

Northparkes Mines General Conditions for Construction

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1. Definitions and interpretation

1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

Alternative Works is defined in Clause 18.1.

Business Day means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 47, the place to which a Notice is sent.

Cancellation Date is defined in Clause 40.2(b)(iii).

Claim means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company, or its Personnel by Personnel of the Contractor or any third party).

Commencement Date is defined in the Key Terms.

Commissioning includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks, no-load commissioning, full-load commissioning, testing to demonstrate performance in accordance with the Specifications and any other actions which are described in the Special Conditions, or otherwise agreed by the Parties, as being part of Commissioning.

Company is defined in the Key Terms.

Company Competencies is defined in Clause 31.5(b).

Company Default is defined in Clause 41.1.

Company Default Notice is defined in Clause 41.2.

Company Induction Courses is defined in Clause 31.5(a).

Company Representative is, initially, as defined in the Key Terms, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Company's Personal Data means the Personal Data that the Company transfers to the Contractor from time to time in connection with the Contract.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Contractor or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company (including in relation to the Works) and which:

- (a) is disclosed to the Contractor or its Personnel by or on behalf of the Company;
- (b) is generated by the Contractor or its Personnel in performing the Works; or
- (c) otherwise comes to the knowledge of the Contractor or its Personnel.

Contract is defined in Clause 2.1.

Contract Value means the monetary value of the relative part of the Works performed, which is calculated by reference to the Contract Price Breakdown.

Contract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Works or the Contract (including all Intellectual Property Rights in

anything developed by the Contractor in providing the Works and any Intellectual Property Rights in the Documentation provided by the Company to the Contractor).

Contract Price is defined in Clause 13.1.

Contract Price Breakdown means the breakdown of the Contract Price set out in Schedule D (Contract Price Breakdown).

Contractor is defined in the Key Terms.

Contractor Default Notice is defined in Clause 40.

Contractor Insurances is defined in Clause 37.1.

Contractor IP means the Contractor's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Contractor Representative is defined in the Key Terms.

Corporations Act means the Corporations Act 2001 (Cth).

Customs Duties means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

Deducted Amount is defined in Clause 17.2(a).

Defects Liability Period is defined in the Key Terms.

Design Work includes the completion of the design, specification and documentation of the Works (including any Variation at any time) to enable the completion of the Works in accordance with the Contract.

Dispute is defined in Clause 42.1.

Dispute Notice is defined in Clause 42.1.

Dispute Representative is defined in Clause 42.2(a).

Documentation includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Environment means components of the earth including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) any human-made or modified structures and areas;
- (e) the aesthetic or amenity values of an area; and
- (f) humans.

Environmental Event means any event or series of events arising out of the performance of the Contract which has resulted, or results, in any actual or potential harm to the Environment including any event or series of events not authorised by or in breach of any law (whether statute or common law), consent, licence or other Government Agency requirement.

Excise Duties means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Final Completion Certificate is defined in Clause 27.6.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Goods means the goods, materials, supplies, equipment or other items identified in the Contract as being required for the Works.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Policies and Standards is defined in Clause 31.3(a).

HSE Management Plan(s) is defined in Clause 31.4(a).

Illegal Information Brokering means the practice by which certain parties approach contractors, sub-contractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

Indemnified Parties is defined in Clause 38.2(a).

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Company is a party to the contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Key Terms means the document named "Key Terms" forming part of the Contract, but not including the Schedules to that document.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Materials is defined in Clause 46.5(a)(i).

Minor Defects and Omissions means minor defects and omissions in any part of the Works which in the

opinion of the Company Representative do not affect the use of the Works or compliance with Clause 34.

Notice is defined in Clause 47.1.

Northparkes IP means the Intellectual Property Rights of the Company which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Official includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Party means a party to the Contract.

Payment Claim Times are defined in the Key Terms.

Personal Data means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed.

Personnel means:

- (a) in relation to the Contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Works;
- (b) in relation to the Company, any of its past or present officers, employees, agents (including, for the purposes of Clause 38, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Works.

Practical Completion of the Works is achieved when:

- (a) the Works are completed in accordance with the Contract other than Minor Defects and Omissions which the Company Representative reasonably considers need not be rectified prior to Practical Completion and the Works are fit for use;
- (b) all tests and inspections required by the Contract or by the Company for the purposes of confirming the Works comply with the Contract have been satisfactorily completed;
- (c) the Contractor has delivered to the Company Representative all Practical Completion Documents and all other Works Documents which the Company Representative considers are reasonably required to allow the use, operation or maintenance of the Works; and
- (d) all conditions expressed by the Contract to be preconditions to Practical Completion have been satisfied.

Practical Completion Certificate means a certificate issued by the Company Representative stating that Practical Completion has been achieved.

Practical Completion Date is defined in the Key Terms.

Practical Completion Documents means those documents described as such in the Key Terms.

Prior Design Work is defined in Clause 25.3.

Progress Claim is defined in Clause 15.2.

Provisional Sum means any estimated amount in relation to the cost of an item of work and identified as such in Schedule B (Prices).

Purchase Order means individual purchase order or service order as may be issued by the Company to the Contractor in respect of the performance of the Works which shall be subject to the terms of the Contract.

Related Body Corporate has the meaning given in the Corporations Act.

Release Date is defined in Clause 21.5.

Security is defined in Clause 21.1.

Separable Portion means a part of the Works (if any) described in Schedule A (Works) as being a Separable Portion or a part of the Works which in the reasonable opinion of the Company Representative is capable of being put to its intended use by the Company.

Site means the Company's premises identified in the Key Terms.

Special Conditions means the special conditions set out in Schedule F (Special Conditions).

Specifications means the specifications for the Works and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

Sub-contractor means any person engaged by the Contractor in accordance with Clause 54 to perform all or any part of the Works on behalf of the Contractor.

Supply Chain means all steps and processes involved in the provision of the Works to the Company, commencing with the sourcing of the Works and finishing with the use of the Works by the Company.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Tender means the Contractor's offer or counter-offer in writing to perform the Works whether described as a "tender" or "proposal" or otherwise.

Term is defined in the Key Terms.

Termination Notice is defined in Clause 39.1.

Variation is defined in Clause 6.1(a).

Variation Date is defined in Clause 6.1(a).

Works means the physical works or improvements which the Contractor is required to perform, complete and hand over to the Company under the Contract and includes the supply, hire or provision of any Goods as required for the performance of those physical works or improvements.

Works Documents means:

- (a) approvals, consents or permits required by law;
 - (b) consultants' (including engineers') reports or certificates required under the Contract (in favour of the Company);
 - (c) suppliers' or manufacturers' warranties or operation or maintenance manuals required under the Contract (in favour of the Company); and
 - (d) 'as built' drawings,
- relating to the Works.

Works Timetable means the schedule set out in Schedule C (Works Timetable) for the effective monitoring of the progress of the Works which:

- (a) (unless otherwise agreed between the Parties) is in a time-based format in which critical items and activities relating to the performance of the Works are clearly identified and detailed; and
- (b) indicate the dates or times for commencement and completion of the various stages or parts of the Works,
- (c) and includes any amendments to such Works Timetable in accordance with Clause 9.2.

1.2 Interpretation

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by including or for example.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause or Appendix is a reference to a clause of, or appendix to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to use in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communications.

- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Contractor will perform any act or provide anything at its cost, this means the Contractor will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.

1.3 Joint Venture

If the Contract specifies that the Company enters into, and is a party to, the Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to the Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Contractor are several only (and will not be, nor construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Contractor assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers;
 - (iii) the rights and remedies in and under the Contract may be exercised by the Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of the Contractor under the contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
 - (v) all Notices to be given or made pursuant to the Contract relating to the Joint Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
 - (vi) in dealing with the Joint Venturers, for all purposes under or in connection with the Contract (including, for the avoidance of doubt, any Purchase Order), the Contractor must deal only with the Company; and
 - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under the Contract.

2. Evidence of Contract and precedence of documents

2.1 Contract

The Contract consists of the following documents:

- (a) Key Terms;

- (b) Schedule F (Special Conditions) (if any);
- (c) Schedule E (Site Specific Terms) (if any);
- (d) these General Conditions;
- (e) Schedule A (Works);
- (f) Schedule B (Prices);
- (g) Schedule C (Works Timetable);
- (h) Schedule D (Contract Price Breakdown); and
- (i) any other Schedules,

but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless the Company expressly so agrees in writing.

2.2 Precedence of Contract documents

- (a) If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.
- (b) If there is an conflict or inconsistency between a Purchase Order and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.

2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Contractor with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Contractor in this regard, unless those communications expressly form part of the Contract.
- (b) If at any time in relation to the Works, the Contractor provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an invoice) such terms and conditions will not form part of, or be incorporated into, the Contract. Where the Works supplied under the Contract are accompanied by the Contractor's documentation, acceptance of the Works (or other items) or documentation by the Company is limited to an acknowledgement of receipt and not of the Contractor's documentation.
- (c) If during the Term the Company issues a Purchase Order which attaches a separate set of terms and conditions other than those incorporated in the Contract, those terms and conditions will not form part of, or be incorporated into, that Purchase Order or the Contract.

2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Contractor and the Company.

3. Contractor's representations

The Contractor represents to the Company that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to perform the Works;
- (c) it is properly licensed, equipped, organised and financed to perform all its obligations under the

Contract and that there are no contracts in existence that would affect the Contractor's ability to perform its obligations under the Contract in a timely and satisfactory manner;

- (d) the Contract has been validly executed by the Contractor and constitutes valid and binding obligations of the Contractor enforceable according to its terms; and
- (e) the execution of the Contract and the performance of the Works do not and will not result in the breach of:
 - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Contractor may be affected or bound; or
 - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Contractor by which the Contractor may be bound.

4. Contractor's investigations

4.1 Investigations regarding Contract

The Contractor acknowledges that, prior to the submission of its Tender or, where no Tender is submitted, prior to accepting the Company's offer in relation to the provision of the Works:

- (a) the Company provided it with every opportunity for inspecting and testing the Site and gave it every assistance in relation to the investigation of all local and other conditions affecting the performance of the Contract, and the provision of the Works, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and
- (b) that it is deemed to have:
 - (i) inspected and tested the Site;
 - (ii) (without limiting Clause 4.2) carefully and fully examined all documents which have been provided by the Company as part of any tender process; and
 - (iii) to have fully informed itself in relation to each of the matters referred to in this Clause 4.1.

4.2 No representation by Company

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Contractor or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Contractor or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Contractor only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Contractor and its subsequent execution and performance of the Contract is deemed to have been based on the Contractor's own investigations and determinations.

4.3 Contractor satisfied with accuracy

The Contractor agrees that it has satisfied itself as to the accuracy of any information given to it at any time

prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

4.4 No relief

Failure by the Contractor to do all or any of the things it is deemed to have done under this Clause 4 will not relieve the Contractor from any of its obligations under the Contract.

4.5 Company not liable

The Company is not liable for any Liabilities incurred or suffered by the Contractor as a result of its reliance in any way upon any information given to it by the Company.

5. Performance by Contractor

5.1 Performance of Works

The Contractor must perform the Works in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

5.2 Ordering

Without limiting Clause 9, the Company may complete and forward a Purchase Order to the Contractor in respect of all or any part of the Works.

6. Variations

6.1 Variations

- (a) During the Term, the Company Representative may by Notice direct the Contractor to vary any aspect of the Works (**Variation**) on and from the date specified in the Notice (**Variation Date**).
- (b) To the extent that the Variation is reasonable, the Contractor must comply with the Notice and any Variation will be binding on the Parties as if it was included in the Contract.

6.2 Cost of Variations

- (a) The difference in the cost (excluding Indirect Transaction Taxes), if any, including a reasonable allowance in respect of Works already performed but not required, caused by Variations directed by the Company Representative will be added to or deducted from the Contract Price as applicable.
- (b) To the extent that the rates for Variations are specified in a Schedule, they may be used by the Contractor to calculate the cost of a Variation, but otherwise the cost of a Variation will be estimated by the Contractor at the lowest reasonable cost consistent with sound industry practices.

6.3 Variation procedure

- (a) Within 10 days after a Variation Date, the Contractor must submit to the Company Representative a statement advising whether, in its opinion, a difference in the Contract Price will arise as a result of the Variation and, if so, the approximate value of the cost difference.
- (b) Within 30 days of a Variation Date, the Contractor must provide a detailed statement to the Company Representative of either the cost of the Variation or a detailed statement as to why the Contractor has been unable to state the cost of the Variation within the 30 day period. In the

latter case, the Contractor must, without prejudice to the rights and remedies of the Company in those circumstances, provide the detailed statement of cost as soon as possible.

- (c) If either of the statements referred to in Clauses 6.3(a) or (b) are submitted later than the relevant time limits specified in those Clauses the claims contained in those statements may, at the sole discretion of the Company Representative, be time barred.
- (d) The Company Representative must use all reasonable endeavours to make a decision in relation to Variation claims as soon as is practicable after the claim is made.
- (e) As soon as practicable after the Company Representative makes a decision in regard to the Contractor's claim, the Company Representative must prepare a document to be signed by the Company Representative and the Contractor Representative setting out the details of the Variation to the Works directed by the Company Representative and any consequent Variation in the Contract Price.
- (f) If the Company Representative does not approve the claim and the Contractor and the Company Representative are unable to agree upon the amount of the difference in cost then the Dispute must be resolved in accordance with Clause 42.

7. Contractor's warranties

7.1 Contractor's warranties

In addition to the warranties contained in Clauses 45.5, 46.1 and 48.1 and the warranty contained in Clauses 7.2 and 8.1, the Contractor warrants that:

- (a) all of the Works will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Works will:
 - (i) be of the highest standard and in accordance with the Company's Specifications (where those Specifications are made known to the Contractor) or in the absence of such Specifications, in accordance with any applicable standards set by the Standards Association of Australia; and
 - (ii) be fit for their purpose;
- (c) in relation to the performance of the Works:
 - (i) the Contractor and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Contractor will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company.
- (d) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Contractor has not withheld from the Company any information concerning the Contractor, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to

engage the Contractor to perform the Works or the price at which or the terms on which the Company would be prepared to engage the Contractor to perform the Works.

7.2 Asbestos and other prohibited substances

Without in any way limiting the operation of Clause 34 or any other Clause of these General Conditions, the Contractor warrants that:

- (a) all Works supplied to the Company and all material used for packing and shipping the Works (including, without limitation, temporary or replacement fittings such as transport gaskets, packaging and strapping or protective materials) will be free from asbestos and any materials containing asbestos and will be free from any other substance which is prohibited under any applicable legislation, laws or Government Agency requirements; and
- (b) the Contractor has applied and will at all times continue to apply due diligence and surveillance in its design, material specification, material selection and manufacture and in respect of its suppliers and Sub-contractors to ensure asbestos or any material containing asbestos and any other prohibited substance has not been incorporated into the Works or any material used for packing and shipping the Works.

7.3 Contractor indemnity

Without limiting Clause 38, and to the extent permitted by law, the Contractor indemnifies the Company each End User and must keep them indemnified in respect of all Liabilities incurred by or awarded against the Company or an End User relating to any breach by the Contractor of the warranties contained in Clause 7.2 and any applicable legislation, laws or Government Agency requirements.

7.4 Survival of Clause

Clauses 7.2, 7.3 and this Clause 7.4 will survive the termination or expiry of the Contract.

8. Defects liability

8.1 Warranty

The Contractor warrants the Works against any defect which arises during the Defects Liability Period.

8.2 Commencement of Defects Liability Period

- (a) The Defects Liability Period will commence on and from the date of issue by the Company of the Practical Completion Certificate.
- (b) The Defects Liability Period for any Separable Portion reaching Practical Completion earlier than the last Separable Portion to reach Practical Completion will expire on the date of expiry of the Defects Liability Period applying to the last Separable Portion to reach Practical Completion.

8.3 Rectification of defects

Upon receipt of a Notice from the Company Representative of any defect in the Works during the Defects Liability Period due to:

- (a) defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose; or
- (b) not being in accordance with the standard provided for in the Contract,

the affected items or parts must be redesigned, repaired or replaced as appropriate by the Contractor at no cost to the Company prior to the expiration of the time specified in the Notice. If the Contractor fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Contractor's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Contractor as a debt due and payable.

8.4 Redesigned, repaired or replaced Works

The warranty in Clause 8.1 applies to any part of the Works which are redesigned, repaired or replaced in accordance with Clause 8.3, and Clause 8.3 applies to any defect in any such redesigned, repaired or replaced part of the Works, until the later of:

- (a) the expiry of the Defects Liability Period; or
- (b) one year from the date of redesign, repair or replacement.

9. Works Timetable

9.1 Adherence to Works Timetable

- (a) Time is of the essence in the performance of the Contractor's obligations under the Contract.
- (b) The Contractor must perform the Works in accordance with the Works Timetable. The Contractor acknowledges that the Company Representative will rely upon the Works Timetable in co-ordinating other work at the Site and elsewhere.
- (c) If the Company Representative is of the opinion that the Contractor will not be able to complete the Works or any part of the Works in accordance with the Works Timetable, then the Company Representative (without prejudice to the Company's other rights under the Contract) may instruct the Contractor to work overtime (including night shifts, Saturdays, Sundays and public holidays) and to provide all necessary additional labour, supervision and plant to achieve and maintain adherence to the Works Timetable at no additional cost to the Company, until such time as the performance of the Works are in accordance with the Works Timetable. The Contractor must comply with any instruction from the Company Representative given in accordance with this Clause 9.1(c).

9.2 Amendments to Works Timetable

- (a) If the Contractor at any time is of the opinion that despite all reasonable steps having been taken, it will not be able to adhere to all or any part of the Works Timetable due to:
 - (i) a breach of any provision of the Contract by the Company;
 - (ii) Force Majeure;
 - (iii) a direction of the Company Representative under Clause 27.3;
 - (iv) a delay or suspension in access to the Site as outlined in Clause 32.5;
 - (v) a delay caused by another on-Site supplier or its personnel as outlined in Clause 35.3; or
 - (vi) the Company directing a Variation,

the Contractor must within 14 days of such event give Notice to the Company applying for an amendment to

the Works Timetable setting out in detail the reasons for the application and clearly establishing the delay in question.

- (b) The Company must, if it considers an application made by the Contractor in accordance with Clause 9.2(a) to be reasonable, by Notice amend the Works Timetable in such manner as it considers appropriate and such amendment will be the Contractor's sole remedy for any delay and the Contractor will not be entitled to any increase in the Contract Price or any damages, costs or expenses in connection with such extension provided that the Company may (in its discretion) reimburse the Contractor for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.
- (c) Unless the Contractor has applied for an amendment to the Works Timetable in accordance with this Clause 9.2 and unless and until the Company has granted an amendment, the Contractor will not by reason of any delay arising from any cause be relieved in any way or to any extent from its obligations to proceed with and complete the Works in accordance with the Works Timetable. In the event of an amendment to the Works Timetable, the Contractor will only be so relieved to the extent that it will have until the expiry of the relevant dates (as amended), in which to perform and complete the Works.

10. Term

The Contract will commence on the Commencement Date and will remain in force, unless terminated earlier in accordance with the Contract, for the Term.

11. Representatives

11.1 Performance

The Works must be performed by the Contractor in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

11.2 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) Directions given to the Contractor by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

11.3 Contractor Representative

- (a) The Contractor Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 11.2, and the Contractor Representative will have full power to legally bind the Contractor in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Contractor Representative is deemed to have been given to the Contractor for and on behalf of the Company and the Contractor must comply with that direction accordingly. Any communication given, or document signed, by a Contractor Representative is deemed to have been given or signed by the Contractor and will bind the Contractor. Matters within the knowledge of a Contractor Representative are

deemed to be within the knowledge of the Contractor.

- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give Notice of such revocation and appointment to the other Party.

12. Risk in, and protection of, Works

12.1 Risk in Works

Risk in the Works will remain with the Contractor until the receipt by the Contractor of a Final Completion Certificate from the Company Representative.

12.2 Protection of Works

Until receipt by the Contractor of a Final Completion Certificate from the Company Representative, the Contractor must protect the Works (and any other work which is required to be performed on the Site in order to enable the Works to be undertaken) by providing the following, at its cost and to the extent expedient or necessary:

- (a) adequate covering;
- (b) proper fencing;
- (c) adequate lighting;
- (d) security;
- (e) temporary roadways, footpaths, guards and fences; and
- (f) notices and signs.

13. Contract Price

13.1 Contract Price

The Contract Price means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 14) by the Company to the Contractor in relation to the Works.

13.2 Contract Price to be inclusive

- (a) All expenses incurred by the Contractor in relation to the provision of the Works, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Contractor must separately disclose to the Company details of any Customs Duties included in the Contract Price.
- (c) Section 152(1)(a) of the *Customs Act 1901* (Cth) does not apply to the Contract.

13.3 Greenhouse gas emissions

Notwithstanding any other provision of this Contract, the Contractor is not entitled to be reimbursed by the Company for any amount that the Contractor pays or is liable to pay as a result of the Contractor, or a Related Body Corporate of the Contractor, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of performing the Works under the Contract; or
- (b) performing the Works.

14. Taxes

14.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
 - (i) inclusive of Taxes; and
 - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (supply) made under or in connection with this Contract, and if the party making that supply (supplier) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (recipient) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when the Contract Price (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This sub-Clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to sub-Clause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- (d) Any reference in:
 - (i) this Contract to a cost, expense or other liability (Cost) incurred by a party; or
 - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,
- (e) must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.
- (f) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

14.2 Withholding Taxes

- (a) If a party (payer) is required by any applicable law to make a deduction or withholding from a payment to the other party (payee) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts,

proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Agency. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause.

- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

14.3 Customs Duties and Excise Duties

- (a) Where the recipient elects to acquire Goods and the supplier is the importer of record, the supplier will:
 - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
 - (ii) use its best endeavours to ensure that any Goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) The supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to make or assess the supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
 - (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
 - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Contract Price. This Clause applies regardless of the shipping, insurance or freight terms used.

14.4 Survival of Clause

This Clause will continue to apply after expiration or termination of this Contract.

14.5 US or Global contracts only

- (a) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the supplier for which the supplier seeks reimbursement from the recipient, then, unless the supplier notifies the recipient in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any

reimbursement by the recipient will be at its sole discretion.

- (b) If the recipient deems that any Indirect Transaction Taxes paid to the supplier under Clause 14.1(b) have been inappropriately levied or that an exemption applies, the recipient may, by written Notice to the supplier, require the supplier to contest such Indirect Transaction Taxes at the recipient's sole expense and subject to its direction and control.
- (c) The supplier shall do all things reasonably necessary to ensure that the recipient remains eligible for any exemption, credit, set-off, deduction or similar amount to which the recipient is entitled as a purchaser or recipient of any supply under any applicable laws, whether the Indirect Transaction Taxes are paid by the supplier or directly by the recipient. If an exemption to payment of Indirect Transaction Taxes applies, the recipient shall provide the supplier with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the supply takes place.

15. Payments to Contractor

15.1 Method of payment

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Contractor by the Company pursuant to the Contract in relation to the performance of the Works must be made in the currency specified in Schedule B (Prices) by electronic funds transfer into the Contractor's nominated bank account.
- (b) If the Contract provides that any of the amounts referred to in Clause 15.1(a) are to be paid to the Contractor:
 - (i) outside Australia;
 - (ii) other than in Australian currency; or
 - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Company obtaining the necessary authorities and consents to the making of that payment.

15.2 Contractor to prepare Progress Claim

Unless otherwise provided in the Contract, at each of the Payment Claim Times, the Contractor must prepare in reasonable detail and in a form approved by the Company Representative, and submit for approval, a Progress Claim (Progress Claim) showing the Contract Value of the parts of the Works performed by the Contractor since the preceding Progress Claim, or, in the case of the first Progress Claim, since the Commencement Date.

15.3 Additional reporting

- (a) In addition to and accompanying each Progress Claim, the Contractor must furnish a report on the progress of the Works compared with the Works Timetable which report must give full details of any action proposed to overcome any failure by the Contractor to adhere to the Works Timetable.

15.4 Provisional Sums

- (a) The Contract Price includes Provisional Sums.
- (b) The Contractor must obtain the written consent of the Company Representative prior to performing the work to which a Provision Sum relates.

- (c) The Contract Price will be adjusted by the difference between a Provisional Sum and the cost to the Contractor of carrying out the item to which the Provisional Sum applies (excluding profit and overhead).
- (d) If the Contractor does not for any reason perform the work to which a Provisional Sum applies, the Provisional Sum will be deducted from the Contract Price.

15.5 Tax Invoices

- (a) Together with the submission of a Progress Claim, the Contractor must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Works to which the particular Progress Claim and calculated by reference to the prices, fees or other amounts specified in Schedule B (Prices).
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
 - (i) a brief description of the Works provided in the period covered by the Tax Invoice;
 - (ii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Company;
 - (iii) if payment is required in any currency other than Australian dollars, the equivalent of the Indirect Transaction Taxes amount; and
 - (iv) any further information stipulated in any applicable laws (including any information necessary to make the invoice a Tax Invoice), or by the Company.

15.6 Payment of Tax Invoices

Subject to Clauses 15.7, 17, 21.4, 37.10(e) and 40.2(b), the Company must pay to the Contractor the amount shown on the Tax Invoice within 45 days following the end of the month in which the Tax Invoice is received by the Company.

15.7 Disputed Tax Invoices

If the Company disputes any amount shown on a Tax Invoice, it must notify the Contractor within 21 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with Clause 15.6, provided that the payment by the Company of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

15.8 Errors or exceptions in invoicing

Without limiting Clause 15.7, if the Contractor discovers or is advised of any errors or exceptions relating to its invoicing for the Works, the Contractor and the Company will jointly review the nature of the errors or exceptions, and the Contractor must, if appropriate, take prompt corrective action and adjust the relevant Tax Invoice or refund overpayments.

16. E-Commerce

16.1 Contractor's e-commerce obligations

The Contractor undertakes to continually monitor and review its business processes in order to identify e-commerce opportunities and must use its best endeavours to develop and use such opportunities in its dealings with the Company.

17. Deduction from payments

17.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Contractor pursuant to Clause 15.5 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 14):
 - (i) all debts and moneys due from the Contractor or its Personnel to the Company;
 - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Contractor or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
 - (iii) the cost of remedying any defective or damaged Works; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Contractor fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Contractor under the Contract, until the matter has been remedied.

17.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Contractor when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Contractor.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
 - (i) give Notice to the Contractor demanding payment of an amount equal to the Deducted Amount and the Contractor will pay that amount to the Company within 30 days of receiving the Notice;
 - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Contractor and the amount so deducted will be treated as having been paid to the Contractor when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Contractor; or
 - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 17.2(b)(i) and deducting an amount under Clause 17.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Contractor, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

17.3 Notification of withholding or deductions

The Company must notify the Contractor of the details of any amounts withheld or deducted pursuant to Clauses 17.1 or 17.2.

17.4 Clause to survive termination

This Clause 17 will survive the termination or expiry of the Contract.

18. Alternative Works

18.1 Alternative Works

To the extent that the Contractor is unable to perform all or any part of the Works in accordance with the Contract for any reason (including Force Majeure), the Company may, in its sole discretion, source such part of the Works from any third party (Alternative Works).

18.2 Contractor responsible for incremental costs

- (a) If the Company exercises its rights under Clause 18.1 to source Alternative Works, the Contractor is responsible for all incremental costs to the Company associated with sourcing the Alternative Works, including Supply Chain differentials, except where the reason for the inability to perform all or part of the Works was:
- (i) due to the Contractor being subject to Force Majeure; or
 - (ii) as a direct result of an act or omission of the Company.
- (b) The Company must use reasonable endeavours in exercising its rights under Clause 18.1 to source the Alternative Works at the minimum cost reasonably available.

19. Contractor's information, accounts and records

19.1 Provision of information

The Contractor must provide the Company with any information requested by the Company in relation to the provision of the Works.

19.2 Contractor to maintain accounts and records

The Contractor must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in Clause 19.2(a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

19.3 Contractor to provide access

- (a) In addition to the rights set out in Clause 19.1, the Contractor and its Personnel must permit the Company to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
 - (i) the Contract Price, including any amendment to the Contract Price;
 - (ii) the existence (or otherwise) of any Indirect Transaction Taxes; or
 - (iii) any other amount payable to, or claimed by, the Contractor pursuant to the Contract.
- (b) The Company may make and retain copies of any of the items referred to in Clause 19.3(a).

20. Right to audit by Company

20.1 Right of audit of Contractor performance

In addition to the rights set out in Clause 19, the Contractor and its Personnel must permit the Company to have access to the Contractor's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Contractor's Personnel in connection with the Works, as necessary for Company Personnel to verify, monitor and audit the Contractor's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in Clause 31; and
- (b) the Company policies identified in Clause 33.

20.2 Action by Contractor

Without limiting any other rights or remedies available to the Company as a result of the Contractor's non-compliance with any of the conditions, policies and standards referred to in Clause 20.1, if deficiencies are identified by an audit undertaken under Clause 20.1, the Contractor must take prompt corrective action and notify the Company of such action.

21. Performance Security

21.1 Security

The Contractor must, within 30 days of a request by the Company in writing, lodge with the Company an unconditional irrevocable guarantee payable on demand:

- (a) from a bank acceptable to the Company in its absolute discretion;
- (b) in the form set out in Appendix A, or such other form as the Company may accept; and
- (c) for an amount equal to 10% of:
 - (i) the Contract Price; or
 - (ii) where the Contract Price cannot be determined conclusively as at the date of a request by the Company under this Clause 21.1, the Company's estimate of the aggregate amount payable by the Company to the Contractor in respect of the Works,

(Security).

21.2 Additional Security

If, as a result of a Variation there is an increase in the Contract Price (as evidenced by a document signed in accordance with Clause 6.3(e)), the Contractor must within 30 days of a request by the Company in writing, lodge with the Company an additional or replacement Security so as to ensure that Securities are provided for, in aggregate, an amount equal to 10% of the revised Contract Price.

21.3 Stamp duty and other Taxes

All stamp duty and other Taxes payable in relation to the Security and any additional Security must be paid by the Contractor prior to lodging the Security with the Company.

21.4 No payment prior to lodgment of Security

Notwithstanding any other provision of the Contract, the Company is not obliged to pay any amount to the Contractor until the Contractor has lodged a Security, or additional Security, with the Company in compliance

with a request from the Company under Clauses 21.1 or 21.2, as the case may be.

21.5 Release Date

The Security will be held by the Company for the proper performance of the Contract until the later of:

- (a) the date on which all the obligations and contingent obligations of the Contractor pursuant to the Contract (including in respect of any Defects Liability Period) have been fulfilled; or
- (b) the date on which all moneys payable to the Company by the Contractor pursuant to the Contract have been paid,

(Release Date).

21.6 Recourse to Security

- (a) The Company may have recourse to the Security if the Company believes (acting reasonably) that the Contractor has not performed its obligations in accordance with the Contract or otherwise has a claim against the Contractor (whether in relation to the Contract or otherwise).
- (b) Notwithstanding any other provision of the Contract, the Company will not be liable for any Liabilities incurred or suffered by the Contractor in relation to the use of the Security by the Company.
- (c) The Contractor agrees that it will not in any proceedings whatsoever exercise any rights it may otherwise have, nor take any steps to injunct or otherwise restrain:
 - (i) the Company from using any sum or sums received from the conversion of the Security;
 - (ii) the Company from exercising its rights under the Security; or
 - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security.

21.7 Return of Security

- (a) Subject to Clause 21.7(b), within 30 days after the Release Date, the Company must return the Security to the Contractor.
- (b) As a condition precedent to the return of any Security to the Contractor, the Contractor must execute and deliver a release in the form set out in Appendix B.

22. Preservation of existing third party supply arrangements

The Contractor acknowledges that:

- (a) supply arrangements exist between the Company and third party suppliers as at the Commencement Date; and
- (b) the Company has no obligation to the Contractor to seek to alter, modify or terminate any of the supply arrangements referred to in Clause 22(a).

23. No minimum purchase or exclusivity

23.1 No minimum purchase

Nothing in the Contract obliges the Company to request or acquire any minimum level of Works from the Contractor.

23.2 No exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Contractor in respect of the Works (or any aspect of it).

24. Contractor Personnel, Facilities and equipment

24.1 Contractor Personnel

The Contractor is required to supply all Personnel necessary for the proper performance of the Works. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Works in respect of which they are engaged.

24.2 Engagement of Personnel

The Contractor must ensure that all Personnel of the Contractor engaged to provide any part of the Works comply with Clauses 43, 44, 45, 46, 50 and 51 with respect to Intellectual Property Rights, public announcements, Confidential Information, Illegal Information Brokering and business standards.

24.3 Contractor Personnel information

- (a) Promptly following the date of the Contract, the Contractor must provide the Company Representative with a detailed organisational chart containing details of the positions and reporting relationships within the Contractor's organisation in relation to supervisory Personnel associated with the provision of the Works.
- (b) During the Term, the Contractor must promptly notify the Company Representative of any changes to the positions and reporting relationships outlined in the organisational chart provided in accordance with Clause 24.3(a).
- (c) The Contractor must at all times keep an updated list of its Personnel undertaking work on the Site.

24.4 Company may object to Personnel

The Company Representative may object to any of the Contractor's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Contractor must remove such Personnel upon receipt from the Company Representative of Notice requiring it to do so and must not re-employ that person in connection with the Works without the prior written consent of the Company Representative. In addition, the Contractor must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

24.5 Contractor responsibilities

The Contractor is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for the Contractor to provide the Works in accordance with the Contract;
- (c) packing and transporting to the Site any Works or Goods manufactured off-Site in accordance with the Company's policy in relation to freight

preparation, which can be provided upon request, provided that the Contractor must not pack or dispatch any part of such off-Site materials to Site without the prior written approval of the Company Representative; and

- (d) the health and safety of its Personnel.

24.6 Company Facilities

- (a) Subject to Clauses 24.5 and 24.6(b), to the extent that the Company has relevant Facilities in place which are available, those Facilities will be available for use by the Contractor or any of its Personnel in relation to the provision of the Works. The Contractor is responsible for the provision of any Facilities which are required for the provision of the Works to the extent that they are not already in existence and available (as determined by the Company).
- (b) The Contractor is required to inform the Company Representative at least 7 days in advance of its requirements in relation to the use of the Company's Facilities. The terms of use of any of the Company's Facilities will be at the Company's discretion.
- (c) The Contractor must ensure that at all times the any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

24.7 Improper or defective items

- (a) The Company Representative may object to and have removed from the Site any improper or defective materials, plant, machinery or implements and may also request the addition of such items as in the opinion of the Company Representative are necessary for the due completion and fulfilment of the Contract.
- (b) If the Contractor fails to comply with any such objection or request made by the Company Representative within 7 days of receiving Notice of that objection or request, then the Company may add to or remove such materials, plant, machinery or implements as it sees fit at the cost of the Contractor.

25. Design Work

25.1 Application of Clause

This Clause 25 applies where Schedule A (Works) specifies that the Contractor is required to carry out Design Work.

25.2 Design Work obligations

The Contractor agrees:

- (a) the description of the Works set out in the Contract is adequate for the Contractor to complete the Design Work; and
- (b) the Contractor will complete the Design Work so that the construction of the Works may be commenced within the time specified in the Works Timetable and so as to enable Practical Completion to be reached by the Practical Completion Date.

25.3 Prior Design Work

If the Company has had the Design Work partially completed by others (*Prior Design Work*) the Contractor agrees that:

- (a) the Contractor will be fully responsible for the whole of the Design Work in accordance with the Contract despite any errors, inconsistencies,

omissions or inadequacy in the Prior Design Work;

- (b) Design Work will be taken to include the Contractor carrying out the development, correction and completion of the Prior Design Work (as the case requires); and
- (c) the Prior Design Work will not affect the obligations of the Contractor under the Contract.

25.4 Company Representative's prior consent to use design documents

The Contractor must not commence the construction of any part of the Works until:

- (a) the Design Work in relation to that part of the Works has been completed in accordance with the Contract; and
- (b) the documents set out in the Contract prepared in connection with the Design Work have been submitted to the Company Representative and the Company Representative has consented to their use for the purposes of the Works.

25.5 Purpose and effect of Company's involvement

The requirement for the Contractor to obtain the Company Representative's consent to the use of design, specification or other documents is not to be taken to impose on the Company or the Company Representative any obligation in respect of the design of the Works and none of:

- (a) the Company Representative's or the Company's consent to the use of any such documents;
- (b) the Company Representative's or Company's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any documents; or
- (c) any direction by the Company Representative or the Company (including any Variation),
- (d) will relieve the Contractor from any of its obligations, warranties or liabilities in respect of the Design Work.

26. Testing, Commissioning and Inspection

26.1 Testing and Commissioning

The Contractor must undertake any testing or Commissioning of the Works required in accordance with the Contract.

26.2 Inspection

The Company Representative has the right to inspect or test the Works at any time to determine whether the Works are in accordance with the Contract and are to the standard provided for in the Contract.

26.3 Access

The Contractor must ensure that the Company has access to the Works at all times and the Contractor must provide all facilities necessary for the supervision and inspection of all Works at the Site.

26.4 Dismantling or opening up Works

- (a) Subject to Clause 26.4(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of a Works, the Works so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the

Works are found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting those Works into a condition which is in accordance with the Contract, will be borne by the Contractor.

- (b) If the Company Representative gives the Contractor reasonable Notice that the Company Representative wants to inspect any portion of the Works before it is assembled, and the Contractor assembles those Works without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling those Works will be borne by the Contractor.

- (iii) the Company Representative's direction has been requested by the Contractor;
- (iv) the Company Representative's direction is required because of a breach of the Contract by the Contractor; or
- (v) the direction involves or constitutes a Variation for which the Contractor already has a claim for:
 - A. adjustment to the Contract Price in accordance with Clause 6; or
 - B. an amendment to the Works Timetable in accordance with Clause 9.2.

27. Time and Completion

27.1 Contractor's obligations

Without limiting Clause 9.2, the Contractor must:

- (a) commence work on the Site on the Commencement Date;
- (b) perform the Works regularly, diligently and as expeditiously as possible; and
- (c) achieve Practical Completion by the Practical Completion Date.

27.2 Prior Notice of Practical Completion

The Contractor must give the Company Representative 7 days' Notice of the date upon which the Contractor anticipates reaching Practical Completion.

27.3 Changes to progress of Works

The Company Representative may at any time direct the Contractor to:

- (a) accelerate or delay the progress of the Works;
- (b) suspend the Works for any period;
- (c) change the order or sequence in which the Works are to be carried out; or
- (d) change the days or hours during which the Works are to be carried out,
- (e) in which case:
- (f) the Contractor must comply with the Company Representative's direction to the extent that the Contractor can do so or notify the Company Representative within 2 days after the Company Representative's direction that it cannot do so and the reasons why not; and
- (g) the Contractor will have no Claim arising from the Company Representative's direction except that:
 - (i) the Contractor may claim an amendment to the Works Timetable in accordance with Clause 9.2 in respect of the Company Representative's direction; and
 - (ii) if the Contractor incurs extra costs as a direct result of such direction despite the Contractor using best endeavours to avoid or minimise such costs, the Contractor may claim an adjustment to the Contract Price to reflect those costs which claim will be considered and determined by the Company Representative;

unless:

27.4 Issue of Practical Completion Certificate

The Company Representative must within 14 days after receiving the Contractor's request for a Practical Completion Certificate:

- (a) issue a Practical Completion Certificate; or
- (b) notify the Contractor of the reasons why the Company Representative considers Practical Completion has not been achieved.

27.5 Issue of Certificate without request

The Company Representative may issue a Practical Completion Certificate at any time after the Company Representative considers Practical Completion has been reached (even if the Contractor has not requested it to do so).

27.6 Final Completion

Subject to Clause 30, upon the expiry of the Defects Liability Period and when satisfied that all of the Works have been completed in accordance with the Contract, and that all of the Contractor's obligations under the Contract have been fulfilled, the Company Representative must certify that this is the case by providing the Contractor with a certificate to this effect (Final Completion Certificate).

28. Goods incorporated in Works

28.1 Substitution of temporary Goods

The Company Representative may, without prejudice to the Company's rights under the Contract or otherwise in relation to the Goods, require that any Goods required to be altered or replaced in accordance with Clauses 8.3 or 46.4 be incorporated in the Works on a temporary basis with a view to substituting acceptable Goods when available. No payment will be made by the Company to the Contractor in respect of any Goods used on a temporary basis in accordance with this Clause 28.

28.2 Delay

- (a) Without limiting the Contractor's responsibility to supply all the Goods and to complete the Works in accordance with the Works Timetable, if in the reasonable opinion of the Company Representative, the performance of the Works is or may be delayed due to the delay in arrival of any Goods to be provided by the Contractor, the Contractor must provide the Company with the following on request by the Company Representative:
 - (i) sufficient description by way of name and item number of the Goods;
 - (ii) copies of orders for the purchase or manufacture of the Goods;

- (iii) notification of the date of commencement of manufacture (if applicable); and
 - (iv) a programme for shipment and delivery of the relevant Goods to the Site,
 - (v) and the Company may then, without creating any existing or future obligations in that regard:
 - (vi) supply the required Goods at the Contractor's cost; or
 - (vii) expedite the procurement and/or the manufacture of all or any of the Goods, and the delivery of those Goods.
- (b) Where the Company has agreed to supply any item or to assist the Contractor in the performance of the Contract pursuant to Clause 28.2(a) then:
- (i) if the Goods are stored by the Company they must be removed from the Company's store or storage area without delay by the Contractor when required by it or when directed in writing by the Company Representative (whichever is the sooner) and those items must be included in the Contractor's materials procurement schedules;
 - (ii) the Contractor is responsible for, and must keep in good order and condition, all those items supplied by the Company pursuant to Clause 28.2(a) from the date of delivery by the Company including any returnable packing or containers;
 - (iii) the Contractor must account to the Company for all items supplied by the Company pursuant to Clause 28.2(a) which it has used and must return to the Company in good order and condition any of those items which remain unused on the date of issue of the Final Completion Certificate (or earlier if directed by the Company), and the Contractor will be responsible for the cost of replacement or repair of any items lost or damaged while it is responsible for those items; and
 - (iv) in the event of any loss of, or damage to, any items supplied by the Company pursuant to Clause 28.2(a) at any time after receipt, the Contractor must notify the Company Representative as soon as possible of the extent and circumstances of the damage or loss.

28.3 Substitution of goods

The Contractor must obtain the Company Representative's approval before substituting any other goods, materials, supplies, equipment or other items for those specified in the Contract and any substitution will not affect the Contract Price or the Works Timetable and will be at the Contractor's cost unless specific written Notice to the contrary is given by the Company Representative prior to such substitution.

28.4 Importation

Without limiting Clause 14.3, where Goods are to be imported by the Contractor into Australia, the Contractor must comply with any applicable customs laws and regulations, and provide the Company with evidence of such compliance on request and the Company may also request any additional information in relation to the Goods to be imported. If the cost to the Contractor of the relevant item is less than that shown opposite the item in Schedule B (Prices) or

Schedule D (Contract Price Breakdown) (or elsewhere in the Contract), then the Contract Price will be reduced by the amount of the difference.

29. Separable Portions

29.1 Interpretation

The interpretations of "Practical Completion Date" and "Practical Completion" will apply separately to each Separable Portion and references to the "Works" will mean the Works comprised in the relevant Separable Portion.

29.2 Creating Separable Portions

If:

- (a) a part of the Works has reached a stage of Practical Completion; and
- (b) another part of the Works has not reached a stage of Practical Completion; and
- (c) the Parties do not agree on the creation of Separable Portions,

the Company Representative may determine the respective parts as Separable Portions.

29.3 Use of Separable Portions

In using a Separable Portion that has reached Practical Completion, the Company will not unreasonably hinder the Contractor in the performance of the other parts of the Works.

30. Effect of Certificates

30.1 Issue of Certificates

The issue of any Practical Completion Certificate or Final Completion Certificate will not:

- (a) constitute a release of the Contractor from the warranties given, or performance of any of its obligations, under the Contract;
- (b) be taken as an admission of the due performance of the Contract or any part of it or of the accuracy of any Claim made by the Contractor or of altered, amended, omitted, additional or otherwise varied Works having been directed or permitted by the Company Representative; or
- (c) negate or prejudice any of the rights, powers and remedies of the Company or the Company Representative.

30.2 Certificate not evidence of performance

Without limiting Clause 30.1, the issue of a Final Completion Certificate will not constitute evidence that all of the Works under the Contract have been finally and satisfactorily performed by the Contractor in circumstances of:

- (a) fraud, dishonesty or negligent or deliberate concealment on the part of the Contractor or any of its Personnel;
- (b) any matter, omission or defect in respect of the Works or any part of the Works which reasonable inspection at the time of the issue of the relevant Final Completion Certificate would not have disclosed; or
- (c) the incorrect inclusion or exclusion (whether accidental, negligent or deliberate) of any materials, Works or figure in any computation, or any arithmetical error in any computation.



31. Health, safety and environment

31.1 Application of Clause

This Clause 31 applies to the extent the Contractor or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Works.

31.2 Contractor acknowledgement

The Contractor acknowledges that there is a direct relationship between the Contractor's health, safety and environmental performance and the success of the Company's business.

31.3 Compliance with health, safety and environmental laws, policies and standards

The Contractor agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 33, the Company's health, safety and environmental policies and associated standards applicable from time to time (a copy of which has been provided to the Contractor) (**HSE Policies and Standards**);
- (b) without limiting Clause 34, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 31.

31.4 Health, Safety and Environmental Management Plan

- (a) If it has not already been finalised as part of the Contractor's submission of the Contractor's Tender (if any), the Contractor must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Contractor with any request for amendments.
- (c) The Contractor and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Contractor to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Contractor must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

31.5 Induction Courses

- (a) Each of the Contractor's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Contractor's Personnel are required to have specific skills for the performance of the Works (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:

- (i) be included in the HSE Management Plan(s);
 - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
 - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
- (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Contractor Personnel attending the Company Induction Courses; and
 - (ii) the Contractor will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Contractor Personnel attending such training courses.
- (d) Any person visiting the Contractor on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

31.6 Contractor to remain liable

Nothing in this Clause 31 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Contractor or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

31.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 31, the Company may:

- (a) require the Contractor, Contractor's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,

and the Contractor must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

32. Access to Site

32.1 Access

Without limiting Clause 37.10(e) or this Clause 32, the Company will grant to the Contractor access to the Site on and from the date of the Contract and the Contractor must give the Company Representative at least 7 days' Notice before commencing the Works on the Site.

32.2 Contractor obligations

- (a) Prior to commencement of the Works on the Site, the Contractor must notify the Company Representative of its normal times and periods of work and must give the Company Representative

at least 24 hours' Notice of any alteration in its working hours or periods of work.

- (b) The Contractor must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

32.3 Setting out

- (a) Unless the Contract provides otherwise, the Contractor will be responsible for correctly setting out the Works, and must provide the necessary equipment for that task.
- (b) Any error which arises in the setting out must be remedied by the Contractor at its own expense.

32.4 Cleaning of the Site

The Contractor must ensure that the Site is left in a clean, orderly and safe condition and fit for immediate use and must carry out all drainage and pumping required to keep the Works dry.

32.5 Delayed or suspended access

If there is any delay in giving the Contractor access to the Site, or if access is suspended or inadequate, the Contractor may apply for an amendment to the Works Timetable in accordance with Clause 9.2.

32.6 Right to deny access

If the Contractor or its Personnel fail to comply with any of the requirements of Clause 31 or this Clause 32, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

32.7 No exclusive possession

The Contractor acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Works.

33. Compliance with Company policies

During the Term, the Contractor must, and must ensure that its Personnel, comply with each of the rules and policies of the Company, as notified by the Company to the Contractor from time to time in writing.

34. Laws

34.1 Compliance with laws

During the Term, the Contractor must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Works, at its cost:
 - (i) obtain all necessary notices;
 - (ii) give all necessary notices;
 - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 34.1(b).

34.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 33 or this Clause 34, the Company may:

- (a) require the Contractor, the Contractor's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,

and the Contractor must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

35. Co-operation with third parties

35.1 No interference

The Contractor must not impede or interfere with the work of any other suppliers or their personnel (whether employed or engaged by the Company or not) on-Site during the Term.

35.2 No compensation

The Contractor is not entitled to any increase in the Contract Price, damages, costs or any other financial or other compensation as a result of any interference on-Site from other suppliers, contractors or personnel.

35.3 Amendment to Works Timetable

If, through no fault of its own, the Contractor suffers delay through interference by other suppliers, contractors or their personnel on the Site, the Contractor may apply for an amendment to the Works Timetable in accordance with Clause 9.2.

36. Force Majeure

36.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other Party that complies with Clause 36.2.

36.2 Force Majeure notice

A Notice given under Clause 36.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

36.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance

of its obligations as soon as reasonably possible; and

- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

36.4 No compensation

Any amendment to the Works Timetable in accordance with Clause 9.2 is the Contractor's sole remedy for any delays resulting from Force Majeure where the Contractor is the affected Party and the Contractor is not entitled to any increase in the Contract Price or any damages, costs or expenses in connection with the Force Majeure.

37. Insurances

37.1 Contractor Insurances

The Contractor is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 37.2, 37.3, 37.4, 37.5, 37.6, 37.7, 37.8 and 37.9 (Contractor Insurances) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

37.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.2(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
 - (iv) cover "goods in the physical and legal control of the Contractor" for an amount not less than the value of the "goods" held off the Site; and
 - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

37.3 Workers' Compensation and Employer's Liability Insurances

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Contractor or any person deemed to be an employee of the Contractor.

- (b) The insurance outlined in Clause 37.3(a) must, unless prohibited by law, be endorsed to:
 - (i) indemnify the Company against any liability which it may incur to the Contractor's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
 - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 37.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

37.4 Contractor's Plant and Equipment

If the performance of the Contract requires the Contractor to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Contractor must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company) to maintain insurance covering all loss and damage to that plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

37.5 Goods in transit

If the performance of the Contract requires the Contractor to transport Goods to or from the Site, unless otherwise advised by the Company in writing, the Contractor will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as a party insured under the policy.

37.6 Motor Vehicle/Automobile Third Party Liability Insurance

- (a) If the performance of the Contract requires the Contractor or its Personnel to use or provide for use motor vehicles, the Contractor must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance outlined in Clause 37.6(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover

provided to another insured under the policy.

37.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Contractor must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Contractor's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Contractor under the Contract. Such insurance must provide cover to an amount of not less than A\$5,000,000 in respect of each and every claim.

37.8 Marine Insurance

- (a) If the performance of the Contract requires or involves the use of watercraft, the Contractor must maintain or require the owners of such watercraft to maintain:
- (i) marine hull and machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
 - (ii) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.8(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

37.9 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Contractor must maintain or require owners of such aircraft to maintain:
- (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - (ii) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.9(a) must, unless prohibited by law, be endorsed to:

- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
- (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
- (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

37.10 Insurance terms

- (a) If the Contractor Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company. The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.
- (b) The Contractor Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 37 will limit the Contractor's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Works, and each time the policies are renewed or varied, the Contractor must provide the Company with an insurance certificate of currency such other evidence as the Company may reasonably require that the Contractor and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Contractor fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
- (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Contractor;
 - (ii) refuse the Contractor and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (f) All Contractor Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Contractor has received a written consent from the Company.

37.11 Notification under Contractor's policy

If the Contractor becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Contractor as required by this Clause 37, the Contractor must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

37.12 Sub-contractors' insurance

The Contractor must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Contractor Insurances required to be effected by the Contractor.

37.13 Insurance claims and payment of insurance excess

- (a) The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor and the Contractor will not be entitled to recover from the Company any excess or deductible so paid by the Contractor.
- (b) The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor where the Company makes a claim under such policy, to the extent that the Company determines that the Contractor or any of its Personnel were responsible for the loss or damage.

37.14 Survival of Clause

This Clause 37 will survive the expiry or earlier termination of the Contract.

38. Indemnities

38.1 Acknowledgement

The Contractor acknowledges that if it enters on to the Site, it does so at the Contractor's own risk. The Contractor must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

38.2 Indemnity

- (a) Subject to Clause 38.3, the Contractor will indemnify (and will keep indemnified) the Company, and its Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:
 - (i) the performance, non-performance or breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under the Contract and/or any Purchase Order;
 - (ii) any act or omission by the Contractor or its Personnel arising out of the performance of the Contract and/or any Purchase Order;
 - (iii) the entry onto and the activities undertaken on, and in, the Site by the Contractor and its Personnel;
 - (iv) the acceptance and use of the Works by any Indemnified Party;
 - (v) the illness, injury or death of any of the Contractor's Personnel arising out of or in any way related to the Contract and/or any Purchase Order;
 - (vi) any Environmental Event which occurs after the date of the Contract which is caused by the Contractor or its Personnel, in connection with the Contractor's performance or non-performance of the Contract, or the activities conducted by the Contractor or its Personnel at the Site;
 - (vii) any claim made against the Company by any of the Contractor's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual

leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; or

- (viii) any penalty imposed for breach of any applicable law in connection with the performance of the Works.

- (b) The Company is entitled to recover from the Contractor an amount due to its Personnel under the indemnity in Clause 38.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 38.2(a) to which its Personnel is entitled, as trustee for and on behalf of that Personnel.

38.3 Exclusions

The Contractor will not be liable under Clause 38.2 to the extent that the Liability was solely caused by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

38.4 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination or expiry of the Contract.

38.5 No requirement for expense before enforcing indemnity right

It is not necessary for the Company or its Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

39. No fault termination

39.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Contractor not less than 30 days' Notice of its intention to do so (**Termination Notice**).

39.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Contractor must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the Works;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

39.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Contractor must:

- (a) immediately cease performance of the Works in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation to the Works performed up to and including the date of receipt of the Termination Notice;
- (c) return to the Company any items issued to the Contractor by the Company during the Term;
- (d) offer the Company first right of refusal to purchase any of the Contractor's equipment used for the purposes of the Contract to be purchased

by the Company at its depreciated value or such other value as agreed by the Parties; and

- (e) take any other action relating to the termination of the Contract as the Company may reasonably require.

39.4 Contractor compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 39, the Contractor is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (i) removing the Contractor's plant and equipment from the Site; and
 - (ii) transporting Contractor Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 39.4(a) represent the only amounts or Liabilities recoverable from the Company by the Contractor following a termination of the Contract by the Company in accordance with this Clause 39.

40. Contractor Default and insolvency

40.1 Contractor Default Notice

If the Contractor breaches any term of the Contract, the Company may serve a Notice of default (**Contractor Default Notice**) on the Contractor containing the information specified in Clause 40.2.

40.2 Contractor Default Notice requirements

A Contractor Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Contractor Default Notice on the Contractor or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Contractor Default Notice or is incapable of remedy, then the Company may by further Notice to the Contractor do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Contractor;
 - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Contractor as a debt due to the Company by the Contractor); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

40.3 Obligations upon termination

If the Company gives Notice pursuant to Clause 40.2(b)(iii), the Contract is terminated from the Cancellation Date and the Contractor must:

- (a) cease performance of the Works in accordance with, but only to the extent specified in, the Contractor Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the Works;

- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Contractor's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Company in relation to the termination.

40.4 No prejudice

Notwithstanding the terms of any Contractor Default Notice or Termination Notice, no action taken by the Company under this Clause 40 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

40.5 Contractor insolvency or bankruptcy

If the Contractor:

- (a) being a company:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
 - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
 - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
 - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - (v) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
 - (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
 - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; or
- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors,

the Company may either:

- (i) terminate the Contract by Notice to the Contractor or any other person in whom the Contract has been vested; or
- (ii) give the person in whom the Contract has been vested, the option to perform the Works in accordance with the Contract, subject to that person providing a guarantee satisfactory to the Company up to the value (as certified by the Company Representative) of the Works remaining to be performed pursuant to the Contract.

41. Default by Company

41.1 Company Default

If the Company:

- (a) neglects or refuses to issue a Practical Completion Certificate or a Final Completion Certificate to which the Contractor is entitled under the Contract; or
- (b) fails to make a payment of any amount due to the Contractor under the Contract in accordance with Clause 15 where the Company is not entitled to exercise any of its rights under Clauses 15.7, 17, 37.10(e) or 40.2(b),

(**Company Default**), then this Clause 41 will apply.

41.2 Company Default Notice

If a Company Default is not remedied within 30 days of the Company Default arising the Contractor may serve a Notice of default on the Company (**Company Default Notice**).

41.3 Company Default Notice requirements

A Company Default Notice must either:

- (a) require the Company to issue a Practical Completion Certificate or a Final Completion Certificate; or
- (b) require the Company to pay to the Contractor the amount owing the subject of the Company Default,
- (c) within a specified period of not less than 30 days' after service of the Company Default Notice on the Company, and in both cases state that if the Company Default is not remedied within the period specified in the Company Default Notice, then the Contractor may either:
 - (i) cease performance of all or any part of the Works until such time as the Company Default is remedied; or
 - (ii) terminate the Contract by Notice to the Company.

41.4 Costs recoverable by Contractor

- (a) Following termination of the Contract by the Contractor pursuant to Clause 41.3(d), the Contractor is entitled to recover from the Company:
 - (i) the amount owing the subject of the Company Default;
 - (ii) out-of-pocket expenses which the Contractor has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - A. removing the Contractor's plant and equipment from the Site; and
 - B. transporting Contractor Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 41.4(a) represent the only amounts or Liabilities recoverable from the Company by the Contractor following a termination of the Contract by the Contractor in accordance with Clause 41.3(b)(ii).

41.5 Company access to Contractor records

For the purposes of Clause 41.4(a), the Contractor must provide the Company with such access to its records, books and (subject to confidentiality

restrictions) contracts as the Company may require in order to verify the amounts claimed by the Contractor.

42. Dispute Resolution

42.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Contractor arising out of or under the Contract (Dispute), a Party may give to the other Party a Notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 42.

42.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a Dispute Representative).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

42.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

42.4 Urgent interlocutory relief

Except in relation to Clause 21.6(c), nothing in this Clause 42 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

43. Confidentiality

43.1 Obligation of confidentiality

The Contractor undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Works; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Works,

unless the Contractor has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).

43.2 Exceptions

Clause 43.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 43 or any other obligations of confidence imposed on the Contractor; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such

disclosure the Contractor gives Notice to the Company with full particulars of the proposed disclosure.

the extent such use is necessary to use the or enjoy the benefit of the Works.

43.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 43.1 will be deemed to be a breach of the Contract.

43.4 Indemnity

(a) Without limiting Clause 38, the Contractor indemnifies the Company and its Personnel, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 43 by the Contractor or its Personnel.

(b) The Company is entitled to recover from the Contractor an amount due to its Personnel under the indemnity in Clause 43.5(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in Clause 43.5(a) to which the entity is entitled, as trustee for and on behalf of that entity.

43.5 Additional obligations

The obligations in this Clause 43 are in addition to and do not diminish the obligations of the Contractor in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

43.6 Return of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Contractor must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Contractor or any of its Personnel.

43.7 Survival of Clause

This Clause 43 will survive the termination or expiry of the Contract.

44. Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Contractor may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

45. Intellectual Property Rights in Works

45.1 Contractor IP

(a) The Company acknowledges that the Contractor remains the owner of all Contractor IP and that nothing in the Contract prevents, limits or restricts the Contractor's subsequent use or exploitation of Contractor IP.

(b) The Contractor grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Contractor IP for the purposes of or in connection with the business of the Company to

45.2 Contract IP

(a) The Contractor agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Contractor assigns and must ensure that all of its Personnel assign all their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Company.

(b) On the Company's request, the Contractor must execute any formal assignment or other document required to give effect to this Clause 45.2.

45.3 Sub-licence of Contractor IP

The Company may sub-licence the Company's rights to use the Contractor IP under Clause 45.1(b) to any person provided such use is in connection with the business of the Company.

45.4 Northparkes IP

(a) The Contractor acknowledges and agrees that the Company remains the owner of all Northparkes IP and that nothing in the Contract prevents, limits or restricts the Company's subsequent use or exploitation of Northparkes IP.

(b) The Company grants to the Contractor, a non-exclusive, non-transferable, revocable licence to use the Northparkes IP and the Contract IP for the sole purpose of providing the Works.

(c) The Contractor must not use, register or attempt to register any interest in or otherwise deal with the Northparkes IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Works.

45.5 Contractor warranty

The Contractor warrants that:

(a) the Contractor has the right to grant to the Company the licence under Clause 45.1(b); and

(b) the Contractor has the right to assign all Contract IP to the Company in accordance with Clause 45.2.

45.6 General Contractor obligations

The Contractor agrees to:

(a) disclose to the Company all Contract IP as and when it is created;

(b) ensure that any sub-contract the Contractor enters into in relation to the Contract contains an assignment by the Sub-contractor to the Company of all Intellectual Property Rights in any Contract IP created by the Sub-contractor for the purposes of the Contract;

(c) notify the Company as soon as the Contractor becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and

(d) provide all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interest in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP). The Contractor must

also ensure that its Personnel provide all reasonable assistance to the Company as set out in Clause 45.2(b).

45.7 Survival of Clause

This Clause 45 will survive the termination or expiry of the Contract.

46. Third party Intellectual Property Rights

46.1 Third party Intellectual Property Rights

The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the performance of the Works, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Works:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 46.1(a).

46.2 Contractor's Indemnity

- (a) Without limiting Clause 38, the Contractor indemnifies the Company and its Personnel, and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
 - (i) the performance of the Works by the Contractor;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Contractor; or
 - (iii) the use and enjoyment of the Works by the Company or its Personnel.
- (b) The Contractor must notify the Company immediately the Contractor becomes aware of a Claim being threatened or made against the Company or its Personnel in relation to any of the matters covered by the indemnity in Clause 46.2(a).
- (c) The Company may require the Contractor to conduct any litigation that may arise from a Claim referred to in Clause 46.2(b) and all negotiations for settlement of that Claim. However, the Contractor must not make any settlement or consent to any judgment, order or verdict against the Company or its Personnel without the Company's prior written consent.

46.3 Procurement of Intellectual Property Rights

If the Company or its Personnel are prevented from using the Works or any part of the Works as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Contractor must (at its cost) take all reasonable steps to procure for the Company and its Personnel the right to (as the case requires) operate or use the Works or the relevant part of the Works for the purpose for which it was intended.

46.4 Procedure where Intellectual Property Rights cannot be procured

If the Contractor cannot procure the rights referred to in Clause 42.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Contractor to immediately (at the Contractor's cost):

- (a) alter the Works or the relevant part of the Works to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Works affected or the relevant part of the Works with works which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Works and reimburse the Company any compensation and other moneys already paid to the Contractor and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Works.

46.5 Moral rights

- (a) The Contractor must (at its cost) procure from each of the Contractor's Personnel and any third parties engaged in the performance of the Works an irrevocable and unconditional consent, in favour of the Contractor (for the benefit of the Contractor and its customers, including the Company), which is legally enforceable by the Company, for the Company to:
 - (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Works to the Company (together the Materials) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form the Company thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof (or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
 - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
 - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.
- (b) Where the Company reasonably believes that the Contractor has not complied with its obligations set out in this Clause 46.5, the Contractor must procure that each of the Personnel of the Contractor or any third parties engaged in the performance of the Works do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to any of the matters stated in this Clause 46.5

47. Notices

47.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "the Company Secretary" for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Contractor, be signed or authorised by either the Contractor Representative, a director or company secretary of the Contractor, or a duly authorised representative of the Contractor; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

47.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

48. Conflict of interest

48.1 Warranty

The Contractor warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Works by the Contractor and its Personnel under the Contract.

48.2 Conflicts of interest

The Contractor must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Works by the Contractor and its Personnel under the Contract without the prior written consent of the Company.

48.3 Indemnity

Without limiting Clause 38, the Contractor indemnifies the Company and its Personnel, and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel as a result of any breach by the Contractor of the warranties contained in Clause 48.1 or the undertakings contained in Clause 48.2.

49. Business Standards

49.1 Establishment of procedures

The Contractor must establish and maintain procedures, policies and precautions to prevent its Personnel from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to Personnel of the Company for the purpose of influencing such Personnel to act contrary to the best interests of the Company. This obligation will apply to the activities of Contractor Personnel in their relations with Company Personnel arising from the Contract.

49.2 Improper advantage or benefit to Official

- (a) The Contractor represents and warrants that it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to an Official to secure any improper advantage or benefit in relation to the matters contemplated by the Contract, either directly or indirectly through a third party.
- (b) The Contractor must not, directly or indirectly, in connection with the Contract, offer, pay promise to pay or authorise the giving of money or anything of value to an Official, or to any other person, while knowing or being aware of a high probability that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly to an Official, for the purpose of influencing the act, decision or omission of such Official to obtain or retain business related to the Contract, to direct business related to the Contract to any person, or to obtain any improper advantage or benefit.
- (c) The Contractor represents that no Official or close relative of an Official has any direct or indirect ownership or other legal or beneficial interest in it or any of its Related Bodies Corporate, or in the contractual relationship established by the Contract, and that no such Official serves as an officer, director, employee, or agent of the Contractor or its Sub-contractors.
- (d) The representations and obligations under this Clause 49.2 will continue throughout the Term.

49.3 Notification regarding change of interests

The Contractor agrees to promptly notify the Company in writing of any changes in the direct or indirect ownership in the Contractor or its Related Bodies Corporate that would make it or them an Official. The Contractor covenants that should the Company notify it of any concerns that there has been a breach of the provisions of Clauses 49.2 or this Clause 49.3, it must cooperate in good faith with the Company in determining whether such a breach has occurred. If the Company determines in its sole discretion that there has been such a breach or that the Contractor has taken any action that would create a material risk of liability for the Company under any applicable law, it may treat the breach as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without

regard to any waiting periods or cure periods specified in the Contract.

49.4 Clause to apply to Sub-contractors

The Contractor must require its Sub-contractors to agree to and comply with contractual provisions substantially identical to those contained in Clauses 49.2 and 49.3.

49.5 Notification of failure to comply with Clause

The Contractor agrees to notify the Company promptly upon discovery of any instance where the Contractor or any of its Personnel fail to comply with this Clause 49.

50. Illegal Information Brokering

50.1 Prohibition

The Contractor recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by the Company and the Contractor represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

50.2 Notification

- (a) The Contractor must immediately notify the Company Representative if any person approaches the Contractor for the purpose of Illegal Information Brokering concerning the Contract or any other related business interest of the Company.
- (b) After receiving a Notice under Clause 50.2(a):
 - (i) such Notice and any related information provided by the Contractor will be treated by the Company with the utmost discretion; and
 - (ii) the Company will handle the Contract with extra security measures, as appropriate, in order to prevent any contractor, sub-contractor or other supplier from gaining any unfair advantage subsequent to such Notice.

51. Compliance with Code of Conduct Policy and Core Contractor compliance training

51.1 Northparkes Code of Conduct Policy

In performing the Works, the Contractor must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Company's code of business conduct policy (**Code of Conduct Policy**);
- (b) report all actual, alleged or suspected non-compliance with the Code of Conduct Policy to the Company or through the Company's reporting system; and
- (c) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of the Code of Conduct Policy.

51.2 Core Contractor compliance training

The Company may identify the Contractor and/or certain of its Personnel as "Core Contractors". The Contractor must ensure that any such Core Contractors undertake the mandatory compliance risk reduction training modules identified by the Company from time to time within the timeframe specified. Such

training modules can be accessed through the Company's business system and delivered as computer based training, or with the approval of the Company's relevant authorised Personnel, classroom based training.

52. Indigenous/Community relations

The Contractor recognises that the Company has a foundation for indigenous people and in the performance of the Contract, the Contractor undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

53. Costs

53.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

53.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract (including any Security) will be borne by the Contractor.

54. Status of Contractor

54.1 Independent contractor

At all times during the Term, and in the provision of the Works, the Contractor is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Contractor and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

54.2 Partnership and joint venture suppliers

Where the Contractor comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

55. Assignment and sub-contracting

55.1 Consent required

The Contractor is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

55.2 Obligations survive assignment or sub-contract

The Contractor acknowledges that no permitted assignment or sub-contract in any way relieves the Contractor from the performance of any of its obligations under the Contract.

55.3 Status of Sub-contractor

As between the Contractor and the Company, the Sub-contractor will be considered the agent and employee of the Contractor. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Contractor.

56. Personal Data Protection

56.1 Personal Data

Each Party agrees to comply with its obligations under all applicable laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to this Contract.

56.2 Warranty

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all applicable laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling) pursuant to this Contract.

56.3 Data protection

In addition to its obligations under Clauses 56.1 and 56.2, Contractor agrees to:

- (a) only collect, use, disclose or process Company's Personal Data for the performance of its obligations under the Contract, and as directed by the Company;
- (b) not disclose Company's Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by applicable laws;
- (c) immediately notify the Company that the disclosure of Company's Personal Data is or may be required by applicable laws;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Company's Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of Company's Personal Data will be fair and lawful and, for this purpose, the Contractor may reasonably enquire of the Company as to the manner in which the Company collected Company's Personal Data; and
- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data:
 - (i) with the Company; or
 - (ii) with any or all of the Contractor's related companies or subcontractors.

For clarification, such a request may be made if the Company considers it necessary or appropriate for the purposes of the Company's compliance with its global data privacy obligations. This Clause operates in addition to Clause 56.2.

56.4 Individual complaints

- (a) If an individual complains to the Company that the Contractor (or any of its Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Company must promptly give the Contractor sufficient details about the complaint to enable

the Contractor to take steps to address the subject of the complaint promptly. The Contractor must provide a written response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven (7) days after the complaint is notified to the Contractor. The response must identify the steps that the Contractor has taken to address the complaint and if relevant, to minimise any further misuse.

- (b) If an individual complains to the Contractor that the Contractor (or any of its Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Contractor must:
 - (i) promptly inform the Company of the complaint;
 - (ii) provide the Company with the Company's Personal Data that is the subject of the complaint; and
 - (iii) provide a Notice to the Company about how the Contractor has addressed the complaint, and what steps the Contractor has taken to minimise further complaints.

56.5 Contractor indemnity

Without limiting Clause 38 the Contractor must indemnify the Company and its Personnel from and against any and all Liabilities arising from the Contractor's actual or alleged breach of this Clause 56.

56.6 Survival of Clause

- (a) The Contractor must, on termination of this Contract, return, destroy, store or dispose of the Company's Personal Data as directed by the Company.
- (b) This Clause will survive the termination or expiry of this Contract.

57. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

58. Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

59. Severability

59.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

59.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

60. Governing law

The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.

61. Counterparts

This Contract may consist of a number of copies, each signed by one or more of the Parties. If so, the signed copies are to be treated as making up the one document, and the date on which the last counterpart is executed will be the date of this Contract.

APPENDIX A

Bank Guarantee

To: [Note: Business Unit name to be inserted in specific General Conditions.]

[**Relevant Business Unit name**] (ABN [#]) of [**address**] (**Company**) and [NAME OF CONTRACTOR] of [REGISTERED ADDRESS OF CONTRACTOR] (**Contractor**) are parties to a contract in respect of [BRIEF DESCRIPTION OF WORKS] being Contract No. [CONTRACT NO.] (**Contract**).

In consideration of the Company, at the request of [NAME OF BANK] (**Bank**), accepting this bank guarantee in lieu of requiring the Contractor to provide the Company with a deposit security in another form pursuant to the Contract, the Bank hereby undertakes that on demand in writing by the Company at any time after the date of this Guarantee (until such time as the Company by notice in writing to the Bank executed by its Company Representative advises the Bank that it is released from its obligations under this undertaking), the Bank will pay to the Company a sum or sums not exceeding [\$] in total (**Guaranteed Sum**).

Payment will be made by the Bank immediately without any reference by the Bank to the Contractor and irrespective of:

- (a) any notice to the Bank by the Contractor not to pay any moneys under this bank guarantee to the Company; or
- (b) the performance or non-performance by either the Contractor or the Company of the Contract or of any variation to, or of any contract substituted for, the Contract.

The Bank may at any time terminate this undertaking by payment to the Company of the Guaranteed Sum (less any amount the Bank may previously have paid to the Company pursuant to this Guarantee). Upon termination, the Bank will no longer be liable under this Guarantee.

DATE:

The Common Seal of [**Name of Bank**] was affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

APPENDIX B

Release

This Release is executed pursuant to the provisions of Contract No. [CONTRACT NUMBER] dated [DATE] (**Contract**) between [**Relevant Business Unit name**] (ABN [#]) (**Company**) and [NAME OF SUPPLIER] (**Contractor**).

In consideration of the return of the Security (as that term is defined in Contract) less any deductions the Company is entitled to make pursuant to the Contract, and the payment of all moneys due upon that return, the Contractor hereby:

- (a) waives, releases and forever discharges the Company from all claims, demands, debts, accounts, expenses (whether known or unknown) which the Contractor has or might have against the Company arising under the Contract or out of its performance of the Contract; and
- (b) indemnifies and holds harmless the Company, its officers, employees, agents, advisers, contractors, sub-contractors and representatives from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any kind arising from, or incidental to, the Contract or the Contractor's performance of the Contract.

DATE:

Executed as a deed

The Common Seal of [*Name of Contractor*] was affixed in the presence of:

 Director Signature

 Print Name

 Director/Secretary Signature

 Print Name

[or]

Signed Sealed and Delivered by
[Name of Contractor]:

 Director Signature

 Print Name

 Director/Secretary Signature

 Print Name