



Tenderer to keep this Section

INVITATION TO TENDER SECTIONS A to C

Invitation to Tender (ITT)

The Removal and Crushing of Rock, Young's Quarry, Norfolk Island

All enquiries regarding the contents of this document should be directed to:

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Tender Release Date:	18 December 2024
Closing Time and Closing Date:	4:00 PM, 24 January 2025

Section A – Tender Information and Conditions

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1. INVITATION TO TENDER

Norfolk Island Regional Council (the **Principal**) is inviting Tender Responses from suitably qualified organisations to perform the removal and crushing of rock from Young’s Quarry, Norfolk Island, in accordance with the Invitation to Tender documentation.

2. PRINCIPAL’S REPRESENTATIVE

This Invitation to Tender is being managed by Peak Services on behalf of the Principal.

All communications related to this Invitation to Tender must be directed to the following Principal's Representative in the first instance:

Peter Morichovitis,
Principal Consultant
pmorichovitis@wearepeak.com.au

All correspondence regarding this Invitation to Tender must be submitted in writing to the Principal's Representative.

3. INVITATION TO TENDER CONDITIONS

The Tenderer needs to ensure that they:

- (a) carefully read all part of the Invitation to Tender documents;
- (b) understand the requirements;
- (c) properly complete and sign all applicable parts of Section D – Tender Response Schedules; and
- (d) lodge the Tender Response before the deadline specified in Clause 3.2 of this document.

3.1. Tender Response Lodgement

Tender Responses must be submitted either by:

- (a) email to pmorichovitis@wearepeak.com.au;
- (b) hard copy delivered to the Council Customer Care, Council Bicentennial Complex; or
- (c) hard copy by mail to PO Box 95, Norfolk Island 2899.

no later than the Closing Time on the Closing Date specified in Clause 3.2.

3.2. Tender Response Closing Time and Closing Date

- (a) All Tender Responses are required to be submitted via the method specified in Clause 3.1 by **4:00pm** (Norfolk Island Time) on **24 January 2025**.
- (b) Tender Responses must be submitted before the Tender Closing Date. Any Tender Response received after the Tender Closing Date may be deemed non-conforming and excluded from the Invitation to Tender process.

3.3. Tender Response

- (a) Any Tender Response that does not conform with the requirements of this Invitation to Tender, may be deemed non-conforming and the Principal reserves the right, in its absolute discretion, to exclude the non-conforming Tender Response from the Invitation to Tender process.
- (b) Non-conforming proposals (Alternate Tender Response) are welcomed by the Principal. At a minimum, an Alternate Tender Response must be clearly identified as an Alternate Tender Response.

3.4. Validity of Tender Response

Tender Responses must remain open for acceptance for a period of not less than ninety (90) calendar days from the Closing Date.

3.5. Modifications or Withdrawal of the Invitation to Tender

- (a) The Principal reserves the right to modify, correct, clarify or otherwise vary the Invitation to Tender at any time before the Closing Date. All Tenderers will be notified in writing of any such modifications, changes, updates, revisions or corrections.
- (b) The Principal reserves the right to suspend, terminate or abandon the Invitation to Tender at any time during or after the Closing Date. All Tenderers will be notified in writing of any such modification.
- (c) Any notices or amendments issued by the Principal to the Tenderers during the Tender Period will form part of the Invitation to Tender.

- (d) The Principal reserves the right to:
 - i. change the Invitation to Tender specifications if required; and
 - ii. invite all Tenderers to change their Tender Responses to take account of a change in the specifications, before deciding on the Tender Responses.

3.6. No Obligation to Proceed or Enter into a Contract

- (a) The Invitation to Tender is not an offer of contract by the Principal. The Invitation to Tender is merely an invitation for Tenderers to submit an offer for the supply of the Specification in this Invitation to Tender.
- (b) By issuing this Invitation to Tender, the Principal is under no obligation (whether equitable or legal) to proceed either in whole or in part with the award of a contract. The Principal is not committed contractually in any way to any person who may receive the Invitation to Tender or submits a Tender Response.

3.7. Acceptance and Rejection of Tender Response

(a) Rejection of Tender Response

The Principal in its absolute discretion, may, without being under any obligation to give reasons for undertaking any of the actions specified below:

- i. reject any or all of the Tender Responses, or to waive any irregularities in the Tender Response;
- ii. accept all or any part of a particular Tender Response;
- iii. accept any particular Tender Response even though the pricing or some other aspect specified in that Tender Response may not be as favourable as some other Tender Response;
- iv. review, evaluate and dispose of any Tender Response as it sees fit; and
- v. suspend, or discontinue, temporarily or permanently, the Invitation to Tender process at any time and for any reason.

(b) Acceptance of Tender Response

A Tender Response will not be deemed to have been accepted by the Principal, unless and until either:

- i. a non-conditional Notice of Award or Purchase Order has been delivered or sent to the Tenderer;
- ii. the parties have executed a written contract, whichever is the earlier.

4. EVALUATION PROCESS

4.1. Evaluation Principles

Evaluation of the Tender Responses will be generally in accordance with the requirements of the *Local Government Act 1993* (NSW) (NI) and other applicable legislative requirements.

4.2. Mandatory Evaluation Criteria

Tenderers must meet the following **mandatory** requirements; failing which their Tender Response may be treated as non-conforming and may be excluded for evaluation, according to Principal's absolute discretion:

- (a) Provision of a completed and signed Tender Form (Invitation to Tender: Section D – Tender Response Schedules);
- (b) Fully completed Tender Response Schedules;
- (c) Evidence of financial viability and capacity; and
- (d) Evidence of sufficient insurances, qualifications, licenses and registrations.

4.3. Scoring Evaluation Criteria

The table below summarises the key attributes that will be considered when scoring the Tender Response.

Item	Evaluation Criteria
1.	Capability and Experience
2.	Solution and Methodology
3.	Work Health and Safety, Environmental and Quality Systems
4.	Local and Social Benefits
5.	Price

5. TENDERER'S RESPONSIBILITIES

5.1. Conduct of Tenderer

Any Tenderer:

- (a) found to have offered a bribe, gratuity, bonus, discount or any sort of enticement to any Councillor, employee of the Principal or their representatives; will have their Tender Response excluded;
- (b) who discusses the Invitation to Tender with any Councillor, employee of the Principal (with the exception of the nominated Principal's Representative), at any time prior to the formal notification of any decisions, may have their Tender Response excluded by the Principal.

5.2. Conflicts of Interest

- (a) Tenderers must clearly identify in their Tender Response whether or not they have any actual, perceived or potential conflict in responding to this Invitation to Tender, and if so, the manner in which they intend to deal with that conflict.
- (b) If, at any time, an actual or potential conflict of interest arises for any Tenderer, that Tenderer must immediately notify the Principal in writing of that Conflict of Interest.
- (c) If a Tenderer notifies the Principal of an actual or potential conflict of interest, or Principal becomes aware of the existence of an actual or potential conflict of interest, Principal may, in its absolute discretion:
 - i. enter into discussions to seek to resolve such conflict of interest;
 - ii. cease further consideration of and disregard the Tender Response lodged by that Tenderer; and/or
 - iii. take any other action as it considers appropriate.
- (d) Any Tenderer who directly or indirectly canvasses support from an elected member or employee of the Principal will be disqualified and any Tender Response will not be considered.

6. ACCURACY OF INFORMATION

6.1. No Liability for Information Provided

Although the Principal has attempted to provide reliable information in this Invitation to Tender, it gives no warranty as to the accuracy, completeness and sufficiency of any information given to the Tenderer whether verbally or in writing by the Principal, its employees, agents, consultants, advisers or other representatives. The Tender Response submitted by the Tenderer will be deemed for all purposes to have been based upon the Tenderer's own investigations and determinations, and the Principal (and its employees, agents, consultants, advisers or other representatives) accepts no responsibility for the Tenderer relying on the contents of this Invitation to Tender or any other statements made, or information provided, on behalf of the Principal.

6.2. Tenderer to Fully Inform Itself

The Tenderer is required to fully inform itself of all conditions relating to the Specification contained in this Invitation to Tender at its own cost and expense, before submitting its Tender Response.

7. INFORMATION AND OBLIGATIONS OF CONFIDENTIALITY

7.1. Right to Information and Disclosure

- (a) The *Freedom of Information Act 1992* (Cth) (**FOI Act**) provides members of the public with a legally enforceable right to access documents held by government.
- (b) The FOI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.
- (c) Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the FOI Act.
- (d) If disclosure under the FOI Act, or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including personal information, this should be indicated by the Tenderer in its Tender Response. It is not guaranteed that any information provided by the Tenderer will be protected from disclosure under the FOI Act.
- (e) The Tenderer must familiarise itself with the relevant provisions of the FOI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- (f) No responsibility is accepted for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the FOI Act.
- (g) The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any contract details of the name and address of the Contractor, a description of the relevant goods, services or goods and services, the commencement and expiry dates of the contract and the consideration payable by the Principal under the Contract.

7.2. Information Privacy

- (a) The Principal is bound by the provisions of the *Privacy Act 1988* (Cth) (**IP Act**).
- (b) By submitting a Tender Response, the Tenderer warrants that it has obtained the consent of each individual whose personal information (as that expression is defined in the IP Act) is included in the Tender Response for:
 - i. the inclusion of their personal information in the Tender Response; and
 - ii. the use of the personal information by the Principal for the purpose of evaluating and awarding the Tender Response; and
 - iii. the disclosure of the personal information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Invitation to Tender.
- (c) The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty in Clause 10.2(b).
- (d) Any personal information exchanged between the Tenderer and the Principal must be dealt with in accordance with the IP Act.
- (e) The Tenderer must immediately notify the Principal upon becoming aware of any breach of this Clause 10.2.

7.3. Public announcements

Neither the Tenderer nor the Principal will make any public announcements or disclosures as to the Invitation to Tender (except any advertising which the Principal undertakes to advise Tenderers of the Invitation to Tender), the Invitation to Tender process, or otherwise, in relation to the subject matter of any potential Contract, without the prior written consent of the other party (except as required by any applicable law or regulatory requirement).

8. PROPOSED CONTRACT

8.1. Conditions of Contract

The Principal intends to negotiate the terms and conditions of any contractual arrangements for the Specification with any preferred Tenderer on the basis of Invitation to Tender: Section C – Conditions of Contract.

8.2. Tenderers to Review Conditions of Contract

Each Tenderer must review and, as it considers appropriate, obtain independent advice (including legal advice) in relation to the Conditions of Contract.

8.3. Subcontractors, Licensees and Partners

- (a) Tenderers must provide details of all subcontractors, licensees and partners proposed to be utilised in the delivery of the Specification (refer Tender Response Schedules).
- (b) Tenderers remain fully responsible for the performance and delivery of any subcontracted or licensed works, and must ensure that the obligations under the awarded Contract are reflected in any engagement of subcontractors and licensees.

9. COSTS

The Principal is not and will not be responsible for any costs (whether direct or indirect) incurred by a Tenderer in preparing, submitting or participating in the Invitation to Tender or otherwise responding to the Invitation to Tender (including attending or providing demonstrations or site visits) or in any subsequent discussions or negotiations.

Section B – Specification

1. PURPOSE

The Principal is inviting Tender Responses from suitably qualified organisations to perform the removal and crushing of rock from Young's Quarry, Norfolk Island, in accordance with this Specification.

2. NORFOLK ISLAND

Norfolk Island is an external territory of Australia located in the Pacific Ocean between New Zealand and New Caledonia, 1,412 kilometres directly east of Australia's Evans Head (NSW) and about 900 kilometres from Lord Howe Island. Together with the neighbouring Phillip Island and Nepean Island, the three islands collectively form the Territory of Norfolk Island.

Norfolk Island is about 8km long and 5km wide and has a population of 2,100 people. Since the mid-1960s the major economic activity of Norfolk Island has been tourism and about 30,000 tourists visit the island annually.

It is often defined by its soaring pine trees and jagged cliffs, however, the island also boasts stunning sandy beaches such as Emily and Slaughter Bays with their reef-protected waters, and surf beaches, such as Bumbora and Anson Bays. The Norfolk Island National Park offers a range of walking tracks from relatively easy to more demanding routes, with stunning vistas and views over palm forests from Mt Pitt and Mt Bates.

3. NORFOLK ISLAND REGIONAL COUNCIL

Norfolk Island Regional Council is the local government body of Norfolk Island which runs the usual local government services for the island community. The Council operates under *the Local Government Act 1993* (NSW) (NI) and is regulated by The Commonwealth Department of infrastructure.

The Council is responsible for rates, roads, waste management, airport operations, telecommunications, electricity supply, liquor bond, water and wastewater; and various Commonwealth Services under a Service Delivery Agreement.

4. SERVICES REQUIREMENTS

- (a) The Principal is seeking to appoint a Contractor to remove and crush approximately 13,000 tonnes of rock won from the most recent shot at Young's Quarry, Norfolk Island.
- (b) The size of crushing is to meet the Principal's requirements and the Commonwealth's requirements as follows.
 - (i) Principal's requirements:
 - 14mm – 1,500 tonnes
 - 10mm – 3,000 tonnes
 - 7mm – 3,000 tonnes
 - Road Base – 1,500 tonnes

To be recovered, loaded, transported to crushing plant, crushed, and deposited at the Drill Ground.

- (ii) Commonwealths' requirements:
 - Primary Armour Rock –approximately 3,300 t
 - Secondary Armour Rock (top-up of existing) – approximately 700 t
 - Core Rock – approximately 300 t

With armour rock sizing and grading as follows:

Type	MEDIAN MASS M50 (tonnes)	MASS GRADING (tonnes)	APPROX DIAMETER(a) (m)
Primary Armour	1.49	1.11 to 1.90	0.86 to 1.03
Secondary Armour	0.15	0.11 to 0.19	0.39 to 0.48
Core	-	-	0.1 to 0.39

To be recovered and set aside at a safe and suitable site at Young's Quarry, from where the rock will be loaded and transported to Kingston by others.

- (iii) Further details of the Commonwealth's requirements are provided in Attachment 4 – Rock Revetment Technical Specification.
- (c) Hours of operation are to be in accordance with the DA and as directed to account for monthly shipping schedule, approximately one ship each month taking two days for each ship.
- (d) The weighbridge at Cascade shall be used by the Contractor.
- (e) It is anticipated that the work will take around eight weeks to complete.
- (f) A Safe Work Method Statement (SWMS) and further background information of the required Services are provided as attachments to the Specification.
- (g) Attachments to the Specification (which also form part of the Specification) are:
 - (i) Attachment 1 – Extraction Safe Work Method (PDF)
 - (ii) Attachment 2 – Extraction Safe Work Method (Word)
 - (iv) Attachment 3 – Technical Memorandum
 - (v) Attachment 4 – Rock Revetment Technical Specification

5. WORK, HEALTH AND SAFETY

5.1 Legislative compliance

The Contractor must comply with and ensure that its employees, subcontractors and agents comply with any acts, regulations, local laws and by-laws, codes of practice, Australian Standards and the Principal's Work Health and Safety (WHS) policy and procedures which are in any way applicable to this Specification or the performance of the services under this Contract.

Note: this provision simply recites obligations that are independently imposed upon the party by force of law, particularly the operation of the relevant general duties provisions of the governing WHS statute.

If the Contractor believes it may or may have been in breach during the term of the Contract, it will inform the Principal representative immediately.

If the Contractor does not make the Principal aware of any breach, the Principal reserves the right to terminate the Contract.

5.2 Contractor PPE

The Contractor and their employees and subcontractors are required to wear the appropriate PPE in accordance with the relevant Australian Standards and Codes of Practice. The Contractor must provide their employees with the appropriate PPE, maintained to the Australian Standards to undertake the Contract works safely and ensure they are trained in their correct use.

All Contractors (including subcontractors) and their personnel who present themselves for duty must ensure they wear the correct PPE.

Where hazards are identified on the worksite, the Contractor must implement corrective controls and inform employees and subcontractors of the hazards ensuring they are equipped with the correct PPE. The Contractor has the right (and responsibility) to instruct people to stop work until suitably protected before work can commence again. Principal's responsible officers will monitor worksites for compliance.

5.3 Contractors' Work Health and Safety Management Plan

Prior to commencing the works under the Contract, the Contractor is required to submit to the Principal a project specific Work Health and Safety Management Plan (WHSMP) before beginning the contracted work. The Principal, or its representative, shall review the plan and formal approval to commence the work shall be provided subject to acceptance of this plan.

The WHSMP should outline how the Contractor will manage Work Health and Safety factors for the term of the Contract. The WHSMP must cover specific WHS issues relevant to the contracted work and document the systems and methods that will be used to effectively manage the risks.

A Contractor's WHSMP should contain the following elements:

- A description of the Contract;
- A WHS structure and system for the work to be performed under the Contract;
- Induction and safety training procedures for the Contractor's employees;
- Safe work practices and procedures for the work to be performed under the Contract;
- A risk assessment for the work to be performed under the Contract;
- A workplace inspection schedule for the duration of the Contract;
- WHS consultative processes to be followed for the duration of the Contract;
- Emergency procedures to be followed during the Contract period;
- Incident recording and investigation procedures to be in place during the Contract period; and
- Health and safety performance monitoring arrangements to be implemented during the Contract.

5.4 Work Health and Safety Procedures

In the event of a Contractor not having sufficient policies and procedures in relation to Work Health and Safety, the Contractor may be requested to adopt the Principal's relevant policies, procedures and guidelines relating to WHS.

5.5 Contractors' Risk Assessment

The Contractor shall prepare and submit a risk assessment prior to commencing the works under the Contract.

The risk assessment form shall be used to record the risk assessment and risk control methods to be employed by the Contractor. The completed risk assessment shall be submitted to Principal for review and approval prior to commencement of works under the Contract.

5.6 Safe Work Method Statements ('SWMS')

The Contractor must provide the Principal with a copy of SWMS for all high risk construction activities associated with the Contract. SWMS should be derived from the risk assessments undertaken (Refer to Clause 5.5). The Contractor is required to comply with all relevant areas of the governing WHS act and regulations and associated Workcover guidelines and/or documentation in providing Principal with SWMS for all high risk construction activities of the Contract works. Prior to the commencement of any Contract works, the Principal (or the Principal's representative) must be satisfied that all functions undertaken by the Contractor are covered by an appropriate SWMS and it is the Contractor's responsibility to ensure that the Principal approves their SWMS.

Attachment 1 – Extraction Safe Work Method (PDF), Attachment 2 – Extraction Safe Work Method (Word), Attachment 3 – Technical Memorandum, and Attachment 4 – Rock Revetment Technical Specification are provided as part of the Specification and can assist in the development of a SWMS.

5.7 Traffic Management Plan

The Contractor must provide the Principal a Traffic Management Plan for the Services. The completed Traffic Management Plan shall be submitted to Principal for review and approval prior to commencement of works under the Contract.

5.8 Plant Specific Risk Assessment

Where the Contractor supplies equipment, machinery, vehicles or tools in the course of performing the work, it is the responsibility of the Contractor to ensure that all such equipment complies fully with all relevant statutory requirements, Codes of Practice and Australian Standards. The Contractor must also maintain all such equipment to the appropriate standard for the duration of the Contract period and ensure operators are appropriately licensed and competent to operate.

The Contractor is required to ensure plant is safe for use and that a plant risk assessment is available that identifies hazards, controls and how to maintain these effectively. The Contractor is required to meet the legislative requirements through making available a documented risk assessment confirming that the plant items proposed to be utilised on the Principal's worksites have been assessed against relevant legislation and Australian Standards.

5.9 Plant and Equipment Inspections

The Contractor must keep a register of all plant and equipment inspections carried out and any alterations or repairs undertaken in accordance with WHS legislation whilst undertaking the Contract works.

5.10 Hazard Identification

During risk assessments the Contractor must identify hazards associated with all tasks to be undertaken and continually undertake risk assessments for the duration of the Contract.

The following is a guide of hazards that may be identified:

- Physical hazards: noise, manual handling and working from heights;
- Chemical hazards: possible inhalation, skin contact and ingestion;
- Electrical hazards: underground cabling and overhead power lines;
- Biological hazards: handling of waste;
- Psychological hazards: conditions that may lead to stress.

5.11 Hazard Reporting

The Contractor is required to identify and control any hazards that arise during the Contract works. The Contractor must report and communicate all significant hazards that occur whilst undertaking Contract works to the relevant Principal officer immediately.

It is the responsibility of the Contractor to ensure compliance with any relevant Federal and State Acts governing the Contract works. If a hazard presents imminent danger, the Contractor must take appropriate action to eliminate the hazard and report it to the Principal immediately by contacting the appropriate Principal officer overseeing the Contract works.

5.12 Contractor WHS Management System

The Contractor must, when requested by Principal, submit a complete copy of the company's WHS Management System documentation which must include as a minimum requirement:

- WHS policy and objectives;

- Organisational structure and responsibilities;
- Safe work practices and procedures;
- WHS training and induction;
- WHS auditing and inspection procedures;
- WHS consultation procedures; and
- WHS performance monitoring.

5.13 WHS Performance Reporting

The Contractor must, when requested by Principal, provide evidence of ongoing performance of the Contractor's WHS management system. Without limiting the requirements of this obligation, the Contractor shall provide the following information on a monthly basis in the form of a Contractor WHS performance report:

- The number of lost time injuries;
- The working days lost due to injury;
- The current status of any injured personnel, damaged property or environmental damage or pollution;
- The status of the implementation and outcomes of corrective actions undertaken as a result of WHS inspections and risk assessments;
- The status of WHS management system audits undertaken.

The Contractor shall, when requested by the Principal, provide reports on WHS inspections, audits or assessments undertaken during the course of the Contract.

5.14 Incident notification

The Contractor must notify the Principal within 24 hours of any accident, injury, property or environmental damage that occurs during the duration of the Contract. All lost time incidents shall be immediately notified to the Principal.

If the Contractor believes it may or may have been in breach during the term of the Contract, it will inform the Principal representative immediately.

If the Contractor does not make the Principal aware of any breach, the Principal reserves the right to terminate the Contract.

The Contractor must provide a written report of any such incident within three days, giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future. This requirement is in addition to, and independent of, any incident notification duty required by law.

5.15 Skills and Competencies

Where plant, equipment or vehicle operation is required under the Contract works, the Contractor must produce to Principal their original certificates of competency and any relevant licenses. Principal will require a copy of these certificates prior to the work commencing on site.

It is the responsibility of the Contractor onsite to ensure that their employees are supervised, trained, instructed and supplied with the appropriate PPE for the hazards within the worksite and in compliance with Principal requirements.

The Contractor and their employees will be informed of the following procedures that must be discussed during the induction process or toolbox meetings and must be documented:

- Emergency procedures and responses;
- Incident/accident procedures;
- Onsite security;

- Hygiene procedures;
- Workplace hazards;
- Site specific rules.

5.16 Inductions

It is the responsibility of the Contractor to ensure that their employees have undergone the Principal's WHS induction training. The Principal can request the evidence of the training for the Contractor's employees at any time during the Contract term and during random and unannounced inspections.

Contractors are required to ensure their employees have been inducted into the WHS requirements for the site where they will be working. This induction will be documented; stating the employee's name, the site they have been inducted to, and have a copy of the WHS documents.

5.17 Daily Onsite Prestart Meeting/Toolbox Meetings

The Contractor must undertake a daily onsite prestart meeting/toolbox meeting with their employees and subcontractors. The Contractor is required to document the prestart and have a documented site-specific Risk Assessment and induction process.

Site meetings must be undertaken daily as a minimum and when job situations or employees/ subcontractors change. A record of all toolbox meetings must be documented stating the employees who attended the meeting and their signatures indicating attendance and the topics that were discussed.

The Contractor must keep a register of all ongoing workplace/site audits undertaken during the term of the Contract works. This register shall also contain corrective actions undertaken to eliminate or control hazards.

5.18 Electrical

In addition to the relevant WHS act and regulations, the Contractor must comply with the Australian Standards and the Code of Practice for Electrical Practices for Construction Work, where relevant.

The Contractor must ensure all employees are appropriately trained in the use of all electrical equipment they will be using during the Contract term and ensure equipment is inspected by a suitably qualified person. The Contractor must keep a record of the currency of all electrical equipment and ensure this record is kept up to date.

5.19 Hazardous Substances

The Contractor is required to provide a list of hazardous substances that will be utilised throughout the Contract term. The Contractor, as required under WHS legislation, must keep a register of the substances and all relevant Safety Data Sheets ('SDS'). The Contractor must ensure all SDSs are current and ensure hazardous substances are stored in accordance with the SDS. The Contractor is requested to use chemicals with lower hazard levels without compromising the technical requirements of the Contract works.

The Contractor is required to keep and produce, as requested by Principal, records of any chemical applications (e.g. weed spraying).

5.20 Lifting and Height Safety Equipment

Lifting and height safety equipment must be inspected and tagged to regulatory intervals.

The Contractor must keep a register of all lifting and height safety gear (chains, slings, wire rope, shackles and hooks etc). and ensure their employees are trained in the use of all lifting and height safety gear they will be using whilst undertaking Contract works.

The Contractor is to provide Principal with evidence of annual and quarterly inspections of the equipment before commencing the Contract work. Daily inspection checks must also be undertaken prior to works being conducted.

5.21 Subcontractors

The Contractor is responsible for selection of suitably qualified/trained subcontractors, where approved by Principal. The Contractor must ensure:

- That subcontractors have the relevant insurance policies;
- Inductions of subcontractors are completed;
- Supervision of subcontractors;
- Subcontractors work in a safe manner and have adequate health and safety procedures that are equivalent to the Contractor's WHS Management System;
- The subcontractor is inducted in accordance with Principal induction requirements.

The Contractor must be able to provide evidence of the subcontractor being inducted and ensure the subcontractor hold the relevant licenses/tickets for the task.

5.22 Permits

The Contractor must ensure they have the correct permits defined in relevant legislation and codes of practice.

5.23 Fitness for Work

The Contractor must ensure that all their staff and subcontractor who attend any Principal site:

- Do not attend the work site in a manner which may put themselves or anyone else at risk;
- Advise management of any condition or medication which may result in them being unfit for work;
- Do not attending work under the influence of drugs or alcohol;
- Do not driving motor vehicles, or operating plant or machinery while under the influence of drugs, alcohol or medication which may impair their ability to operate a motor vehicle, plant or machinery.

If the Principal operates a random drug testing process at its sites; the Contractor, their employees or subcontractors may be tested at any time during their provision of service.

5.24 Emergency Procedures

The Contractor must provide adequate fire protection and fire extinguishers relevant to the Contract works being undertaken and ensure they are always available at the workplace/site. The Contractor must ensure all firefighting equipment is supplied, maintained and inspected in compliance with AS-1851. The Contractor must keep a register of fire protection equipment available whilst undertaking the Contract works and the Principal has the right to request this information at any time during the term of the Contract.

The Contractor must have emergency procedures in place and ensure their employees and subcontractors are familiar with the procedures. Where the Contractor is working on the Principal's worksite, the Contractor must ensure their employees and subcontractors know the Principal's emergency procedures relevant to that workplace/site.

5.25 Non-Compliance

If during the performance of work under the Contract, the Principal informs the Contractor that it is of the opinion that the Contractor is:

- Not conducting the work in compliance with the WHS Legislation or relevant policies and procedures; or
- Conducting the work in such a way as to endanger the health and safety of the Contractor's employees, Principal employees or the general public,

The Principal may direct the Contractor to remedy the breach of WHS within a set time.

If the Contractor fails to rectify any breaches of workplace health and safety, or if the Contractor's performance has involved recurring breaches of WHS, Principal will notify Workplace Health and Safety Queensland and may request an inspection visit of the workplace or may terminate the work forthwith, depending on the severity of the issue.

Section C – Conditions of Contract

Reference Schedule

ITEM	DESCRIPTION	DETAILS													
[DRAFTING NOTE: REFERENCE SCHEDULE TO BE COMPLETED BEFORE EXECUTION OF CONTRACT AFTER CONTRACTOR DETAILS ARE KNOWN]															
1.	Contractor's Representative (Clause 8) (a) Name: (b) Address: (c) Telephone: (d) Email:	<hr/> <hr/> <hr/> <hr/>													
2.	Principal's Representative (Clause 8) (a) Name: (b) Address: (c) Telephone: (d) Email:	<hr/> <hr/> <hr/> <hr/>													
3.	Primary obligations, warranties and representations (Clause 9) (a) Purpose for which the Services are to be fit (b) Third party warranties required	To perform the removal and crushing of rock from Young's Quarry, Norfolk Island.	[Detail the warranties which the Contractor must obtain from third parties, including what is warranted and the warranty period. If these are described elsewhere, simply refer to that description]												
4.	Key Personnel (Clause 10)			<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Name</th> <th style="width: 30%;">Role</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Name	Role					<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Name</th> <th style="width: 30%;">Role</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Name	Role		
Name	Role														
Name	Role														
5.	Applicable policies, guidelines, procedures and codes of the Principal (Clause 11)	<ul style="list-style-type: none"> (i) Bullying and Harassment in the Workplace Policy (ii) Code of Conduct (iii) Fraud and Corruption Prevention Policy (iv) Gift and Benefits Policy (v) Information Technology Policy (vi) Media Policy Work, Health and Safety Policy (vii) Plastic Bags Norfolk Island Policy (viii) Procurement Policy (ix) Related Parties Disclosure Policy 													

Reference Schedule

ITEM	DESCRIPTION	DETAILS [DRAFTING NOTE: REFERENCE SCHEDULE TO BE COMPLETED BEFORE EXECUTION OF CONTRACT AFTER CONTRACTOR DETAILS ARE KNOWN]
6.	Site (Clause 12) (a) Pre-conditions to access to the Site (b) Site specific requirements	 [List pre-conditions, ensuring that they are objectively verifiable] [Insert any requirements in relation to the Contractor's access to or conduct on the Site]
7.	Time for Meetings (Clause 14)	<i>If nothing stated, as reasonably required by the Principal.</i>
9.	Timing (Clause 16) (a) Working hours (b) Commencement Time (c) Completion Time (d) Program (e) Additional requirements of Completion (f) Additional causes of delay for which extension of time will be granted	 <i>If nothing stated, as reasonably directed by the Principal</i> <hr/> <i>If nothing stated, as reasonably directed by the Principal</i> <hr/> <i>If nothing stated, as reasonably directed by the Principal</i> The Contractor is required to comply with [identify program with which Contractor is to comply] <i>Note// additional requirements of Completion may be described elsewhere in the Contract.</i> <hr/> <i>If nothing stated there are no additional causes of delay</i>
10.	Invoices: (Clause 18) (a) May be submitted on: (b) Should be emailed to: (c) Must be supported by:	 [Insert date on which invoices may be submitted] for [Insert the Services for which payment may be claimed] <i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i> <hr/> [Insert email address to which claims should be sent] <hr/> [Detail the supporting documentation which is required to be submitted with each claim]
11.	Liability (Clause 22)	

Reference Schedule

ITEM	DESCRIPTION	DETAILS
	<p>(a) The Principal's liability is limited to:</p> <p>(b) The Contractor's liability is limited to:</p>	<p>[DRAFTING NOTE: REFERENCE SCHEDULE TO BE COMPLETED BEFORE EXECUTION OF CONTRACT AFTER CONTRACTOR DETAILS ARE KNOWN]</p> <p>If nothing stated, the Principal's liability is limited to the Price.</p> <p>If nothing stated, the Contractor's liability is not limited.</p>
12.	<p>The Contractor must effect the following insurances: (Clause 23)</p>	<p><input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims</p> <p><input type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims</p> <p><input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under this Contract</p> <p><input checked="" type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant</p> <p><input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Contractor's Personnel as required by law</p> <p><i>If not selected, the Contractor is not required to effect the insurance</i></p>
13.	<p>Intellectual Property (Clause 31)</p>	
	<p>(a) Project IP, the alternative applying:</p>	<p><input checked="" type="checkbox"/> Alternative 1 – Project IP vests in the Principal</p> <p><input type="checkbox"/> Alternative 2 – Project IP vests in the Contractor</p> <p><i>If nothing stated, Alternative 1 applies.</i></p>
	<p>(b) Moral Rights consent</p>	<p><input checked="" type="checkbox"/> Moral Rights consent is required</p> <p><input type="checkbox"/> Moral Rights consent is not required</p> <p><i>If nothing selected, a Moral Rights consent is required.</i></p>

General Conditions

Parties:

Norfolk Island Regional Council of 9 New Cascade Road, Norfolk Island
2899.

(Principal)

[Insert Contractor's Name] ACN [Insert ACN] ABN [Insert ABN] of [Insert
Contractor's address].

(Contractor)

Background:

- A. The Contractor has offered to provide the Services to the Principal.
- B. The Parties wish to enter into this Contract to record the terms on which the Contractor will provide the Services to the Principal.

The Parties agree:

1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
- (a) **Affected Party** has the meaning given in clause 28.1;
 - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
 - (d) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract.
 - (e) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Price);
 - (g) **Commencement Time** means the time stated in the Reference Schedule by which the Contractor is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the date of the Contract);
 - (h) **Completion** means the stage at which:
 - (i) each and every part of the Services has been carried out and completed in accordance with the Contract, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the

General Conditions

- Principal from using the Contractor Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;
- (ii) all Contractor Documents have been updated and provided to the Principal in accordance with the Contract; and
 - (iii) other obligations of the Contractor which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;
- (i) **Completion Time** means the time (if any) stated in the Reference Schedule by which the Contractor is required to achieve Completion as extended (if at all) pursuant to the Contract;
- (j) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 30 or are independently developed by the other Party;
- (k) **Contract** means the documents identified in clause 4.1;
- (l) **Discloser and Disclosee** have the meanings given in clause 1.1(j);
- (m) **Exceptional Circumstances** means disclosure:
- (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to who it is necessary to disclose the information;
 - (iv) to any of its Personnel who are bound to keep the information confidential and to who it is necessary to disclose the information;
 - (v) to comply with the law or a requirement of an Authority (including a stock exchange); and
 - (vi) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (vii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority;
 - (viii) to the extent otherwise expressly permitted by the Contract;
- (n) **Force Majeure** means:
- (i) an act of God, earthquake, lightning, cyclone, tsunami, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;

General Conditions

- (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (iv) embargo;
- (v) illness declared by the World Health Organisation to be a pandemic;
- (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Contractor or otherwise caused by or contributed to by the Contractor and which affects an essential portion of the Contractor's obligations under the Contract;
- (vii) which:
 - A. is beyond the immediate or reasonable control of the Affected Party;
 - B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
 - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or Contractor (as the case may be) or the expenditure of a reasonable sum of money;
- (o) **General Conditions** means these general conditions;
- (p) **Good Industry Practice** means those practices, methods, techniques and acts that, as at the date of this Contract are equal or superior to those utilised by other competent suppliers experienced in the provision of services similar to the Services;
- (q) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST. GST does not apply for goods and services on Norfolk Island;
- (r) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (s) **Improper Conduct** means:
 - (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (iv) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or

General Conditions

- (vii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 1993* (NSW) (NI).
- (t) **Insolvency Event** in respect of a Party, means the Party:
 - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (u) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (v) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (w) **NOT USED**;
- (x) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (y) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (z) **Party or Parties** means one or both of the Principal and the Contractor as the context requires;
- (aa) **Payment Period** means the period ending 25 Business Days after receipt by the Principal of the claim;
- (bb) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Contractor;
- (cc) **Price** means the amount payable for the provision of Services as determined in accordance with Schedule 1;
- (dd) **Principal** means Norfolk Island Regional Council;
- (ee) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Contractor pursuant to clause 8.1;
- (ff) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (gg) **Project IP** means the Intellectual Property Rights in the Contractor Documents and all other materials, documents or data created in the performance of the Contractor's obligations under the Contract;
- (hh) **Reference Schedule** means the schedule of that name included in this Contract;

General Conditions

- (ii) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (jj) **Review Period** means the period stated in the Contract in which the performance of the Contractor against a Service Level is to be reviewed;
- (kk) **Service Level** means the service levels (if any) described as such in the Contract;
- (ll) **Services** means the services to be provided or the work to be carried out by the Contractor as described in Schedule 1 and any services or work not specifically mentioned in Schedule 1 but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (mm) **Site** means the site or sites made available by the Principal to the Contractor for the purpose of the Contractor carrying out its obligations under the Contract;
- (nn) **Substantial Breach** includes:
 - (i) a failure to remedy a breach of a warranty given or representation made within 10 Business Days after being given a written notice to do so;
 - (ii) a failure to remedy any breach of an obligation under the Contract within 10 Business Days after being given a written notice to do so;
 - (iii) a breach that is incapable of remedy of an obligation under, or warranty given or representation made in, the Contract; or
 - (iv) a breach of clause 19;
 - (v) the Contractor failing to achieve or exceed:
 - A. the same Service Level for three consecutive Review Periods, even though the Contractor may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
 - B. any two Service Levels for two consecutive Review Periods;
 - (vi) if the defaulting Party is the Contractor, the consistent or repeated breach of the Contract by the Contractor, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (oo) **Contractor** means the person or entity identified as the Contractor in the 'Parties' clause of this Contract;
- (pp) **Contractor Documents** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor (and all information advice, designs, calculations and recommendations in those documents);
- (qq) **Variation** means any material increase, decrease or change to the Services or the Contractor's obligations under the Contract;
- (rr) **WHS** means work, health and safety;
- (ss) **WHS Act** means the Work Health and Safety Act as amended or replaced from time to time;
- (tt) **WHS Regulation** means the Work Health and Safety Regulation as amended or replaced from time to time;

General Conditions

- (uu) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (vv) **Workplace** has the meaning given in the WHS Act and the WHS Regulation

2. INTERPRETATION

- 2.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation.
- 2.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing.
- 2.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 2.4 **(Law)** A reference to 'law' includes all:
 - (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of NSW, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licenses, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,
 - (c) which are applicable to the Contractor or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments.
- 2.5 **(Other references)** A reference to:
 - (a) a person includes any other legal entity and a reference to a legal entity includes a person;
 - (b) a clause is to a clause in the Contract unless expressly stated otherwise;
 - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
 - (d) a monetary amount is a reference to an Australian currency amount.
- 2.6 **(Time)** References to time are to local time on Norfolk Island. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.
- 2.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.
- 2.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

General Conditions

2.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

3. GENERAL PROVISIONS

3.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally;

3.2 **(Governing law)** This Contract is governed by the law of NSW and the law of the Commonwealth of Australia in force on Norfolk Island. The Parties submit to the jurisdiction of the Courts of NSW, relevant Federal Courts and Courts competent to hear appeals from them.

3.3 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

3.4 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.

3.5 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:

- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
- (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.

3.6 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.

3.7 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.

3.8 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Contractor of any other obligation under the Contract, at law or in equity.

3.9 **(Counterparts)** This Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email.

3.10 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Contractor must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.

3.11 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 21, 22, 23.2, 26.5, 29.4, 29.6, 30, 31 and 33 survive the expiration or earlier termination of the Contract.

General Conditions

4. CONTRACT

4.1 **(Documents comprising Contract)** The Contract comprises:

- (a) the Reference Schedule;
- (b) these General Conditions;
- (c) Schedule 1 – Specification and Price; and

4.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Contractor and the Principal (whether oral or in writing).

4.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 4.1, then the documents will take precedence in the order set out in clause 4.1 with the Reference Schedule being the highest in the order.

5. PERFORMANCE AND PAYMENT

5.1 **(Performance)** The Contractor must, at the Contractor's expense, provide the Services and otherwise comply with its other obligations under the Contract in accordance with the Contract.

5.2 **(Payment)** Subject to the Contract, the Principal must pay the Contractor the Price for Services provided in accordance with the Contract.

6. NO EXCLUSIVITY

6.1 The Contractor is not the exclusive Contractor of the Services or of services of the same or a similar type to the Services.

7. NATURE OF RELATIONSHIP

7.1 The Contractor is an independent contractor of the Principal. The Contractor is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Contractor must provide such materials, equipment, knowledge and Personnel as the Contractor deems necessary to comply with its obligations and under the Contract.

8. REPRESENTATIVES

8.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer. No other person is permitted to exercise any right or function of the Principal without the express written consent of the Principal or the Principal's Representative. The Contractor must notify the Principal immediately if it receives a purported direction in connection with the Contract from any person other than the Principal's Representative. The Principal shall not be liable upon any Claim relating to a direction given to the Contractor by any person other than the Principal's Representative.

8.2 **(Contractor's Representative)** The Contractor must nominate an authorised representative for the purpose of managing the Contract and must notify the Principal in writing of the details of the nominated representative. Matters which are in the knowledge of the Contractor's representative are deemed to be within the knowledge of the Contractor. If the Principal reasonably objects to the nominated representative, the Contractor shall nominate another representative.

8.3 **(Change of representative)** Either Party must notify the other in writing of a change in

General Conditions

representative prior to effecting the change. If the Principal reasonably objects to the representative nominated by the Contractor, the Contractor shall nominate another representative.

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

9.1 **(Contractor Warranties)** The Contractor must ensure, and warrants and represents that:

- (a) **(Improper Conduct)** neither the Contractor nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Contractor must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract;
- (b) **(ability)** the Contractor and, to the extent applicable to them, its Personnel:
 - (i) have the experience, skills, expertise, resources and judgement;
 - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,
- (iii) which are required for the Contractor to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Contractor has completed its obligations under the Contract;
- (c) **(investigations)** the Contractor has carefully reviewed the Contract (including the specification and all other information contained or referenced in Schedule 1) and is satisfied that the specification and other information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
- (d) **(workmanship)** where the Services require the carrying out of work, that work shall:
 - (i) be free from defects;
 - (ii) comply in all respects with the Contract and any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the materials and any applicable law;
 - (iii) be fit for the purpose stated in or to be reasonably inferred from the Contract or otherwise made known to the Contractor prior to the date of the Contract,
- (iv) and any design prepared by the Contractor in relation to the work shall be in accordance with the requirements of the Contract;
- (e) **(legal capacity)** the Contractor has the full power, authority and capacity to enter into the Contract and that the Contractor's obligations under the Contract are valid and binding on it, and enforceable against it;
- (f) **(standard)** the Contractor will, and to the extent applicable to them, will ensure that its Personnel:
 - (i) perform the Services and carry out its other obligations in connection with the Contract:
 - A. to the standard of skill, care and diligence expected of a skilled and competent Contractor engaged in the business of providing services or work similar to the Services or to such higher standard as the

General Conditions

Contractor has represented in writing to the Principal in relation to the Contract;

- B. in accordance with Good Industry Practice; and
 - C. in a manner which achieves or exceeds each of the Service Levels in every Review Period; and
- (ii) ensure that any Services provided under the Contract are fit for the purpose or purposes identified in the Reference Schedule;
- (g) **(Contractor Documents)** all Contractor Documents will:
- (i) comply with the requirements of the Contract and applicable law;
 - (ii) be consistent with or exceed applicable industry standards;
 - (iii) be of a standard and quality expected of a skilled and competent Contractor experienced in the preparation of documents similar to the Contractor Documents using Good Industry Practice; and
 - (iv) be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;
- (h) **(intellectual property)** except to the extent that Contractor Documents are prepared strictly in accordance with technical plans or drawings provided to the Contractor by the Principal:
- (i) the Contractor Documents do not; and
 - (ii) the Principal's use of them for a purpose stated in or to be reasonably inferred from the Contract will not,
- (iii) infringe Intellectual Property Rights;
- (i) **(Price)** the rates and prices in the Contract include compliance with all of the Contractor's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise;
- 9.2 **(Notice of breach)** The Contractor must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Contractor has breached a warranty given or representation made in clause 9.1.
- 9.3 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 9.1 remain unaffected notwithstanding:
- (a) that the Specification is prepared by the Principal or the Principal's Personnel;
 - (b) any inspection, test, receipt, review or comment on or of the Services or Contractor Documents by the Principal or the Principal's Personnel;
 - (c) any Variation or other direction by the Principal or the Principal's Personnel; or
 - (d) the adoption or incorporation into the Contractor Documents by the Contractor of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 9.3(c) and 9.3(d) do not apply to the extent that the Contractor has given the Principal prior written notice expressly stating that the Variation, direction,

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adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

- 9.4 **(Third party warranties)** The Contractor shall obtain and provide to the Principal, the warranties required by the Contract. Unless otherwise stated, each warranty shall be in the name of the Principal and the Contractor and commence on Completion.

10. KEY PERSONNEL

- 10.1 **(Provision of Key Personnel)** The Contractor must ensure that only Key Personnel perform the roles identified in the Reference Schedule.
- 10.2 **(Change in Key Personnel)** The Contractor may seek the approval of the Principal to change the role of any Key Personnel or to engage additional persons as Key Personnel. The Contractor must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.

11. CONDUCT OF CONTRACTOR AND PERSONNEL

- 11.1 **(General)** The Contractor must, and must ensure that to the extent applicable to them, its Personnel involved in the performance of the Contractor's obligations under the Contract:
- (a) act professionally and courteously in all dealings with the Principal and the Principal's Personnel and the general public in connection with the Contract;
 - (b) comply with:
 - (i) any law, standards and codes of practice applicable to the Contractor, the Contractor's business or the Contractor's obligations under the Contract;
 - (ii) all directions of the Principal given pursuant to the Contract; and
 - (iii) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Reference Schedule or which are publicly available or otherwise made known to the Contractor from time to time; and
 - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out or to the public generally.
- 11.2 **(NOT USED)**
- 11.3 **(Conflict)** Where there is any conflict between any standard or obligation described in clause 11.1, the Contractor and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by the Principal.
- 11.4 **(Removal)** The Principal may at any time direct the Contractor to remove any of the Contractor's Personnel from the performance of the whole or part of the Contractor's obligations under the Contract if the Principal reasonably believes that the Contractor is in breach of clause 11.1 or a warranty and representation given in clause 9.1(a) or clause 9.1(b) in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Contractor.
- 11.5 **(Industrial relations)** The Contractor remains solely responsible for the management of industrial relations relating to its Personnel. The Contractor must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Contractor to comply with its obligations under the Contract.

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12. SITE

- 12.1 **(Access)** The Principal will endeavour to give the Contractor sufficient, but non-exclusive, access to the Site to carry out the Contractor's obligations under the Contract.
- 12.2 **(Pre-conditions to access)** The Principal may refuse to give such access until the Contractor has given the Principal:
- (a) evidence of insurance required by clause 23.3;
 - (b) any other documents or information which the Contract requires to be given to the Principal before access to the Site shall be given, including those identified in the Reference Schedule.
- 12.3 **(Cooperation with Principal's Personnel)** The Contractor must use all reasonable endeavours to cooperate, communicate and co-ordinate with the Principal's Personnel at the Site. The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Contractor under the Contract is or is to be carried out on the giving of reasonable written notice.
- 12.4 **(Site specific requirements)** The Contractor must comply with the reasonable requirements of the Principal in relation to the Contractor's access to or conduct on the Site, including those identified in the Reference Schedule.

13. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 13.1 **(By the Contractor)** The Contractor may subcontract, assign or novate the whole or any part of its obligations under the Contract but only with the prior written consent of the Principal (which may be given, withheld or given subject to conditions at the absolute discretion of the Principal). Subcontracting of the Contractor's obligations shall not relieve the Contractor from any liability or obligation under the Contract. As between the Principal and the Contractor, the Contractor shall be responsible and liable to the Principal for the acts or omissions of the Contractor's Personnel in connection with the Contract as if they were the acts or omissions of the Contractor.
- 13.2 **(By the Principal)** The Principal may assign or novate the whole or any part of its obligations under the Contract in its absolute discretion and without obtaining the consent of the Contractor.

14. MEETINGS

- 14.1 The Contractor must, at the times stated in the Reference Schedule and when otherwise reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract.

15. CONTRACTOR DOCUMENTS

- 15.1 **(Provision of copies)** The Contractor must create and provide the Principal with copies of the Contractor Documents at the times required by the Contract, or where no time is stated, promptly whenever requested by the Principal.
- 15.2 **(Updated Contractor Documents)** Where directed by the Principal to do so, as a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 29 is given), the Contractor must provide the Principal with a complete updated copy of the Contractor Documents.

16. TIMING

- 16.1 **(Timing)** Subject to clause 16.2, the Contractor must commence performing its obligations under the Contract by the Commencement Time and must perform those obligations:

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- (a) within any working hours described in the Reference Schedule and/or elsewhere in the Contract;
 - (b) with due expedition and without delay;
 - (c) in accordance with any requirements of the Contract and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program included in the Contract or agreed between the Parties);
 - (d) so that all Services reach Completion by the applicable Completion Time.
- 16.2 **(Delay)** The Contractor must promptly notify the Principal if the Contractor is or will be delayed in providing the Services. Where the Contractor is delayed in reaching Completion by the Completion Time because of an act or omission of the Principal or the Principal's Personnel or any other cause of delay identified in the Reference Schedule or elsewhere in the Contract as entitling the Contractor to an extension of the Completion Time, the Principal shall grant a reasonable extension of the Completion Time. The Principal may grant an extension of the Completion Time for delay caused by any other cause of delay.
- 16.3 **(Prevention and Mitigation)** The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 16.4 **(No monetary compensation)** The Contractor shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Contractor's obligations under the Contract however caused.

17. VARIATIONS

- 17.1 **(Direction for Variation)** The Principal may at any time and for any reason direct a Variation by giving written notice to the Contractor but cannot direct a Variation which is outside the general scope of the Contract. The Contractor cannot carry out a Variation without a written direction to do so from the Principal.
- 17.2 **(Adjustment of Price)** The Price shall be adjusted for each Variation directed by the Principal in accordance with clause 17.1 by the amount agreed by the Parties or failing agreement by a reasonable amount determined by the Principal. The Contractor shall not otherwise be entitled to any payment in connection with a Variation.
- 17.3 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Services then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Contractor shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

18. INVOICES

- 18.1 **(Submission of invoices)** Subject to clause 18.8, the Contractor may submit invoices to the Principal for Services provided in accordance with the Contract at the times and for the Services stated in the Reference Schedule. The invoice must comply with the GST Law and be accompanied by any documentation which the Reference Schedule requires to be provided with an invoice or which the Principal reasonably directs prior to the time for submission of the invoice. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days after Completion.
- 18.2 **(Amount due)** The Principal may deduct any amount due and owing by the Contractor to the Principal and any amount which the Principal reasonably claims is or will become due and owing by the Contractor to the Principal (whether under the Contract or otherwise) from any amount claimed by the Contractor under or in connection with the Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by the Principal to the Contractor or by the Contractor to the Principal as the case may be.

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- 18.3 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Contractor (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Contractor to the Principal, the Contractor must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 18.4 **(No admission)** Payments made by the Principal to the Contractor are made on account only and do not constitute an admission that the Contractor is entitled to the payment made or that the Services and/or Contractor Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 18.5 **(Sole entitlement)** Payment of the Price shall be the Contractor's only entitlement to monetary compensation for the provision of the Services and compliance with the Contractor's other obligations under the Contract.
- 18.6 **(Final invoice)** Where directed to do so by the Principal, as a pre-condition to entitlement to payment of its final invoice, the Contractor must provide to the Principal a statutory declaration dated after all Services and Contractor Documents have been provided.
- 18.7 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST.
- 18.8 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Contractor not to issue tax invoices or adjustment notes in respect of the same supplies.

19. WORK HEALTH AND SAFETY

- 19.1 **(Relationship of obligations)** The obligations in this clause 19 are in addition to, and not in substitution for any other obligation of the Contractor:

- (a) under the WHS Act and WHS Regulation; or
- (b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause 19 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Contractor's obligations under this clause 19.

- 19.2 **(Primary obligations of Contractor and Personnel)** The Contractor must itself, and must ensure that its Personnel engaged in performing the Contractor's obligations under the Contract:

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Contractor's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal considers the Contractor cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;

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- (e) except where the Contractor is the principal contractor for a Site under the WHS Regulation, (in which case this subclause 19.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures of the Principal which are in any way applicable to this Contract for that Site.

19.3 **(Incident notification)** The Contractor must:

- (a) promptly (and no more than 12 hours after the occurrence) notify the Principal of any accident, injury, property or environmental damage, which occurs during the carrying out of an obligation of the Contractor under the Contract;
- (b) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation; and
- (c) immediately notify the Principal of any lost time incident and within 3 Business Days of any such incident provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future.

19.4 **(Contractor's WHS systems and documentation)** The Contractor:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (b) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and submit to the Principal for review the WHS documentation that the Principal directs it to prepare within the time directed by the Principal and must ensure that such documentation:
 - (i) addresses all the specific WHS hazards, issues relevant to the Contractor's obligations under the Contract which can be reasonably anticipated or ascertained at that time;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,and if the Principal notifies the Contractor that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;
- (d) must, if the Principal at any time during the performance of the Contractor's obligations under the Contract requests the Contractor to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:
 - (i) submit revised documentation to the Principal; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Contractor's obligations under the Contract;
- (e) is not entitled to make any Claim (whether for additional costs or expense or extension to the Completion Time) in connection with its obligations under this clause.

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- 19.5 **(Site specific induction for construction sites)** If any Site is a construction site, then the Contractor must ensure that all Personnel of the Contractor working on that construction site receive a site-specific induction and that each person visiting the Contractor or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction

20. PROTECTION OF PROPERTY AND THE ENVIRONMENT

- 20.1 **(General)** The Contractor must:

- (a) perform its obligations under the Contract and ensure that its Personnel perform their part of those obligations safely and in a manner that will prevent pollution, contamination or damage to property; and
- (b) take all measures necessary to protect property in the performance of its obligations under the Contract.

- 20.2 **(Rectification of damage)** The Contractor must promptly rectify:

- (a) any damage to any property which is caused by the Contractor in connection with the performance of its obligations under the Contract;
- (b) any damage to any property, which occurs whilst the Contractor is responsible for its care (whether or not due to any act or omission of the Contractor).
- (c) The Contractor shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the damage and/or the Principal failed to act reasonably to mitigate the damage.

- 20.3 **(Urgent action)** If urgent action is necessary to protect persons, property or the environment in connection with the performance of the Contractor's obligations under the Contract, and the Contractor has not taken that action, the Principal may take such action itself or have it undertaken by others without prior notice to the Contractor. The cost incurred by the Principal in doing so shall be a debt due and owing by the Contractor to the Principal and may be deducted from any payments otherwise owing to the Contractor.

21. INDEMNITY

- 21.1 **(Indemnity)** To the extent permitted by law, the Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel against:

- (a) loss of or damage to property of the Principal;
- (b) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
- (c) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal in connection with:
 - (i) a breach of the Contractor's obligations under clauses 19, 20.1 or 30.5;
 - (ii) the Contractor's failure to satisfy a law as required by the Contract;
 - (iii) any breach by the Contractor of its obligations under any law; and/or
 - (iv) any enforcement of obligations imposed on the Contractor under any law,

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- 21.2 arising out of or in connection with the performance of the Contractor's obligations under the Contract, but the indemnity will be reduced to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.
- 21.3 **(Acceptance of benefit)** The Principal has informed its Personnel and communicates acceptance on behalf of its Personnel, of the Contractor's undertaking to indemnify under clause 21.1.

22. LIMITATION OF LIABILITY

- 22.1 **(Limit of liability)** To the extent permitted by law, the aggregate liability of each Party to the other in respect of any Claim will not exceed the amount specified in the Reference Schedule. Where no limits of liability are stated in the Reference Schedule, the liability of the Principal shall be limited to the Price and the liability of the Contractor shall not be limited.
- 22.2 **(Consequential loss)** To the extent permitted by law, neither Party, shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business unless, and then only to the extent, that the Contract expressly provides for that liability.
- 22.3 **(Exceptions)** Clauses 22.1 and 22.2 do not apply to:
- (a) liability of the Principal to pay the Price;
 - (b) liability of either Party in connection with personal injury, or death or damage to property;
 - (c) liability of either Party arising under an indemnity given under the Contract or as a result of an infringement of confidentiality or Intellectual Property Rights, a deliberate breach or abandonment of the Contract, Wilful Misconduct, gross negligence or fraud or other criminal conduct;
 - (d) liability of either Party to the extent that the Party is entitled to be indemnified under a policy of insurance required to be effected under the Contract or would have been so entitled if this clause 22 did not form part of the Contract, the Party had effected and maintained the insurance policy in accordance with the Contract, complied with its obligations under the Contract, lodged and diligently pursued a claim under the policy and complied with the terms of, and any other obligation or duty in connection with, the policy and the insurer had remained solvent;
 - (e) liability of either Party incurred because of a breach of any law by the other Party;
 - (f) liability of the Contractor to the extent that the Contractor is entitled to recover that liability from any other third party (including any subcontractor, consultant or supplier of the Contractor) or would have been entitled to recover that liability but for any act or omission of the Contractor,
 - (g) and amounts referred to in subclauses (a), (b), (c), (d), (e) and (f) shall not be included in calculating whether the limit of liability of a Party in clause 22.1 has been reached.

23. INSURANCE

- 23.1 **(Insurances to be effected and maintained)** The Contractor must effect the insurances stated in the Reference Schedule and any other insurance which the Contractor considers is necessary to protect its interests. Where the Reference Schedule does not provide for the insurances to be effected then the Contractor must effect the following insurance policies on terms and with an insurer reasonably acceptable to the Principal:

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- (a) public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims;
 - (b) professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims;
 - (c) third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under the Contract;
 - (d) plant and equipment insurance for each item of plant for the full replacement value of the plant; and
 - (e) workers' compensation insurance in respect of the Contractor's Personnel as required by law.
- 23.2 **(Period of insurance)** The insurance policies required under clause 23.1 must be maintained at all times from the date on which the Contractor commences the performance of its obligations under the Contract until Completion (and, in respect of professional indemnity insurance only, for a period of 7 years after Completion).
- 23.3 **(Evidence of insurance)** If requested by the Principal, the Contractor must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal. The Principal may suspend the Contract or withhold payment from the Contractor until such evidence is provided.
- 23.4 **(No implied limitation)** Nothing in this clause, nor the Contractor's compliance or non-compliance with it, shall be taken to limit or reduce the Contractor's liability under the Contract or at law.
- 23.5 **(Notification)** The Contractor must immediately notify the Principal's Representative if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected.

24. SERVICE LEVELS

- 24.1 **(Guarantee)** The Contractor must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels.
- 24.2 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.

25. INSPECTIONS AND TESTS

- 25.1 **(Right to inspect and test)** The Principal's Representative shall be entitled to inspect and test all Services and Contractor Documents provided to ensure that the Services and the Contractor Documents comply with the Contract, including all warranties given and representations made by the Contractor in the Contract. Inspections or tests carried out by the Principal or on behalf of the Principal shall not relieve the Contractor of any obligation or liability under the Contract nor limit or waive any right of the Principal.
- 25.2 **(Cost)** If an inspection or test undertaken by the Principal reveals a failure by the Contractor to comply with the Contract, then the costs reasonably incurred by the Principal in undertaking the inspection or test shall be a debt due and payable by the Contractor to the Principal.

26. NON-CONFORMANCE

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- 26.1 **(Non-conforming Services or Contractor Documents)** Where:
- (a) any of part of the Services or Contractor Documents provided by the Contractor does not conform strictly to the requirements of the Contract (including where the Contractor has failed to achieve any Service Level); or
 - (b) the Contractor fails to comply with any other obligation of the Contractor under the Contract,
 - (i) the Principal may, in addition to or as an alternative to exercising its rights under clause 29, exercise the rights provided in clause 26.2.
- 26.2 **(Principal's rights in respect of non-conformance or failure)** Where permitted by clause 26.1, the Principal may:
- (a) direct the Contractor to provide a detailed proposal as to how the Contractor proposes to rectify the non-conformance and the time within which such a proposal is to be provided;
 - (b) whether or not the Principal has given a direction under clause 26.2(a), direct the Contractor to:
 - (i) rectify the non-conformance or failure (including by performing or reperforming, removing, demolishing, repairing, replacing or reconstructing any non-conforming Services or replacing non-conforming Contractor Documents) at the Contractor's expense and within the timeframes reasonably directed by the Principal; and
 - (ii) make good any damage to any property or work to the extent caused by the non-conformance or the rectification,

at the Contractor's expense and within the timeframes reasonably directed by the Principal;
 - (c) accept the non-conformance or failure, in which case the Price will be adjusted as if the Principal had directed a Variation for the non-conformance or failure; or
 - (d) where it is impractical to give the Contractor a direction pursuant to clause 26.2(b), take any of the steps contemplated by that clause itself, in which case the costs reasonably incurred by the Principal in doing so shall be a debt due and owing by the Contractor to the Principal.
- 26.3 **(Step-in rights)** If the Contractor fails to comply with a direction under clause 26.2, then the Principal may after giving at least 5 Business Days written notice to the Contractor (except in the case of emergency, in which case no notice is required) carry out that other obligation itself or have it carried out by others.
- 26.4 **(Costs)** The cost incurred by the Principal in connection with any action taken, or purportedly taken, pursuant to clause 26.2 or 26.3 so shall be a debt due and owing by the Contractor to the Principal.
- 26.5 **(Timing)** A direction under clause 26.2 may be given at any time up to 12 months after Completion.
- 26.6 **(Application of clause)** For clarity, this clause 26 shall apply to all Services and Contractor Documents provided or to be provided, under the Contract, including Services and Contractor Documents provided in compliance with a direction under clause 26.2(b).

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27. SUSPENSION

- 27.1 **(Right to suspend)** The Principal may direct the Contractor to suspend the performance of the whole or part of the Contractor's obligations under the Contract at any time and for any reason and may direct the Contractor to recommence performing those obligations by giving notice in writing to the Contractor. The Contractor must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.
- 27.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Contractor or its Personnel (including a breach of the Contract by the Contractor) then the Contractor shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Contractor demonstrates it has reasonably, necessarily and not prematurely incurred by the Contractor by reason of the suspension and which the Contractor demonstrates it cannot reasonably mitigate.

28. FORCE MAJEURE

- 28.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 28.2 **(Suspension)** On the giving of a notice under clause 28.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 28.3 **(Removal of Force Majeure)** The Affected Party shall use all reasonable diligence to remedy or remove such Force Majeure as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 28.4 **(Industrial relations)** Clause 28.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 28.5 **(Principal's rights)** Where the Contractor gives a notice under clause 28.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Contractor is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Contractor is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;
 - (b) take such other action as the Principal, acting reasonably, considers appropriate.
 - (c) The cost incurred by the Principal in exercising these rights shall be borne by the Principal.
- 28.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Contractor.

29. TERMINATION AND DEFAULT

- 29.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Contractor.
- 29.2 **(Default by Contractor)** Where the Contractor has committed a Substantial Breach or is

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subject to an Insolvency Event, the Principal may by giving written notice to the Contractor immediately:

- (a) take out of the Contractor's hands the whole or part of the Contractor's obligations remaining to be completed pursuant to the Contract and suspend payment to the Contractor under the Contract until it becomes due and payable under clause 29.5; or
- (b) to the extent permitted by law, terminate the Contract.
- (c) The Principal may itself perform, or may engage others to perform, any obligations of the Contractor taken out of the hands of the Contractor or which remain unperformed at the time of termination.

29.3 **(Default by Principal)** Where the Principal has committed a Substantial Breach, the Contractor may suspend the performance of its obligations under the Contract by giving written notice to this effect to the Principal. If the default has not been remedied within 20 Business Days after the notice of suspension is given to the Principal, the Contractor may terminate the Contract by giving written notice to this effect.

29.4 **(Payment on Termination)** If the Contract is terminated by either Party the Principal shall, subject to the Contract and its other rights at law, pay the Contractor:

- (a) the amount which the Contractor is entitled to be paid under the Contract for Services provided up to and including the date of termination; and
- (b) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Contractor, the amount of any other direct costs which the Contractor demonstrates it has reasonably, necessarily and not prematurely incurred prior to the termination in the expectation of completing its obligations under the Contract, and which the Contractor demonstrates it cannot reasonably mitigate,
- (c) except that the total amount payable to the Contractor under the Contract shall not under any circumstances exceed the amount to which the Contractor would have become entitled to be paid had the Contract not been terminated.

29.5 **(Payment on take out)** On completion of the obligations of the Contractor which have been taken out of the hands of the Contractor, the Principal shall determine the cost incurred in completing those obligations and the amount which would have been paid to the Contractor had the Contractor completed those obligations (including any payment suspended under clause 29.2(a) and the difference shall be a debt due and payable by the Contractor to the Principal or by the Principal to the Contractor as the case may be.

29.6 **(No other compensation)** Except to the extent expressly provided in this clause 29, the Contractor shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Principal taking obligations out of the hands of the Contractor pursuant to this clause 29.

30. HANDLING OF INFORMATION

30.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to, or use, by any other person, firm or company of the Confidential Information.

30.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 30.1, that Party must immediately notify the other Party and take reasonable steps required to prevent or stop the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

General Conditions

- 30.3 **(Return of Confidential Information)** The Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser, subject to any record keeping requirements at law.
- 30.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 30.
- 30.5 **(Information Privacy Act)** If the Contractor collects or has access to 'Personal Information' as that term is defined in the Information Privacy Act in order to carry out its obligations under the Contract, the Contractor must 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. Personal information collected by the Principal in connection with the Contract is collected for the purposes of enabling the Principal to properly discharge its functions as a local government authority and may be accessible by and disclosed to Personnel engaged to assist the Principal in doing so. Personal information will otherwise be dealt in accordance with the Principal's privacy policy. The Principal is authorised to collect personal information in accordance with the *Local Government Act 2003* (NSW) (NI), the *Local Government (General) Regulation 2005* (NSW) (NI) and related legislation.
- 30.6 **(Media)** The Contractor must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, in connection with the Contract in any media without the prior approval of the Principal.

31. INTELLECTUAL PROPERTY

- 31.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Contractor a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Contractor's obligations under the Contract and for no other purpose. The Contractor grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Contractor's Background IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 31.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that Project IP vests in the Principal, then:
- (a) Project IP vests on creation in and is the exclusive property of the Principal;
 - (b) to the extent (if any) that clause 31.2(a) does not vest Project IP in the Principal, the Contractor assigns all right, title and interest in the Project IP to the Principal; and
 - (c) the Principal grants the Contractor a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Contractor to comply with the Contractor's obligations under the Contract and for no other purpose.
- 31.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the Contractor, Project IP vests in the Contractor on creation and the Contractor grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.

General Conditions

- 31.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Contractor or any of its Personnel in the Background IP or the Project IP; and
 - (b) the Contractor must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Contractor Documents.
- 31.5 **(Warranty and representation by Contractor)** The Contractor warrants and represents that:
- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Services, or to assign or license the Contractor's Background IP and Project IP in accordance with this clause 31;
 - (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
 - (c) except to the extent that the infringement is caused by the Contractor's incorporation of the Principal's Background IP, the Project IP will not infringe the Intellectual Property Rights of a third party.
- 31.6 **(Indemnity)** Each Party indemnifies the other in respect of breach of a warranty given or representation made in this clause 31.

32. DISPUTE RESOLUTION

- 32.1 **(Initial conference)** If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.
- 32.2 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the NSW Law Society or his nominee at the request of a Party.
- 32.3 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.
- 32.4 **(Urgent relief)** This clause 32 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

33. CLAIMS

- 33.1 The Principal shall not be liable upon any Claim by the Contractor for monetary compensation (other than for the Price) in connection with the Contract unless the Contractor has given the Principal written notice of its intention to make the Claim within 25 Business Days after the direction or other event on which the Claim is based was given or occurred.

EXECUTION

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of
Norfolk Island Regional Council in
accordance with the Council's
local laws and in the presence of:

.....
Signature of witness

.....
Name of witness (block letters)

Date: / /

)
)
)
)
) Chief Executive Officer
)
) Date: / /
)
)
)

EXECUTION BY THE CONTRACTOR (PURSUANT TO THE CORPORATIONS ACT)

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

.....
Signature of witness

.....
Name of witness (block letters)

Date: / /

)
)
)
)
) Director
)
)
) Director/Secretary
)
) Date: / /
)

EXECUTION BY CONTRACTOR (OTHER THAN PURSUANT TO THE CORPORATIONS ACT)

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

.....)

.....)

.....)

Signature of witness)

.....)

Name of witness (block letters))

Date: / /)

.....)
Signature

.....)

Name of authorised representative

Date: / /)

SCHEDULE 1 – SPECIFICATION AND PRICE

DRAFTING NOTE: [Insert the Specification and Price into the Execution copy of the Contract]