



CONTRACT (GOODS AND SERVICES)

[INSERT CONTRACT/PROJECT NAME]

CONTRACT NO: [INSERT CONTRACT NUMBER]

Project Details

Purchaser:			
Project Name:			
Address of Project:			
Project Manager:		Mobile:	
Project Engineer:		Mobile:	
Site Supervisor:		Mobile:	

ITEM	DESCRIPTION	DETAILS [DRAFTING NOTE: WHERE AN ITEM IS NOT RELEVANT TO A PARTICULAR ENGAGEMENT, INSERT 'NOT APPLICABLE'. WHERE AN ITEM CAN ONLY BE COMPLETED AFTER A QUOTATION OR TENDER IS ACCEPTED, INSERT 'TO BE CONFIRMED'.]
1.	Supplier's Representative (Clause 6) (a) Name: (b) Address: (c) Telephone: (d) Email:	
2.	Purchaser's Representative (Clause 5) (a) Name: (b) Address: (c) Telephone: (d) Email:	
3.	Primary obligations, warranties and representations (Clause 7) (a) Warranty Period (Goods) (b) Third party warranties required	[Insert period of warranty to be given by the Supplier to the Purchaser] after the date on which the Goods are Delivered. [Detail the warranties which the Supplier must obtain from third parties, including what is warranted and the warranty period. If these are described elsewhere, simply refer to that description]
4.	Applicable policies, guidelines, procedures and codes of the Purchaser (Clause 8)	[List and provide a link to or copies of the documents]
5.	Site (Clause 9) (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 Supplier's access to or conduct on the Site]
6.	Time for Meetings (Clause 11)	<i>If nothing stated, as reasonably required by the Purchaser.</i>
9.	Delivery Details (Goods) (Clause 12)	[Insert Delivery Place(s), Delivery Time(s) and other requirements of delivery for Goods or include in Schedule 1] <i>If nothing stated, as reasonably directed by the Purchaser.</i>
10.	Timing (Clause 14) (a) Working hours (b) Commencement Time (Services Only) (c) Completion Time (Services Only) (d) Program	<i>If nothing stated, as reasonably directed by the Purchaser.</i> <i>If nothing stated, as reasonably directed by the Purchaser.</i> <i>If nothing stated, as reasonably directed by the Purchaser.</i> The Supplier is required to comply with [identify program with which Supplier is to comply]

Reference Schedule

ITEM	DESCRIPTION	DETAILS
<p>[DRAFTING NOTE: WHERE AN ITEM IS NOT RELEVANT TO A PARTICULAR ENGAGEMENT, INSERT 'NOT APPLICABLE'. WHERE AN ITEM CAN ONLY BE COMPLETED AFTER A QUOTATION OR TENDER IS ACCEPTED, INSERT 'TO BE CONFIRMED'.]</p>		
	<p>(e) Additional requirements of Completion</p> <p>(f) Additional causes of delay for which extension of time will be granted</p> <p>(g) Liquidated Damages</p>	<p><i>Note// additional requirements of Completion may be described elsewhere in the Contract.</i></p> <hr/> <p><i>If nothing stated there are no additional causes of delay.</i></p> <hr/> <p>per calendar day</p> <p><i>If nothing stated there are no liquidated damages.</i></p>
11.	<p>Invoices: (Clause 16)</p> <p>(a) May be submitted on:</p> <p>(b) Should be emailed to:</p> <p>(c) Must be supported by:</p>	<p>[Insert date on which invoices may be submitted] for [Insert the Goods and/or Services for which payment may be claimed]</p> <p><i>If nothing stated, on the 25th day of each month for Goods and Services provided up to the 25th of that month.</i></p> <hr/> <p>[Insert email address to which claims should be sent]</p> <hr/> <p>[Detail the supporting documentation which is required to be submitted with each claim]</p>
12.	<p>Liability (Clause 21)</p> <p>(a) The Purchaser's liability is limited to:</p> <p>(b) The Supplier's liability is limited to:</p>	<p><i>If nothing stated, the Purchaser's liability is limited to the Price.</i></p> <hr/> <p><i>If nothing stated, the Supplier's liability is not limited.</i></p>
13.	<p>The Supplier must effect the following insurances: (Clause 22)</p>	<p>[AMEND INSURANCE VALUES AS REQUIRED]</p> <ul style="list-style-type: none"> <input 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 <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 <input type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under this Contract <input type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant <input type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law <p><i>If not selected, the Supplier is not required to effect the insurance.</i></p>

General Conditions

Parties:

RMS ENGINEERING & CONSTRUCTION PTY LTD ABN (74 128 352 25) of Unit 1 - 31 Jay Street, Bohle 4818 in the State of Queensland.

(Purchaser)

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

(Supplier)

Background:

- A. The Supplier has offered to provide the Goods and/or Services to the Purchaser and has made the representations and given the warranties stated in this Contract to the Purchaser in connection with its offer.
- B. In reliance on those representations and warranties, the Purchaser has accepted the Supplier's offer.
- C. The Parties wish to enter into this Contract to record the terms on which the Supplier will provide the Goods and/or Services to the Purchaser.

The Parties agree:

1. CONTRACT

1.2 (Documents comprising Contract) The Contract comprises:

- (a) the Reference Schedule;
- (b) Schedule 3 - Special Conditions;
- (c) these General Conditions;
- (d) Schedule 1 - Scope and Price; and
- (e) Schedule 2 - Purchaser's Documentation.

1.3 (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 Supplier and the Purchaser (whether oral or in writing). Except to the extent the parties expressly agree otherwise in writing, the Contract will exclude all other terms, including any terms appearing on Supplier's invoices or other paperwork and those terms will have no legal effect and will not constitute part of this Contract. No conduct by the Purchaser will constitute acceptance of any other terms put forward by the Supplier in relation to the Goods and/or Services.

1.4 (Order of precedence) If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.2, then the documents will take precedence in the order set out in clause 1.2 with the Reference Schedule being the highest in the order.

1.5 (Acceptance of Terms) The Supplier will be deemed to have accepted the terms and conditions of this Contract, on the earlier of the date on which it signs the Contract and the date on which it commences either the supply or fabrication of the Goods, or the performance of the Services.

2. PERFORMANCE AND PAYMENT

2.1 (Performance) The Supplier must, at the Supplier's expense, provide the Goods and/or Services and otherwise comply with its other obligations under the Contract in accordance with the Contract.

2.2 (Payment) Subject to the Contract, the Purchaser must pay the Supplier the Price for Goods and Services provided in accordance with the Contract.

3. NO EXCLUSIVITY

3.1 The Supplier is not the exclusive supplier of the Goods and Services, or of goods and/or services of the same or a similar type to the Goods and Services. The Purchaser shall not be liable upon any Claim by the Supplier in connection with the

Purchaser engaging other suppliers to supply the same or a similar type of goods and/or services as the Goods and Services.

4. NATURE OF RELATIONSHIP

4.1 The Supplier is an independent contractor of the Purchaser. The Supplier 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 Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.

5. PURCHASER'S REPRESENTATIVE

5.1 (The Purchaser's Representative) The Purchaser's Representative is appointed as the Purchaser's agent to exercise any of the Purchaser's rights or functions under the Contract. The Purchaser's Representative is not an independent certifier or valuer.

5.2 (Sole Representative) No other person is permitted to exercise any right or function of the Purchaser without the express written consent of the Purchaser or the Purchaser's Representative. The Supplier must notify the Purchaser immediately if it receives a purported direction in connection with the Contract from any person other than the Purchaser's Representative. The Purchaser shall not be liable upon any Claim relating to a direction given to the Supplier by any person other than the Purchaser's Representative.

5.3 (Rights and powers of the Purchaser's Representative) The Purchaser's Representative may exercise any rights and powers granted to the Purchaser under this Contract. The Purchaser's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's provision of the Goods and/or Services.

5.4 (Compliance) The Supplier must, and must ensure that its Personnel, comply with all Directions given by the Purchaser's Representative, within the time specified in the Direction, or where no time is stated, as soon as is reasonably practicable.

5.5 (Delegation) The Purchaser's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers of the Purchaser.

5.6 (Change) The Purchaser may notify the Supplier of a change in

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the Purchaser's Representative at any time.

6. SUPPLIER'S REPRESENTATIVE

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

6.2 **(Change)** The Supplier may seek the approval of the Purchaser to change the Supplier's Representative. The Supplier must provide any information reasonably required by the Purchaser in connection with such a request. The Purchaser may refuse to approve a replacement person if the Purchaser reasonably believes that the person is inappropriate to take the role of Supplier's Representative or is of lesser skill, experience and competency to the person being replaced.

7. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

7.1 **(Obligations, Warranties and Representations)** The Supplier must ensure, and warrants and represents that:

(a) **(ability)** the Supplier and, to the extent applicable to them, its Personnel:

- (i) have the experience, skills, expertise and resources;
- (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Supplier 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 Supplier has completed its obligations under the Contract;

(b) **(Standard)** the Supplier will, and to the extent applicable to them will ensure that its Personnel, provide the Goods and/or Services and carry out its other obligations in connection with the Contract in accordance with Good Industry Practice and that the Services provided under the Contract are fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;

(c) **(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,

and any design prepared by the Supplier in relation to the work shall be in accordance with the requirements of the Contract;

(d) **(Investigations)** the Supplier has carefully reviewed the Contract (including the scope and all other information contained in or incorporated by reference into Schedule 1) and is satisfied that the scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;

(e) **(Legal Capacity)** the Supplier has the full power, authority and capacity to enter into the Contract and that the

Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;

(f) **(Supplier Documents)** all Supplier Documents will:

- (i) comply with the requirements of the Contract and applicable law;
- (ii) be of a standard and quality expected of a supplier using Good Industry Practice; and
- (iii) be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;

(g) **(Condition of Goods)** the Goods shall:

- (i) at the time at which they are Delivered:
 - A. comply with any applicable requirement, code, guideline, policy, drawing or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Goods and any applicable law; and
 - B. where Goods are manufactured, be new; and
- (ii) at the time at which they are Delivered and for the duration of any applicable Warranty Period:
 - A. be free from defects and of merchantable quality;
 - B. comply in all respects with the Contract including as to quality, quantity, performance, functionality and description; and
 - C. conform to any sample goods approved by the Purchaser; and
 - D. be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract; and

(iii) when title passes, be free from all encumbrances and interests, except for an encumbrance or interest which arises by operation of a law and which cannot be excluded by agreement;

(h) **(Intellectual Property)** except to the extent that Goods or Supplier Documents are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Purchaser:

- (i) the Goods and Supplier Documents do not; and
- (ii) the Purchaser's use of the Goods and Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract will not,

infringe Intellectual Property Rights;

(i) **(Price)** the rates and prices in the Contract include compliance with all of the Supplier's obligations under the Contract including but not limited to all costs in connection with the Supplier's hoisting, transportation, delivery and storage of all materials and Goods except, and then only to the extent that the Contract provides otherwise;

7.2 **(Discrepancy or inconsistency)** Where there is any discrepancy or inconsistency between any requirements in clause 7.1, the Supplier must notify the Purchaser in writing of the discrepancy or inconsistency and unless otherwise directed by the Purchaser, comply with the highest or most onerous requirement.

7.3 **(Notice of breach)** The Supplier must notify the Purchaser immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given or representation made in clause 7.1.

7.4 **(Warranties unaffected)** The warranties, representations and

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acknowledgements in clause 7.1 remain unaffected notwithstanding:

- (a) that the Scope was prepared by the Purchaser or the Purchaser's Personnel;
- (b) any inspection, test, receipt, review, comment, permission or approval on, of or in relation to the Goods, Services or Supplier Documents by the Purchaser or the Purchaser's Personnel;
- (c) any Variation or other direction by the Purchaser or the Purchaser's Personnel; or
- (d) the adoption or incorporation into the Supplier Documents by the Supplier of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Purchaser),

except that clauses 7.4(c) and 7.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

8. SUPPLIER'S PERSONNEL

8.1 (General) The Supplier must:

- (a) act, and ensure that its Personnel involved in the provision of Goods and/or Services act, professionally and courteously in all dealings with the Purchaser and the Purchaser's Personnel and the general public in connection with the Contract;
- (b) comply with, and ensure that its Personnel involved in the provision of Goods and/or Services comply with:
 - (i) any law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract;
 - (ii) all directions of the Purchaser given pursuant to the Contract; and
 - (iii) any applicable policies, guidelines, procedures and codes of the Purchaser which are identified in the Reference Schedule or which are publicly available or otherwise made known to the Supplier from time to time; and
- (c) not, and must ensure that its Personnel involved in the provision of the Goods and/or Services do not, either directly or indirectly cause any 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 the Goods are to be Delivered, or to the public generally; and
- (d) ensure that its Personnel involved in the provision of the Goods and/or Services:
 - (i) are familiar with and properly trained for their allocated role;
 - (ii) perform their allocated role competently and safely and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations;
 - (iii) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).

8.2 (Conflict of Interest) The Supplier warrants and represents that

as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Purchaser in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

8.3 (Removal) The Purchaser may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Purchaser reasonably believes that the Supplier is in breach of clause 8.1 or clause 8.1(d) or a warranty and representation given in clause 7.1(a) or clause 7.1(a) in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

8.4 (Industrial relations) The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Purchaser in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.

9. SITE

9.1 (Access for Supplier) The Purchaser will give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract. The Purchaser may refuse to give such access until the Supplier has given the Purchaser:

- (a) evidence of insurance required by clause 22.3;
- (b) any other documents or information which the Contract requires to be given to the Purchaser before access to the Site shall be given, including those identified in the Reference Schedule; and
- (c) evidence that the Supplier has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the Reference Schedule.

9.2 (Access for Purchaser) The Purchaser and its Personnel shall be entitled to access the Site and any other place where any obligation of the Supplier under the Contract is or is to be carried out on the giving of reasonable written notice, including to conduct tests, inspections or audit of the Supplier's compliance with this Contract or to carry out other services or work at the Site. The Supplier must cooperate, communicate and co-ordinate with the Purchaser and the Purchaser's Personnel in relation to the access by the Purchaser and the Purchaser's Personnel. The Purchaser must use reasonable endeavours to ensure none of the Purchaser's Personnel impedes the Supplier in the provision of the Goods and/or Services.

9.3 (Site specific requirements) The Supplier must comply with the reasonable requirements of the Purchaser in relation to the Supplier's access to or conduct on the Site, including those identified in the Reference Schedule.

10. SUBCONTRACTING, ASSIGNMENT AND NOVATION

10.1 (By the Supplier) The Supplier 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 Purchaser (which may be given, withheld or given subject to conditions at the absolute discretion of the Purchaser). Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Purchaser and the Supplier, the Supplier shall be responsible and liable to the Purchaser for the acts or omissions of the Supplier's Personnel in connection with the Contract as

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if they were the acts or omissions of the Supplier.

10.2 **(By the Purchaser)** The Purchaser may contract, 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 Supplier.

10.3 **(Third party warranties)** The Supplier shall obtain and provide to the Purchaser, the warranties required elsewhere in the Contract. If directed to do so by the Purchaser, the Supplier shall also obtain a warranty from each subcontractor, supplier, retailer or manufacturer on terms commonly provided by those subcontractors, retailers or manufacturers for their parts of the Services or Goods, in the name of both the Purchaser and the Supplier and shall commence on Completion and continue throughout the Warranty Period.

11. MEETINGS

11.1 The Supplier must, at the times required by the Reference Schedule and when otherwise reasonably required by the Purchaser, meet and discuss the performance of the Supplier and/or any other matter concerning the Purchaser in connection with the Contract.

12. DELIVERY OF GOODS

12.1 **(Delivery)** The Supplier shall comply with all requirements relating to delivery which are stated in the Reference Schedule and elsewhere in the Contract or which are otherwise reasonably directed by the Purchaser.

12.2 **(Change to delivery details)** The Purchaser may request the Supplier to vary the Delivery Time and/or the Delivery Place and the Supplier shall comply with the varied requirements at its expense unless it cannot reasonably do so. The Supplier shall not be entitled to any monetary compensation in connection with a change to the Delivery Time or the Delivery Place unless the Supplier notifies the Purchaser of such additional costs prior to taking any steps to comply with the request.

12.3 **(Delivery dockets)** The Supplier must provide a true and correct delivery docket to the Purchaser at the time at which the Goods are Delivered. The signing of a delivery docket by the Purchaser shall be evidence only that Goods have been received and not that those Goods comply with the Contract.

13. TITLE AND RISK IN GOODS

13.1 **(Title and risk)** Title to and property in the Goods shall pass immediately to the Purchaser upon payment. Risk in the Goods shall remain with the Supplier until the Goods are received by the Purchaser. If Goods are rejected pursuant to clause 24.2, the Goods shall be at the risk of the Supplier from the time that the Purchaser gives notice of the rejection by the Purchaser.

13.2 **(Security Interest)** The Supplier acknowledges that the Purchaser has a security interest in the Goods and the proceeds of the Goods for the purpose of the *Personal Property Securities Act 2009* (Cth) and agrees to provide all reasonable assistance to the Purchaser in order to perfect and enforce that security interest.

13.3 **(No acknowledgement)** Taking possession of Goods shall not constitute an admission by the Purchaser that those Goods comply with the Contract.

14. TIMING

14.1 **(Timing)** Subject to clause 14.2, the Supplier must commence performing its obligations under the Contract by the Commencement Time and must perform those obligations:

- (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 Purchaser as to the order and timing of the performance of those obligations (including any program or schedule included in the Contract or agreed between the Parties which may be updated as required by the Purchaser);

(d) so that all Services reach Completion by the applicable Completion Time and all Goods are Delivered by the applicable Delivery Time.

14.2 **(Delay or interruption)** The Supplier must promptly notify the Purchaser's Representative if the Supplier suspects, or becomes aware, that the provision of the whole or any party of the Goods and/or Services is or will be interrupted or delayed and must provide any further information reasonably requested by the Purchaser's Representative in relation to the delay or interruption. Where the Supplier is delayed in delivering the Goods by the Delivery Time or reaching Completion by the Completion Time because of an act or omission of the Purchaser or the Purchaser's Personnel, Force Majeure or any other cause of delay identified in the Reference Schedule or elsewhere in the Contract as entitling the Supplier to an extension of the Completion Time or the Delivery Time, the Purchaser shall grant a reasonable extension of the Delivery Time or the Completion Time as the case may be. The Purchaser may grant an extension of the Delivery Time or the Completion Time as the case may be for delay caused by any other cause of delay.

14.3 **(Prevention and Mitigation)** The Supplier shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay or interruption.

14.4 **(No monetary compensation)** The Supplier shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Supplier's obligations under the Contract however caused.

14.5 **(Liquidated damages)** If the Supplier does not reach Completion by the Completion Time (as extended, if at all, by the Purchaser) or the Goods are not Delivered by the applicable Delivery Time, then the Supplier shall be indebted to the Purchaser for liquidated damages at the rate stated in the Reference Schedule for each calendar day from the Completion Time to the time at which Completion is reached or each calendar day from the Delivery Time to the time the Goods are Delivered. The Purchaser shall be entitled to deduct liquidated damages from payments to the Supplier and recover any balance as a debt due and owing. If the Purchaser's entitlement to delay liquidated damages is found to be void or otherwise unenforceable, the Purchaser shall be entitled to recover general damages.

15. VARIATIONS

15.1 **(Direction for Variation)** The Purchaser may at any time and for any reason direct a Variation by giving written notice to the Supplier but cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Purchaser.

15.2 **(Variation proposal)** The Purchaser may, but shall not be obliged to, direct the Supplier to provide an estimate or quotation for a Variation and/or a statement as to the impact of the Variation on the Services and/or the Goods (as the case may be). The Purchaser may direct the Supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Supplier must comply with such a direction at its expense.

15.3 **(Adjustment of Price)** Subject to clause 15.4, the effect of a Variation on the Supplier's entitlement to payment shall be

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determined using the following order of priority:

- (a) agreement between the Parties;
- (b) applicable fees, rates or prices (if any) stated in Schedule 1; or
- (c) by the Purchaser (acting reasonably).

15.4 (**No entitlement**) The Purchaser shall not be liable upon any Claim arising out of a direction for a Variation, unless:

- (a) the Purchaser's Representative has, before the Supplier complies (in whole or part) with the direction, expressly stated in writing that the direction is a direction for a Variation; or
- (b) the Supplier has, prior to complying (in whole or part) with the direction, notified the Purchaser in writing that it considers that the direction constitutes a Variation.

15.5 (**Variations requested by the Supplier**) The Purchaser may approve a request for a Variation by the Supplier. Unless the Purchaser agrees otherwise in writing, a Variation approved under this clause 15.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.

15.6 (**Omissions**) Where the Purchaser directs a Variation omitting or reducing any part of the Goods and/or Services, then the Purchaser may subsequently provide the omitted or reduced Goods and/or Services itself or engage others to do so on its behalf. The Supplier 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.

15.7 (**Change in law**) If a law:

- (a) necessitates a change to the Services and/or the Goods;
- (b) necessitates a change in a fee or charge or payment of a new fee or charge;
- (c) comes into effect after the date of the Contract and could not reasonably then have been anticipated by a competent contractor; and
- (d) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Purchaser in writing of the law and the effect of it on the Supplier. After the notice is given, the Parties shall attempt to agree on a change to either the Services and/or the Goods (as the case may be) and/or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 30. Unless otherwise directed by the Purchaser, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

16. INVOICING

16.1 (**Submission of invoices**) Subject to clause 16.10, the Supplier may submit invoices to the Purchaser for Goods and Services provided in accordance with the Contract at the times and for the Goods and 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 Purchaser 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 the later of Completion or the date on which Goods required under the Contract are Delivered.

16.2 (**Further supporting documentation**) The Purchaser may, no later than 5 Business Days after receipt of an invoice under

clause 16.1, direct the Supplier to provide documentary supporting evidence to the Purchaser's satisfaction of the Supplier's entitlement to payment of the amount claimed. The Supplier shall not be entitled to payment of an invoice until all documentation required by clause 16.1 or otherwise directed by the Purchaser under this clause 16.2 is provided.

16.3 (**Entitlement to payment**) Except to the extent that the Purchaser in its absolute discretion determines otherwise, the Supplier shall only be entitled to payment for Services provided or Goods Delivered in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).

16.4 (**Amount due**) The Purchaser may deduct any amount due and owing by the Supplier to the Purchaser (whether under the Contract or otherwise) from any amount claimed by the Supplier 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 Purchaser to the Supplier or by the Supplier to the Purchaser as the case may be.

16.5 (**Due date for payment**) Subject to the Contract, the Purchaser shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Purchaser, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Purchaser.

16.6 (**Final invoice**) Where directed to do so by the Purchaser, as a pre-condition to entitlement to payment of its final invoice, the Supplier must provide to the Purchaser a statutory declaration in the form contained in Schedule 2, dated after all Goods, Services and Supplier Documents have been provided.

16.7 (**No admission**) Payments made by the Purchaser to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Goods, Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.

16.8 (**Sole entitlement**) Payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Goods and Services and compliance with the Supplier's other obligations under the Contract.

16.9 (**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. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.

16.10 (**Recipient created tax invoices**) Where the Purchaser is the recipient of a taxable supply under this Contract, the Purchaser 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 Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

17. WORK HEALTH AND SAFETY

17.1 (**Relationship of obligations**) The obligations in this clause 17 are in addition to, and not in substitution for any other obligation of the Supplier elsewhere in this Contract, under the WHS Act and WHS Regulation or otherwise at law relating to WHS.

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17.2 **(Primary obligations of Supplier and Personnel)** The Supplier must itself, and must ensure that its Personnel engaged in performing the Supplier'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; and
- (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 Supplier's obligations under the Contract.

17.3 **(Incident notification)** The Supplier must 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 Supplier under the Contract.

17.4 **(Supplier's WHS systems and documentation)** The Supplier:

- (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, where directed to do so by the Principal, 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 adopt a WHS plan and other WHS documentation which:
 - (i) addresses all the specific WHS hazards, issues relevant to the Supplier'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 must update such documentation as required from time to time to ensure that it complies with this clause 17.4(c).

17.5 **(Construction sites)** If the Site or any part of it is a construction site, then the Supplier must:

- (a) ensure that all Personnel of the Supplier working on or attending at that construction site receive a site-specific induction and that each person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction;
- (b) comply with, and ensure that all Personnel of the Supplier working on or attending at that construction site comply with:
 - (i) the reasonable WHS 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 and other WHS

requirements of the Principal which are in any way applicable to this Contract or the Site.

18. HEAVY VEHICLE NATIONAL LAW

18.1 **(Definitions)** Terms used in this clause which are defined in the National Law have the same meaning as in that law unless the context otherwise requires.

18.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the Supplier's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the National Law; or
 - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) another person, including another party in the chain of responsibility, to contravene the National Law.

18.3 **(Notice)** The Supplier must immediately notify the Purchaser if the Supplier considers that anything in this Contract, or any act or omission of the Purchaser or its respective officers, employees, agents or representatives has or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:

- (a) being the driver of a heavy vehicle to contravene the National Law; or
- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the National Law.

19. PROTECTION OF PROPERTY AND THE ENVIRONMENT

19.1 **(General)** The Supplier 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 or the environment; and
- (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

19.2 **(Rectification of damage)** The Supplier must promptly rectify:

- (a) any damage to any property which is caused by the Supplier or the Supplier's Personnel in connection with the performance of its obligations under the Contract;
- (b) any damage to any property, which occurs whilst the Supplier is responsible for its care (whether or not due to any act or omission of the Supplier).

The Supplier shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the act or omission or Wilful Misconduct of the Purchaser or the Purchaser's Personnel caused or contributed to the damage and/or the Purchaser failed to act reasonably to mitigate the damage.

19.3 **(Urgent action)** If urgent action is necessary to protect persons, property or the environment in connection with the performance of the Supplier's obligations under the Contract, and the Supplier has not taken that action, the Purchaser may

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take such action itself or have it undertaken by others without prior notice to the Supplier. The cost reasonably incurred by the Purchaser in doing so shall be a debt due and owing by the Supplier to the Purchaser and may be deducted from any payments otherwise owing to the Supplier.

20. INDEMNITY

20.1 (**Indemnity**) To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Purchaser and the Purchaser's officers, employees and related bodies corporate against:

- (a) loss of or damage to property of the Purchaser (including Supplier Documents);
- (b) Claims by any person against the Purchaser 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 Purchaser and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Purchaser in connection with:
 - (i) a breach of the Supplier's obligations under clauses 17, 19.1, 28.2 or 29.4;
 - (ii) a breach of any law by the Supplier including:
 - A. the Supplier's failure to satisfy a law as required by the Contract;
 - B. any breach by the Supplier of its obligations under any law; and/or
 - C. any enforcement of obligations imposed on the Supplier under any law,

to the extent caused or contributed to by the breach of Contract by the Supplier but the indemnity will be reduced to the extent that the act or omission or Wilful Misconduct of the Purchaser or the Purchaser'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.

20.2 (**Acceptance of benefit**) The Purchaser has informed its offices, employees and related bodies corporate and communicates acceptance on their behalf of the Supplier's undertaking to indemnify under clause 20.1.

21. LIMITATION OF LIABILITY

21.1 (**Limit of liability**) To the extent permitted by law:

- (a) the aggregate liability of each Party to the other in respect of any Claim will not exceed that Party's Liability Limit; and
- (b) 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.

21.2 (**Exceptions**) Clause 21.1 does not apply to:

- (a) liability of the Purchaser to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,

by that Party;

(d) liability of the Supplier which the Supplier:

(i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or

(ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier; or

(e) liability of the Supplier which the Supplier is entitled to recover from any third party (including any subcontractor, consultant or supplier of the Supplier) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability,

and amounts referred to in subclauses (a), (b), (c), (d) and (e) shall not be included in calculating whether a Party's Liability Limit has been reached.

22. INSURANCE

22.1 (**Insurances to be effected and maintained**) The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests. Where the Reference Schedule does not provide for the insurances to be effected then the Supplier must, unless otherwise directed by the Purchaser, effect the following insurance policies on terms and with an insurer reasonably acceptable to the Purchaser:

- (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 (including cover for Supplier Documents) 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 Supplier 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 Supplier's Personnel as required by law.

22.2 (**Period of insurance**) The insurance policies required under clause 22.1 must be maintained at all times from the date on which the Supplier commences the performance of its obligations under the Contract until the Supplier's obligations under the Contract are complete (and, in respect of professional indemnity insurance only, for a period of 7 years after those obligations are complete).

22.3 (**Subcontractors**) The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the work to be carried out by the subcontractor, supplier or consultant.

22.4 (**Evidence of insurance**) If requested by the Purchaser, the Supplier must provide the Purchaser with a copy of the relevant certificate of currency and other evidence reasonably required by the Purchaser. The Purchaser may suspend the Contract or withhold payment from the Supplier until such evidence is provided.

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- 22.5 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.
- 22.6 **(Notification)** The Supplier must immediately notify the Purchaser's Representative if any insurance policy required under the Contract is cancelled or the Purchaser's interest in respect of any of those policies is adversely affected.
23. **INSPECTIONS AND TESTS**
- 23.1 **(Right to inspect and test)** The Purchaser may inspect and test, or engage a third party to inspect and test, any or all Goods, Services, Works and the Supplier Documents provided to ensure that the Goods, Services, Works and the Supplier Documents comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by or on behalf of the Purchaser shall not relieve the Supplier of any obligation or liability under the Contract nor limit or waive any right of the Purchaser.
- 23.2 **(Cost)** If an inspection or test undertaken by or on behalf of the Purchaser reveals a failure by the Supplier to comply with the Contract, then the costs reasonably incurred by the Purchaser in undertaking the inspection or test shall be a debt due and payable by the Supplier to the Purchaser.
24. **NON-CONFORMANCE**
- 24.1 **(Non-conforming Goods, Services, Works or Supplier Documents)** Where:
- (a) any of part of the Goods, Services, Works or Supplier Documents provided by the Supplier does not conform strictly to the requirements of the Contract; or
 - (b) the Supplier fails to comply with any other obligation of the Supplier under the Contract,
- the Purchaser may, in addition to or as an alternative to exercising its rights under clause 27, exercise the rights provided in clause 24.2.
- 24.2 **(Purchaser's rights in respect of non-conformance or failure)** Where permitted by clause 24.1, the Purchaser may:
- (a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided;
 - (b) whether or not the Purchaser has given a direction under clause 24.2(a), direct the Supplier to:
 - (i) rectify the non-conformance or failure including by:
 - A. performing or reperforming any non-conforming Services;
 - B. removing, demolishing, repairing, replacing or reconstructing any non-conforming Goods or Works;
 - C. replacing non-conforming Supplier Documents; and
 - (ii) make good any damage to any other property (including Works or Goods) to the extent caused by the non-conformance or the rectification, at the Supplier's expense and within the timeframes reasonably directed by the Purchaser;
 - (c) reject non-conforming Goods, in which case the Purchaser may:
 - (i) return the whole of the Goods Delivered (or, at its discretion, the non-conforming part of those Goods) to the Supplier or direct the Supplier to collect those Goods at the Supplier's expense and within the timeframes reasonably directed by the Purchaser;
 - (ii) direct the Supplier to either refund all monies paid for the returned Goods or to replace the returned Goods at the Supplier's expense at a time and place directed by the Purchaser; or
 - (d) accept the non-conformance or failure, in which case the Price will be adjusted as if the Purchaser had directed a Variation for the non-conformance or failure.
- 24.3 **(Step-in rights)** Instead of a direction pursuant to clause 24.2(b) or where the Supplier fails to comply with a direction under clause 24.2, the Purchaser may after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required) take any of the steps contemplated by clause 24.2(b) itself or engage a third party to do so.
- 24.4 **(Costs)** The cost reasonably incurred by the Purchaser in connection with any action taken, or purportedly taken, pursuant to clause 24.2 or 24.3 so shall be a debt due and owing by the Supplier to the Purchaser.
- 24.5 **(Timing)** The rights given to the Purchaser under clauses 24.2 or 24.3 may be exercised at any time up to 12 months after the Goods, Services, Works or Supplier Documents were provided by the Supplier.
- 24.6 **(Application of clause)** For clarity, this clause 24 shall apply to all Goods, Services and Supplier Documents provided or to be provided, under the Contract, including Goods, Services, Works and Supplier Documents provided in compliance with a direction under clause 24.2(b) or 24.2(c).
25. **SUSPENSION**
- 25.1 **(Right to suspend)** The Purchaser may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Purchaser.
- 25.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Purchaser shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by the Supplier by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.
26. **FORCE MAJEURE**
- 26.1 **(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.
- 26.2 **(Suspension)** On the giving of a notice under clause 26.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 26.3 **(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.
- 26.4 **(Industrial relations)** Clause 26.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner

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in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.

26.5 (**Purchaser's rights**) Where the Supplier gives a notice under clause 26.1, the Purchaser may at its election:

- (a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Purchaser is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Purchaser are able to be reasonably brought to an end;
- (b) take such other action as the Purchaser, acting reasonably, considers appropriate.

The cost incurred by the Purchaser in exercising these rights shall be borne by the Purchaser.

26.6 (**Termination**) If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Purchaser may terminate the Contract immediately by giving written notice to the Supplier.

27. TERMINATION AND DEFAULT

27.1 (**Termination for convenience**) The Purchaser may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.

27.2 (**Notice to show cause**) If a Party ("the defaulting Party") commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a Notice to Show Cause. The notice to show cause must state:

- (a) that it is a notice to show cause under clause 27;
- (b) the alleged Substantial Breach;
- (c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 27.3 or clause 27.5 (as the case may be);
- (d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and
- (e) where applicable, the place at which cause must be shown.

27.3 (**Supplier's failure to show cause**) If, by the time specified in the notice to show cause given by the Purchaser to the Supplier, the Supplier fails to show reasonable cause why the Purchaser should not exercise a right under this clause 27.3, or if the Substantial Breach is incapable of remedy, the Purchaser may:

- (a) immediately terminate this Contract; or
- (b) permanently or temporarily take the whole or any part of the obligations of the Supplier under the Contract (including the obligation to remedy the default) out of the hands of the Supplier and may itself perform those obligations or engage a third party to do so on the Purchaser's behalf, in which case:
 - (i) the Supplier shall not be entitled to any further payment in respect of the obligations taken out of Supplier's hands;
 - (ii) the Supplier must continue to perform any obligations under the Contract that were not taken out of the Supplier's hands;
 - (iii) the Purchaser or the third party so engaged may enter the Site and any relevant premises of the Supplier and use all of the Supplier's plant, equipment and materials as may be necessary to perform the obligation;

(iv) the Purchaser may, on the giving of reasonable notice, require the Supplier to resume the performance of its obligations under the Contract if the Supplier ceases to be subject an Insolvency Event or the Purchaser is otherwise of the view that the Supplier is capable of continuing to perform its obligations under the Contract in accordance with the Contract; and

(v) if the costs incurred by the Purchaser in performing the obligation or engaging a third party to do so are greater than the costs which would have been incurred had the Supplier performed the obligation then the difference shall be a debt due and owing by the Supplier to the Purchaser and may be deducted from payments otherwise owing to the Supplier. Until such costs are incurred, the Purchaser may deduct the estimated costs from payments to the Supplier.

27.4 (**Step-in rights**) Without limiting the Purchaser's other rights, where the Supplier fails to carry out an obligation under the Contract, then the Purchaser may after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required) carry out that obligation itself or have it carried out by others. If the Purchaser incurs more cost in carrying out the obligation itself, or having it carried out by others than it would have incurred if the Supplier had carried out the obligation then those additional costs shall be a debt due and payable by the Supplier to the Purchaser.

27.5 (**Purchaser's failure to show cause**) If, by the time specified in a notice to show cause given by the Supplier to the Purchaser, the Purchaser fails to show reasonable cause why the Supplier should not exercise a right under this clause 27.5, or if the breach is incapable of remedy, the Supplier may at its election:

- (a) suspend the whole or part of the provision of the Goods and/or Services (but only after ensuring that the Site and the Goods are left in a secure and safe condition); or
- (b) if the breach is not capable of remedy, terminate the Contract by giving written notice to the Purchaser.

If the Supplier suspends the whole or part of the Services under this clause 27.5, the Supplier shall lift the suspension if the Purchaser remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Purchaser fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Purchaser.

27.6 (**Insolvency Event**) If the Supplier is subject to an Insolvency Event, then the Purchaser may, to the extent permitted by law, exercise its rights in clause 27.3 without first giving a notice to show cause.

27.7 (**Consequences of termination**) If the Contract is terminated by either Party for any reason, then:

- (a) unless otherwise directed by the Purchaser, the Supplier must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of termination; and
- (b) the Purchaser may carry out any obligation of the Supplier which has not been carried out and completed as at the date of termination itself or engage others to do so on the Purchaser's behalf;
- (c) the Purchaser shall, subject to the Contract, pay the Supplier:
 - (i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the

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Supplier in accordance with the Contract up to and including the date of termination; and

- (ii) if the termination is solely due to the act or omission of the Purchaser, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier 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 Supplier demonstrates it cannot reasonably mitigate,
- (d) except that the total amount payable to the Supplier under the Contract shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Contract not been terminated and the Supplier had completed those obligations itself.

27.8 (**Other rights**) To the extent permitted by law the Supplier shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Purchaser taking obligations out of the hands of the Supplier other than as expressly provided in this clause 27. Nothing in this clause 27 shall prejudice the Purchaser's right to claim and recover damages for breach of contract by the Supplier.

28. HANDLING OF INFORMATION

28.1 (**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.

28.2 (**Breach of Confidence**) If a Party becomes aware of a suspected or actual breach of clause 28.1, 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.

28.3 (**Return of Confidential Information**) Subject to this clause 28.3, 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. The Disclosee may, subject to its continuing to comply with this clause 28, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.

28.4 (**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 28.

28.5 (**Media**) The Supplier 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 Purchaser.

29. INTELLECTUAL PROPERTY

29.1 (**Background IP**) Background IP of a Party shall remain the exclusive property of that Party. The Purchaser grants the

Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Purchaser's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Purchaser an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Goods and Services are provided and for the purpose of complying with the Purchaser's obligations and exercising the Purchaser'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.

29.2 (**Project IP**) Project IP:

- (a) vests on creation in and is the exclusive property of the Purchaser;
- (b) to the extent (if any) that clause 29.2(a) does not vest Project IP in the Purchaser, the Supplier assigns all right, title and interest in the Project IP to the Purchaser; and
- (c) the Purchaser grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.

29.3 (**Moral Rights consent**) If Moral Rights consent is required by the Supplier in relation to or in connection with this Contract then:

- (a) the Purchaser may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
- (b) the Supplier must procure, and on request by the Purchaser provide to the Purchaser a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.

29.4 (**Warranty and representation by Supplier**) The Supplier warrants and represents that:

- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Goods and/or Services, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 29;
- (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 Supplier's incorporation of the Purchaser's Background IP, the Project IP will not infringe the Intellectual Property Rights of a third party.

29.5 (**Indemnity**) Each Party indemnifies the other in respect of breach of a warranty given or representation made in this clause 29.

30. DISPUTE RESOLUTION

30.1 (**Mandatory process**) Unless otherwise stated in this Contract, any Dispute between the Parties must be resolved in accordance with this clause 30.

30.2 (**Notice of dispute**) If a Party considers that a Dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the Dispute and stating that the notice is given under this clause 30. The notice shall be delivered by hand or registered post.

30.3 (**Initial conference**) If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties

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shall promptly confer to attempt to resolve the dispute.

30.4 (**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 Queensland Law Society or his nominee at the request of a Party.

30.5 (**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.

30.6 (**Urgent relief**) This clause 30 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.

31. CLAIMS

31.1 (**Claims pursuant to the Contract**) The Purchaser shall not be liable upon any Claim by the Supplier for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Supplier has given the Purchaser written notice of its intention to make the Claim promptly and no later than 15 Business Days after the direction or other event on which the Claim is based was given or occurred.

31.2 (**Other Claims**) The Purchaser shall not be liable upon any other Claim by the Supplier in connection with the Contract unless the Supplier has given the Purchaser written notice of its intention to make the within 6 calendar months after the direction or other event on which the Claim is based was given or occurred.

32. DEFINITIONS

32.1 In the Contract, unless inconsistent with the context or subject matter:

- (a) **Affected Party** has the meaning given in clause 26.1;
- (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 and which are made available by a Party for the provision of Goods and/or Services 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 Supplier 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 Purchaser of the Services or prevent the Purchaser from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;
 - (ii) all Supplier Documents have been updated and provided to the Purchaser in accordance with the Contract; and
 - (iii) other obligations of the Supplier 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 Supplier 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 28 or are independently developed by the other Party;
- (k) **Conflict of Interest** means any actual, potential, or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;
- (l) **Contract** means the documents identified in clause 1.2;
- (m) **Delivered** means delivered to the Purchaser or made available for collection (as the case may be) at the Delivery Place along with all information and documentation required by the Contract;
- (n) **Delivery Place** means the place for delivery or collection of the Goods as stated in the Reference Schedule and/or Schedule 1;
- (o) **Delivery Time** means the time by which Goods are to be Delivered as stated in the Reference Schedule and/or Schedule 1 as extended (if at all) pursuant to the Contract;
- (p) **Discloser and Disclosee** have the meanings given in clause 32.1(j);
- (q) **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;

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- (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);
 - (vi) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (vii) to the extent otherwise expressly permitted by the Contract;
- (r) **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;
 - (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 and the effects of that pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;
- which:
- A. is beyond the immediate or reasonable control of the Affected Party; and
 - 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 supplier or the expenditure of a reasonable sum of money;
- (s) **General Conditions** means these general conditions;
- (t) **Good Industry Practice** means:
- (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts, of a skilled, competent and experienced supplier engaged in the business of providing goods, services or work similar to the Goods and Services;
- (u) **Goods** means the plant, equipment, materials, parts, consumables or other goods used or provided, or to be used or provided, by the Supplier as described in Schedule 1 and any other goods not specifically mentioned in Schedule 1, but that are obviously and indispensably necessary for the supply of the plant, equipment, materials, parts, consumables or other goods that are mentioned, and includes Goods which are required for the proper performance of the Services in accordance with the Contract, whether or not specifically mentioned in the Contract;
- (v) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (w) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (x) **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;
- (y) **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;
- (z) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (aa) **Liability Limit** means:
- (i) in respect of the Principal, the sum of:
 - A. the amount specified in 12(a) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;
 - (ii) in respect of the Supplier, the sum of:
 - A. the amount specified in item 12(b) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract;
- (bb) **National Law** means the Heavy Vehicle National Law (Queensland);
- (cc) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (dd) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (ee) **Party or Parties** means one or both of the Purchaser and the Supplier as the context requires;
- (ff) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Purchaser of the claim;
 - (ii) otherwise, the period ending 25 Business Days from end of month.
- (gg) **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 Purchaser, does not include the Supplier;

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- (hh) **Price** means the amount payable for the provision of Goods and/or Services as determined in accordance with Schedule 1;
- (ii) **Purchaser** means RMS Engineering & Construction Pty Ltd;;
- (jj) **Purchaser's Documentation** means the documents listed in Schedule 2.
- (kk) **Purchaser's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 5;
- (ll) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (mm) **Reference Schedule** means the schedule of that name included in this Contract;
- (nn) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (oo) **Services** means the services to be provided or the work to be carried out by the Supplier as described in Schedule 1 (including the supply, use or installation of any Goods, the construction of any Works and the provision of Supplier Documents) 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;
- (pp) **Site** means the site or sites made available by the Purchaser to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (qq) **Substantial Breach** includes:
- (i) in respect of the Supplier:
 - A. a breach of an obligation in clause 7.1;
 - B. failing to make a payment to the Purchaser:
 - I within 20 Business Days after the due date for the making of the payment in clause 16.5;
 - II where the Supplier has given a notice of dispute disputing its liability to make the payment, 20 Business Days after the dispute is finally resolved in the Purchaser's favour;
 - C. failing to take out and maintain any insurance required under clause 22;
 - D. failing to comply with a direction given or purportedly given under clause 24;
 - E. the Supplier or any of the Supplier's Personnel engaging in any conduct in which, in the Purchaser's opinion, causes harm to the Purchaser's reputation;
 - F. a warranty given or representation made in this Contract is found to be incorrect, false or misleading in any material respect;
 - G. committing a material breach of the Contract, an Approval or other law;
 - H. a breach of clause 17;
 - I. the consistent or repeated breach of the Contract by the Supplier, 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;
 - J. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
 - (ii) in respect of the Purchaser:
 - A. failing to make payment to the Supplier within:
 - I 20 Business Days after the due date for the making of the payment in clause 16.516.2;
 - or
 - II where the Purchaser has given a notice of dispute disputing its liability to make the payment, 20 Business Days after the dispute is finally resolved in the Supplier's favour;
 - and
 - B. otherwise committing a material breach of the Contract;
- (rr) **Supplier** means the person or entity identified as the Supplier on page 3 of this Contract;
- (ss) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents (including any WHS documentation and management plans required by the Contract), whether electronic documents or hard copy format, required by the Contract to be handed over to the Purchaser by the Supplier (and all information advice, procedures, undertakings, designs, calculations and recommendations in those documents);
- (tt) **Variation** means any material increase, decrease or change to the Goods or Services or the Supplier's obligations under the Contract;
- (uu) **Warranty Period** for Goods means the longer of:
- (i) the period stated in the Reference Schedule or where no period is stated 12 months after the Goods are Delivered; and
 - (ii) such further period required under or implied by any applicable law;
- (vv) **WHS** means work, health and safety;
- (ww) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (xx) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (yy) **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;
- (zz) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- (aaa) **Works** means any work which by the Contract, is to be handed over to the Purchaser.

33. INTERPRETATION

- 33.1 (**Headings**) Headings are for reference purposes only and must not be used in interpretation.
- 33.2 (**No limitation**) The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Purchaser 'may' do something the Purchaser is not obliged to do that thing and is not prevented from doing any other thing.
- 33.3 (**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

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the singular number.

33.4 (**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 Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
- (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Supplier 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.

33.5 (**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.

33.6 (**Time**) References to time are to local time in Queensland. 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.

33.7 (**Indemnities**) Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Purchaser need not incur any expense or make any payment in order to rely on an indemnity.

33.8 (**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.

33.9 (**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.

34. GENERAL PROVISIONS

34.1 (**Joint and several obligations**) To the extent permitted by law, if either party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally.

34.2 (**Governing law**) This Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of

the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

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

34.4 (**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.

34.5 (**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.

34.6 (**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.

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

34.8 (**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 Consultant of any other obligation under the Contract, at law or in equity.

34.9 (**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 email.

34.10 (**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 Supplier 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

34.11 (**Clauses to survive termination**) In addition to any other clauses which may be found to survive termination, clauses 7.1(g)(ii), 20, 21, 22.2, 24.5, 28, 29 and 31 survive the expiration or earlier termination of the Contract.

Execution

EXECUTION BY THE PURCHASER

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

.....)
Signature of witness)	Director
.....)
Name of witness (block letters))	Director/Secretary
Date: / /)	Date: / /

EXECUTION BY THE SUPPLIER (PURSUANT TO THE CORPORATIONS ACT)

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

.....)
Signature of witness)	Director
.....)
Name of witness (block letters))	Director/Secretary
Date: / /)	Date: / /

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

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

.....)
Signature of witness)	Signature
.....)
Name of witness (block letters))	Name of authorised representative
Date: / /)	Date: / /

Schedule 1 - Scope and Price

[SUGGESTED ITEMS FOR SCOPE AND PRICE BUT FORMAT UP TO RMS]

1. SCOPE OF SERVICES/GOODS

The Supplier agrees to supply the following:

No.	Description	QTY	Unit of Measurement	Unit Rate (\$) (GST Excl)	Amount (\$) (GST Exclusive)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

2. SUPPLIER DOCUMENTS

The Supplier agrees to provide the following deliverables on or before the following dates:

No.	Description of Supplier Documents	Date for Completion
1.		
2.		

3. DELIVERY SCHEDULE

The Supplier agrees to supply the following:

Sr. No.	Description	Delivery Date
1		
2		
3		

Schedule 2 - Purchaser's Documentation

[SUGGESTED ITEMS FOR BUT DEPENDENT ON NEED AND REQUIREMENT OF THE ENGAGEMENT]

In performing the Services or supplying the Goods under this Contract, the Supplier acknowledges the receipt of the documents below and agrees to comply with the Purchaser's Documents listed below.

4. SPECIFICATIONS OF GOODS

The Supplier agrees to supply the following Goods in accordance with the relevant Australian Standards/Specifications.

Other Materials to be supplied:	
Applicable Standards:	
Packaging:	
Measurements:	

5. PROGRAM

[Insert reference to any relevant Program or Management Plan].

[Other documents to include would be any Project specific codes of conduct, site entry conditions specific to the project, environmental plans, etc]

Schedule 3 - Special Conditions

[SUGGESTED SPECIAL CONDITIONS BUT DEPENDENT ON NEED AND REQUIREMENT OF THE ENGAGEMENT. CAN WORK WITH RMS TO DEVELOP OTHERS AS NEEDED]

1. [OPTIONAL - DELETE IF NOT REQUIRED] APPROVALS AND OTHER LAW

- 1.1 **(Identifying, obtaining and maintaining Approvals)** The Supplier must identify and notify the Purchaser of all Approvals which are necessary for the proper performance of the Services (other than Approvals which the Purchaser has advised the Supplier it has already obtained). The Supplier must obtain and maintain all such Approvals until all of the Supplier's other obligations under the Contract are complete. The cost of obtaining and maintaining all such Approvals shall be borne by the Supplier.
- 1.2 **(Compliance)** The Supplier must and must ensure that its Personnel comply with all Approvals and other law which are in anyway applicable to the Services, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes or duties.
- 1.3 **(Obtaining or granting of Approvals by Purchaser)** The Purchaser gives no warranty and makes no representation that:
- (a) it will be able to obtain, or obtain within any particular time; or
 - (b) where the Purchaser is the relevant Authority, that it will grant,
- any Approval required for the Supplier to perform the Services.
- 1.4 **(Provision of the Services)** The Supplier must, and warrants and represents that it will, perform the Services so that the Site, at all times during the Term, complies with all Approvals and other applicable law.
- 1.5 **(Obligation to report breach)** The Supplier must notify the Purchaser immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached an obligation under clauses 1.1 or 1.2. Unless otherwise directed by the Purchaser, the Supplier must take immediate steps to remedy such a breach at its expense.

2. [OPTIONAL - DELETE IF NOT REQUIRED] BIOSECURITY MANAGEMENT

- 2.1 **(Definitions)** In this clause:
- (a) a **biosecurity risk** is the risk that exists when dealing with:
 - (i) any pest, disease, or contaminant (including plants, seeds, spores, eggs, vertebrate and invertebrate pest); or
 - (ii) something that could carry a pest, disease or contaminant (e.g. animals, plants, soil, equipment and water-known as 'carriers').
 - (b) a **potential biosecurity risk** is a risk that does not currently occur at the Site but which has the capacity to occur at the Site. It may be present but not visible or may be introduced during the performance of the Supplier's obligations. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import or export of soils.
 - (c) a **known biosecurity risk** is a risk that is currently recorded within the footprint or proximity of the Site which is:
 - (i) identified within biosecurity plans or programs active for the area;
 - (ii) identified during the performance of the Supplier's obligations; or
 - (iii) otherwise identified by the Purchaser.
- 2.2 **(Preparation of plan)** The Supplier shall prepare a biosecurity risk management plan (**BRMP**) to ensure reasonable and practical steps are taken to address biosecurity risks and that the Supplier meets its general biosecurity obligation (as that term is used in the *Biosecurity Act 2014* (Qld)). The primary purpose of the BRMP is to address both potential risks and known biosecurity risks.
- 2.3 **(Training)** The Supplier shall ensure that all relevant Personnel are trained to be aware of biosecurity risks.
- 2.4 **(Notice of breach or risk)** If at any time during the performance of the Supplier's obligations a breach of the BRMP or a significant biosecurity risk is identified, then the Supplier must immediately contact the Purchaser for direction.

Schedule 3 - Special Conditions

3. **OPTIONAL - DELETE OR AMEND AS REQUIRED** LABOUR HIRE

- 3.1 (Labour hire) The Supplier must not provide or utilise any labour for the performance of this Contract unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld).