liabilities, the Contractor must comply with the approved Program.
- A.18.4 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 A.18.2(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.
- A.18.5 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.
- A.19 Delays And Extensions Of Time**
- A.19.1 Clauses A.19.3 to A.19.7 (inclusive) will only apply if the Quotation Form sets out one or more Completion Dates.
- A.19.2 If the Contractor believes that anything, including any breach, act or omission of the Principal, may delay the progress of the Maintenance Services, the Contractor must Notify the Principal with details of the estimated extent of the delay and the cause.
- A.19.3 Subject to Clauses A.19.4 and A.19.6, 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 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
  - (d) if the delay continues beyond the extension of time claimed by the Contractor under Clause A.19.3(c), the Contractor gives the Principal an updated Notice every 5 Business Days that satisfies the requirements of Clause A.19.3(c) until the delay ends.
- A.19.4 The Contractor is not entitled to an extension of time for delays caused by it whether occurring before or after the Completion Date, nor for delays due to inclement weather or industrial conditions occurring after the Completion Date.
- A.19.5 Provided that the requirements of Clause A.19.3 are satisfied, the Superintendent 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 A.19.3(c) or A.19.3(d) and extend the Completion Date by that period. If an extension of time is granted, the Superintendent will Notify the Contractor of the revised Completion Date.
- A.19.6 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.
- A.19.7 If the Contractor does not make any Claim for an extension of time within the time or in the form specified in Clause A.19.3, the Contractor is not entitled to an extension of time, or to later Claim an extension of time, for that delay.
- A.19.8 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.
- A.19.9 For the avoidance of doubt, a delay caused by any act or omission of the Principal or any failure by the Principal to comply with this Clause A.19 will not cause the Completion Date to be set at large.
- A.20 Variations**
- A.20.1 The Contractor must not vary the Maintenance Services except as directed by written Notice by the Principal under this Clause A.20.
- A.20.2 The Principal may, at any time, direct the Contractor by written Notice to amend, increase, decrease or omit any part of the Maintenance Services (including omission for the purpose of or with the intention of contracting with another person to perform that part of the Maintenance Services) or change the quality, character or extent of any services, material or work to be supplied or performed as part of the Maintenance Services or to perform additional services. No variation directed by the Principal will invalidate the Contract.
- A.20.3 Within 5 Business Days of receiving a direction under Clause A.20.2, and before carrying out the variation, the Contractor must provide to the Principal a detailed quotation for the variation supported by measurements or other evidence of cost. If the Principal and the Contractor fail to agree upon the value of a variation, the value of the variation will be a reasonable amount as determined by the Superintendent.
- A.20.4 If the Contractor is of the opinion that any direction or instruction is a variation even though it was not expressed as such, the Contractor must Notify the Principal within 3 Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Contractor fails to Notify the Principal in accordance with this clause, the Contractor will not be entitled to make any Claim with respect to the instruction or direction.
- A.20.5 Except as provided in this Clause A.20, the Contractor has no Claim against the Principal arising out of or in connection with any variation directed by the Principal.
- A.21 Latent Conditions**
- A.21.1 Clause A.21 will only apply if the Quotation Form has been completed to confirm that Clause A.21 applies.
- A.21.2 If, during the performance of the Maintenance Services, the Contractor becomes aware of a Latent Condition, the Contractor must, within 3 Business Days of becoming aware of the Latent Condition, and before the Latent Condition is disturbed, give a written Notice to the Principal specifying:
- (a) the Latent Condition encountered and in what respects it differs materially from that which would have been expected;
  - (b) the additional work and resources which the Contractor estimates to be necessary to deal with the Latent Condition;
  - (c) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
  - (d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
  - (e) other details reasonably required by the Principal.
- A.21.3 If a Latent Condition causes the Contractor to incur extra cost, the Contractor has given the Principal Notice in accordance with clause A.21.2, the Principal will promptly investigate the Latent Condition and determine whether a variation is necessary, and if a variation is necessary, will issue a direction under clause A.20.2 in respect of the Latent Condition.

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- A.21.4 Where, pursuant to this clause A.21, a valuation is to be made under clause A.20.3, regard will not be had to the value of more work carried out or more cost incurred before the date on which the Contractor gives the written Notice required by clause A.21.2.
- A.22 Liquidated Damages**
- A.22.1 Clauses A.22.1 to A.22.3 (inclusive) will only apply if:
- (a) the Quotation Form sets out one or more Completion Dates; and
  - (b) the Quotation Form specifies a rate for liquidated damages.
- A.22.2 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 Quotation Form (if any), for every day after the Completion Date up to and including the date that Completion is achieved by the Contractor (as determined by the Superintendent acting reasonably) or the date that the Contract is terminated pursuant to Clause A.26, whichever is sooner.
- A.22.3 The Principal and the Contractor agree that all liquidated damages which may be payable by the Contractor to the Principal pursuant to this Clause A.22:
- (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.
- A.22.4 If the Quotation Form 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.
- A.23 Defects**
- A.23.1 The Contractor must, at its cost, and with as little inconvenience to the occupants or users of the Assets or Site as reasonably possible, rectify any Defect during the performance of the Maintenance Services or the Defects Liability Period (if applicable). The Contractor is responsible for all work and liable for all costs associated with the rectification of the Defect.
- A.23.2 Without limiting Clause A.23.1, where the Principal becomes aware of any Defect during the performance of the Maintenance Services or during the Defects Liability Period (if applicable), it may direct the Contractor by Notice to rectify the Defect.
- A.23.3 If any Defect is not rectified within 5 Business Days of a direction by the Principal under Clause A.23.2, the Principal may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to the Principal from the Contractor.
- A.23.4 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.
- A.24 Design**
- A.24.1 This Clause A.24 will only apply if the Maintenance Services includes the completion of any design, specification and documentation.
- A.24.2 If the Contractor is required to carry out any design work (including 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 for not less than \$1 million from the date of the Contract until six years after the date that Completion is achieved by the Contractor (as determined by the Superintendent acting reasonably).
- A.24.3 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 A.24.2(b).
- A.24.4 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.
- A.24.5 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 A.24.5 until the draft design documents are approved by the Principal.
- A.24.6 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.
- A.24.7 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.
- A.25 Suspension**
- A.25.1 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 and the Contractor must immediately comply.
- A.25.2 The Contractor has no Claim arising out of a suspension (including for loss of profits) other than an extension of time under Clause A.19, except that the Contractor will have no entitlement to an extension of time if the suspension was caused or contributed to by the Contractor or its Personnel.
- A.25.3 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.
- A.26 Default And Termination**
- Termination without cause
- A.26.1 The Principal may, at any time, terminate the Contract for any reason in its absolute discretion by giving 5 Business Days Notice to the Contractor.
- A.26.2 If the Principal exercises its rights under Clause A.26.1, the Principal will pay in accordance with the Contract to the Contractor for the work completed up to the date of termination in accordance with the Contract:
- (a) any materials reasonably ordered and that the Contractor is legally required to accept (but only if materials become the Principal's property upon payment); and
  - (b) reasonable equipment demobilisation costs incurred by the Contractor by reason of the termination.
- A.26.3 The Contractor will have no other Claim as a consequence of the termination, including for loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- Immediate termination
- A.26.4 The Principal may, without limiting its rights at law, immediately terminate the Contract by Notice to the Contractor if the Contractor:
- (a) breaches any part of Clause A.11.5 or Clause A.28;
  - (b) is subject to an Insolvency Event;
  - (c) breaches any applicable Legislative Requirements;
  - (d) is unable to perform any 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;
  - (e) fails to comply with a written Notice from the Principal or the Superintendent, or any other direction properly given, within the timeframe required by the Principal or the Superintendent;
  - (f) breaches a term of the Contract and that breach cannot be remedied; or
  - (g) 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 or the Superintendent.
- A.26.5 If the Principal exercises its rights under Clause A.26.4, the Principal will not be liable to make any further payment to the Contractor for the Maintenance Services.
- Rights on termination
- A.26.6 Upon termination of the Contract, the Contractor must immediately, or on such later date as specified in the Notice of termination:
- (a) cease all further work and remove from the Site all plant, equipment, tools, appliances and other property and items belonging to the Contractor or the Contractor's Personnel;
  - (b) remove any rubbish or debris and leave the whole of the Site in a clean and safe condition; and
  - (c) deliver to the Principal the parts of the Maintenance Services performed by the Contractor up to the date of termination.
- A.26.7 Termination of the Contract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

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**A.27 Risk And Indemnity**

- A.27.1 The Contractor releases, discharges and indemnifies the Principal and its Personnel (**Indemnified Persons**) from and against all claims, expenses, losses and damages incurred in connection with:
- (a) any negligent or unlawful act or omission by the Contractor or its Personnel;
  - (b) any breach of the Contract by the Contractor;
  - (c) any loss of or damage to real or personal property caused by the Contractor or its Personnel;
  - (d) personal injury or death caused by the Contractor or its Personnel;
  - (e) a breach of any Legislative Requirement; or
  - (f) the infringement of the Intellectual Property Rights of any third party,

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

- A.27.2 The indemnities in the Contract are continuing obligations, independent from the other obligations of the parties under the Contract. 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 on demand any amount it must pay under an indemnity in the Contract.

**A.28 Insurance**

- A.28.1 Before commencing any of the Maintenance Services, the Contractor must, at its cost, take out and maintain the following insurances from the date of the Contract until the expiry of the Defects Liability Period, or if no Defects Liability Period applies to the Contract, until the Completion Date or the expiry of the Contract Term (as the case may be):

- (a) public liability insurance for the amount specified in the Quotation Form;
- (b) workers' compensation insurance (Workcover) as required by law;
- (c) insurance of any plant and equipment used to perform the Maintenance Services for an amount at least equivalent to the replacement value of the plant and equipment;
- (d) third party comprehensive motor vehicle insurance; and
- (e) any other insurance specified, and for the amounts specified, in the Quotation Form.

- A.28.2 The insurances required under Clause A.24.2(b) (if applicable) and Clause A.28.1A.28.1 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 methods of the Maintenance Services and the Contractor's obligations and liabilities under or arising out of the Contract).

- A.28.3 The Contractor must provide a certificate of currency for each insurance policy required under Clause A.24.2(b) (if applicable) and Clause A.28.1 prior to commencing any of the Maintenance Services and at any time upon request by the Principal.

- A.28.4 If any insurance policy required by Clause A.24.2(b) (if applicable) and Clause A.28.1 is materially modified or cancelled, the Contractor must immediately Notify the Principal.

- A.28.5 The Contractor must pay any excesses for claims made under any policy of insurance effected by the Principal or the Contractor, which relate to the Contractor or the Maintenance Services.

**A.29 Confidentiality**

- A.29.1 The Contractor must not:

- (a) disclose to any person; or
- (b) use for any purpose other than the performance of the Maintenance Services,

the contents of the Contract and any other document or information obtained by the Contractor in the course of or in connection with the performance of the Maintenance Services (including any business related information, data or application systems, code and documentation) (**Confidential Information**):

- (c) without the prior written consent of the Principal; or
- (d) unless required by law.

- A.29.2 The Contractor must immediately Notify the Principal if the Contractor becomes aware of any unauthorised disclosure or use of the Confidential Information.

- A.29.3 The Contractor must return any Confidential Information (including copies) on the written request of the Principal.

**A.30 Privacy**

- A.30.1 If the Contractor collects or has access to Personal Information (as defined in the *Information Privacy Act 2009* (Qld) (**IPA**)) in order to perform the Maintenance Services, the Contractor must:

- (a) if the Principal is an 'agency' within the meaning of the IPA, comply with Parts 1 and 3 of Chapter 2 of the IPA 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 the performance of the Maintenance Services, unless required or authorised by law;
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written 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 the performance of 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 A.30;
- (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 may reasonably require from time to time.

- A.30.2 On request by the Principal, the Contractor must obtain from its Personnel performing the Maintenance Services, an executed deed of privacy in a form acceptable to the Principal.

- A.30.3 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 Works (whether as part of its offer 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 Superintendent and any consultant of the Principal requiring the information for the purposes set out in Clause A.30.3(b)(ii); and
  - (ii) disclosing that the entities referred to in Clause A.30.3(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.

- A.30.4 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 Superintendent and any consultant of the Principal.

- A.30.5 The Contractor must immediately Notify the Principal on becoming aware of any breach of this Clause A.30.

**A.31 Assignment And Subcontracting**

- A.31.1 The Contractor must not subcontract any of the Maintenance Services or assign the Contract, or any part thereof, or any right, benefit or interest under the Contract without the prior written approval of the Principal.

- A.31.2 The Contractor must, with a request for approval to subcontract under Clause A.31.1, Notify the Principal of the work to be subcontracted, the name and address of the proposed subcontractor (including details confirming compliance with Clause A.3.4) and the value of the proposed subcontract.

- A.31.3 The Principal may, in its absolute discretion and without giving reasons, reject any requests for approval to subcontract under Clause A.31.1 or impose conditions on any approval given. No approval given by the Principal under Clause A.31.1 (or failure to do so) will relieve the Contractor of its 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.

- A.31.4 The Principal may assign or novate the Contract, or assign a right, benefit or interest under the Contract, by Notice to the Contractor. The Contractor must execute any document reasonably required by the Principal to affect its rights under this clause.

**A.32 Intellectual Property Rights**

- A.32.1 The Principal grants the Principal an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Principal in connection with the Contract for any purpose associated with the Maintenance Services and the Assets.

- A.32.2 The Contractor warrants to the Principal that the performance of the Maintenance Services, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Principal in connection with the Contract, will not infringe the Intellectual Property Rights of any third party.

**A.33 Personal Property Securities Act**

- A.33.1 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

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- (c) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- A.33.2 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.
- A.33.3 Except as expressly agreed in writing to the contrary, the Contractor:
- 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
  - 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.
- A.33.4 The Contractor must:
- 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:
    - owned by the Principal;
    - supplied or to be supplied by the Contractor to the Principal; or
    - in which the Principal has an interest;
  - give the Principal any information reasonably required by the Principal in relation to any such Security Interest or claim; and
  - on request by the Principal, use best endeavours to ensure that the third party:
    - 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
    - subordinates any such Security Interest to the interest of the Principal, by an agreement in form and substance satisfactory to the Principal.
- A.33.5 Without limiting Clauses A.33.3 and A.33.4, 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.
- A.33.6 The Contractor must ensure that each subcontract has, for the benefit of the Principal, a clause that reflects this Clause A.33.
- A.33.7 Without limiting Clause A.29, 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.
- A.34 Disputes**
- A.34.1 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 A.34, and a party may not commence court proceedings concerning the Dispute unless the party has complied with this Clause A.34 or the party seeks urgent injunctive or declaratory relief.
- A.34.2 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**).
- A.34.3 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.
- A.34.4 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 Principal and the Contractor 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.
- A.34.5 If the Dispute is not resolved under Clause A.34.4 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.
- A.34.6 If the Dispute is not resolved under Clause A.34.5 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.
- A.34.7 Each party must continue to perform its obligations under the Contract despite the existence of a Dispute.
- A.35 Payment**
- A.35.1 The Contractor must submit in hardcopy to the Superintendent and electronically to the Principal at the email address nominated in the Quotation Form, on the Payment Claim Date, its claims for payment (**Payment Claim**) for Maintenance Services properly performed 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:
- the calculations substantiating the amount which it claims; and
  - any other information which the Principal and the Superintendent may reasonably require.
- A.35.2 The Superintendent 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 Superintendent (having regard to Clauses A.35.7, A.35.8 and A.35.9), is payable by the Principal (**Payment Schedule**) within 10 Business Days of the receipt of a Payment Claim. The Payment Schedule must also state:
- the Payment Claim to which the Payment Schedule applies; and
  - if the amount in the Payment Schedule is less than that in the Payment Claim, the reasons why.
- A.35.3 At any time up to the expiry of the Defects Liability Period, the Superintendent may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule or previous payment.
- A.35.4 Subject to Clauses A.35.7, A.35.8 and A.35.9, the Principal will pay the Contractor, or the Contractor will pay to the Principal, as the case may be, the amount of the Payment Certificate within 5 Business Days of the date of the Payment Schedule. Any payment by the Principal is on account only, and is not evidence of any Maintenance Services having been performed in accordance with the requirements of the Contract.
- A.35.5 The Principal will issue tax invoices and adjustment notes in respect of the Maintenance Services performed by the Contractor under or in association with the Contract, and the Contractor will not issue tax invoices in respect of the Maintenance Services.
- A.35.6 The Contractor must Notify the Principal immediately if it becomes aware of an adjustment event occurring.
- A.35.7 The Contractor will not be entitled to claim payment for:
- materials, plant or equipment which have not been used in the performance of the Maintenance Services in accordance with the Contract, unless the parties otherwise agree in writing; and
  - any Maintenance Services that is not in accordance with the Contract.
- A.35.8 Without limiting the Principal's other rights, a Payment Claim Date will not occur unless the Contractor has:
- returned a signed copy of the Quotation Form;
  - fully complied with its obligations to provide security (if any) under Clause A.7;
  - provided certificates of currency in accordance with Clause A.28.3; and
  - provided the Principal with a statutory declaration (in a form required by the Principal), 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.
- A.35.9 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 arising from or in connection with the Contract or the Maintenance Services. 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, expense or Claim, the Principal may have recourse to the security.
- A.36 GST**
- A.36.1 In this Clause A.36, the terms 'GST', 'Recipient', 'Supplier', 'Supply' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- A.36.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Price).
- A.36.3 If the Quotation Form has been completed to confirm that this Clause A.36.3 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.
- A.36.4 If the Quotation Form has been completed to confirm that Clause A.36.3 applies, the Contractor and the Recipient confirm that:
- both parties are registered for GST;
  - if either party deregisters for GST, they will Notify the other party immediately;
  - the Recipient will issue a Recipient Created Tax Invoice in respect of the Supply made by the Contractor; and
  - the Contractor will not issue a Tax Invoice in respect of the Supply made by the Contractor.
- A.36.5 If the Quotation Form has been completed to confirm that Clause A.36.3 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.
- A.36.6 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:
- 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
  - if:



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- (i) the Quotation Form has been completed to confirm that Clause A.36.3 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.
- A.36.7 For clarity, the GST payable under Clause A.36.6 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.
- A.36.8 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.
- A.36.9 Where a Supply is made under or in connection with the Contract is a Progressive or Periodic Supply, Clause A.36.6 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.
- A.36.10 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 the Supplier must give the Recipient a Tax Invoice for the Supply.
- A.36.11 Each party warrants that it was registered for GST when it entered into the Contract and agrees to Notify the other party immediately if it becomes aware of it ceasing to be registered for GST.
- A.36.12 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.
- A.36.13 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 this Clause A.36.
- A.37 MILESTONES**
- A.37.1 Clause A.37 will only apply if the Quotation Form has been completed to confirm that Clause A.37 applies.
- A.37.2 The parties agree that:
- (a) the Price includes all of the Milestone Amounts;
  - (b) the Milestone Amount is the only amount able to be claimed by the Contractor in respect of the Maintenance Services and the Maintenance Services comprising the relevant Milestone;
  - (c) the Milestone Amounts are only payable in accordance with this Clause A.37;
  - (d) despite anything in the Contract to the contrary:
    - (i) each Milestone has only two milestone payments (each being a 'Milestone Payment Amount') that, together, total to the Milestone Amounts:
      - (A) the first Milestone Payment Amount equals 80% of the relevant Milestone Amount; and
      - (B) the second Milestone Payment Amount equals 20% of the relevant Milestone Amount;
    - (ii) to the extent that a variation directly affects the Maintenance Services comprising a Milestone, the Principal's Nominated Representative must adjust the Milestone Amount by the amount priced for the variation and payable in accordance with the Contract but only to reflect the extent that the variation directly affects the Milestone;
    - (iii) the Contractor must separately itemise in a Payment Claim each Milestone and the amount claimed in respect of such Milestone; and
    - (iv) except to the extent expressly provided for in paragraphs (e) and (f) below, achieving Milestone Completion for a Milestone is a condition precedent to the Contractor's entitlement to submit a claim for payment, and to be paid, for the Maintenance Services comprising the relevant Milestone;
  - (e) if the Contractor notifies the Principal's Nominated Representative in writing that it has completed no less than 80% of the Maintenance Services comprising a Milestone and the Principal's Nominated Representative, in its sole and unfettered discretion, accepts in writing that the Contractor has achieved that level of completion for the Milestone (Milestone Partial Acceptance Notice), then the Contractor is entitled to deliver a Payment Claim in accordance with Clause A.35 claiming the payment of the first Milestone Payment Amount for the relevant Milestone; and
  - (f) if the Contractor notifies the Principal's Nominated Representative in writing that it has achieved Milestone Completion of a Milestone and the Maintenance Services, in its sole and unfettered discretion, accepts in writing that the Contractor has achieved Milestone Completion for a Milestone (Milestone Completion Acceptance Notice), the Contractor is entitled to deliver a Payment Claim in accordance with Clause A.35 claiming payment of the second Milestone Payment Amount for the relevant Milestone.
- A.38 Quality Assurance**
- A.38.1 The Contractor must:
- (a) implement and carry out the performance of 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.
- A.38.2 The Contractor's implementation of, or compliance with, the Quality Assurance System does not relieve the Contractor of its obligations under the Contract.
- A.39 Records**
- A.39.1 The Contractor must keep and maintain, and ensure that its subcontractors keep and maintain, accurate accounts, records and information (including information stored by or accessible by computer or other electronic means or technology) relating to the performance of the Maintenance Services.
- A.39.2 At all reasonable times, the Principal (by itself or by its agents) will have the right to inspect and review performance of the Maintenance Services and the accounts, records and information created by the Contractor in the performance of the Maintenance Services, 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 and information.
- A.40 General**
- A.40.1 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- A.40.2 The Contract may only be amended by written agreement between all parties.
- A.40.3 The Contract (including the Quotation Form) may be executed in any number of counterparts. All counterparts together make one instrument.
- A.40.4 The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- A.40.5 Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.
- A.40.6 A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- A.40.7 A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- A.40.8 If the Contractor comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several, and any rights of those persons can only be exercised jointly.
- A.40.9 Clauses A.27, A.29, A.30, A.32, A.33 (and any other clauses which by their nature are capable of surviving) survive the expiration or termination of the Contract.
- A.41 Notice**
- A.41.1 A Notice under the Contract is only effective if it is:
- (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 person's address, sent by registered mail to that person's address or sent by email to that person's email address.
- A.41.2 A Notice delivered under Clause A.41.1 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.
- A.41.3 A party's address and email address are those set out in the Quotation Form, or as one party may Notify the other of a change of such address or email address.