



Pilgangoora Operations Pty Limited

[Contractor]

Construction Contract

[DRAFTING NOTE – there are a number of drafting notes highlighted throughout the contract template that must be reviewed, addressed and deleted (where possible) before this contract template may be circulated to external parties (including this note). They will all begin with 'DRAFTING NOTE']

[DRAFTING NOTE – please consider with Legal whether the nature of the works would allow for a contractor's area of responsibility to be defined – being an area a contractor would have sole and exclusive control over.]

[Project] – Stage 2 - [Contract description]

CONTRACT NO: [Insert]

Formal Instrument of Agreement

Date _____

Parties

Pilgangoora Operations Pty Limited (ABN 75 616 560 395) of Level 2, 88 Colin Street, West Perth, Perth 6005 (**Principal**)

[Contractor] **[ABN]** of **[address]** (**Contractor**)

Background

The Principal wishes to engage the Contractor to carry out and complete the construction of the Works in accordance with the requirements of the Contract.

The Principal and the Contractor agree that the Contractor must carry out and complete the construction of the Works for the Principal on the terms of the Contract.

Agreed terms

1 Performance

- (a) The Contractor must carry out and complete the construction of the Works in accordance with the Contract.
- (b) The Principal must pay the Contractor the Contract Price at the times and in the manner provided for in the Contract.
- (c) Each of the parties must perform the obligations imposed on it by the Contract.

2 Contract documents

The Contract comprises:

- (a) this Formal Instrument of Agreement;
- (b) the General Conditions; and
- (c) the following documents marked as follows:

Document description	Where
Schedule of Contract Details	schedule 1
Schedule of Technical Specifications and Drawings	schedule 2
Schedule of Form of Unconditional Undertaking	schedule 3
Schedule of Guarantee and Indemnity	schedule 4
Schedule of Key Personnel	schedule 5
Schedule of Pre-Contract Information	schedule 6
Schedule of Existing Approvals	schedule 7
Schedule of Provisional Items	schedule 8
Schedule of Separable Portions	schedule 9
Schedule of Site Information	schedule 10
Schedule of Program	schedule 11
[Schedule of Construction Method Statement]	schedule 12
Schedule of Quality Manual	schedule 13
Schedule of Collateral Warranty	schedule 14
Schedule of Pricing	schedule 15
Schedule of Native Title Key Obligations	schedule 16
Schedule of Interface Works	schedule 17
Schedule of Pastoral Access Deed Key Obligations	schedule 18
Schedule of Policies	schedule 19
Schedule of CDRL	schedule 20
Schedule of Reporting Requirements	schedule 21
Schedule of Rules of Credit	schedule 22

Document description	Where
<p>[Schedule of Builder's Side Deed]</p> <p>[DRAFTING NOTE: contracts regarding mining services, haulage and power will need to enter into a Builder's Side Deed with the Principal and financiers, otherwise the Schedule of Builder's Side Deed and other references in the General Conditions can be deleted]</p>	Schedule [#]
<p>[DRAFTING NOTE: Consider whether additional schedules or annexures are required.]</p>	

3 Application of the Contract

The Contract applies to the Work under the Contract performed before, on or after the date of the Contract.

4 Entire understanding

- (a) The Contract contains the entire understanding between the parties as to the subject matter of the Contract.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Contract are merged in and superseded by the Contract and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of the Contract; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Execution

Executed as a deed.

Executed by **Pilgangoora Operations**)
Pty Limited ABN 75 616 560 395 in)
accordance with Section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
Director

.....
Name of Director (print)

Executed by **[Contractor] ABN [#]**, in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
Director

.....
Name of Director (print)

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General Conditions

1 Interpretation

1.1 Definitions

In the Contract these terms have the following meanings:

Acceleration Direction	The meaning given to it by clause 9.9(a)
Adjoining Site	Any property adjoining the Site or near the Site.
Australian Standards	The standards published by Standards Australia Limited ABN 85 087 326 690 and distributed by SAI Global.
Authority	Any: <ul style="list-style-type: none">(a) government department;(b) local government council;(c) government or statutory authority; or(d) other person under a Law, which has a right to impose a requirement, or whose consent is required, with respect to the Work under the Contract.
[Builder's Side Deed]	The form of the builder's side deed set out in the Schedule of Builder's Side Deed.
Building Code	The Code for the Tendering and Performance of Building Works 2016. The Building Code can be viewed at the Australian Government website https://www.legislation.gov.au/Details/F2017C00668
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in the city stated at Item 1 .
Claim	Includes any claim for an increase in the Contract Price, for payment of money (including damages) or for an extension of time: <ul style="list-style-type: none">(a) under, arising out of, or in any way in connection with, the Contract, including any direction of the Principal's Representative;(b) arising out of, or in any way in connection with Work under the Contract, the Works, or either party's conduct before the Contract; or otherwise at law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.
Collateral Warranty	A warranty to be provided by a subcontractor in favour of the Principal in the form set out in the Schedule of Collateral Warranty.
Compensable Cause	Means: <ul style="list-style-type: none">(a) breach by the Principal of the Contract; or(b) suspension of the performance of the Work under the Contract, or any part of the Work under the Contract, pursuant to a notice

under clause **9.12(a)**, unless that notice was given as a result of a breach by the Contractor of the Contract or an act or omission of the Contractor.

Compensation	<p>Any compensation whatsoever, including compensation:</p> <ul style="list-style-type: none">(a) for costs and expenses incurred, loss or damage suffered, any benefit conferred or unjust enrichment;(b) in the nature of restitution; and(c) calculated on a quantum meruit.
Confidential Information	<p>All information disclosed to the Contractor by, or on behalf of, the Principal, the Principal's Representative or any related entity of the Principal, including:</p> <ul style="list-style-type: none">(a) information, which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal;(b) trade secrets or information, which is capable of protection at Law as confidential information;(c) information from a third party, where the Contractor is advised by the Principal, the Principal's Representative or any related entity of the Principal that such information is confidential; and(d) information derived or produced, partly or wholly, from the information referred to above, including any calculation, conclusion, summary or computer modelling, <p>whether the information was disclosed:</p> <ul style="list-style-type: none">(e) orally, in writing or in electronic or machine readable form;(f) before, on or after the date of the Contract;(g) as a result of discussions between the parties; or(h) by the Principal, any of its related entities or third parties. <p>Confidential Information does not include information that:</p> <ul style="list-style-type: none">(a) is in or enters the public domain through no fault of the Contractor or any of its officers, employees or agents;(b) is or was made available to the Contractor by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the Principal in relation to that information; or(c) is or was developed by the Contractor independently of the Principal and any of its officers, employees or agents.
Construction Method Statement	<p>The plan set out in the Schedule of Construction Method Statement, as updated under clause 8.1.</p>
Constructional Plant	<p>Plant and equipment used to perform the Work under the Contract which do not form part of the Works.</p>

Contamination	<p>In respect of land or water, including groundwater:</p> <ul style="list-style-type: none"> (a) that the land or water is affected or degraded by the presence of any substance; and (b) having regard to the use of the land or water or of any land or water in the vicinity: <ul style="list-style-type: none"> (i) the substance creates, or may create, a risk of harm to the Environment; or (ii) the concentration of the substance is not within the acceptable standards set out under Law.
Contract Price	<p>means:</p> <ul style="list-style-type: none"> (a) where the Principal has accepted a lump sum, the lump sum stated at Item 2; (b) where the Principal accepted rates, the sum of the products ascertained by the Principal's Representative by multiplying the rates by the corresponding quantities in the Schedule of Pricing; or (c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b), <p>including the Provisional Items Budget, as adjusted in accordance with the Contract.</p>
Contractor's Representative	The Contractor's representative appointed under clause 4.2 .
Contractor's Specification	Any specification or design carried out or completed by the Contractor either as part of the Work under the Contract or in connection with Work under the Contract.
Controller	The meaning given to it in the Corporations Act.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Date for Practical Completion	The date by which the Contractor must achieve Practical Completion, as adjusted under the Contract or otherwise allowed in any arbitration or litigation. At the date of the Contract, the Date for Practical Completion is stated at Item 3 .
Date of Practical Completion	The date the Contractor achieves Practical Completion, as certified by the Principal's Representative under clause 9.11(d)(i) .
Day 1 Clauses	<ul style="list-style-type: none"> (a) Clauses 1 and 2; (b) clause 8.2; (c) clause 13; (d) clause 15; (e) clause 16.2; (f) clause 17; and <p>[Please note: Clauses to be reviewed prior to contract signing].</p>

Defects Correction Period	<p>The period which:</p> <ul style="list-style-type: none"> (a) commences on the Date of Practical Completion; and (b) ends at the expiry of the timeframe stated at Item 7; and <p>any further Defects Correction Period created under clause 8.10(e).</p>
Employee Relations Management Plan	The plan referred to in clause 8.9 .
Environment	<p>Components of the earth, including:</p> <ul style="list-style-type: none"> (a) land, air and water; (b) any layer of the atmosphere; (c) any organic or inorganic matter and any living organism; and (d) human-made or modified structures and areas, <p>and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c) above.</p>
Existing Approvals	Documents referred to in the Schedule of Existing Approvals.
Existing Operation	All improvements on or about the Site and operations of the Principal, or any related entity of the Principal, carried out on or about the Site (whether before or after the date of the Contract).
Fair Work Act	The <i>Fair Work Act 2009</i> (Cth), and any regulations made thereunder, or any legislation passed in replacement or substitution.
Final Payment Certificate	The meaning given to it by clause 10.8(a) .
Final Payment Claim	The meaning given to it by clause 10.7(a) .
Financier	Any financier of the Principal.
Greenhouse Gas	<p>Means:</p> <ul style="list-style-type: none"> (a) carbon dioxide; (b) methane; (c) nitrous oxide; (d) sulphur hexafluoride; (e) a hydrofluorocarbon of a kind specified in the National Greenhouse and Energy Reporting Regulations 2008 (Cth); or (f) a perfluorocarbon of a kind specified in the National <i>Greenhouse and Energy Reporting Regulations 2008</i> (Cth).
GST	A goods and services tax, as governed by the GST Act.
GST Act	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guarantor	Stated at Item 6 .

Indemnified Parties	The Principal, any Related Body Corporate of the Principal, the Principal's Representative, and their respective officers, employees and agents.
Industrial Action	<p>Industrial action of any description including any action of the following kinds:</p> <ul style="list-style-type: none"> (a) the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the Work under the Contract; (b) a ban, limitation or restriction on the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors, or on the acceptance of or offering for work by such a person; (c) a failure or refusal by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors to attend for work or to perform any work; or (d) picketing or protest which interferes with the performance of the Contractor's obligations under the Contract, or hinders the mobilisation of personnel, equipment or supplies required for the Contractor's obligations under the Contract.
Industrial Legislation	Industrial legislation of the Commonwealth or State of Western Australia, including, but not limited to, the Fair Work Act, the <i>Industrial Relations Act 1979</i> (WA), the <i>Long Service Leave Act 1958</i> (WA), the <i>Minimum Conditions of Employment Act 1993</i> (WA), and any regulations made thereunder, or any legislation passed in replacement or substitution.
Industrial Relations Issues	<p>Any issues arising out of or pertaining to the relationship between:</p> <ul style="list-style-type: none"> (a) the Contractor, and the Contractor's or the Principal's employees, agents or subcontractors; (b) any persons employed or engaged by the Contractor or the Contractor's agents or subcontractors; (c) an industrial association (as that term is defined in section 12 of the Fair Work Act) and the persons referred to in paragraph (a) or (b); (d) an officer, employee or agent of an industrial association and the persons referred to in paragraph (a) or (b); or (e) any representatives of the persons in paragraph (b).
Insolvency Event	<p>With respect to a party, any of the following:</p> <ul style="list-style-type: none"> (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;

- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller (as that term is defined in the Corporations Act) is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966; or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

**Intellectual
Property Rights**

All current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, materials, documents, methods, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended and revised from time to time).

**Intended
Purpose**

The purposes stated in, and reasonably inferred or ascertainable from, the Contract.

Interface Works

means the works to be performed by the Principal or other contractors engaged by the Principal which have, or may have, a physical interface with the Work under the Contract, particulars of which are set out at **schedule 17**.

Item

An item listed in the Schedule of Contract Details.

Latent Condition

Physical conditions on the Site, including artificial things (but excluding Contamination which is caused, contributed to, or exacerbated, by the

Contractor), and excluding the effects of weather conditions, which differ materially from the physical conditions which could reasonably have been anticipated by an experienced and qualified contractor in the position of the Contractor at the date of the Contract if the Contractor had:

- (a) examined all information made available in writing by the Principal to the Contractor before the date of the Contract, including the matters referred to in clause **3.5(a)(i)** and any geotechnical or site conditions reports;
- (b) examined all information relevant to the risks, contingencies and other circumstances relating to the Site and the Works and which is obtainable by the making of enquiries and reasonable diligence; and
- (c) inspected and carried out all possible investigations in relation to the Site and its surroundings.

Law

- (a) Commonwealth and State legislation, including regulations, by-laws and other subordinate legislation;
- (b) common law and equity;
- (c) Authority requirements; and
- (d) guidelines of the Commonwealth, the State and local governments and Authorities.

Management Plans

The management plans specified in the Schedule of CDRL.

Modern Slavery

has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

Parent Company Guarantee

The form of guarantee and indemnity set out in the Schedule of Guarantee and Indemnity.

Practical Completion

That stage in the performance of the Work under the Contract, when:

- (a) the Works are complete, except for minor defects and minor omissions;
- (b) the Principal's Representative is satisfied, in its absolute discretion, that:
 - (i) those minor defects and minor omissions do not prevent the Works from being used for their Intended Purpose;
 - (ii) the Contractor has reasonable grounds for not promptly rectifying those minor defects and minor omissions; and
 - (iii) rectification of those minor defects and minor omissions will not prejudice the safe and convenient use of the Works for their Intended Purpose;
- (c) all commissioning, certification and testing required by the Contract to be done and passed, has been done and passed;
- (d) all information which is essential for the use, operation and maintenance of the Works has been supplied to the Principal's Representative and including the following:

- (i) as-built drawings and related documentation, including a complete set of specifications and design drawings in accordance with the Schedule of CDRL;
 - (ii) operation and maintenance manuals and preventative maintenance plans;
 - (iii) the warranties required by the Contract (including all executed Collateral Warranties);
 - (iv) all Testing Certificates; and
 - (v) a quality completion file containing all test results, certificates, correspondence or other data required for the approval of items incorporated in the Works;
- (e) the certificate and the drawings referred to in **clause 8.8(a)** have been provided to the Principal's Representative;
 - (f) any other certificate or approval, which must be issued or given by an Authority for the Works to be lawfully used for their Intended Purpose, has been issued or given by that Authority and provided to the Principal's Representative; and
 - (g) the Contractor has removed from the Site and the surrounding area, all waste and surplus material arising from the performance of the Work under the Contract, and all Constructional Plant so as to leave the Site and the surrounding area in a clean and tidy condition.

Pre-Contract Information	The documents listed in the Schedule of Pre-Contract Information.
Principal's Representative	The person named at Item 4 , or any replacement appointed under clause 4.1 .
Principal Supplied Material	The physical materials, equipment or infrastructure described in Item 13 supplied by the Principal for incorporation in the Work under the Contract.
Program	Set out in the Schedule of Program, as updated under clause 9.2 .
Project Control Group	The project control group referred to in clause 5.1 .
Provisional Item	An item of the Works listed in the Schedule of Provisional Items.
Provisional Items Budget	The budget for the Provisional Items stated in the Schedule of Provisional Items.
Qualifying Cause of Delay	Means: <ul style="list-style-type: none"> (a) a Compensable Cause; (b) a suspension by the Contractor of the performance of the Work under the Contract pursuant to a statutory right to suspend; (c) a Latent Condition; (d) a Variation;

- (e) inclement weather which occurs before the Date for Practical Completion at the Site and continues for the period specified in **Item 8** which, in the Principal's Representative's opinion, makes it unworkable or unsafe to continue the Work under the Contract;
- (f) failure to give the Contractor access to the Site in accordance with **clause 3.1(a)**;
- (g) Industrial Action of nationwide application which:
 - (i) is not directed at the Contractor or the Contractor's employees, agents or subcontractors; or
 - (ii) does not arise from or in connection with an Industrial Relations Issue.

Quality Manual	Set out in the Schedule of Quality Manual.
Receiver	The meaning given in the Corporations Act.
Related Body Corporate	The meaning given in the Corporations Act.
Remediation	<ul style="list-style-type: none"> (a) Includes: (b) preparing a long term management plan (if any) for the land; (c) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and (d) eliminating or reducing hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).
Safety Legislation	The <i>Mining Act 1978</i> (WA) and the <i>Mines Safety and Inspection Act 1994</i> (WA) (or if this legislation is superseded, any replacement legislation) and regulations made thereunder (collectively 'mine safety legislation'), to the extent the mine safety legislation applies to the Site or the Work under the Contract to the extent the mine safety legislation does not apply to the Site or the Work under the Contract, the <i>Occupational Safety and Health Act 1984</i> (WA) (and if this legislation is superseded, any replacement legislation) and any regulations made thereunder.
Safety Management Plan	The plan referred to in clause 8.7 .
[Schedule of Builder's Side Deed]	Schedule [#].
Schedule of CDRL	Schedule 20.
Schedule of Collateral Warranty	Schedule 14.
Schedule of Construction	Schedule 12.

Method Statement	
Schedule of Contract Details	Schedule 1.
Schedule of Existing Approvals	Schedule 7.
Schedule of Form of Unconditional Undertaking	Schedule 3
Schedule of Guarantee and Indemnity	Schedule 4.
[Schedule of Interface Works]	Schedule 17.
Schedule of Key Personnel	Schedule 5.
[Schedule of Native Title Key Obligations]	Schedule 16.
[Schedule of Pastoral Access Deed Key Obligations]	Schedule 18.
Schedule of Policies	Schedule 19.
Schedule of Pre-Contract Information	Schedule 6.
Schedule of Pricing	Schedule 15.
Schedule of Program	Schedule 11.
Schedule of Provisional Items	Schedule 8.
Schedule of Quality Manual	Schedule 13.
Schedule of Rates	Any bill of quantities, schedule of rates, schedule of section costs or other document set out in Section 2 of the Schedule of Pricing.
Schedule of Separable Portions	Schedule 9.

Schedule of Site Information	Schedule 10.
Schedule of Technical Specifications and Drawings	Schedule 2.
Security of Payment Act	The <i>Construction Contracts Act 2004</i> (WA).
Separable Portion	A separable portion identified in the Schedule of Separable Portions or directed by the Principal's Representative pursuant to clause 1.3(b) .
Separate Contractors	Contractors, other than the Contractor, engaged by the Principal to perform any work or services at, or in the vicinity of, the Site or an Adjoining Site.
Site	Those parts of the land or buildings provided by the Principal for perform the Work under the Contract comprising the land or buildings described at Item 5 as shown in the Schedule of Site Information.
Site Conditions	Means: <ul style="list-style-type: none"> (a) the physical conditions and characteristics of the Site and its surroundings, including water, atmospheric and sub-surface conditions and characteristics; and (b) the climatic and weather conditions, and effects of those conditions, at the Site and its surroundings.
Site Team	The site team referred to in clause 5.4(a) .
Statutory Manager	The person appointed by the Principal as the manager, principal contractor or equivalent supervisory role, responsible for occupational health and safety, mine safety and/or mine management at the Site and any other workplace as required or permitted by Safety Legislation.
Temporary Works	Works used to perform the Work under the Contract, which do not form part of the Works.
Testing Certificates	Evidence (including all certificates issued by the relevant Authorities) that all tests required to be carried out and passed in accordance with the Contract have been carried out and passed.
Upstream Documents	The Principal's contractual arrangements with third parties specified in Item 10 .
Valid Tax Invoice	An invoice, which complies with the GST Act relating to the production and form of tax invoices for GST purposes.
Variation	A change to the Work under the Contract directed by the Principal in a Variation Order.
Variation Order	The meaning given to it by clause 6.2(h) .
Variation Pricing Request	The meaning given to it by clause 6.2(d) .

Work under the Contract The work which the Contractor is required by the Contract to perform, including the construction of the Works, rectification work, Temporary Works and use of Constructional Plant.

Works Those parts of the Work under the Contract, including Variations, which are required by the Contract to be handed over to the Principal.

1.2 Ambiguities, errors, omissions, discrepancies or inconsistencies

- (a) If:
- (i) the Principal or the Contractor notifies the Principal's Representative in writing of;
or
 - (ii) the Principal's Representative otherwise discovers,
- an ambiguity, error, omission, discrepancy, inconsistency or other fault in, from or between any of the terms of the Contract, the Principal's Representative must issue such direction as may be necessary to resolve or correct that ambiguity, error, omission, discrepancy, inconsistency or other fault.
- (b) The Contractor is not entitled to any Compensation or an extension of time for complying with a direction under **clause 1.2(a)**.

1.3 Application of certain terms to Separable Portions

- (a) The interpretations of:
- (i) Date of Practical Completion;
 - (ii) Date for Practical Completion;
 - (iii) Defects Correction Period; and
 - (iv) Practical Completion,
- and **clauses 8.8(a), 8.8(b), 9.7, 9.10, 10.6 and 13.1(a)** apply separately to each Separable Portion and references in those definitions and clauses to the Works and the Work under the Contract mean those parts of the Works and the Work under the Contract comprised in the relevant Separable Portion.
- (b) In addition to any Separable Portions described in the Schedule of Separable Portions, Separable Portions may be directed by the Principal's Representative, who shall clearly identify for each, the:
- (i) portion of the Works;
 - (ii) Date for Practical Completion; and
- respective amounts for security and liquidated damages (which, unless otherwise provided for in the direction, will be calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the original Contract Price as at the date of the Contract).

2 Nature of Contract and Contractor's warranties

2.1 Conditions Precedent

- (a) This **clause 2.1** only applies where there are conditions precedent specified in **Item 9**.

- (b) The rights and obligations of the parties under the Contract, other than the Day 1 Clauses, are subject to the satisfaction or waiver of the conditions precedent (if any) identified in **Item 9**.
- (c) The satisfaction of each of the conditions precedent identified in **Item 9** can only be waived by the Principal by notice in writing given to the Contractor (on such conditions (if any)) as the Principal may stipulate).
- (d) Unless each of the conditions precedent identified in **Item 9** have been satisfied, or waived under **clause 2.1(c)**, within 60 Business Days of the date of the Contract (or such later date as the parties may agree):
 - (i) the parties will no longer be bound by the terms of the Contract or other obligations connected with the Work under the Contract or the Works other than the Day 1 Clauses;
 - (ii) the Contract will be taken to have been terminated on that date (or such later date as the parties may agree) and the Contract will be of no further force or effect;
 - (iii) the Principal will return any security under the Contract, subject to the right of the Principal to call on any such security; and
 - (iv) the Contractor will have no entitlement under or in respect of the Contract or in respect of or otherwise in connection with the Work under the Contract, other than any claim in relation to a breach of any Day 1 Clause.
- (e) The Contractor must not commence carrying out work on the Site unless and until each of the conditions precedent identified in **Item 9** have been satisfied or waived under **clause 2.1(c)**.

2.2 Performance and payment

The Contractor must carry out and complete Work under the Contract in accordance with the Contract and directions given by the Principal under the Contract.

2.3 Warranties relating to the Work under the Contract

- (a) Without limiting the generality of **clause 2.2** and **clause 9.1(a)** the Contractor warrants to the Principal that:
 - (i) the Contractor:
 - (A) is and will at all times be suitably licensed, registered, accredited, qualified and experienced, and is and will at all times exercise due skill, care and diligence in the carrying out and completion of Work under the Contract;
 - (B) has carefully examined the Principal's project requirements and all of the other documents that comprise the Contract; and
 - (C) is fully responsible for the methods of construction and shall execute and complete Work under the Contract in accordance with the Contract so that the Works, when completed and thereafter at all relevant times, will:
 - (1) comply with the Contract in all respects (including the Principal's project requirements);
 - (2) meet and satisfy all performance levels and performance requirements stated in the Contract; and
 - (3) comply with all applicable Law;

- (ii) any subcontractors that it engages shall be suitably licensed, registered, accredited, qualified and experienced;
 - (iii) all materials, plant, equipment and other items supplied under the Contract by the Contractor shall be new, in conformity with their description, be of merchantable quality and fit for their intended purpose;
 - (iv) all workmanship will be proper and tradesmanlike and to the standards specified in the Contract, and to the extent that such standards are not specified, then to the standards commensurate with good industry practice; and
 - (v) subject to **clause 8.6**, the Principal shall receive good and clear title to the Works, including all materials, plant, equipment and other items incorporated therein or supplied by the Contractor under the Contract.
- (b) The Contractor acknowledges and agrees that:
- (i) the warranties in **clause 2.3(a)** and the Contractor's other warranties, obligations and liabilities under the Contract and at law, remain unaffected; and
 - (ii) the Contractor will bear and continue to bear full liability and responsibility in accordance with the Contract for the performance of Work under the Contract, notwithstanding any one or more of the following:
 - (iii) that the Contractor has entered into a novation of any prior contract between the Principal and a Principal's consultant and thereafter has retained that consultant in connection with Work under the Contract;
 - (iv) the involvement of subcontractors in the execution of any of the Work under the Contract;
 - (v) any receipt or review of, or comment or direction on, or consent to, or rejection, non-rejection or approval of, or permission to use, or expression of satisfaction or dissatisfaction with:
 - (A) any document or information provided by the Contractor;
 - (B) any submission, proposal or recommendation by the Contractor; or
 - (C) any of the Contractor's work methods or procedures,
 by or on behalf of the Principal;
 - (vi) any supervision, superintendence or review of, or comment or direction on, or consent to, or rejection, non-rejection or approval of, or expression of satisfaction or dissatisfaction with:
 - (A) any of the Contractor's subcontractor selections;
 - (B) any of the Contractor's materials, plant, machinery or equipment selections;
 - (C) the execution of any Work under the Contract; or
 - (D) any work, materials, plant, machinery or equipment or work methods,
 by or on behalf of the Principal;
 - (vii) the making available to the Contractor, or the provision to the Contractor, by or on behalf of the Principal, whether before, on or after the date of Contract, of any information documents;
 - (viii) any failure by the Principal to do any of the things referred to in this **clause 2.3(b)**;

- (ix) any variation, directed or approved by the Principal under **clause 6.2** and including a deemed Variation;
- (x) any failure by the Principal's Representative to direct or approve a Variation under the Contract;
- (xi) any of the things mentioned in **clause 2.3**.

2.4 Contractor's Specification

Without limiting the warranties in **clause 2.3**, to the extent that the Contractor carries out or completes any Contractor's Specification, the Contractor warrants that the Contractor's Specification will:

- (a) comply with the requirements of the Contract;
- (b) be undertaken with due skill and care and in accordance with accepted practice in the Australian engineering and construction industry and relevant Law;
- (c) be undertaken with due care and with the degree of skill, diligence, prudence and foresight that reasonably would be expected from an experienced and competent contractor undertaking work similar to the work the subject of the relevant Contractor's Specification;
- (d) be undertaken with all adequate insurances in place which an experienced and competent contractor would have in place when undertaking work similar to the work the subject of the relevant Contractor's Specification in similar circumstances; and
- (e) be fit for its intended purpose.

2.5 Principal Supplied Materials

- (a) The Contractor acknowledges that the Principal may provide the Principal Supplied Materials.
- (b) Upon receipt of the Principal Supplied Materials, the Contractor must immediately inspect and test the Principal Supplied Materials.
- (c) Subject to **clause 2.5(d)**, the Contractor must promptly, and in any event within 10 Business Days of any inspection and testing under **clause 2.5(b)**, give notice to the Principal's Representative of any defect in the Principal Supplied Materials.
- (d) If the Contractor issues a notice in accordance with **clause 2.5(c)**, the Principal will procure the remedy of the defect.
- (e) If the Contractor fails to issue a notice in accordance with **clause 2.5(c)** in respect of a defect in the Principal Supplied Materials prior to or during the inspection and testing referred to in **clause 2.5(d)** exercising good industry practice, then:
 - (i) the Principal will not be liable for any Claim by the Contractor; and
 - (ii) the Contractor will be absolutely barred from making any Claim against the Principal,
 arising out of or in any way in connection with the relevant defect.
- (f) The Contractor acknowledges that:
 - (i) at all times the Principal or third parties (as the case may be) will retain ownership of the Principal Supplied Materials; and

- (ii) risk in and responsibility for the Principal Supplied Materials will pass from the Principal or other third party (as the case may be) to the Contractor at the time the Contractor takes delivery or possession of the Principal Supplied Materials.

3 The Site

3.1 Access to Site

- (a) Subject to **clause 3.1(b)**, the Principal must:
 - (i) give the Contractor sufficient access to the Site to allow it to commence the Work under the Contract by the later of:
 - (A) the Contractor having provided to the Principal:
 - (1) security in accordance with **clause 10.6**;
 - (2) evidence that it has effected the insurances required by the Contract in accordance with **clause 13**;
 - (3) final Management Plans have been provided in accordance with the Schedule of CDRL; and
 - (4) evidence that it and its personnel hold all licences and permits required by Law or by the Contract in connection with the performance of the Work under the Contract; or
 - (B) the date specified in **Item 11**.
 - (ii) subject to the other provisions of the Contract affecting access, must give the Contractor access to such further portions of the Site as may, from time to time, be necessary for carrying out the Work under the Contract.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Site is not owned by the Principal;
 - (ii) the Principal's obligation in **clause 3.1(a)** is only to the extent that the Principal has been granted availability and use of the Site sufficient to make the Site available to the Contractor in accordance with **clause 3.1(a)**; and
 - (iii) the Contractor will not be given exclusive possession of the Site and may be required to share the Site with others.
- (c) A failure by the Principal to give access as required by **clause 3.1(a)** above will not be a breach of the Contract but will entitle the Contractor to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under **clause 9.4**; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly out of the Contractor's failure to give the Contractor access to the Site, as determined by the Principal's Representative.
- (d) To the extent permitted by law, the Contractor will not be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with the Principal's failure to give the Contractor access to the Site, other than under paragraph (c) above.

3.2 Access for the Principal, the Principal's Representative, and others and Site security

- (a) The Contractor must ensure that the Principal, the Principal's Representative, Separate Contractors, and any other person authorised by the Principal's Representative have safe access to any area within the Site at all times.
- (b) The Contractor must provide the Principal and the Principal's Representative, at all times, with access to all places where work is being prepared or done, or from where materials, manufactured articles or machinery are being obtained for the Work under the Contract.
- (c) Unless stated otherwise in **Item 11**, subject to **clause 3.2(a)**, the Contractor must:
 - (i) control access within the Site; and
 - (ii) arrange for proper security for the Site.

3.3 Separate Contractors and Interface Works

- (a) The Principal may engage Separate Contractors to work upon or in the vicinity of the Site at the same time as the Contractor (including to perform the Interface Works).
- (b) The Contractor must:
 - (i) permit Separate Contractors to carry out their work (including the Interface Works);
 - (ii) fully co-operate with any Separate Contractors;
 - (iii) carefully co-ordinate and interface the Work under the Contract with the work to be carried out by Separate Contractors (including the Interface Works);
 - (iv) minimise delay, disruption and inconvenience to Separate Contractors and any person authorised by the Principal to occupy, use, operate, maintain or access the Site;
 - (v) not unreasonably obstruct, delay or interfere with Separate Contractors' work (including the Interface Works);
 - (vi) not damage Separate Contractors' work (including the Interface Works);
 - (vii) comply with all written directions from the Principal's Representative regarding Separate Contractors and their work (including the Interface Works); and
 - (viii) allow any Separate Contractors to use the amenities, facilities and services which are available for use on the Site.
- (c) The Contractor acknowledges and agrees that:
 - (i) such liaison or assistance does not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with the Contract; and
 - (ii) it is not entitled to make any Claim or entitled to any Compensation in relation to such liaison or assistance.
- (d) The Contractor is not entitled to make any Claim or to any Compensation or an extension of time resulting from:
 - (i) delay or disruption caused by any Separate Contractor and their work; or
 - (ii) a direction under **clause 3.3(b)(vii)**.
- (e) Any action of the Contractor under **clause 3.3(b)** does not lessen, or otherwise affect, the Contractor's obligations under the Contract. Neither the Principal nor the Principal's

Representative assume any responsibility or duty of care to the Contractor in respect of its actions under **clause 3.3**.

3.4 Existing Operation

- (a) The Contractor acknowledges that, whilst Work under the Contract is being performed:
 - (i) the Principal may continue the Existing Operation;
 - (ii) the Contractor shall have no right of exclusive occupation of any part of the Site and shall access the Site only in accordance with the Principal's directions
 - (iii) invitees of the Principal, including members of the public, clients, tenants, employees, contractors and agents of the Principal shall have access to the Site to conduct business with the Principal;
 - (iv) the Contractor must:
 - (A) arrange work on and adjacent to the Site so as to minimise nuisance to occupants and users of the Existing Operation;
 - (B) where appropriate, protect the occupants and users of the Existing Operation against weather, dust, dirt, water and other nuisance by temporary hoardings and the like;
 - (C) maintain fire egress at all times in accordance with all relevant Laws.
 - (D) perform the Work under the Contract in such a manner as to interfere to the least extent possible with the Existing Operation;
 - (E) only access the Site during the hours and on the days provided for in the Contract;
 - (F) take all steps necessary to protect the safety of the Principal and invitees of the Principal from risks to safety caused by the performance of Work under the Contract;
 - (G) complete such safety or other training or induction as the Principal from time to time directs;
 - (H) comply with all procedures, policies and rules adopted from time to time by the Principal in connection with the Site;
 - (I) keep itself informed as to the requirements of, comply with and not do anything which may place the Principal in breach of any Law including those applying to the Site and the Existing Operation;
 - (J) erect appropriate signage for the benefit of invitees of the Principal at the Site to enable them to find their way around the Site;
 - (K) keep the Site clean and tidy at all times;
 - (L) keep the Principal informed as frequently as possible and at least on a daily basis of the operations of the Contractor which may affect the Existing Operation; and
 - (M) consult and co-operate with the Principal and attend meetings as required by the Principal in relation to the interface between the Existing Operation and the performance of Work under the Contract.
- (b) The Contractor is not entitled to make any Claim or to any Compensation or an extension of time resulting from the conduct of Existing Operation.

- (c) Any costs, losses and damages incurred by the Contractor as a consequence of the Principal conducting the Existing Operation are deemed to be included in the Contract Price.

3.5 Risk of Site Conditions

- (a) The Contractor:
 - (i) acknowledges that it has:
 - (A) examined the Site and its surroundings;
 - (B) examined all other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under the Contract, which is obtainable by making reasonable enquiries;
 - (C) examined the Contract;
 - (D) examined the Pre-Contract Information;
 - (E) examined the Existing Approvals; and
 - (F) entered into the Contract based upon its own investigations, examinations and determinations; and
 - (ii) warrants that it is practicable to perform the Work under the Contract in accordance with the Contract without the need for any Variation.
- (b) Subject to **clause 3.6** and any express rights of the Contractor under **clauses 9.3 or 9.4**, the Contractor is responsible for, and assumes the risk of, all loss (including delay), expense or damage caused by Site Conditions encountered in the performance of the Work under the Contract and its other obligations under the Contract.
- (c) Neither the Principal nor the Principal's Representative:
 - (i) is responsible for the accuracy, or the contents, of; or
 - (ii) makes any representation, or assumes any duty of care, in respect of, the following information:
 - (iii) the Pre-Contract Information; and
 - (iv) any other reports, data, test results, samples or geotechnical investigations or information provided to the Contractor before the date of the Contract.
- (d) The Contractor acknowledges that:
 - (i) the information referred to in **clause 3.5(c)** does not form part of the Contract and it has not relied on that information in choosing to enter into the Contract;
 - (ii) the Principal or the Principal's Representative is not responsible for the accuracy of the information referred to in **clause 3.5(c)** or any negligence in the preparation of that information;
 - (iii) to the extent that the Principal is not the author of the information referred to in **clause 3.5(c)**, the Principal is merely passing on that information to the Contractor;
 - (iv) the Contractor has:
 - (A) been allowed adequate access to the Site;
 - (B) been allowed to consult with the authors of the information referred to in **clause 3.5(c)**;

- (C) had sufficient time thoroughly to review the information referred to in clause **3.5(c)**; and
- (D) been allowed to perform its own investigations of the Site and its surroundings, before the date of the Contract to reach its own conclusions about Site Conditions; and
- (v) Subject to **clause 3.6**, the Contractor must perform any work necessary to overcome the effect of, or which is otherwise occasioned by, Site Conditions, whether or not the Contractor anticipated them at the date of the Contract.
- (e) Neither the Principal nor the Principal's Representative are liable in contract, tort or otherwise for any loss, expense or damage suffered or incurred by the Contractor (whether arising by the negligence of the Principal or the Principal's Representative or their employees, consultants or agents or otherwise) however caused in respect of:
 - (i) the provision of the information referred to in **clause 3.5(c)**; or
 - (ii) a failure to provide any information to the Contractor.
- (f) The Contractor acknowledges that the Principal has entered into the Contract in reliance on the acknowledgments made by the Contractor in **clause 3.5(d)**.

3.6 Latent Conditions

- (a) The Contractor, upon becoming aware of a condition that the Contractor believes to be a Latent Condition while carrying out Work under the Contract, shall immediately, and where possible before the Latent Condition is disturbed, give the Principal's Representative written notice, including details of:
 - (i) the condition encountered and in what respects it is said by the Contractor to be a Latent Condition;
 - (ii) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with, remove or overcome the effects of the condition and the steps the Contractor intends to take to deal with, remove or overcome the effects of the condition;
 - (iii) the expected delay (if any) in achieving Practical Completion; and
 - (iv) other details reasonably required by the Principal's Representative.
- (b) Subject to the requirements of **clause 9.4**, delay caused by a Latent Condition may entitle the Contractor to claim an extension of time.
- (c) If a Latent Condition necessarily causes the Contractor to carry out additional work which the Contractor could not reasonably have anticipated at the date of the Contract, a valuation shall be made under **clause 6.3** and the amount shall be added to the Contract Price.
- (d) Where pursuant to this **clause 3.6** a valuation is to be made under **clause 6.3**, regard shall not be had to the value of more work carried out, more Constructional Plant used or more cost incurred before the date on which the Contractor gave the written notice required by **3.6(a)**.

3.7 Removal of Contamination

- (a) Subject to **clause 3.6**, the Contractor is responsible for, and assumes the risk of, all loss (including delay), liability, expense or damage caused by Contamination.
- (b) If the Contractor encounters Contamination when performing the Work under the Contract, the Contractor must, at its cost:

- (i) promptly give written notice to the Principal's Representative containing details of the Contamination;
 - (ii) protect everyone from exposure to the Contamination, until the nature of the Contamination has been completely determined;
 - (iii) perform all work necessary to contain, Remediate or clean up the Contamination, protect the surrounding parts of the Site and, if necessary, dispose of the Contamination in accordance with Law; and
 - (iv) comply with any direction under **clause 3.7(c)**.
- (c) The Principal's Representative may, following receipt of a notice under **clause 3.7(b)(i)**, give a written direction to the Contractor regarding the protection of people from exposure to the Contamination, the containment, Remediation, cleaning up, or disposal of the Contamination or the protection of the surrounding parts of the Site.

3.8 Environmental obligations

- (a) The Contractor must:
- (i) comply with all requirements of the Law and the Contract for the protection of the Environment; and
 - (ii) avoid unlawful pollution of the Site and its surroundings, including noise pollution.
- (b) The Contractor is responsible for, and must make good, any damage to the Environment caused by the performance of the Work under the Contract, including any unlawful pollution of the Site or its surroundings.
- (c) The Contractor must, at its cost:
- (i) clean up any unlawful pollution of the Site and its surroundings caused by the performance of the Work under the Contract; and
 - (ii) comply with all directions of the Principal's Representative and any Authority regarding cleaning up that pollution.

3.9 Surveys and setting out

The Contractor must:

- (a) set out the Works in accordance with the Contract and any set out information or survey marks provided by the Principal or the Principal's Representative;
- (b) correct any errors it makes in performing its obligations under **clause 3.9(a)**; and
- (c) carry out any survey which may be necessary for the Work under the Contract.

3.10 Nature of Site and Adjoining Sites

The Contractor acknowledges and agrees that:

- (a) the Site is not owned by the Principal, and where part or all of the Site is subject to the interests of third parties on, in or over the Site, the Contractor must obtain (except to the extent obtained by the Principal under the Contract) and maintain the appropriate approvals, permissions or consents from those interested third parties to carry out the Work under the Contract; and
- (b) where the Work under the Contract requires the Contractor to perform work on, in or over any Adjoining Site, the Contractor must obtain and maintain the appropriate approvals, permissions or consents from the owner and occupiers of that Adjoining Site,

and in respect to both such matters, the Contractor must:

- (c) comply with all conditions attaching to such approvals, permissions or consents and, in any event, promptly make good or, at the option of the interested third party or owner and occupier of the Adjoining Site (as the case may be), meet the cost of making good any damage to that part of the Site or that Adjoining Site (as the case may be) arising out of the performance of the Work under the Contract; and
- (d) indemnify the Principal and the Principal's Representative against:
 - (i) any claim in respect of personal injury or death or loss of, or damage to the Principal's or any other property in respect of the Contractor's access to, or over, or use of the Site or any Adjoining Site; and
 - (ii) any claim, action, cost expense, damages, loss or liability arising from breach of any condition attaching to any approval, permission or consent governing access or use of the Site or any Adjoining Site.

3.11 Minerals, fossils and relics

- (a) Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:
 - (i) take precautions to prevent their loss, removal or damage;
 - (ii) give the Principal's Representative written notice of the discovery; and
 - (iii) comply with the directions of the Principal's Representative in respect of the discovery.
- (b) If the discovery of a matter referred to in **clause 3.11(a)** and the compliance by the Contractor with the directions of the Principal's Representative in accordance with **clause 3.11(a)(iii)** causes the Contractor to carry out additional work and incur additional cost, which the Contractor could not have reasonably anticipated at the date of the Contract:
 - (i) a valuation will be made in accordance with **clause 6.3**, and the amount shall be added to the Contract Price; and
 - (ii) subject to the requirements of **clause 9**, the Contractor shall be entitled to claim an extension of time to the Date for Practical Completion.

4 Personnel and subcontracting

4.1 Principal's Representative

- (a) The Principal has appointed the Principal's Representative to:
 - (i) act as the Principal's Representative under the Contract; and
 - (ii) monitor the performance by the Contractor of its obligations under the Contract, and may appoint a replacement from time to time.
- (b) The Principal's Representative will perform its functions under the Contract as the agent of the Principal and not as an independent certifier, assessor or valuer.
- (c) The Principal's Representative may delegate all or any of its functions under the Contract.
- (d) The Principal must promptly inform the Contractor in writing of:

- (i) any replacement of the Principal's Representative; and
- (ii) any delegation by the Principal's Representative of any of its functions under the Contract and the extent and the scope of that delegation.

4.2 Contractor's Representative

- (a) The Contractor must appoint a representative who must:
 - (i) have authority to act on behalf of the Contractor in respect of the Contract; and
 - (ii) be approved in writing by the Principal's Representative.
- (b) The Contractor's Representative may delegate all or any of his or her functions under the Contract to a nominee approved in writing by the Principal's Representative.
- (c) The Contractor must promptly inform the Principal's Representative in writing of:
 - (i) any appointment or replacement of the Contractor's Representative; and
 - (ii) any delegation by the Contractor's Representative of any of his or her functions under the Contract and the extent and the scope of that delegation.
- (d) The Contractor must ensure that the Contractor's Representative, and any delegate notified to the Principal's Representative under **clause 4.2(c)**, are not replaced without the Principal's Representative's written approval.

4.3 Personnel

- (a) The Contractor must:
 - (i) provide experienced and skilled personnel to perform the Work under the Contract in accordance with the Contract;
 - (ii) ensure that all the Work under the Contract is performed under the supervision of appropriately qualified, experienced and competent personnel, including in compliance with applicable Safety Legislation.
- (b) The Contractor must ensure that the key personnel named in the Schedule of Key Personnel:
 - (i) are engaged in the provision of the Work under the Contract in the capacity set out in the Schedule of Key Personnel;
 - (ii) perform the Work under the Contract required of their nominated positions;
 - (iii) are not removed from those nominated positions without the Principal's Representative's written approval.
- (c) The Contractor must:
 - (i) always have employed during the performance of Work under the Contract, persons in the positions of the Key Personnel listed in the Schedule of Key Personnel who are approved by the Principal's Representative and who have at least the equivalent skill and experience of those Key Personnel; and
 - (ii) only replace the Key Personnel in circumstances of death, serious illness, change of employment, or a request by the Principal Representative.
- (d) If it is necessary to replace any of the key personnel referred to in **clause 4.3(b)**, the Contractor must arrange for a replacement, of similar or greater skill and experience, approved in writing by the Principal's Representative, to perform the Work under the Contract required of the replaced person's nominated position.

- (e) If the Contractor fails to comply with clauses 4.3(b), (c) or (d), then the Contractor must pay the Principal liquidated damages stated in the Schedule of Key Personnel and the Principal may recover all liquidated damages payable as a debt.
- (f) The Contractor warrants to the Principal, and acknowledges and agrees that:
 - (i) the liquidated damages calculated in accordance with this clause 4.3(e) are a reasonable and genuine pre-estimates of the loss and damage that may be suffered or incurred by the Principal as a result of the applicable circumstances described in clause 4.3(e); and
 - (ii) the Contractor will not commence or bring any proceedings, or seek to rely on any argument that any liquidated damages calculated in accordance with clause 4.3(e) is a penalty or is otherwise invalid or unenforceable or that clause 4.3(e), or any part of it, is otherwise invalid or unenforceable.
- (g) The Principal's Representative may direct the Contractor to remove from the Site, or from any activity connected with the Work under the Contract, any person who, in the opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent or is otherwise interfering with the orderly progress of the Work under the Contract or any other work on, or in the vicinity of, the Site.
- (h) The Contractor must comply with a direction under **clause 4.3(g)** within the time specified in the direction by the Principal's Representative.

4.4 Subcontracting

- (a) Subject to **clause 4.4(b)**, the Contractor may enter into subcontracts for the vicarious performance of the Work under the Contract.
- (b) The Contractor must:
 - (i) obtain the Principal's Representative's written approval before appointing a subcontractor to perform any part of the Work under the Contract; and
 - (ii) promptly give the Principal's Representative any information requested by it to enable it to consider any request for approval.
- (c) The Contractor must ensure that any work performed by a subcontractor is done within the time required by, and otherwise complies with, the Contract.
- (d) The Contractor's obligations under the Contract are not lessened or otherwise affected by entering into a subcontract or approval to subcontract.
- (e) The Contractor must ensure that subcontracts adequately address industrial relations, safety, environmental and programming issues relevant to the Work under the Contract.
- (f) The Contractor must supply the Principal's Representative with an unpriced copy of any subcontract.

4.5 Novation and subcontractor warranties

- (a) The Contractor must, if the Contract is terminated or as otherwise directed by the Principal, promptly execute a deed of novation in the form in **schedule 23** between the Principal, the Contractor, and the relevant subcontractor, supplier, or consultant.
- (b) The Contractor is not entitled to compensation for entering into a deed of novation pursuant to **clause 4.5(a)**.
- (c) The Contractor shall deliver to the Principal before Practical Completion a Collateral Warranty from each of the subcontractors, suppliers, or consultants who provide the work identified in **Item 12**.

- (d) Where any subcontractor, supplier, or consultant has provided warranties or guarantees in relation to any work, plant, equipment or material incorporated into the Works (other than for which a Collateral Warranty has been provided to the Principal in accordance with **clause 4.5(c)**) which have not expired within 14 days after the expiration of the Defects Correction Period then:
- (i) so far as they are capable of assignment, the Contractor shall, within 14 days of the expiration of the Defects Correction Period, assign to the Principal the benefit of such warranties and guarantees; and
 - (ii) so far as they are not capable of assignment, the Contractor by this clause irrevocably appoints the Principal as its attorney for the purposes of enforcing the benefit of those warranties and guarantees and the Contractor shall provide the Principal with copies of those warranties and guarantees prior to the Date of Practical Completion or within 7 days of an earlier request from the Principal.
- (e) The Contractor must ensure that each subcontract contains:
- (i) a covenant acceptable to the Principal which will entitle:
 - (A) the Contractor to novate the subcontract to the Principal, if the Contract is terminated or if the Principal otherwise directs the subcontract to be novated, by promptly executing a deed of novation in the form in **schedule 23**, at no cost to the Principal; and
 - (B) the Guarantor to novate the subcontract in the Guarantor's favour, at no cost to the Guarantor, for the purpose referred to in clause **Error! Reference source not found.** of the Parent Company Guarantee; and
 - (ii) a term which:
 - (A) requires the subcontractor to provide to the Principal:
 - (1) a Collateral Warranty if the subcontract is for the provision of any work identified in **Item 12**;
 - (2) any warranty normally provided by suppliers, manufacturers and subcontractors for work similar to the subcontract work; and
 - (3) any warranty required by the Principal's Representative;
 - (B) ensures that the Principal obtains the benefit of the warranties referred to in **clause 4.5(e)(ii)(A)** and may enforce or call upon those warranties in accordance with the subcontract on its own behalf or on behalf of the Contractor; and
 - (C) if directed by the Principal's Representative on the termination of the Contract, requires the subcontractor to provide to the Principal all designs, documents, materials and other things intended for use in connection with the Work under the Contract or incorporation into the Works.
- (f) The Contractor:
- (i) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to execute, sign, seal and deliver all notices, deeds and documents for the purpose referred to in **clause 4.5(e)(i)(A)**; and
 - (ii) ratifies anything done by an attorney or its delegate in accordance with **clause 4.5(f)**.

5 Meeting and reporting obligations

5.1 Project Control Group

- (a) The Project Control Group comprises:
 - (i) the Principal's Representative;
 - (ii) a senior manager of the Principal;
 - (iii) the Contractor's Representative;
 - (iv) a senior manager of the Contractor; and
 - (v) any other person the Principal or the Principal's Representative requires, including a representative of the Principal's financier.
- (b) The Contractor must ensure that representatives of the Contractor's subcontractors attend the Project Control Group meetings when the Principal's Representative requires.
- (c) The functions of the Project Control Group include:
 - (i) reviewing the progress of the Work under the Contract in relation to the Program;
 - (ii) reviewing the quality of work and any remedial measures required;
 - (iii) reviewing matters arising from the design documentation and any proposed design changes; and
 - (iv) any other matters required by the Principal's Representative.
- (d) The Project Control Group must meet monthly or at such other times as may be required by the Principal's Representative.
- (e) The Principal's Representative must:
 - (i) convene and chair meetings of the Project Control Group;
 - (ii) take minutes of meetings held by the Project Control Group;
 - (iii) provide those minutes to the Contractor's Representative;
 - (iv) if the Contractor's Representative disagrees with the minutes provided in accordance with **clause 5.1(e)(iii)**, the Contractor must within two Business Days or receipt of those minutes, make such amendments (to the extent the Principal's Representative agrees with the Contractor's Representative); and
 - (v) if applicable, give to the Project Control Group members a copy of the amended minutes.

5.2 Reporting obligations

The Contractor must:

- (a) comply with the requirements of the Schedule of CDRL and Schedule of Reporting Requirements;
- (b) at least five Business Days before each meeting of the Project Control Group, provide a written report to the Principal's Representative, in a form approved by the Principal's Representative, setting out:
 - (i) the progress of the Work under the Contract against the Program;
 - (ii) details of any activities which are behind the progress anticipated in the Program;

- (iii) strategies implemented or proposed to overcome issues, including corrective action statements for catching up lost time or avoiding potential delays;
- (iv) any foreseen delays to future activities on the Program;
- (v) the likely effect on the Program of any actual or foreseen delays;
- (vi) current claims for extensions of time, including details of dates submitted, dates determined and any other details the Principal's Representative requires;
- (vii) a summary of all Variation Pricing Requests and Variation Orders;
- (viii) the status of all activities on which work is being undertaken;
- (ix) details of subcontractors engaged, or proposed to be engaged, by the Contractor;
- (x) details of daily staff levels of the Contractor and subcontractors on the Site, including all activities, locations and hours of work of those staff;
- (xi) details of safety-related issues, including lost-time injury records;
- (xii) evidence of compliance with the quality management requirements of the Contract;
- (xiii) expenditure against predicted cash flow and budget;
- (xiv) Industrial Relations Issues and Industrial Action affecting, or which may affect, the Work under the Contract;
- (xv) colour photographs of the Site (from locations on or adjacent to the Site nominated by the Principal's Representative from time to time) showing the progress of the Works under the Contract in the reporting period;
- (xvi) details of the Provisional Items, including:
 - (A) the list of tenderers invited to tender for any Provisional Item;
 - (B) the commencement and closing dates for the tender for any Provisional Item;
 - (C) the tender prices submitted by tenderers including a breakdown of those prices for any Provisional Item;
 - (D) the identity of the successful tenderer and subcontract price for any Provisional Item; and
 - (E) the subcontract price against the corresponding amount stated in the Schedule of Provisional Items for any Provisional Item; and
- (xvii) any other matters required by the Principal's Representative;
- (c) provide to the Principal's Representative, within a reasonable time of being requested to do so, any information in connection with the Work under the Contract which the Principal's Representative requires;
- (d) advise the Principal's Representative (in writing, if the Principal's Representative requires, and within the time specified by the Principal's Representative) of suitable courses of action in relation to matters raised in Project Control Group meetings;
- (e) establish and maintain any records and registers, which the Principal's Representative requires;
- (f) maintain a daily site diary until Practical Completion (and any longer period reasonably required by the Principal), containing the following information:
 - (i) progress of the Work under the Contract against the Program;

- (ii) details of any activities which are behind the progress anticipated in the Program;
- (iii) details of daily staff levels of the Contractor and subcontractors on the Site, including all activities, locations and hours of work of those staff;
- (iv) details of weather conditions at the Site;
- (v) details of any incident occurring at the Site, including any Industrial Action, environmental or safety incident; and
- (vi) any other matters required by the Principal's Representative; and
- (g) provide to the Principal's Representative:
 - (i) a weekly summary of the information contained in the daily site diary, in a format approved by the Principal's Representative; and
 - (ii) a copy of the daily site diary, if required by the Principal's Representative.

5.3 Records on Site

The Contractor must keep at the Site:

- (a) one complete set of the Contract;
- (b) a complete marked-up set of the all schedules and annexures to the Contract, showing the most recent information resulting from any change to the Contract as compared to the information contained in the schedules and exhibits existing at the date of the Contract;
- (c) one copy of all construction documentation and workshop drawings;
- (d) all notices, instructions or other information issued by the Principal's Representative to the Contractor; and
- (e) the daily site diary referred to in **clause 5.2(f)**,

and make them available to the Principal's Representative as the Principal's Representative may require.

5.4 Site meetings

- (a) The Site Team comprises:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative; and
 - (iii) any other person the Principal or the Principal's Representative requires.
- (b) The functions of the Site Team are to:
 - (i) progressively review the progress of the Work under the Contract against the Program;
 - (ii) propose and implement strategies to overcome issues including corrective action statements for catching up lost time or avoiding potential delays;
 - (iii) review other site-related issues, including occupational health and safety, compliance with quality management, Variation Orders, claims for extensions of time and Industrial Relations Issues and Industrial Action; and
 - (iv) any other matters required by the Principal's Representative.
- (c) The Site Team must meet weekly and at such other times as may be required by the Principal's Representative.
- (d) The Contractor's Representative must:

- (i) take minutes of meetings held by the Site Team;
- (ii) provide a draft of the minutes to the Principal's Representative;
- (iii) if the Principal's Representative disagrees with the draft minutes within five Business Days of receiving the draft minutes, make such amendments as may be necessary; and
- (iv) give to the Site Team members a copy of the minutes or amended minutes (as the case may be).

6 Scope of the Work under the Contract and Variations

6.1 Scope of the Work under the Contract

- (a) The description of Work under the Contract and the Works represent the parties' best efforts to define the technical information and tasks necessary for performance of the Work under the Contract, including completion of the Works. The parties acknowledge that the Work under the Contract includes the provision of all equipment and performance of all other work necessary for the completion and handover of the Works in accordance with the Contract.
- (b) The Contractor must perform the Work under the Contract in accordance with the Contract.
- (c) The Work under the Contract includes:
 - (i) all work specifically referred to in the Contract;
 - (ii) all work that is not specifically mentioned in the Contract but can be reasonably inferred by an experienced and competent contractor as being required for the proper performance of the Works as if such works were expressly stipulated in the Contract; and
 - (iii) any Variation.
- (d) The Contractor acknowledges and agrees that except as expressly set out in the Contract:
 - (i) the Contractor shall not be entitled to any adjustment of the Contract Price as a result of carrying out and completing the Work under the Contract, including as referred to in **clause 6.1(c)**; and
 - (ii) the Contract Price is wholly sufficient to carry out and complete the Work under the Contract, including as referred to in **clause 6.1(c)**, in accordance with the Contract and without adjustment.

6.2 Variations

- (a) The Principal's Representative may, at any time, direct a Variation required by the Principal. That Variation may involve increases in or additions to, reductions in (or omissions from) or changes in the character or the quality of, the previous Work under the Contract.
- (b) If the Variation requires the omission of work, the Principal may perform the omitted work, or have it done by others, or not, as it sees fit.
- (c) Notwithstanding any other clause of the Contract:

- (i) the Contractor is not entitled to a Variation in respect of actual quantities of items in the Schedule of Rates differing from estimated quantities, except in accordance with **clause 6.2(d)**;
 - (ii) the Contractor is not entitled to a Variation to the extent that the nature, character, complexity or degree of difficulty of the Work under the Contract differs from that anticipated by Contractor as at the date of the Contract.
- (d) Before issuing a Variation Order under **clause 6.2(h)**, the Principal's Representative may issue a written form, expressly identified as a 'Variation Pricing Request', advising the Contractor of the proposed Variation and requiring the Contractor, within the time required under **clause 6.2(e)**, to:
 - (i) provide an estimate of the valuation of the proposed Variation and any adjustment to the Contract Price;
 - (ii) provide an estimate of the effect the proposed Variation will have on the time for achieving Practical Completion; and
 - (iii) if the proposed Variation is likely to delay the Contractor in achieving Practical Completion:
 - (A) advise the Principal's Representative whether it is practicable to accelerate the progress of the Work under the Contract to achieve Practical Completion by an earlier date; and
 - (B) if it is practicable to do so, provide an estimate of the earlier date and the acceleration costs.
- (e) Within a reasonable time after receipt of the Variation Pricing Request and in any event no later than five Business Days after issue of the Variation Pricing Request (or such longer period as the parties may agree or as the Principal's Representative determines), the Contractor must provide the required information to the Principal's Representative in writing.
- (f) The Principal's Representative may request any other information which the Principal's Representative requires regarding the Variation Pricing Request, and the Contractor must provide such further requested information within five Business Days' of such request.
- (g) The Principal is under no obligation to issue a Variation Pricing Request, and is in no way bound by the information provided by the Contractor in response to a Variation Pricing Request.
- (h) A direction given under **clause 6.2(a)** may only be effected by a written form, expressly identified as a 'Variation Order', signed by the Principal's Representative.
- (i) If the Contractor considers that it has been required to carry out a Variation (whether as a result of a direction from the Principal's Representative or any other event) but the Principal's Representative has not given a written direction in the form of a Variation Order the Contractor must, within five Business Days of receipt of the direction or that other event, give written notice to the Principal's Representative of:
 - (i) its opinion that the work involves a Variation which should have been directed in the form of a Variation Order;
 - (ii) the reasons for its opinion;
 - (iii) the effect on the Program and the Date for Practical Completion (if any);
 - (iv) the effect on any applicable warranties; and

- (v) a detailed estimate of the cost.
- (j) In response to a written notice given by the Contractor under **clause 6.2(i)**, the Principal's Representative may:
 - (i) confirm that the direction is a Variation Order;
 - (ii) withdraw the direction; or
 - (iii) confirm the direction and notify the Contractor that the direction is not a Variation Order.
- (k) If the Contractor does not comply with the requirements of **clause 6.2(i)**, the Contractor is not entitled to any Compensation or an extension of time in respect of that direction or event and is not entitled to maintain in any proceedings whatsoever that the direction or event ought to have been the subject of a Variation Order.
- (l) No Variation shall invalidate the Contract.

6.3 Valuation

- (a) The Principal's Representative shall, as soon as practicable, price each Variation (including any delay costs or acceleration costs where the proposed Variation will result in a delay to the Work under the Contract) as follows:
 - (i) by agreement between the Principal's Representative and the Contractor's Representative;
 - (ii) failing agreement, as determined by the Principal's Representative using rates in the Schedule of Rates, where applicable, and the parties acknowledge and agree that the rates in the Schedule of Rates will be applicable for work, the subject of a Variation, notwithstanding that the work is more difficult or complex than the work included in the documents which comprise the Contract; and
 - (iii) where there are no applicable rates in the Schedule of Rates, as determined by the Principal's Representative using reasonable rates.
- (b) The price calculated under **clause 6.3(a)** will be added to or deducted from the Contract Price, as applicable.
- (c) Notwithstanding **clauses 6.3(a)** and **6.3(b)**, the Principal shall have no liability to the Contractor to the extent the value of any Variation exceeds the amount set out in any response by the Contractor to a Variation Pricing Request (if any) under **clause 6.2**.
- (d) The Contractor acknowledges and agrees that the rates in the Schedule of Rates are inclusive of overhead and profits.

6.4 Provisional Items

- (a) The Principal and the Contractor acknowledge and agree that:
 - (i) the Contract Price at the date of the Contract includes the Provisional Items Budget; and
 - (ii) the amounts shown in the Provisional Items Budget:
 - (A) are notional prices;
 - (B) are included in the Contract Price; and
 - (C) are not, themselves, payable by the Principal to the Contractor but where the Principal's Representative directs the Contractor to carry out the Provisional Item work, the Contract Price will be adjusted by the difference between the

Provisional Items Budget and the subcontract price for the relevant Provisional Item approved by the Principal's Representative (including under **clause 6.4(e)** as applicable); and

- (iii) their intention is to obtain the best value offer for each Provisional Item by the tender process contemplated in this **clause 6.4**.
- (b) The Contractor acknowledges that the Contractor has included in the Contract Price all of its preliminaries, overheads and profit including those preliminaries, overheads and profit in connection with performing those parts of the Work under the Contract the subject of the Provisional Items (regardless of the value of the Provisional Items as let).
- (c) The Contractor must not subcontract any Provisional Items described in **Item 14** without:
 - (i) first obtaining three written quotations to carry out the work (which must be provided by parties who are at arm's length to the Contractor and obtained in compliance with any procurement codes and guidelines stated at **Item 15**) and providing those written quotations to the Principal's Representative; and
 - (ii) the Principal's Representative's prior written approval of the subcontractor and the price to carry out the work which must be a fixed lump sum price with unit rates for the purposes of valuing variations.
- (d) With a request for approval to subcontract part of the Work under the Contract, the Contractor shall give the Principal's Representative written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give the Principal's Representative other information which the Principal's Representative reasonably requests, including the proposed subcontract documents.
- (e) Within ten Business Days of the Contractor's request for approval to subcontract part of the Work under the Contract, the Principal's Representative shall give the Contractor written notice of approval or of the reasons why approval is not given.
- (f) The Contractor must, in relation to the Provisional Items:
 - (i) ensure that the process of obtaining written quotations for each Provisional Item is conducted fairly;
 - (ii) not engage in any form of collusive tendering practice;
 - (iii) declare any conflict of interest as soon as the Contractor becomes aware of that conflict; and
 - (iv) ensure that the tender documents for the Provisional Items require tenderers to:
 - (A) declare any conflict of interest including disclosure of any payment to or receipt of money from any other tenderers in connection with their tenders; and
 - (B) comply with the obligations set out in the procurement codes and guidelines stated at **Item 15**.
- (g) The Principal and the Contractor acknowledge and agree that:
 - (i) the Principal may, in its absolute discretion and in accordance with this **clause 6.4(g)**, delete any Provisional Item; and
 - (ii) where a Provisional Item is deleted, the Contract Price will be reduced by the Provisional Item Budget for that Provisional Item.

7 Intellectual Property Rights

- (a) The Contractor shall not contest the title to, or in any way take action which detrimentally affects the title to, any Intellectual Property Right owned or used by the Principal.
- (b) The Contractor shall not use any Intellectual Property Right owned or used by the Principal for any purpose whatsoever except for the performance of its obligations under the Contract.
- (c) The Contractor warrants that any design, materials, documents and methods of working, each provided by the Contractor, will not infringe any Intellectual Property Right.
- (d) The Contractor must indemnify the Principal and the Principal's Representative against any loss or damage, cost or expense which the Principal or the Principal's Representative suffers or incurs as a result of the actual or alleged infringement of an Intellectual Property Right arising out of or in connection with the Works or Work under the Contract.
- (e) Subject to **clause 7(f)**, copyright and property in the design documents hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the design documents for Work under the Contract. The Contractor must do everything necessary to perfect such vesting.
- (f) Notwithstanding **clause 7(e)**, design documents which were in existence prior to the date of the Contract and which have not been developed by or on behalf of the Contractor for incorporation in the design documents or for Work under the Contract ('**Pre-existing IP**'), will (as between the Principal and the Contractor) remain the property of the Contractor. The Contractor grants to the Principal a perpetual, irrevocable, royalty free, non-exclusive and transferable licence (including a right to sublicense) to use the Pre-existing IP for the Work under the Contract. Such licence must also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to or augmentation of, the Works and the copying of the documents for such purposes. Such vesting will not extend to components of the design which have been developed by the Contractor for general use in the Contractor's work and have not been specially developed for incorporation in the design documents. The Contractor shall do everything necessary to perfect such vesting.

8 Construction-related obligations

8.1 Construction Method Statement

- (a) The Contractor must update the Construction Method Statement:
 - (i) monthly; and
 - (ii) within the time stipulated in a written direction of the Principal's Representative, to show how the Contractor will do the Work under the Contract.
- (b) The Contractor warrants that compliance with the Construction Method Statement will ensure that the Work under the Contract is done in accordance with the Contract.
- (c) If it is not feasible or practicable to do the Work under the Contract in accordance with the Construction Method Statement, the Contractor must perform the Work under the Contract using whatever methodology, as approved by the Principal's Representative, may prove to be necessary to complete the Work under the Contract in accordance with the Contract.

8.2 Compliance with Law

- (a) The Contractor must:
 - (i) comply with all Law, including in performing its obligations under the Contract. This obligation is not affected by any approval given by the Principal, the Principal's Representative or an Authority; and
 - (ii) promptly give the Principal's Representative a copy of any relevant document issued by an Authority.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Principal has obtained the Existing Approvals;
 - (ii) the Contractor must comply with the Existing Approvals;
 - (iii) the Contractor must:
 - (A) give the notices;
 - (B) pay the levies, charges or fees; and
 - (C) obtain (other than to the extent an approval is an Existing Approval), maintain, and comply with all necessary Authority consents, licenses, permits, approvals and other authorisations, required in connection with the Work under the Contract and the Contractor's other obligations under the Contract, including as necessary to comply with Law. The Contractor must provide evidence of its compliance with this **clause 8.2** (including original approvals and other documents) upon request and as otherwise required by the Principal.
 - (iv) if compliance with Law necessitates a change to the Work under the Contract:
 - (A) it must promptly inform the Principal's Representative in writing with details of the change to the Work under the Contract and its proposal for performing the Work under the Contract, which must be consistent with its obligations under the Contract;
 - (B) it must obtain the Principal's Representative's written approval before implementing the proposal; and
 - (C) if the Principal's Representative does not approve its proposal, the Contractor must develop it until the Principal's Representative approves a revised proposal; and
 - (v) it is not entitled to any Compensation or an extension of time for complying with Law or any Authority consents, licenses, permits, approvals (including Existing Approvals) and other authorisations.
- (c) If the Contractor fails to comply with any condition of an Authority consent, licence, permit, approval (including an Existing Approval) or other authorisation, the Principal may:
 - (i) comply with that condition; and
 - (ii) recover all costs and expenses incurred from the Contractor as a debt.
- (d) The Contractor indemnifies the Principal from and against any and all liabilities, damages, claims, fines, penalties, fees, costs and expenses of whatever nature arising out of or

resulting from the breach any Law by the Contractor or its personnel, including its subcontractors and their personnel.

8.3 Greenhouse Gas and energy reporting

- (a) The Contractor acknowledges that the Principal may have obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) to provide data to the Australian Federal Government, including about its Greenhouse Gas emissions, energy consumption and energy production. If the Principal has any such obligations, the Contractor must:
 - (i) maintain records of its Greenhouse Gas emissions, energy consumption and energy production in connection with the performance of the Work under the Contract; and
 - (ii) submit monthly reports to the Principal in a form approved by the Principal.
- (b) If requested by the Principal, the Contractor must also permit the Principal (or their nominee) to have access to the Contractor's records referred to in **clause 8.3(a)** to enable the Principal to comply with its reporting obligations referred to in **clause 8.3(a)** in respect of the Work under the Contract.

8.4 Quality management and qualitative non-performance

- (a) The Contractor must, and warrants that it will:
 - (i) use good quality, new (unless otherwise specified in the Contract) and undamaged materials for the Works, which must be suitable for the Intended Purpose;
 - (ii) use materials and equipment of Australian manufacture (to the extent practical);
 - (iii) not use asbestos in any form when performing the Work under the Contract;
 - (iv) ensure that all workmanship is of the highest quality and standard and is in accordance with the Contract; and
 - (v) subject to any provision of the Contract to the contrary, comply with relevant standards, including Australian Standards, codes of practice and manufacturers' standards, when performing the Work under the Contract.
- (b) The Contractor must give the Principal's Representative access to the Contractor's and each subcontractor's quality systems, to enable monitoring and quality auditing.
- (c) The Contractor warrants that compliance with the Quality Manual will ensure that the Work under the Contract is done in accordance with the Contract.
- (d) If it is not feasible or practicable to do the Work under the Contract in accordance with the Quality Manual, the Contractor must perform the Work under the Contract using whatever quality methodology or quality systems may prove to be necessary to complete the Work under the Contract in accordance with the Contract.
- (e) If the Principal's Representative considers that any Work under the Contract is not in accordance with the Contract, the Principal's Representative may:
 - (i) direct the Contractor to rectify that part of the Work under the Contract, including by:
 - (A) demolishing the work;
 - (B) removing the material from the Site;
 - (C) reconstructing, replacing or correcting the material or work; or

- (D) not delivering the material or work to the Site; or
 - (ii) direct the Contractor not to rectify that part of the Work under the Contract.
- (f) The Principal may have the work referred to in **clause 8.4(e)** done by others:
 - (i) if:
 - (A) the Principal's Representative has directed the Contractor to rectify that work under **clause 8.4(e)(i)**; and
 - (B) the Contractor has not rectified that work within the period and in accordance with the requirements specified in that direction; or
 - (ii) if the Principal's Representative has directed the Contractor not to rectify that work under **clause 8.4(e)(ii)**,

and the Principal may recover all costs and expenses incurred from the Contractor as a debt.
- (g) Review of any samples, goods, equipment or materials by the Principal or the Principal's Representative in accordance with the Contract is solely to monitor the performance of the Contractor. The Contractor is totally responsible for carrying out the Work under the Contract in accordance with the Contract.

8.5 Inspection and testing

- (a) If the Contract requires the Contractor to give written notice to the Principal's Representative before covering up any part of the Work under the Contract, the Contractor must give such notice to the Principal's Representative in accordance with the Contract.
- (b) Before conducting any test required by the Contract, the Contractor must give written notice of at least five Business Days to the Principal's Representative of the time, date and place of the test.
- (c) If the Principal's Representative does not attend at that time, and the Contractor has complied with **clause 8.5(b)**, the Contractor may proceed with the test.
- (d) Unless otherwise specified in the Contract, all tests and their associated cost are the responsibility of the Contractor.
- (e) At any time before the Defects Correction Period expires, the Principal's Representative may direct that any part of the Work under the Contract, including materials or workmanship, be tested.
- (f) If testing shows that every part of the Work under the Contract subject to that direction, complies with the Contract:
 - (i) the Contractor is only entitled to payment of the additional direct and reasonable costs incurred in complying with a direction under **clause 8.5(e)** and rectifying any consequential damage to the Work under the Contract;
 - (ii) the Contractor is not entitled to an extension of time;
 - (iii) the Principal's Representative and the Contractor's Representative must attempt to agree on the payment to which the Contractor is entitled under **clause 8.5(f)(i)**. If the Principal's Representative and the Contractor's Representative agree on that payment, the Principal's Representative must give a written notice to the Contractor setting out the adjustment to the Contract Price; and

- (iv) if the Principal's Representative and the Contractor's Representative fail to reach agreement within 15 Business Days of performance of the test, the Principal's Representative must determine the amount payable and give a written notice to the Contractor setting out the adjustment to the Contract Price.
- (g) If testing shows that any part of the Work under the Contract subject to a direction under **clause 8.5(e)**, does not comply with the Contract, the Contractor is not entitled to any Compensation or an extension of time.
- (h) The Contractor must:
 - (i) provide such assistance and samples and make accessible such parts of the Work under the Contract as may be required by the Principal's Representative to do any tests;
 - (ii) on completion of the tests, if necessary, rectify the Work under the Contract, so that it complies with the Contract; and
 - (iii) promptly provide to the Principal's Representative the results of any tests undertaken by the Contractor (and, in the case of any part of the Work under the Contract which is manufactured off the Site, the Contractor must provide to the Principal's Representative the results of any tests undertaken by the Contractor before that part of the Work under the Contract is despatched from the place of manufacture).
- (i) For the purposes of **clause 8.5**, testing includes examination and measuring.
- (j) If the Contractor fails to comply with **clauses 8.5(a), 8.5(b), 8.5(h)(i) or (h)(iii)** or a direction under **clause 8.5(e)**, the Principal or the Principal's Representative may:
 - (i) open up or pull down the Work under the Contract;
 - (ii) carry out such tests as are necessary; and
 - (iii) recover all costs and expenses incurred from the Contractor as a debt.
- (k) If the Contractor fails to comply with **clause 8.5(h)(ii)**, the Principal may rectify the Work under the Contract and recover all costs and expenses incurred from the Contractor as a debt.

8.6 Transfer of ownership

- (a) Ownership of materials, plant, equipment and other items supplied under the Contract (other than Constructional Plant) will transfer to the Principal, free of any Security Interest:
 - (i) at the time of the making of any payment by the Principal under the Contract which is attributable (either in whole or in part) to the relevant materials, plant, equipment or other item;
 - (ii) when the item is delivered to the Site; or
 - (iii) when the item is incorporated into the Works,
 whichever occurs first.
- (b) Nothing in this **clause 8.6** limits or affects **clause 13.1** and notwithstanding that ownership of any item may have passed to the Principal, the Contractor shall still ensure that the item is properly stored (and in the case of items being transported to the Site, adequately packaged), labelled the property of the Principal and adequately protected and insured.

8.7 Safety requirements

- (a) The Contractor is responsible for the occupational health and safety at all times of all personnel engaged by it (including its employees, employees of the Principal or the Principal's subcontractors, and the Contractor's subcontractors and their respective employees, who are working or attending at any working environment or residential premises under the Contractor's control) in connection with the Contract or any part of the Work under the Contract.
- (b) The Contractor must ensure that in carrying out its obligations under the Contract it complies with all Safety Legislation (including, but not limited to, any duty imposed on the Contractor by the applicable Safety Legislation as a designer, manufacturer, importer or supplier of the Works).
- (c) The Contractor must ensure that all subcontractors, and all agents and employees of the Contractor and any subcontractor, comply with all Safety Legislation.
- (d) The Contractor must keep the Principal fully and regularly informed of all safety matters arising out of, or in any way in connection with, the Contract.
- (e) The Contractor must provide the Safety Management Plan to the Principal not less than 28 days before commencing any work on the Site for the review of the Principal, and must maintain, administer and comply with the Safety Management Plan and any other safety management plan required by the Contract or by the Safety Legislation.
- (f) The Contractor, at no additional cost to the Principal, must, and must ensure that all subcontractors and all agents and employees of the Contractor and all subcontractors, promptly obey all directions and instructions given by the Statutory Manager relating to the safety of persons or property, or to the proper compliance with the Safety Legislation which it is the duty of the Statutory Manager to enforce. The decision of the Statutory Manager is final and any such directions or instructions he or she may give must be obeyed in the manner he or she directs. To the extent of any inconsistency, this **clause 8.7** prevails over all other provisions of the Contract.
- (g) Without limiting any other clause of the Contract, the Contractor must:
 - (i) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while carrying out work under the Contract comply with, the requirements of the Safety Management Plan;
 - (ii) comply with any reasonable direction or instruction of the Principal given following any potential or perceived breach of the Safety Legislation or the Safety Management Plan;
 - (iii) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site and the work under the Contract;
 - (iv) implement and comply with all necessary security requirements of the Principal for the Site and ensure that all persons performing work on the Site (including all persons employed or engaged by its subcontractors) undertake the safety and site induction course required by the Principal;
 - (v) ensure that all work under the Contract is executed in a safe manner including:
 - (A) erecting and maintaining, as required by existing conditions and the progress of work under the Contract, all safeguards necessary for safety and protection (including barriers, fences and railings); and

- (B) posting danger signs and other warnings against hazards and notifying the Principal and other users of any dangerous or hazardous conditions arising out of the carrying out of work under the Contract;
- (vi) have on the Site at all times, appropriate first aid facilities and a member of its staff fully qualified and experienced in occupational health and safety and familiar with all occupational health and safety laws including the Safety Legislation;
- (vii) take all measures necessary to protect people and property on or adjacent to the Site and the Work under the Contract;
- (viii) if the Contractor or any subcontractor, or any agent or employee of the Contractor or a subcontractor, damages any property, promptly make good the damage and pay any damages which the Contractor is liable at law to pay; and
- (ix) ensure that all work, plant, equipment and other items used in the carrying out of Work under the Contract are maintained in a safe and working order.
- (h) If the Principal considers that any work, plant, equipment or other items are unsafe for use in conjunction with the carrying out of work under the Contract, the Principal may direct the Contractor to:
 - (i) cease using the unsafe work, plant, equipment or item until it has been brought into a safe working order; or
 - (ii) replace the unsafe work, plant, equipment or item with work, plant, equipment or an item which is in a safe working order.
- (i) If the Contractor fails to comply with an obligation under the Safety Legislation or this **clause 8.7**, the Principal may perform or have performed the obligations on the Contractor's behalf and the costs and expenses incurred by the Principal are recoverable from the Contractor as a debt due to the Principal.
- (j) To the maximum extent permitted by law, and without limiting any other indemnity by the Contractor, the Contractor indemnifies the Principal against any and all suits, actions, proceedings, claims, demands, losses, damages, liabilities, costs and expenses of whatsoever nature (including legal costs on a full indemnity basis) which the Principal may suffer or incur or have brought against it, or which may be imposed under or may arise out of enforcement of any section of any Safety Legislation, arising out of or in any way in connection with any failure by the Contractor to comply with any Safety Legislation or any breach by the Contractor of its obligations under this **clause 8.7**.
- (k) If the Contractor has an incident or occurrence concerning any aspect of the Work carried out under the Contract at the Site, which is required in accordance with the Safety Legislation to be notified to the safety regulator under the applicable Safety Legislation, the Contractor must immediately give notice to the Principal of the incident or occurrence.
- (l) When requested to do so by the Principal, the Contractor must give all documents relevant to the incident or occurrence the subject of the notice referred to in **clause 8.7(k)** to the Principal and the Principal's Representative. The Contractor also authorises the Principal and the Principal's Representative to conduct, or procure the conduct of, interviews with the Contractor's employees and subcontractors regarding all matters relevant to the incident or occurrence.

8.8 Surveys

- (a) Before Practical Completion, the Contractor must submit to the Principal's Representative a certificate and necessary drawings executed by a competent engineering surveyor certifying that the Works are:

- (i) laid out in accordance with the Contract; and
 - (ii) contained within the title boundaries, except only for those parts of the Works specifically required to be outside those boundaries.
- (b) If the survey referred to in **clause 8.8(a)** shows that any part of the Works is not located in accordance with the Contract, the Principal may make any alteration the Principal requires to locate that part of the Works in accordance with the Contract and recover all costs and expenses incurred from the Contractor as a debt.

8.9 Industrial relations

- (a) The Contractor must and must ensure that its subcontractors, comply with all applicable Commonwealth and state industrial awards, and all applicable Industrial Legislation.
- (b) The Contractor must regularly consult with the Principal's Representative, throughout the performance of the Work under the Contract, concerning any industrial relations issues, which may arise and, in particular, its negotiation of enterprise bargaining agreements or other industrial agreements with its employees.
- (c) The Contractor:
 - (i) must subject to **clause 8.9(c)(iv)**, assume sole responsibility for, and manage, all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under the Contract;
 - (ii) must keep the Principal's Representative regularly informed of any Industrial Relations Issues or Industrial Action which will, or is likely to, affect the performance of the Contractor's obligations under the Contract;
 - (iii) must immediately notify the Principal's Representative of:
 - (A) any Industrial Relations Issues or Industrial Action which causes the Contractor or a subcontractor engaged by the Contractor to suspend or cease carrying out all or any part of the Contractor's obligations under the Contract; and
 - (B) what action or measures (including settlement) the Contractor has taken or proposes to take to overcome, or minimise the effects of, such Industrial Relations Issues or Industrial Action;
 - (iv) must, not less than 28 days before commencing any work on the Site, submit to the Principal for its approval, and have approved, an Employee Relations Management Plan. The Contractor must review and update its Employee Relations Management Plan at the times requested by the Principal and in any event no less than annually. The Contractor must implement and comply with and must ensure all its subcontractors implement and comply with the Employee Relations Management Plan;
 - (v) must ensure that its subcontractors, not less than 28 days prior to the subcontractor performing any work on the Site, also submit to the Principal for its approval, and have approved, an Employee Relations Management Plan. The Contractor must ensure that the subcontractor implements and complies with the Employee Relations Management Plan; and
 - (vi) must not carry out any of the Contractor's obligations under the Contract on or about the Site until:
 - (A) it has enterprise agreements that apply (as that term is defined in section 12 of the Fair Work Act) to the work under the Contract with all Contractor

employees, including those who will be working on the Site, all on terms acceptable to the Principal; and

- (B) it has ensured that its subcontractors have enterprise agreements that apply (as that term is defined in section 12 of the Fair Work Act) with all of the subcontractor's employees, including those who will be working on Site, all on terms acceptable to the Principal.
- (d) The Principal has a right to direct the Contractor in relation to the management of all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under the Contract, including but not limited to with respect to the commencement and conduct of proceedings in any court or tribunal, and any negotiations and dealings with an industrial association (as that term is defined in section 12 of the Fair Work Act).

8.10 Defects Correction Period

- (a) After Practical Completion, the Contractor must promptly complete all outstanding items of work required to be completed to comply with the Contract.
- (b) At any time before the end of the Defects Correction Period, the Principal's Representative may direct the Contractor:
 - (i) to rectify any defect in, or omission, from the Work under the Contract; or
 - (ii) not to rectify a defect in, or omission from, the Work under the Contract.
- (c) The Principal's Representative must ensure that a direction under **clause 8.10(b)(i)**:
 - (i) identifies the defect or omission; and
 - (ii) states a date by which the Contractor must complete the rectification.
- (d) The Contractor must comply with a direction under **clause 8.10(b)(i)**.
- (e) There is to be a separate Defects Correction Period in respect of any part of the Work under the Contract rectified during the Defects Correction Period, commencing on the date the rectification work is completed, of a duration as stated at **Item 16**.
- (f) If directed by the Principal's Representative, the Contractor must also prepare and submit to the Principal's Representative a program and method statement for the performance of the rectification work which must be in accordance with the Contract.
- (g) If the Contractor fails to comply with a direction under **clause 8.10(b)(i)** by the date stipulated in the direction the Principal may:
 - (i) have the rectification work performed by others; and
 - (ii) recover all costs and expenses incurred from the Contractor as a debt.
- (h) If, after the last Defects Correction Period expires, the Principal's Representative forms the view that all defects in, or omissions from, the Work under the Contract, which are the subject of directions under **clause 8.10(b)(i)**, have been rectified, the Principal's Representative must promptly issue to the Principal and the Contractor a certificate stating that it has formed that view.
- (i) If the Principal's Representative issues a direction under **clause 8.10(b)(ii)**, the Principal's Representative must give the Principal and the Contractor its determination of the reduction of the Contract Price for the defect or omission the subject of that direction and the Principal may recover that amount from the Contractor as a debt.

9 Time

9.1 Completion of Work under the Contract

- (a) The Contractor must:
 - (i) perform the Work under the Contract in accordance with the Program; and
 - (ii) achieve Practical Completion by the Date for Practical Completion, or earlier if practicable.
- (b) While the Contractor may achieve Practical Completion before the Date for Practical Completion, the Principal and the Principal's Representative have no responsibility or duty of care to do, or refrain from doing, anything to enable the Contractor to achieve those results.

9.2 Program

- (a) The Contractor must update the Program:
 - (i) fortnightly or as otherwise specified in the Schedule of CDRL; and
 - (ii) within the time stipulated in a written direction of the Principal's Representative, to show:
 - (iii) progress achieved and, where appropriate, changes to the sequence and duration of activities required to comply with **clause 9.1(a)** including the effect of any extension of time; and
 - (iv) any corresponding changes to proposed manpower and shifts to be worked and resources to be utilised,and promptly provide three colour copies to the Principal's Representative.
- (b) Where a Program is rejected by the Principal's Representative for any reason, the Contractor must submit a corrected and revised Program within five Business Days.
- (c) The submission by the Contractor of a Program or of an updated or revised Program does not relieve the Contractor from any of its obligations under the Contract including the obligation to achieve Practical Completion by the Date for Practical Completion.
- (d) No comment, rejection, or approval (including deemed approval) by the Principal Representative in relation to a Program or of an updated or revised Program or draft program shall be construed as a direction to accelerate or in any way affect the Contractor's obligation to achieve Practical Completion by the Date for Practical Completion or give rise to any Entitlement or Claim.

9.3 Risk of delay and resultant increased costs

- (a) Subject to **clause 9.3(b)**, the Contractor accepts the risk of any loss, expense or damage resulting from delay in, or disruption to, the performance of the Work under the Contract and its other obligations under the Contract.
- (b) If the Contractor is granted an extension of time for a Compensable Cause then the Contract Price shall be adjusted by the Principal's Representative's assessment of the lesser of:
 - (i) the amount calculated by multiplying the rate for delay costs in **Item 17** by the number of Business Days for which the extension of time is granted; and
 - (ii) the direct costs (excluding profit and overheads) which the Contractor can demonstrate to the Principal's Representative by written evidence it has

necessarily and unavoidably suffered as a consequence of that delay for the period of the extension of time.

- (c) The Principal's Representative must give a written notice to the Contractor adjusting the Contract Price to reflect the delay costs to which the Contractor is entitled in accordance with **clause 9.3(b)**.

9.4 Extensions of time to Date for Practical Completion

Subject to **clause 9.8(c)**, the Contractor is entitled to an extension of time provided the Contractor:

- (a) gives written notice to the Principal's Representative of the fact or likelihood of delay, within five Business Days of when the Contractor should reasonably have become aware of the cause of the delay;
 - (i) provides with that notice details of:
 - (A) the cause of delay;
 - (B) how the Date for Practical Completion is likely to be delayed, both in the progress of one or more activities and as a whole; and
 - (C) the date on which the cause of the delay first arose;
 - (ii) gives the Principal's Representative, within 20 Business Days of when the Contractor should reasonably have become aware of the cause of the delay:
 - (A) a written claim for an extension of time specifying the number of days claimed and the date on which the delay ceased;
 - (B) a statement of the facts on which the claim is based, including:
 - (1) any steps taken by the Contractor to minimise the delay or comply with an Acceleration Direction under **clause 9.9(a)**; and
 - (2) the extent to which those steps reduced the delay; and
 - (iii) satisfies the Principal's Representative that:
 - (A) the cause of the delay is a Qualifying Cause of Delay;
 - (B) if the Date for Practical Completion has:
 - (1) not passed, Practical Completion will be delayed beyond the Date for Practical Completion; or
 - (2) passed, Practical Completion has been delayed;
 - (C) the matters referred to in **clause 9.4(a)(iii)(B)** are apparent from an assessment of the critical path of the current revision of the Program when the delay first arose;
 - (D) the Contractor has:
 - (1) if applicable, complied with **clause 9.9**; and
 - (2) otherwise, consistently taken all reasonable steps to minimise the delay; and
 - (E) the cause of the delay is not in any way connected with an act or omission of the Contractor and could not have been prevented by the Contractor or a subcontractor or any of their respective employees or agents taking reasonable steps.

9.5 Determination of extension of time claims

- (a) Subject to **clause 9.9**, the Principal's Representative must, within 20 Business Days of receipt of a claim under **clause 9.4(a)(ii)** or, where the Principal's Representative gives a direction under **clause 9.5(b)**, within 20 Business Days after receipt of the supporting information, give the Contractor:
 - (i) written notice of any extension of time granted; or
 - (ii) if no extension is granted, written notice of that decision.
- (b) If the Principal's Representative gives a written direction, within ten Business Days of receipt of the Contractor's notice under **clause 9.4(a)(ii)**, to the Contractor to provide the Principal's Representative with further information in support of the Contractor's claim, the Contractor must give that supporting information within five Business Days.
- (c) If the Principal's Representative does not give a written notice within the period referred to in **clause 9.5(a)**, the Date for Practical Completion will not be set at large.
- (d) If the Contractor has not given written notice of delay in accordance with **clause 9.4(a)** within the time required by that clause, the Contractor shall have no entitlement in respect of the delay and any claim shall be absolutely barred.

9.6 Independent discretion to extend time

- (a) Notwithstanding that the Contractor has not claimed an extension of time, or is not entitled to an extension of time, the Principal's Representative may at any time, in its absolute discretion, grant an extension of time for any reason whatsoever. The Principal's Representative is not under any obligation to exercise the discretion under **clause 9.6(a)** fairly, reasonably or for the benefit of the Contractor or at all and without limiting **clause 4.1** the Principal's Representative may exercise or refrain from exercising this discretion as instructed by the Principal. The exercise or failure to exercise this discretion is not a direction or matter that can be opened up or reviewed in any resolution of disputes under **clause 15** or otherwise (including by any expert determination, litigation or arbitration).
- (b) If the Principal's Representative grants an extension of time under **clause 9.6(a)**:
 - (i) it must give the Contractor written notice, which expressly refers to **clause 9.6**; and
 - (ii) the Contractor is not entitled to any Compensation for the delay.

9.7 Liquidated damages for late Practical Completion

- (a) If the Contractor fails to achieve Practical Completion by the Date for Practical Completion, the Contractor must pay the Principal liquidated damages stated at **Item 18** for every day after the Date for Practical Completion, up to and also counting the Date of Practical Completion or the date of earlier termination of the Contract and the Principal may recover all liquidated damages payable as a debt.
- (b) For the avoidance of doubt, liquidated damages (at the rate identified in **Item 18**) will accrue and be payable separately and cumulatively for each Separable Portion.
- (c) The Contractor warrants to the Principal, and acknowledges and agrees that:
 - (i) the liquidated damages calculated in accordance with this **clause 9.7** are a reasonable and genuine pre-estimates of the loss and damage that may be suffered or incurred by the Principal as a result of the applicable circumstances described in **clause 9.7(a)**; and

- (ii) the Contractor will not commence or bring any proceedings, or seek to rely on any argument that any liquidated damages calculated in accordance with **clause 9.7(a)** is a penalty or is otherwise invalid or unenforceable or that **clause 9.7(a)**, or any part of it, is otherwise invalid or unenforceable.
- (d) The parties acknowledge and agree that:
 - (i) if **Item 17** is not completed or is completed by words which indicate that liquidated damages will not apply to the Contract (whether by the use of the words 'not applicable', 'nil' or otherwise); or
 - (ii) if **clause 9.7(a)** is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion,

the Contractor shall indemnify the Principal for any loss, damage, cost or expense suffered or incurred by the Principal by reason of the Contractor's delay in the execution of the Work under the Contract including the Contractor's failure to bring the Works to Practical Completion by the Date for Practical Completion.
- (e) The Contractor acknowledges that the liquidated damages referred to in **clause 9.7(a)** do not include any allowances, and do not preclude the Principal from making any claim, for unliquidated damages in respect of any liability, loss, expense or damage that may be suffered or incurred by the Principal by reason of:
 - (i) the Principal having to refinance the Works or putting in place alternative financing arrangements for the Works; or
 - (ii) the Contractor's breach of its obligations under **clause 9.1**,

as a result of the Contractor failing to achieve Practical Completion by the Date for Practical Completion.

9.8 No entitlement

If there is a delay to the Work under the Contract for which the Contractor is not entitled to, or has not been granted, an extension of time, the Contractor:

- (a) must achieve Practical Completion by the Date for Practical Completion;
- (b) does not have any remedy against the Principal for the delay, including any entitlement to damages for breach of the Contract; and
- (c) is not relieved of any liability to the Principal for any failure to achieve Practical Completion by the Date for Practical Completion by reason of the delay, including any liability to pay liquidated damages.

9.9 Acceleration of the Work under the Contract

- (a) If:
 - (i) the Contractor is entitled to have the Date for Practical Completion extended under **clause 9.4**; or
 - (ii) the Principal's Representative is of the opinion, such opinion to be based upon reasonable grounds, that the Contractor will not achieve Practical Completion by the Date for Practical Completion, whether or not the Contractor is entitled to an extension of time in respect of such delay,

or both, the Principal's Representative may direct the Contractor to carry out such measures as may be required in order to correct, either fully or partially, the effects and

consequences of the delay, include re-scheduling, re-programming, increasing the labour force, and/or plant or equipment, expediting and adjusting the activities and changing the sequence of the Work under the Contract, or both, and changing the working hours (**Acceleration Direction**).

- (b) If the Principal's Representative gives the Contractor an Acceleration Direction which:
 - (i) requires full correction of the delay, the Contractor's entitlement to any extension of time to which it otherwise would have been entitled will be reduced to nil; or
 - (ii) only requires partial correction of the delay, the Contractor's entitlement to any extension of time to which it otherwise would have been entitled will be reduced by the extent of correction required.
- (c) The Contractor will not be entitled to make any claim in respect of an Acceleration Direction unless the Contractor would, but for the Acceleration Direction, have been entitled to an extension of time under **clause 9.4**. If:
 - (i) the Contractor is so entitled; and
 - (ii) the Acceleration Direction causes the Contractor to reasonably incur more cost than would otherwise have been incurred had the Acceleration Direction not been given,subject to **clause 9.9(d)**, the Contractor will be entitled to be paid in respect of the Acceleration Direction in accordance with the Schedule of Pricing to the extent applicable, and to the extent not applicable, the Contractor's actual costs excluding any on-Site or off-Site overheads and profit, plus the mark up for subcontractor work specified in the Schedule of Pricing, or if there is no such mark up stated in the Schedule of Pricing, the Contractor's actual costs excluding any on-Site or off-Site overheads and profit (**Acceleration Costs**).
- (d) Where both Qualifying Causes of Delay and non Qualifying Causes of Delay contribute to the delay in relation to which the Acceleration Direction was given, the Acceleration Costs must be apportioned. The Acceleration Costs to which the Contractor will be entitled are that proportion of the Acceleration Costs which the delay caused by a Qualifying Cause bears to the total delay for which the Acceleration Direction was given.
- (e) Despite any other provision of this Contract, the Contractor shall not have any Claim in relation to any Acceleration Direction if the Contractor has not achieved the acceleration or change required by the Acceleration Direction.

9.10 Contractor's Acceleration Proposal

- (a) Without prejudice to **clause 9.9**, the Principal Representative may at any time direct the Contractor in writing to provide the Principal Representative with the following information in relation to the proposed acceleration of the Work under the Contract ('**Contractor's Acceleration Proposal**'):
 - (i) details of the additional labour and construction plant which the Contractor considers will be required to comply with the proposed acceleration;
 - (ii) an estimate of the hours of work which will be required to be performed by the Contractor outside the working hours or the working days defined in the Contract and the construction program to enable the Contractor to achieve the proposed acceleration;
 - (iii) details of additional supervision which the Contractor will be required to provide to achieve the proposed acceleration;

- (iv) the Contractor's extra costs and expenses which it may reasonably incur in achieving the proposed acceleration; and
- (v) a draft revised construction program showing the proposed revised date for practical completion which will be implemented to achieve the proposed acceleration.
- (b) The Contractor shall provide the Principal Representative with the Contractor's Acceleration Proposal within 7 Business Days of receipt of the direction given under **clause 9.10(a)**.
- (c) On receipt of the Contractor's Acceleration Proposal, the Principal Representative may do any one of the following:
 - (i) advise the Contractor by notice in writing which expressly refers to the Contractor's Acceleration Proposal that the Principal accepts the Contractor's Acceleration Proposal in which case, subject to **clause 9.9(e)**, the Date for Practical Completion shall be revised to the date contained in the Contractor's Acceleration Proposal and the Contract Price shall be adjusted by the amount accepted by the Principal in the Contractor's Acceleration Proposal; or
 - (ii) reject the Contractor's Acceleration Proposal.

9.11 Practical Completion

- (a) At least ten Business Days before the date on which the Contractor estimates that it will achieve Practical Completion, the Contractor must give the Principal's Representative written notice of the date the Contractor estimates it will achieve Practical Completion.
- (b) The Contractor must give the Principal's Representative a further notice when it considers it has achieved Practical Completion.
- (c) The Principal's Representative and the Contractor's Representative must jointly inspect the Work under the Contract at a mutually convenient time no later than two Business Days after receipt of a notice under **clause 9.11(b)**.
- (d) Within ten Business Days after the joint inspection, the Principal's Representative must:
 - (i) give the Principal and the Contractor a certificate which states the date on which Practical Completion was achieved;
 - (ii) give the Contractor written notice of matters and things required to be done to achieve Practical Completion; or
 - (iii) give the Contractor written notice that the Works are so far from Practical Completion that it is not yet practicable to issue a notice under **clause 9.11(d)(ii)** and requiring the Contractor to continue with the performance of the Work under the Contract.
- (e) If the Principal's Representative gives the Contractor a notice under **clauses 9.11(d)(ii)** or **9.11(d)(iii)**:
 - (i) the Contractor must notify the Principal's Representative when the Contractor has achieved Practical Completion;
 - (ii) the Principal's Representative and the Contractor's Representative must jointly inspect the Work under the Contract promptly at a mutually convenient time; and
 - (iii) **clauses 9.11(d)** and **9.11(e)** apply again until the Principal's Representative gives a certificate under **clause 9.11(d)(i)**.
- (f) At least four weeks prior to Practical Completion, the Contractor must provide the Principal's Representative with three copies of all final drafts of:

- (i) as-built drawings and related documentation, including a complete set of the final drafts of the specifications and design drawings (in both printed form and electronic format to be specified by the Principal's Representative); and
 - (ii) operation and maintenance manuals and preventative maintenance plans.
- (g) No payment and no partial or entire use or occupancy of the Works by the Principal is deemed to constitute Practical Completion and does not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract.

9.12 Suspension

- (a) The Principal's Representative may at any time and for any reason give written notice to the Contractor to suspend the performance of all or any part of the Work under the Contract which must include details of the extent to which the Principal's Representative requires the Contractor to keep its personnel, subcontractors and equipment on standby.
- (b) If the Contractor receives a written notice from the Principal's Representative under **clause 9.12(a)**, the Contractor must immediately suspend the performance of the Work under the Contract or the relevant part.
- (c) Subject to **clause 9.12(h)**, the Contractor may recover from the Principal the direct and reasonable costs incurred by the Contractor in:
 - (i) keeping its personnel, subcontractors and equipment on standby, to the extent required in the notice under **clause 9.12(a)**; and
 - (ii) demobilising and remobilising its personnel, subcontractors and equipment.
- (d) The Principal's Representative and the Contractor's Representative must attempt to agree on the payment to which the Contractor will be entitled under **clause 9.12(c)** as a result of complying with a notice under **clause 9.12(a)**. If the Principal's Representative and the Contractor's Representative agree on that payment, the Principal's Representative must give a written notice to the Contractor setting out the adjustment to the Contract Price.
- (e) If the Principal's Representative and the Contractor's Representative fail to reach agreement within ten Business Days, the Principal's Representative must determine the amount payable and give a written notice to the Contractor setting out the adjustment to the Contract Price.
- (f) The Principal's Representative may at any time give written notice to the Contractor to resume the performance of the Work under the Contract, or the relevant part, which has been suspended.
- (g) If the Contractor receives a notice under **clause 9.12(f)**:
 - (i) the Contractor must immediately resume performance of the Work under the Contract, or the relevant part, which has been suspended; and
 - (ii) subject to **clauses 9.4** and **9.12(h)**, the Principal's Representative must extend the Date for Practical Completion.
- (h) If the Principal's Representative gives a notice under **clause 9.12(a)** as a result of a breach by the Contractor of the Contract, the Contractor is not entitled to:
 - (i) any costs under **clause 9.12(c)**;
 - (ii) an extension of time under **clause 9.12(g)(ii)**; or

- (iii) terminate the Contract.

10 Payment

10.1 The Principal's payment obligations

- (a) The Principal must pay the Contractor the Contract Price in accordance with the Contract.
- (b) Except where expressly provided in the Contract, the Contractor acknowledges that:
 - (i) it shall not be entitled to any adjustment to the Contract Price for the duration of the Contract; and
 - (ii) the Contract Price includes everything necessary for the performance of the Work under the Contract and all of the Contractor's obligations under the Contract.

10.2 Schedule of Rates

- (a) This **clause 10.2** does not apply to items of Work under the Contract covered by any lump sum component of the Contract Price, and only applies to items of Work under the Contract (if any) for which the Principal accepted a rate or price in a Schedule of Rates.
- (b) Quantities in a Schedule of Rates are estimated quantities only.
- (c) The Principal's Representative is not required to give a direction by reason of the actual quantity of an item of Work under the Contract being greater or less than the estimated quantity shown in a Schedule of Rates.
- (d) If, otherwise than by reason of a Variation, the actual quantity of an item of Work under the Contract is greater or less than the estimated quantity shown in the Schedule of Rates, the Contract Price will be adjusted:
 - (i) if the actual quantity of an item of work comprising the Work under the Contract is less than the estimated quantity for that item shown in the Schedule of Rates, a deduction to the Contract Price calculated as the product of that difference in quantity by the applicable rate in the Schedule of Rates; and
 - (ii) if the actual quantity of an item of work comprising the Work under the Contract properly performed by the Contractor is greater than the estimated quantity for that item shown in the Schedule of Rates, an addition to the Contract Price calculated as the product of that difference in quantity by the applicable rate in the Schedule of Rates, provided that where that difference is greater than the limit of accuracy stated in **Item 23**, the excess quantity above the limit of accuracy will be a deemed Variation and priced under **clause 6.3**.
- (e) If the Schedule of Rates omits an item which:
 - (i) should have been included in the Schedule of Rates; and
 - (ii) is not Work under the Contract for which the Principal accepted a lump sum, the item shall be deemed to be accounted for in the rates that are included in the Schedule of Rates.
- (f) The Contractor acknowledges and agrees that the Principal has not given and does not give any representations or warranties (whether express or implied) to the Contractor, and the Principal has no liability to the Contractor, concerning the completeness of the Schedule of Rates or the accuracy of the estimated quantities shown in the Schedule of Rates.
- (g) The Contractor warrants that:

- (i) it has thoroughly reviewed the Schedule of Rates and is satisfied that the Schedule of Rates is accurate and that the Contract Price is sufficient to perform and complete the Work under the Contract in accordance with the Contract;
- (ii) without limiting **10.2(g)(i)** above, the Contractor has allowed for the provision of all plant, equipment, work, materials, utilities and any other work necessary for the Work under the Contract, regardless of the nature or character of the Work under the Contract, the degree of difficulty or complexity of the Work under the Contract, and whether or not expressly mentioned in the documents which comprise the Contract or any design documentation. Any such plant, equipment, work, materials, utilities and any other work necessary for the Work under the Contract:
 - (A) must be undertaken and provided by the Contractor and forms part of the Work under the Contract; and
 - (B) will not entitle the Contractor to make a Claim except as expressly provided for in the Contract.
- (h) The Contractor acknowledges that the Principal has entered into the Contract in reliance on the acknowledgments made, and the warranty given, by the Contractor in this **clause 10.2**.
- (i) Subject to any express entitlement under this **clause 10.2** to an adjustment to the Contract Price, notwithstanding any other clause of the Contract, the Contractor acknowledges and agrees that it is not entitled to any Claim or Compensation (including an extension of time) by reason of the actual quantity of an item of Work under the Contract being greater or less than the estimated quantity shown in the Schedule of Rates.

10.3 Progress claims

- (a) Subject to the Contractor having complied with its obligations under **clauses 10.6(a)(i), 10.15(b) and 13.3(e)**, the Contractor is entitled to submit its claim for payment to the Principal's Representative, and must do so within 10 Business Days after the end of each month, in a form approved by the Principal's Representative, which:
 - (i) shows the value of the Work under the Contract done by the Contractor to the end of the previous month;
 - (ii) includes details of:
 - (A) any amount claimed by the Contractor's subcontractors, which is the subject of a dispute between the Contractor and those subcontractors and details of the dispute; and
 - (B) in the case of the value of any part of the Work under the Contract the subject of a Provisional Item included in that claim, the amount claimed by a subcontractor for that part of the Work under the Contract.
- (b) The Contractor warrants that:
 - (i) each Payment Claim will comply in all respects with the requirements of the Contract, including with respect to the calculation of the amount claimed; and
 - (ii) on or before the date of submission of each Payment Claim, the Contractor has paid all moneys then due and payable to all workers and subcontractors who have at any time been employed by the Contractor on the Work under the Contract in respect of their employment or engagement on the Work under the Contract.

10.4 Payment certificate

- (a) Following receipt of the claim provided in accordance with **clause 10.3**, the Principal's Representative must, within ten Business Days, determine the amount payable in respect of that claim and issue a certificate to the Principal and the Contractor setting out that determination.
- (b) In the certificate referred to in **clause 10.4(a)**, the Principal's Representative will set out its reasonable determination of:
 - (i) the value of the Work under the Contract performed by the Contractor, after allowing for the cost of rectifying any defect;
 - (ii) the value of unfixed plant and materials which the Principal's Representative has approved for payment under **clause 10.13**;
 - (iii) any money which is payable, or which may become payable, from the Contractor to the Principal in respect of the Contract or the Work under the Contract;
 - (iv) the amount determined as payable to the Contractor in the previous certificate issued under **clause 10.4(a)**; and
 - (v) the amount payable to the Contractor, or from the Contractor to the Principal, being the amounts assessed under **clause 10.4(b)(i)** and **(ii)** less the amounts assessed under **clause 10.4(b)(iii)**.
- (c) The Contractor must give the Principal a Valid Tax Invoice for the amount determined by the Principal's Representative under **clause 10.4(b)(v)** within two Business Days of receipt of a certificate under **clause 10.4(a)**.
- (d) Where an amount is certified as being due for payment to the Contractor by the Principal in a certificate issued under **clause 10.4(a)**, the Principal must pay the Contractor the amount certified by the earlier of:
 - (i) the number of days stated at **Item 19** after receipt of a Valid Tax Invoice in accordance with **clause 10.4(c)**; and
 - (ii) 42 days of receipt by the Principal's Representative of the claim under **clause 10.3**.
- (e) Payments made by the Principal are on account only and are not:
 - (i) evidence of the value of work; or
 - (ii) an admission of liability on the part of the Principal.
- (f) Where an amount is certified as being due for payment to the Principal by the Contractor in a certificate under **clause 10.4(a)**, the Contractor must pay the Principal the amount certified within ten Business Days after receipt of that certificate, after which time the Principal may recover such amount from the Contractor as a debt.

10.5 Set-off

- (a) The Principal may set-off or deduct from:
 - (i) any amounts due to the Contractor under the Contract, including any amounts certified by the Principal's Representative; or
 - (ii) the amount available to the Principal if it exercises its rights under the unconditional undertakings referred to in **clause 10.6(a)**,any moneys payable, or which may become payable, from the Contractor to the Principal whether arising under the Contract or otherwise.

- (b) Failure by the Principal to set-off any amount it is entitled to set-off under this **clause 10.5** will not prejudice the Principal's right to subsequently exercise its right of set off.
- (c) Even if a debt owed by the Contractor to the Principal under the Contract has not been included in the Principal's Representative's determination under **clauses 10.4(a), 10.6(a)** or **14.5(e)**, the Principal may separately recover the debt from the Contractor.

10.6 Security

- (a) The Contractor must, on or before the date of the Contract:
 - (i) provide the Principal with security in the form of one or more unconditional undertakings:
 - (A) as set out in **Item 20**;
 - (B) for the amount or amounts stated at **Item 20**;
 - (C) issued by a bank authorised under section 9 of the *Banking Act 1959* (Cth), which:
 - (1) has its principal place of business in Australia;
 - (2) has a Standard & Poor's long-term issuer credit rating of AA minus or better; oris otherwise a financial institution acceptable to the Principal in its absolute discretion; and
 - (D) in the form set out in the Schedule of Form of Unconditional Undertaking, as security for the performance of its obligations under the Contract. The Contractor shall not be entitled to submit any claim for payment under **clause 10.3(a)** or be entitled to any Compensation unless and until it has provided the Principal with the unconditional undertakings required by **clause 10.6(a)(i)**.
- (b) At 3 monthly intervals from the date of Contract, the Principal's entitlement to security will be adjusted to reflect any net increases in the Contract Price. The adjustments will be such that the total amount of security equals the percentage stated in **Item 20** of the increased Contract Price.
- (c) If the Principal's entitlement to security is increased under paragraph (b) above, within 10 Business Days of being notified in writing by the Principal of the amount of the additional security required, the Contractor must provide the additional security to the Principal. The additional security must comply in all respects with **clause 10.6(a)(i)(A)**.
- (d) The Principal may:
 - (i) convert all or part of any unconditional undertaking into cash at any time without notice (including in circumstances where the Contractor has failed to provide additional security in accordance with **clause 10.6(c)**);
 - (ii) use the proceeds of any unconditional undertaking in relation to any liability, claim, cost, expense, loss or damage which the Principal has incurred or claims that it has incurred in connection with any actual or alleged act, default or omission of the Contractor; or
 - (iii) have recourse to the security provided under the terms of that security.
- (e) The Contractor must not take any steps whatever to restrain:
 - (i) the Principal from making any demand under those unconditional undertakings; or

- (ii) the issuer of those unconditional undertakings from complying with any such demand.
- (f) If the Principal makes a demand under any unconditional undertaking, the Principal:
 - (i) does not hold the amount received on trust for the Contractor; and
 - (ii) is not obliged to pay the Contractor interest on that amount.
- (g) The Principal must release the lesser of:
 - (i) one unconditional undertaking; or
 - (ii) where a demand has been made under an unconditional undertaking provided to the Principal under **clause 10.6(a)(i)**, the remaining portion of one conditional undertaking (if any),

within ten Business Days after the issue of a certificate from the Principal's Representative under **clause 9.10** certifying that Practical Completion has been achieved.
- (h) The Principal must release the balance of the amount held by it under **clause 10.6(a)(i)** (excluding any amount the subject of a bona fide claim by the Principal) within ten Business Days after the issue of a certificate under **clause 8.10(h)**.
- (i) The Contractor is responsible for all stamp duty (including penalties, if applicable) payable in connection with:
 - (i) the unconditional undertakings provided by the Contractor under **clause 10.6(a)**; and
 - (ii) any demands made on those unconditional undertakings.

10.7 Final payment

- (a) Within ten Business Days after expiry of the last Defects Correction Period, the Contractor must provide to the Principal's Representative a final payment claim titled 'Final Payment Claim'.
- (b) The Contractor must include in the Final Payment Claim the portion of the Contract Price, and any claim the Contractor has in respect of the Contract or the Work under the Contract, which the Contractor considers to be due from the Principal under the Contract.
- (c) After the earlier of:
 - (i) the expiry of ten Business Days after expiry of the last Defects Correction Period; and
 - (ii) the receipt of the Final Payment Claim,

the Contractor is barred from making any claim against the Principal in respect of the Contract or the Work under the Contract, whether in contract, tort or otherwise, which has not been made.

10.8 Final Payment Certificate

- (a) The Principal's Representative:
 - (i) must, within ten Business Days after receipt of the Contractor's Final Payment Claim; or
 - (ii) may, if the Contractor does not issue a Final Payment Claim under **clause 10.7(a)**,

issue to the Contractor and the Principal a certificate titled 'Final Payment Certificate', which states:

- (iii) the Contract Price as adjusted in accordance with the Contract;
 - (iv) the value of the Work under the Contract performed by the Contractor assessed by the Principal's Representative and taken into account in determining the amount certified for payment to the Contractor by the Principal, or to the Principal by the Contractor, in the last certificate issued under **clause 10.4(a)**;
 - (v) any moneys which are due, or which may become due, to the Principal in respect of the Contract or the Work under the Contract; and
 - (vi) the resulting amount certified as then being due for payment to the Contractor by the Principal or to the Principal by the Contractor.
- (b) If the Final Payment certifies an amount due for payment to the Contractor by the Principal, the Contractor must give the Principal a Valid Tax Invoice for the difference between the Contract Price and the amount determined by the Principal's Representative under **clause 10.8(a)(vi)** within two Business Days of receipt of the Final Payment Certificate.
- (c) Where an amount is certified as being due for payment to the Contractor by the Principal in the Final Payment Certificate, the Principal must pay the Contractor the amount certified by the earlier of:
- (i) the number of days stated at **Item 21(a)** after receipt of a Valid Tax Invoice in accordance with **clause 10.8(b)**; or
 - (ii) but in any event within 42 days of receipt by the Principal's Representative of the Final Payment Claim.
- (d) Where an amount is certified as being due for payment to the Principal by the Contractor in the Final Payment Certificate, the Contractor must pay the Principal the amount certified within the timeframe stated at **Item 22**.

10.9 Payment of Subcontractors, workers and consultants

- (a) The Contractor must pay and must ensure that its subcontractors pay:
- (i) all amounts payable to all workers who have been employed by the Contractor or a subcontractor; and
 - (ii) all amounts payable to its subcontractors, suppliers, and consultants, promptly when due and payable to its workers, subcontractors, suppliers, or consultants (as applicable) in respect of the relevant Work under the Contract.
- (b) The Contractor must, with every claim for payment, and otherwise upon request by the Principal's Representative, provide documentary evidence reasonably satisfactory to the Principal's Representative (including receipts for payment) that at the date of the request, all its workers, subcontractors, suppliers, and consultants have been paid all money due and payable to them in respect of their engagement on the Work under the Contract.
- (c) If:
- (i) the Principal becomes aware that a Subcontractor, worker or consultant is entitled to suspend work which forms part of the Works pursuant to the Security of Payment Act;

- (ii) the Contractor fails to promptly provide the documentary evidence requested by the Principal's Representative in accordance with **clause 10.9(b)**; or
- (iii) the Principal believes on reasonable grounds that the Contractor has not paid any amount referred to in **clause 10.9(a)** promptly from when that amount became (or may have become) due and payable,

the Principal may (in its absolute discretion) pay out of any moneys payable to the Contractor, any moneys owing, or that may be owing, by the Contractor to its workers, subcontractors, suppliers, or consultants in relation to the execution of any part of the Work under the Contract.

- (d) Any payment made under **clause 10.9(c)** will be a debt due from the Contractor to the Company.
- (e) The Contractor indemnifies the Principal against any claims and liens in regard to wages due and payable to the workers, subcontractors, suppliers, or consultants.

10.10 Taxes

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Contract are exclusive of GST.
- (b) If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with the Contract, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
- (c) The recipient will pay the amount referred to in **clause 10.10(b)** in addition to and at the same time that the consideration for the supply is to be provided under the Contract.
- (d) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 10.10(b)**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a Supplier under the Contract, the amount payable by the recipient under **clause 10.10(b)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (f) Where a party is required under the Contract to pay, reimburse or indemnify an expense or cost of another party, the amount to be paid, reimbursed or indemnified by the first party will be the sum of:
 - (i) the amount of the expense or cost less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment, reimbursement or indemnity is subject to GST, an amount equal to that GST.

10.11 Customs clearance and Australian customs duty

- (a) If materials, plant, equipment or other items are to be imported into Australia by the Contractor for incorporation into the Works, then unless the Contract states otherwise:
 - (i) the Contractor will pay any Australian customs duty that may be payable on the importation of those items; and
 - (ii) the Contractor must co-operate with and provide reasonable assistance to the Principal in seeking exemptions from or reductions in any Australian customs duty, and if such exemptions or reductions are obtained, then to the extent (if any) that

the Principal has already paid or reimbursed the Contractor the amount of the exemption or reduction, the Contractor must repay that amount to the Principal.

- (b) The Contractor must bear and pay for any Australian customs duty that may be payable in connection with the importation into Australia of:
 - (i) any construction plant; and
 - (ii) any materials, plant, equipment or other items required to repair, replace or rectify any loss, damage or defect that the Contractor is required to repair, replace or rectify at its cost.
- (c) The Contractor is responsible for handling and clearing through customs in all applicable jurisdictions (including Australia), all overseas sourced materials, plant, equipment and other items that are to be supplied by the Contractor under the Contract for incorporation into the Works or for use in performing Work under the Contract.

10.12 Security of Payment Act

- (a) The Contractor must:
 - (i) promptly give the Principal and the Principal's Representative a copy of any notice the Contractor receives from a subcontractor under section 42 of the Security of Payment Act; and
 - (ii) ensure that each subcontractor promptly gives the Principal and the Principal's Representative a copy of any notice that the subcontractor receives from another person under section 42 of the Security of Payment Act.
- (b) If the Principal becomes aware that a subcontractor is entitled to suspend work under section 42 of the Security of Payment Act, the Principal may (in its absolute discretion) pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work under the Contract. The Principal may recover from the Contractor each amount paid as a debt.
- (c) The Contractor indemnifies the Principal against any loss, expense or damage of any nature, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by the Principal arising out of or in connection with:
 - (i) a suspension by a subcontractor of work which forms part of the Work under the Contract under section 42 of the Security of Payment Act; and
 - (ii) a failure by the Contractor to comply with **clause 10.12(a)**.
- (d) If the Contractor makes a payment claim to the Principal under the Security of Payment Act, and the Contractor applies for adjudication of the payment to be made, the prescribed appointer for the purposes of section 26(1)(c)(ii) of the Security of Payment Act is the Institute of Arbitrators and Mediators, Australia.
- (e) For the purposes of this **clause 10.12**:
 - (i) 'subcontractor' means a person engaged by the Contractor, its subcontractors or any other person to do work or supply materials and equipment which forms part of the Work under the Contract or to provide professional services in relation for the Work under the Contract; and
 - (ii) 'work' means work which the Contractor is, or may be, required to do under the Contract.

10.13 Payment for unfixed plant and materials

- (a) The Principal is not obliged to pay for unfixed plant or materials unless the Contractor:

- (i) provides additional security that meets the requirements for the unconditional undertakings set out in **clause 10.6(a)** and is equal to the amount that the Contractor has claimed in respect of the unfixed plant or material item; and
- (ii) establishes to the satisfaction of the Principal's Representative that the Contractor has paid for the item and the item is properly stored, labelled the property of the Principal and is adequately protected and insured.
- (b) Upon payment to the Contractor of the amount which includes the value of the unfixed plant or material item, the item must be the property of the Principal, free of any lien or charge or any other Security Interest.
- (c) The Principal must release the relevant security provided in accordance with **clause 10.13(a)(i)** within ten Business Days of incorporation of the unfixed plant or material item in the Works.

10.14 Warranties on the Contract Price

The Contractor warrants that:

- (a) it has examined the following to determine the Contract Price (including the rates in any Schedule of Rates):
 - (i) the Contract;
 - (ii) the Site and its surroundings; and
 - (iii) all other information it considers relevant or necessary;
- (b) it has relied solely on its own assessment, skill, expertise and enquires in respect of all information relevant to the risks, contingencies and other circumstances having an effect on determining the Contract Price; and
- (c) it has fully satisfied itself as to all conditions of any kind which could affect the Works.

10.15 Parent Company Guarantee and Builder's Side Deed

- (a) The Contractor must:
 - (i) procure that the Guarantor enters into the Parent Company Guarantee and any associated documentation requested by the Principal; and
 - (ii) if the Guarantor is incorporated outside of Australia, provide the Principal with a legal opinion:
 - (A) from lawyers authorised to practice in the place of incorporation of the Guarantor;
 - (B) stating that the Parent Company Guarantor is binding and enforceable against the Guarantor;
 - (C) in favour of the Principal; and
 - (D) which is in a form reasonably satisfactory to the Principal.
- (b) The Contractor shall not be entitled to submit any claim for payment under the Contract or be entitled to any Compensation unless and until it has complied with the requirements of **clause 10.15(a)**.
- (c) The Contractor must enter into the Builder's Side Deed and any associated documentation requested by the Principal.

11 Personal Property Securities Act

- (a) In this **clause 11**:
- (i) **'collateral'**, **'financing statement'**, **'perfect'**, **'PPS Lease'**, **'register'** and have the meaning given in the PPS Act;
 - (ii) **'PPS Act'** means the *Personal Property Securities Act 2009* (Cth); and
 - (iii) **'Security Interest'** means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or any security arrangement which is deemed to be a security interest for the purposes of the PPS Act and includes a PPS Lease.
- (b) If the Contract creates a Security Interest to which the PPS Act applies the Principal may at the cost of the Contractor complete and lodge a financing statement or do all other things necessary to perfect that Security Interest.
- (c) The Contractor must, upon demand co-operate with the Principal so as to give the Principal the full benefit of any Security Interest created by the Contract, including, providing all details of any collateral the subject of such Security Interest reasonable necessary for the Principal to register and maintain a financing statement on the register in respect of the Security Interest.
- (d) The Contractor shall pay all costs and expenses incurred in registering or perfecting a Security Interest as provided for by this clause.
- (e) The Principal is not required to give any notice under the PPS Act unless the obligation to give the notice under the PPS Act is required by the PPS Act and cannot be excluded.
- (f) Despite **clause 16.2**, the Principal and the Contractor agree, subject to section 275(7) of the PPS Act, that neither of them will disclose information of the kind mentioned in section 275(1) of the PPS Act.

12 Indemnities

12.1 Release

The Contractor releases the Indemnified Parties from any liability or obligation to the Contractor, or any person claiming through or on behalf of the Contractor, in respect of:

- (a) physical loss of, or damage to, any real or personal property;
- (b) personal injury, disease or illness to, or death of, persons; or
- (c) financial loss or expense,

arising out of the performance of the Work under the Contract and the Contractor's other obligations under the Contract.

12.2 Indemnity by the Contractor

The Contractor indemnifies the Indemnified Parties against any liability, claim, loss, expense or damage of any nature, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by them arising out of or in connection with breach of the Contract by the Contractor or a negligent act or omission of the Contractor, including claims, loss, expense or damage in respect of:

- (a) physical loss of, or damage to, property of the Indemnified Party;

- (b) damage to any other property, including any adjoining property as contemplated by **clause 3.10**;
- (c) personal injury, disease, illness or death; and
- (d) the infringement of any Intellectual Property Rights.

12.3 Breach of other agreements

- (a) The Contractor acknowledges that any breach by it of the Contract may result in the Principal committing breaches of and being liable for losses, damages, costs and expenses under the Upstream Documents.
- (b) The parties agree that, notwithstanding **clause 12.4**, those losses, damages, costs and expenses in **clause 12.3(a)** are within the contemplation of the parties as being the direct result of any breach by the Contractor of the Contract.

12.4 Indirect and Consequential Loss

- (a) A party will not be liable to the other in respect of any Consequential Loss which may be suffered or incurred by the other party in connection with the Work under the Contract, the Works or the Contract, and this exclusion of liability shall apply whether the liability or claim is based on breach of contract, repudiation, tort (including negligence), under an indemnity, under statute, in equity or otherwise, but this **clause 12.4** does not apply to or limit any of the following obligations or liabilities of the parties:
 - (i) death or injury to persons or damage to real or personal property;
 - (ii) liability for liquidated damages under **clause 9.7** or for unliquidated damages at general law as provided in **clause 9.7**;
 - (iii) liability arising from fraudulent or criminal acts or omissions of a party or any of its subcontractors or any of their respective agents or employees;
 - (iv) liability for wilful misconduct in breach of contract which has substantial harmful consequences for the other party (including an intentional, unlawful abandonment of the Contract);
 - (v) liability for conduct which is so grossly careless that it amounts to reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
 - (vi) liability to indemnify the Principal under the Contract;
 - (vii) misuse of confidential information by the Contractor or breach of **clause 16.2**;
 - (viii) liability to the extent the Contractor is indemnified for the liability under any policy of insurance required to be effected or maintained by the Principal or the Contractor under the Contract, or would have been indemnified but the inclusion of this **clause 12.4** in the Contract or for a failure on the Contractor's part to comply with its insurance obligations as required by the Contract or the terms of any such policy of insurance or to diligently pursue a claim;
 - (ix) liability for insurance deductibles borne by the Contractor;
 - (x) liability for any fine, penalty, sanction or compensation imposed by any legislative requirement; and
 - (xi) liability which by law a party cannot contract out of or limit.
- (b) For the purposes of **clause 12.4(a)**, 'Consequential Loss' means any liability or claim suffered or incurred by any person (including under an indemnity) whether arising in

contract, in tort (including negligence), under statute or on any other basis in law or equity for:

- (i) loss of profit;
- (ii) loss of revenue;
- (iii) loss of goodwill; or
- (iv) loss of business opportunity.

13 Risk of loss or damage and insurance

13.1 Responsibility for care of the Work under the Contract

- (a) The Contractor is responsible for the care of the Work under the Contract from the date of commencement of the Work under the Contract to 4.00 pm on the Date of Practical Completion.
- (b) The Contractor must promptly make good loss of, or damage to, any part of the Work under the Contract while:
 - (i) it is responsible for its care; and
 - (ii) defects are being rectified after the Date of Practical Completion.

13.2 Insurance policies effected by the Contractor

- (a) Without in any way limiting or affecting the Contractor's other obligations under the Contract, the Contractor must, before commencing the Work under the Contract, take out and maintain in effect until the Principal's Representative issues a certificate in accordance with **clause 8.10(h)** the insurances described in this **clause 13.2**.
- (b) **Contractor's plant and equipment insurance**
 - (i) Contractor's plant and equipment insurance in respect of all plant, equipment and other property owned, operated or controlled by the Contractor or its employees, subcontractors or agents or for which the Contractor is responsible which the Contractor brings to or uses on Site, including transit risk or at other places where the Work under the Contract is performed for not less than the market value of the plant and equipment.
 - (ii) The Contractor's plant and equipment policy must:
 - (A) include legal liability coverage for road registered plant and equipment to a limit of not less than that set out in **Item 24**;
 - (B) include a principal's indemnity extension indemnifying the Principal, its Related Body Corporates and their respective employees;
 - (C) in respect of the principal's indemnity extension at paragraph (B) above, include a cross liability clause which confirms insurers accept the term 'insured' as applying to each of the parties constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other insured party to claim under the policy; and
 - (D) include a waiver of subrogation in favour of the Principal, its Related Body Corporates and employees.

(c) **Public and Products liability insurance**

- (i) Public and products liability insurance covering legal liability to pay compensation for bodily injury, death, sickness or disease to any person and loss, destruction or damage to real or personal property (including resultant loss of use), arising directly or indirectly from the Work under the Contract or its performance.
- (ii) The public and products liability policy must:
 - (A) include a minimum policy limit at set out at **Item 25**;
 - (B) include products liability coverage for the design, manufacture, supply, sale, or distribution of products associated with the Work under the Contract;
 - (C) include a principal's indemnity extension indemnifying the Principal, its Related Body Corporates and their respective employees;
 - (D) include a cross liability clause which confirms insurers accept the term 'insured' as applying to each of the parties constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other insured party to claim under the policy;
 - (E) extend to cover goods in the physical and legal control of the Contractor held off-Site;
 - (F) extend to cover liability in respect of third party property damage or personal injury arising from the use of unregistered plant and equipment; and
 - (G) extend to cover liability in respect of third party property damage or personal injury arising from off Site construction, fabrication or assembly in connection with the Works.

(d) **Motor vehicle insurance**

- (i) In respect of all vehicles owned, operated, leased, hired, or controlled by the Contractor or its employees, subcontractors or agents, registered or required to be registered in accordance with any Law which are used (or to be used) on any road at any time in connection with the Work under the Contract.
- (ii) The motor vehicle insurance policy must:
 - (A) provide cover for material damage to all vehicles for not less than their market value;
 - (B) include coverage for liability in respect of third party property damage or personal injury to a minimum limit set out at **Item 26**;
 - (C) include a principal's indemnity extension indemnifying the Principal, its Related Body Corporates and their respective employees;
 - (D) in respect of the principal's indemnity extension at **(C)** above, include a cross liability clause which confirms insurers accept the term 'insured' as applying to each of the parties constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other insured party to claim under the policy;

- (E) include a waiver of subrogation in favour of the Principal, its Related Body Corporates and employees; and
 - (F) include bodily injury gap coverage arising from the use of registered motor vehicles not otherwise covered by compulsory third party insurance.
- (e) **Workers' compensation insurance**
 - (i) Workers' compensation insurance to cover liability under any statute relating to workers' or accident compensation and employer's liability at common law in accordance with the requirements of the Law and with a limit of not less than the value stated at **Item 27**.
 - (ii) The workers' compensation policy must;
 - (A) comply with all statutory requirements including providing compulsory statutory workers compensation benefits;
 - (B) include a principal indemnity extension for both statutory benefits and common law, in favour of the Principal, its Related Body Corporates and their respective employees; and
 - (C) include a waiver of subrogation in favour of the Principal, its Related Entities and their respective employees.
- (f) **Travel, medical and medical evacuation insurance**
 Travel, medical and medical evacuation insurance for the Contractor's employees, subcontractors and agents travelling on an assignment (and not covered under a Western Australian workers compensation policy) as part of the Work under the Contract including visits to Site.
- (g) **Contract Works insurance**
 Contract Works insurance:
 - (i) for the Work under the Contract, including any individual component forming part of the Work under the Contract or the Works;
 - (ii) against physical loss, damage or destruction; and
 - (iii) with a limit of liability of not less than the full reinstatement or replacement value of the Work under the Contract, plus all costs of demolition and removal of debris and consultants' fees.
- (h) **Other insurances required by law**
 The Contractor must effect and maintain any other insurance required by Law.

13.3 Insurance requirements

The Contractor must:

- (a) pay the deductible in connection with any claim made in respect of any loss or risk covered by an insurance policy effected under **clause 13.2**;
- (b) ensure that the insurance policies effected under **clause 13.2** contain provisions to the effect that:
 - (A) a notice to the insurer by one insured party is deemed to be notice by all insured parties; and
 - (B) disclosure to the insurer by one insured party is deemed to be disclosure by all of the insured parties.

- (c) ensure that the insurance policies effected under **clause 13.2** are effected with an insurer or insurers approved in writing by the Principal's Representative (not to be unreasonably withheld) with a minimum credit rating of A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service);
- (d) ensure that the insurance policy effected under **clause 13.2(d)** provides protection to the Principal arising out of the use of the Contractor's vehicles in addition to the Contractor;
- (e) before commencing the Work under the Contract, and at other times requested by the Principal's Representative, give the Principal's Representative certificates from the relevant insurer or insurers specifying for each insurance policy:
 - (i) the cover;
 - (ii) any significant exclusions, limitations or conditions;
 - (iii) the policy number;
 - (iv) the expiry date; and
 - (v) sufficient information to enable the Principal's Representative to confirm proof of currency and coverage of each insurance policy,

and the Contractor shall not be entitled to submit any claim for payment under the Contract or be entitled to any Compensation unless and until it has provided the Principal's Representative with the certificates of insurance required by this **clause 13.3(e)**;

- (f) promptly give written notice to the Principal and the Principal's Representative if an insurer gives notice of cancellation or other notice in respect of any insurance policy effected under **clause 13.2** and provide to the Principal's Representative a copy of such notice;
- (g) ensure that all of the Contractor's subcontractors effect and maintain insurance in accordance with **clause 13.2**;
- (h) ensure that insurance premiums are paid on time, deductibles are paid promptly and the conditions of insurance are otherwise complied with;
- (i) not do or omit to do anything which might vitiate, impair or derogate from the cover under any insurance policy or which might prejudice any claim under any policy;
- (j) immediately notify the Principal's Representative of any event which may result in any insurance policy lapsing or being cancelled or avoided; and
- (k) as soon as practicable notify the Principal's Representative of any occurrence that may give rise to a claim under any insurance policy and thereafter keep the Principal's Representative informed of developments concerning the claim.

13.4 Failure to maintain an insurance policy

If the Contractor fails to effect or maintain an insurance policy under **clause 13.2**, the Principal may (but is not obliged to) effect and maintain the insurance policy and recover all costs and expenses incurred from the Contractor as a debt. The Contractor is not relieved of any liability under the Contract due to, or as a result of, the Principal effecting or maintaining any insurance policy referred to in **clause 13.2**.

13.5 Responsibility for excess or deductible

In the event of a claim the Contractor shall be responsible for the excesses, except to the extent caused or contributed to by the negligence of the Principal.

14 Default and termination

14.1 The Principal's remedy notice

- (a) If the Principal's Representative considers that the Contractor is in breach of the Contract, the Principal's Representative may give the Contractor a written notice specifying:
 - (i) the date by which the Contractor must rectify the breach, to the extent that the breach is capable of rectification; or
 - (ii) the Principal's or the Principal's Representative's requirements for mitigating the effects of the breach, to the extent that the breach is incapable of rectification.
- (b) If the Principal's Representative gives the Contractor a notice under **clause 14.1(a)**, the Contractor must:
 - (i) comply with the notice; and
 - (ii) give the Principal's Representative a program for performing the things necessary to comply with the notice.
- (c) If the Contractor fails to comply with a notice under **clause 14.1(a)**:
 - (i) the Principal or the Principal's Representative may take any action it considers appropriate to:
 - (A) rectify that breach; or
 - (B) mitigate the effects of the breach; and
 - (ii) the Contractor indemnifies the Principal against any loss, expense or damage of any nature, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by the Principal in respect of that action, except to the extent that the loss, expense or damage arises from the negligence or wilful default of the Principal.

14.2 Termination following default

The Principal may terminate the Contract by giving the Contractor written notice of at least five Business Days if the Contractor does not comply with a notice under **clause 14.1(a)**.

14.3 Termination for Insolvency Event

To the extent permitted by Law, either party may terminate the Contract, with immediate effect, by written notice to the other party if an Insolvency Event occurs with respect to that other party.

14.4 Consequence of termination under clauses 14.2 and 14.3

If the Principal gives the Contractor a notice under **clauses 14.2 or 14.3**:

- (a) the Contractor must:
 - (i) stop performing the Work under the Contract within the time specified in the notice;
 - (ii) properly secure the Work under the Contract and leave the Site in a safe condition; and
- (b) the Principal may recover damages on the same basis as if the Contractor had repudiated the Contract and the Principal had accepted the repudiation.

14.5 Termination for convenience

- (a) Despite any other provision of the Contract the Principal may at its sole discretion, and without giving any reason, terminate the Contract by giving written notice to the Contractor of at least 20 Business Days.
- (b) On receipt of a notice under **clause 14.5**, the Contractor must:
 - (i) stop performing the Work under the Contract within the time specified in the notice; and
 - (ii) remove its construction plant from the Site;
 - (iii) do all things reasonably necessary to mitigate and minimise the cost to the Principal of the termination of the Contract including, but not limited to:
 - (A) the immediate off-hire of all plant and equipment;
 - (B) demobilisation of all non-essential personnel;
 - (C) the immediate cancellation of orders for materials, plant or equipment ordered for the Works where such orders may be cancelled without penalty; and
 - (iv) endeavour to mitigate any expense or losses that it or any subcontractor may incur or has incurred in relation to its obligations under the Contract; and
 - (v) properly secure the Work under the Contract and leave the Site in a safe condition.
- (c) If for any reason a purported termination under **clauses 14.2** or **14.3** or at general law by the Principal is held to be ineffective, the purported termination is not a breach or repudiation of the Contract and must be treated to have been effected under **clause 14.5(a)**.
- (d) If the Contract is terminated under **clause 14.5(a)**, the Contractor may, after demobilisation from the Site, submit a claim, in a form approved by the Principal's Representative, showing:
 - (i) the value of the Work under the Contract performed by the Contractor;
 - (ii) subject to the Contractor's obligation to mitigate its costs and expenses, the cost of materials, plant and equipment ordered for the Works, to the extent the Contractor cannot cancel such orders, provided that:
 - (A) on payment by the Principal, the unencumbered title to the materials passes to the Principal; and
 - (B) the materials have not been prematurely ordered;
 - (iii) subject to the Contractor's obligation to mitigate its costs and expenses, the direct and reasonable demobilisation costs incurred by the Contractor calculated in accordance with the Schedule of Rates; and
 - (iv) up to a maximum amount of the balance of the original Contract Price as at the date of the Contract unpaid at the date of termination and other amounts payable pursuant to the Contract at the date of termination.
- (e) The Principal's Representative must, within ten Business Days of receiving the claim, determine the amount payable and issue a certificate to the Principal and the Contractor setting out that determination and showing:

- (i) the Principal's Representative's assessment of the value of the Work under the Contract completed up to and including the date of termination, after allowing for the cost of rectifying any defects and the value of materials, plant and equipment ordered which have or will become the property of the Principal;
 - (ii) the direct and reasonable demobilisation costs incurred by the Contractor calculated in accordance with the Schedule of Rates;
 - (iii) any moneys which are due, or which may become due, from the Contractor to the Principal in respect of the Contract or the Work under the Contract; and
 - (iv) the amount certified as then being due for payment to the Contractor by the Principal or to the Principal by the Contractor.
- (f) The Contractor must, within two Business Days of receipt of the Principal's Representative's certificate under **clause 14.5(e)**, give the Principal a Valid Tax Invoice for the amount certified by the Principal's Representative under **clause 14.5(e)**.
- (g) Where an amount is certified as being due for payment to the Contractor by the Principal in a certificate under **clause 14.5(e)**, the Principal must pay the Contractor the amount certified by the time stated at **Item 28**.
- (h) Where an amount is certified as being due for payment to the Principal by the Contractor in a certificate under **clause 14.5(e)**, the Contractor must pay the Principal the amount certified within the timeframe stated at **Item 29**, after which time the Principal may recover such amount from the Contractor as a debt.
- (i) The Contractor is not entitled to any other Compensation as a result of the Principal exercising its rights under **clause 14.5(a)**.

14.6 Contractor's entitlement after termination

If the Principal repudiates the Contract and the Contractor accepts that repudiation, thereby terminating the Contract, the Contractor is entitled to damages but is not entitled to any other Compensation.

14.7 Take out

- (a) If the Contractor does not comply with a notice under **clause 14.1(a)**, the Principal may, by giving the Contractor written notice of at least five Business Days:
- (i) take out of the Contractor's hands the whole or part of the Work under the Contract remaining to be completed; and/or
 - (ii) suspend payment until it becomes due and payable pursuant to **clause 14.7(d)(ii)**.
- (b) The Principal may complete Work under the Contract taken out of the Contractor's hands and may:
- (i) use materials, equipment and other things intended for the Work under the Contract; and
 - (ii) without payment of compensation to the Contractor:
 - (A) take possession of, and use, such of the Constructional Plant and other things on or in the vicinity of the Site as were used by the Contractor; and
 - (B) contract with such of the Contractor's consultants, suppliers and subcontractors,

as are reasonably required by the Principal to facilitate completion of the Work under the Contract.

- (c) The Contractor shall sign all documents and do all other things that are necessary to enable the Principal to do the things mentioned in **clauses 14.7(b)(i) and 14.7(b)(ii)**.
- (d) If the Principal exercises the power under **clause 14.7(a)**, the Principal Representative must:
 - (i) assess the total cost incurred by the Principal in having the Work under the Contract performed and completed; and
 - (ii) assess the difference between that cost and the amount which would otherwise have been paid to the Contractor if the Work under the Contract had been completed by the Contractor in accordance with the Contract; and
 - (iii) if the amount calculated under **clause 14.7(d)(ii)** is a positive amount, certify that difference as the amount due and payable by the Contractor to the Principal, or, if that amount is a negative amount certify that difference as the amount due and payable by the Principal to the Contractor.
- (e) If the Contractor is indebted to the Principal, the Principal may retain the Constructional Plant or other things taken under **clause 14.7(b)(ii)(A)** until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of any sale. Any excess must be paid to the Contractor.

15 Resolution of disputes

15.1 Disputes and differences

All disputes or differences in respect of the Contract or the Work under the Contract must be resolved in accordance with this **clause 15**.

15.2 Review by the Principal's Representative

- (a) Written notice of any dispute or difference must be given to the Principal's Representative and the other party. That notice must:
 - (i) set out the legal basis of the claim;
 - (ii) set out the facts upon which the claim is based;
 - (iii) have annexed copies of correspondence and any relevant background material;
 - (iv) contain detailed particulars of the quantification of the claim; and
 - (v) if the claim is made by the Contractor, be signed by its chief executive officer.
- (b) If the Principal's Representative and the Contractor's Representative are unable to resolve the dispute or difference within ten Business Days of receipt of the notice under **clause 15.2(a)**, either party may refer the dispute or difference to the senior representatives of the parties referred to in **clause 15.2(c)**.
- (c) For the purposes of **clause 15.2**, the senior representatives of the parties are stated at **Item 29**, or any replacement notified by a party to the other party in writing.
- (d) If the senior representatives of the parties are unable to resolve a dispute or difference referred to them under **clause 15.2(b)** or agree on a method for resolving the dispute within a further 20 Business Days, either party may, after giving written notice to the other party, commence arbitration in respect of the dispute or difference.

- (e) Service of the notices under, and in compliance with the process outlined in, **clause 15.2** are conditions precedent to the commencement of any arbitration in respect of a dispute or difference.

15.3 Arbitration

- (a) The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth, Western Australia before one arbitrator, the arbitrator will be nominated by the Chair of Resolution Institute upon the application of either party. The arbitration will be conducted in accordance with Resolution Institute Arbitration Rules.
- (b) To the extent permitted by law, the parties agree that:
 - (i) the powers conferred and restrictions imposed on a court by Part 1F *Civil Liability Act 2002* (WA) are not conferred or imposed on the arbitrators appointed under this **clause 15.3**; and
 - (ii) any such arbitrators will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002* (WA) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this this **clause 15.3**, have applied to any Dispute referred to arbitration.

15.4 Summary relief

Nothing in this **clause 15** shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek urgent injunctive or urgent declaratory relief.

15.5 Dispute resolution not to delay performing the Work under the Contract

Despite the other provisions of this **clause 15**, the Contractor must continue performing the Work under the Contract and its other obligations under the Contract.

16 Media releases and confidentiality

16.1 Media release

- (a) The Contractor must not advertise or issue any information, publication, document or article for publication or media release or other publicity relating to the Work under the Contract, the Contract or the Principal's business and activities without the Principal's Representative's written approval.
- (b) The Contractor must refer to the Principal any enquiries from the media concerning the Work under the Contract or the Principal's business and activities.

16.2 Confidentiality

- (a) The Contractor must not and must ensure that its employees and subcontractors do not without the Principal's Representative's approval, disclose or give to any person any Confidential Information.
- (b) The Principal and the Contractor each agree not to disclose:
 - (i) information about the terms of the Contract;
 - (ii) information about the obligations secured by any Security Interest under the Contract or the terms of payment or performance in respect of any obligation under the Contract at any particular time; and
 - (iii) without limitation to the above, any information of the kind described in section 275(1) of the PPS Act, including:

- (A) information about the Contract including a copy of it;
 - (B) information about the amount or the obligation secured by any Security Interest created by or under the Contract and the terms of such payment or performance at any time; or
 - (C) information about Relevant Collateral at any time,
- except:
- (iv) to its officers, employees, legal and other advisers and auditors;
 - (v) with the consent of the other party; or
 - (vi) to the extent it is necessary for either party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.
- (c) The obligations in this **clause 16** will not cease on the completion, expiry or termination of this Contract.

17 Notices

17.1 General

- (a) Unless otherwise specifically provided, any notice, consent, approval or other communication under the Contract must be:
 - (i) in writing;
 - (ii) delivered by hand or by mail to the address, or sent to the email address stated at **Item 31** (or such other postal address or email address as a party may notify to the other from time to time in writing) or, if nominated in **Item 32**, submitted via Teambinder; and
 - (iii) marked with the title stating that it is a notice under the Contract.
- (b) Subject to **clause 17.1(c)**, a notice is given on the day that:
 - (i) if delivered by hand or mail to the addressee, on the day of delivery if it is a Business Day, otherwise on the next Business Day; or
 - (ii) if sent by electronic mail, when the communication enters the information system on which the mailbox of the recipient's email address resides. A notice is taken to have entered the information system on which the mailbox of the recipient's email address resides at the time it was sent if the sender does not receive notification within 24 hours of sending the communication that the communication has not been delivered; or
 - (iii) if sent through Teambinder, at the time recorded in Teambinder as being the time at which it was sent, unless the result is that the communication would be taken to be given or made at a time which is after business hours at the local time in the place of receipt of the communication, in which case that communication is taken to be received at 9:00 am on the next Business Day.
- (c) If a notice is delivered by hand after 5.00 pm on a day, the notice will be deemed to have been received on the next Business Day.
- (d) A party must notify the other party and the Principal's Representative of any change to its details stated at **Item 31**.

- (e) The Principal's Representative must notify the parties of any change to its details stated at **Item 31**.

17.2 Email notices

- (a) Despite any other provision of the Contract but subject to this **clause 17.2**, the Principal and Contractor agree that notices under the Contract may be sent by electronic mail.
- (b) The party sending the notice must keep a contemporaneous printed record of any notice sent by it by electronic mail.
- (c) Each party must monitor the information systems on which the mailboxes for their respective email addresses reside on a frequent and regular basis but no less often than once a day.
- (d) Each party must immediately notify the other if they discontinue the use of, or change, their respective email addresses, or if they are unable to access their email addresses for a period longer than one day.
- (e) Each party must ensure that it is able to receive notices to its email address, including by ensuring that sufficient storage capacity is available at all times.
- (f) For the avoidance of doubt, a notice sent by electronic mail under the Contract will be taken to be a notice in writing signed by the person identified as the sender of the electronic mail.

17.3 Notification of Claims

- (a) The Contractor must give the Principal the notices required by **clause 17.4** if it wishes to make a Claim in respect of any matter (including a breach of the Contract by the Principal) under, arising out of, or in connection with the work under the Contract or the Contract.
- (b) This **clause 17.3** does not apply to Claims for:
 - (i) payment under **clause 10.3**;
 - (ii) Variations under **clause 6.2**; or
 - (iii) an extension of time under **clause 9.5**;

in respect of which the Contractor must give the notices in the form and within the times prescribed by those clauses.

17.4 Prescribed notices

The notices referred to in **clause 17.3** are:

- (a) a written notice within [5] Business Days after the Contractor first becoming aware of the matter in respect of which the Claim is based expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the matter in respect of which the Claim will be based; and
- (b) a written notice within [10] Business Days after giving the written notice under **clause 17.4(a)**, which must include:
 - (i) particulars concerning the matter in respect of which the Claim is based;

- (ii) the legal basis for the Claim;
- (iii) the facts relied on in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated,

and, if the matter in respect of which the Claim is based is, or the consequences of the matter are, continuing, the Services Contractor must continue to give that information every [10] Business Days from the date the initial notice under this **clause 17.4(b)** was submitted or given to the Principal, until after the matter in respect of which the Claim is based has, or the consequences of it have, ceased.

17.5 Deemed waiver

If the Contractor fails to give a notice in accordance with **clause 17.4**:

- (a) the Principal is not liable for, or in connection with, any Claim; and
- (b) the Contractor will be absolutely barred from making, and deemed to have irrevocably waived any right to make, any Claim,

arising out of, or in connection with, the relevant matter to which clause 17.4 applies.

18 National Building Code

The Building Code applies to the Contract, and the Contractor agrees to comply in all respects with the Building Code and as otherwise directed by the Principal.

19 Interface with lenders

The Contractor must, when reasonably requested to do so by the Principal, co-operate with any lenders for the Project and representatives of those lenders. The Contractor acknowledges and agrees that:

- (a) such co-operation will not detract from or otherwise affect the Contractor's warranties obligations or liabilities under or in connection with the Contract; and
- (b) it will not be entitled to claim any additional cost or expense or any adjustment to the Contract Price or to claim any extension of time or to make any claim under the Contract, any applicable law, in equity or otherwise in relation to such co-operation.

20 Modern Slavery prevention

- (a) The Contractor represents and warrants on a continuing basis that:
 - (i) neither the Contractor nor any of its directors, officers, employees, representatives, agents, contractors or subcontractors will engage in Modern Slavery;
 - (ii) it investigates, assesses and addresses the risk of Modern Slavery practices within its operations and the supply chain used by the Contractor, including by implementing appropriate due diligence and remediation programs;
 - (iii) it will ensure that all personnel responsible for managing the operations and supply chain utilised by the Contractor have undertaken suitable training to be able to identify and report Modern Slavery;

- (iv) it will advise the Principal regarding any identified instances of Modern Slavery practices and will immediately take all reasonable actions to address or remove such practices; and
- (v) it has all necessary processes, procedures and systems in place to comply with this **clause 20**.
- (b) The Contractor must provide, within a reasonable time, all information reasonably requested by the Principal for the purposes of the *Modern Slavery Act 2018* (Cth).
- (c) The Contractor represents and warrants that any information it supplies to the Principal in accordance with this **clause 20** is true and accurate and may be relied upon by the Principal for the purposes of the *Modern Slavery Act 2018* (Cth).

21 Assignment

- (a) The Principal may create any Security Interest or assign, transfer, novate, mortgage, encumber, or charge any or all of its rights, interests, obligations or liabilities under or in connection with the Contract without the consent of the Contractor.
- (b) Without limiting **clause 10.14**, the Contractor must not assign any right under the Contract or create any Security Interest, or allow any Security Interest to subsist, over the Contract, the Work under the Contract or any part of the Work under the Contract including unfixed plant and materials, or the Site, without the Principal's written approval.

22 General

22.1 Governing law and jurisdiction

The Contract is governed by and is to be construed in accordance with the laws applicable in the place stated at **Item 33**.

22.2 Construction

Unless expressed to the contrary, in the Contract:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in the place stated at **Item 33**;
 - (vii) '\$' or 'dollars' is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) the Contract includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of the Contract;
- (g) if the date on or by which any act must be done under the Contract is not a Business Day, the act must be done on or by the next Business Day; and
 - (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

22.3 Headings

Headings do not affect the interpretation of the Contract.

22.4 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

22.5 Rights cumulative

Except as expressly stated otherwise in the Contract, the rights of a party under the Contract are cumulative and are in addition to any other rights of that party.

22.6 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to the Contract does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) A right relating to the Contract may only be waived in writing signed by the party or parties waiving the right.

22.7 Relationship of parties

The Contract is not intended to create a partnership, joint venture or agency relationship between the parties.

22.8 Independent contractor

- (a) The Contractor is an independent contractor and is not and cannot be taken to be or hold itself out to be an agent, employee, partner, joint venturer of the Principal or otherwise associated with the Principal;
- (b) The Contractor must not:
 - (i) hold itself out as having the authority to pledge the credit of the Principal;
 - (ii) accept orders, otherwise contractually bind or enter into any agreement or arrangement which binds or commits or purports to bind or commit the Principal in any way; or

- (iii) make any oral or written representation or statement, express or implied, on behalf of the Principal.

22.9 Liability

An obligation of two or more persons binds them separately and together.

22.10 Warranties as to capacity and acknowledgment

Each party represents and warrants to each other party that:

- (a) capacity: it has capacity unconditionally to execute and deliver and comply with its obligations under the Contract;
- (b) action taken: it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with its obligations under, the Contract;
- (c) binding obligations: the Contract constitutes its valid and legally binding obligations and is enforceable against it by any other party in accordance with its terms; and
- (d) no contravention: its unconditional execution and delivery of, and compliance with its obligations under the Contract, do not contravene:
 - (i) any law to which it or any of its property is subject or any order or directive from a government body binding on it or any of its property; or
 - (ii) its constituent documents, any agreement or instrument to which it is a party or any obligation to any other person.

22.11 Comments, review, representation or approval by the Principal or the Principal's Representative

No comment, review, representation, vetting, inspection, testing or approval by the Principal or the Principal's Representative, or failure to do so, (including as part of the Project Control Group) in respect of the Contractor's obligations under the Contract will lessen or otherwise affect the Contractor's obligations under the Contract.

22.12 Proportionate liability

The provisions of Part 1F of the *Civil Liability Act 2002* (WA) are excluded from applying to the Contract and the Contractor's performance of the Work under the Contract.

Schedule 1

Schedule of Contract Details

Item 1	Business Day (clause 1.1)	Perth, Western Australia
Item 2	Contract Price (clause 1.1)	The amount determined by the Principal's Representative in accordance with Schedule 15
Item 3	Date for Practical Completion (clause 1.1)	As set out in the Schedule of Separable Portions
Item 4	Principal's Representative (clause 1.1)	[Insert]
Item 5	Site (clause 1.1)	[Insert details of land comprising the Site]
Item 6	Guarantor (clause 1.1)	[Insert details of the guarantor] [DRAFTING NOTE: If the Guarantor is a foreign company, a legal opinion will be required. Other issues such as foreign withholding tax may need to be considered.]
Item 7	Defects Correction Period (clause 1.1)	[52] weeks after the Date of Practical Completion [of the last Separable Portion]
Item 8	Inclement weather – minimum duration (clause 1.1)	[On each occasion, a minimum of 6 consecutive hours during standard working hours of [insert]]. [DRAFTING NOTE: To be carefully considered on a case by case basis, for example, whether the duration of inclement weather will include the duration of the effect of such weather.]
Item 9	Conditions precedent (if any) (clause 1.1)	[DRAFTING NOTE - Insert details of any conditions precedent – e.g. finance conditions, board approvals, provision of security. If none, state 'There are no conditions precedent']

Item 10	Upstream Documents (clause 1.1)	<ol style="list-style-type: none"> 1. Schedule of Native Title Key Obligations ; 2. Schedule of Pastoral Access Deed Key Obligations; 3. [DRAFTING NOTE – insert any other arrangements with third parties which may be impacted by the Construction Contract or the Work under the Contract.]
Item 11	<p>Date Contractor shall be provided access to Site (clause 3.1(a))</p> <p>Those parts of the Site for which the Contractor must control access to, and arrange proper security for, are: (clause 3.2(c))</p>	<p>[Insert date Contractor may be provided access to site]</p> <p>[DRAFTING NOTE – if the Contractor is not required to control access to the Site / security of the Site (because it will not be granted possession of the Site), describe here those parts of the Site for which the Contractor must control access / arrange security. E.g. those parts of the Site relevant to each specific Separable Portion. If the Contractor is not required to control access or arrange security for any parts of the Site, state “The Contractor is not required to control access to, or arrange proper security of, the Site.”]</p>
Item 12	Collateral Warranties (clause 4.5(c))	[Insert description of work that there is to be Collateral Warranties for]
Item 13	Principal Supplied Materials (clause 2.5)	[DRAFTING NOTE – if the Principal will provide materials, equipment or other physical things for incorporation in the works, describe here. Note that the amount of Contract Works insurance should include the replacement cost of all Principal Supplied Materials.]
Item 14	Provisional Items with subcontracting restrictions (clause 6.4(c))	<ol style="list-style-type: none"> 1. [Insert Provisional Item] 2. [Insert Provisional Item] 3. [Insert Provisional Item]

Item 15	Procurement Codes/Guidelines (clause 6.4(f)(iv)(B))	[Insert any specific Procurement Codes/ Guidelines]						
Item 16	Separate Defects Correction Period (clause 8.10(e))	12 months from the date the rectification work is completed						
Item 17	Delay Costs (clause 9.3(b))	[\$[Insert]] per day						
Item 18	Liquidated damages rate (clause 9.7(a))	[\$[Insert]] per day / [The liquidated damages rate is set out in the Schedule of Separable Portions]						
Item 19	Timeframe for the Principal to pay the Contractor (clause 10.4(d)(i))	(a) [30] days after the end of the month in which the Principal’s Representative receives the claim under clause 10.2 (b) [five] Business Days after the Contractor achieves Practical Completion						
Item 20	Security (clause 10.6(i)(A))	<p>The Contractor will provide [insert number] of unconditional undertakings.</p> <p>Amount of each unconditional undertaking:</p> <table><tr><th>Undertaking</th><th>Value</th></tr><tr><td>Unconditional undertaking No. 1</td><td>[#]% of the Contract Price</td></tr><tr><td>Unconditional undertaking No. 2</td><td>[#]% of the Contract Price</td></tr></table> <p>[DRAFTING NOTE – if separate security will be required for each Separable Portion, ‘Value’ should refer to the Schedule of Separable Portions, and that Schedule should specify the applicable security for each Separable Portion and the date by which it must be provided.]</p>	Undertaking	Value	Unconditional undertaking No. 1	[#]% of the Contract Price	Unconditional undertaking No. 2	[#]% of the Contract Price
Undertaking	Value							
Unconditional undertaking No. 1	[#]% of the Contract Price							
Unconditional undertaking No. 2	[#]% of the Contract Price							
Item 21	Time for the Principal to pay the Contractor the final payment (clause 10.8(c)(i))	(a) [30] days after the end of the month in which the Principal’s Representative receives the Final Payment Claim (b) Within [14] Business Days after receipt of the certificate						

Item 22	Timeframe for the Contractor to pay the Principal (clause 10.8(d))	(a) Within [20] Business Days after receipt of the Final Payment Claim (b) Within [14] Business Days after receipt of the Final Payment Certificate
Item 23	Quantities in Schedule of Rates - limits of accuracy (clause 10.2(d))	[+ 25%]
Item 24	Contractor's plant and equipment insurance (clause 13.2(b))	[Thirty million dollars (\$30,000,000)] for any one occurrence and unlimited as to the number of occurrences
Item 25	Public and products liability insurance (clause 13.2(c))	Fifty million dollars [\$50,000,000] for any one occurrence and in the aggregate with respect to products liability
Item 26	Motor vehicle insurance (clause 13.2(d))	[Thirty million dollars (\$30,000,000)] for any one occurrence and unlimited in the aggregate
Item 27	Workers' compensation insurance (clause 13.2(e))	[Fifty million dollars (\$50,000,000)]
Item 28	Timeframe for the Principal to pay the Contractor following termination of the Contract for convenience (clause 14.5(g))	Within [30] Business Days after receipt by the Principal's Representative of the statement under clause 14.5(d)
Item 29	Timeframe for the Contractor to pay the Principal following termination of the Contract for convenience (clause 14.5(h))	Within [20] Business Days after receipt of the certificate issued under clause 14.5(e)
Item 30	Senior Representatives (clause 15.2(c))	The Principal: [Insert] The Contractor: [Insert]

Item 31	Notices (clause 17.1(a)(ii))	To the Principal: Address: Level 2, 88 Colin Street, West Perth, WA Attention: [Insert] Fax: [Insert] Email: [Insert]
		To the Principal's Representative: Address: [Insert] Attention: [Insert] Fax: [Insert] Email: [Insert]
		To the Contractor: Address: [Insert] Attention: [Insert] Fax: [Insert] Email: [Insert]
Item 32	Teambinder may be used for submission of notices (clause 17.1(a))	YES / NO (If nothing stated, Teambinder may not be used for submission of notices).
Item 33	Law of the Contract (clause 22.1)	Western Australia

Schedule 2

Schedule of Technical Specifications and Drawings

Schedule 3

Schedule of form of Unconditional Undertaking

Date

Parties

[TBA] [TBA] of [#address] (**Contractor**)

Pilgangoora Operations Pty Limited (ABN 75 616 560 395) of Level 2, 88 Colin Street, West Perth, Perth 6005 (**Principal**)

[insert] ACN [insert] of [insert Address] (**Bank**)

Background

A The Principal entered into a contract with the Contractor dated [#] to carry out work for the [#insert description of Project#] (**Contract**).

The Contract requires the Contractor to deliver to the Principal [#] unconditional undertakings for \$[#] from a bank or another financial institution acceptable to the Principal.

The Principal agrees to accept this unconditional undertaking, together with another unconditional undertaking in the same terms, from the Bank in satisfaction of the Contractor's obligation.

Agreed terms

1 Undertaking by Bank

The Bank unconditionally agrees to pay to the Principal on demand any sum demanded by the Principal to a maximum aggregate sum of [#] dollars \$[#] (**Security Sum**).

2 Payment of Security Sum

Payment of the Security Sum (or any part of it) must be made by the Bank to the Principal immediately on delivery to the Bank of a written demand signed by a director of the Principal. Payment must be made without notice or reference to the Contractor and despite any notice by the Contractor to the Bank not to pay and without regard to the performance or

non-performance by the Contractor or the Principal of the Contract, any variation of it or of any contract substituted for it.

3 Liability of Bank

The liability of the Bank under this deed is not impaired or discharged by:

- (a) any alteration or variation to the Contract or Change (as defined in the Contract);
- (b) any extension of time or adjustment to the amount payable to the Contractor under the Contract;
- (c) any other forbearance on the part of the Principal; or
- (d) the Principal waiving any breach of the Contract by the Contractor.

4 Expiry of undertaking

This undertaking continues until:

- (a) the Principal returns this deed to the Bank or gives written notice to the Bank that the undertaking is no longer required by the Principal; or
- (b) payment to the Principal by the Bank of the whole of the Security Sum or the balance of it remaining after any paid payment or payments,

whichever first occurs.

5 Notices

All notices and demands given by the Principal under this deed are deemed to be properly given if:

- (a) given in writing, signed on behalf of the Principal by a director of the Principal; and
- (b) delivered by hand to the office of the Bank at the above address.

6 Governing law

- (a) This deed is governed by the laws of Western Australia.
- (b) The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia.

7 Deed

The Bank intends this instrument to operate as a deed.

Signed sealed and delivered by [#] by)
the party's attorney pursuant to power)
of attorney dated [#] who states that no)
notice or revocation of the power of
attorney has been received in the
presence of:

.....
Signature of witness

.....
Name of witness (print)

.....
By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

.....
Name of attorney (block letters)

.....
Title of attorney (block letters)

Schedule 4

Schedule of Guarantee and Indemnity

[date]

[#] (Guarantor)

[#] (Secured Party)

[TBA] (Contractor)

Guarantee and Indemnity

Date

Parties

[Insert Guarantor Name, ACN] of [Insert Address] (Guarantor)

[Insert Principal Name] ACN [Insert] of [Insert Address] (Secured Party)

Background

The Secured Party has entered into, or agreed to enter into, the Contract with the Contractor at the request of the Guarantor and subject to the condition that the Guarantor enters into this Deed.

Agreed terms

8 Interpretation

8.1 Definitions

In this Deed:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Perth, Western Australia.

Contract means the [Insert description of contract] between the Secured Party and the Contractor dated on or around the date of this Deed and any agreement or instrument created under it.

Contractor means the Contractor under the Contract.

Insolvency means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) the winding up, dissolution, provisional liquidation or administration of a corporation;
- (c) the appointment of a receiver, controller, administrator, provisional liquidator or liquidator to a corporation;
- (d) any arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of that person's creditors or members or a moratorium involving any of them; and
- (e) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

Tax means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Secured Party) and any interest, penalty, fine or expense relating to any of them.

1.2 Construction

Unless expressed to the contrary, in this Deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;

- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation; and
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

1.3 Headings

Headings do not affect the interpretation of this Deed.

2 Consideration

The Guarantor acknowledges that:

- (a) it enters into this Deed in consideration of the Secured Party entering into the Contract at the Guarantor’s request; and
- (b) the Secured Party relies on the guarantee and indemnity provided by this Deed in entering into the Contract.

3 Guarantee and indemnity

3.1 Guarantee and indemnity

The Guarantor:

- (a) unconditionally and irrevocably guarantees to the Secured Party on demand the due and punctual performance by the Contractor of its obligations under the Contract;
- (b) separately unconditionally and irrevocably indemnifies, and at all times keeps indemnified, the Secured Party against all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Secured Party in connection with a failure by the Contractor to duly and punctually perform its obligations or satisfy its liabilities under the Contract or as a result of the Contract being void, voidable or otherwise unenforceable; and
- (c) for the avoidance of doubt, acknowledges that the Contractor is jointly and severally liable to the Secured Party for the performance by all parties comprising the Contractor of all obligations under the Contract.

3.2 Separate and principal obligation

The indemnity contained in **clause 3.1(b)** is a separate and distinct obligation and will not be restrictively interpreted by reason of the guarantee set out in **clause 3.1(a)**. The Guarantor's liability under **clause 3.1(b)** is that of principal debtor.

4 Liability unaffected by other events

4.1 Liability

The Guarantor shall not be discharged or released or excused from this Deed by:

- (a) any arrangement made between the Secured Party and the Contractor with or without the consent of the Guarantor;
- (b) any alteration, amendment or variation in the obligations assumed by the Contractor;
- (c) any forbearance, waiver or concession whether as to payment, time, performance or otherwise or failure or neglect to enforce any right or remedy against the Contractor;

- (d) any laches, acquiescence or other act, neglect, default, omission, fraud, duress, unconscionable conduct or mistake by the Secured Party, the Contractor or any other person;
- (e) the total, partial or conditional release or discharge of the Contractor's obligations or any security held for the performance of the Contractor's obligations;
- (f) the transfer, assignment or novation by any of the Secured Party or the Contractor of all or any of its rights or obligations under the Contract;
- (g) the occurrence of any material breach of the Contract applicable to the Contractor; or
- (h) any transaction or agreement between the Contractor and the Secured Party (including any collateral security) or any obligation owed by the Contractor to the Secured Party being void, voidable or otherwise unenforceable by the Secured Party or the Secured Party being otherwise prevented from requiring the Contractor to comply with its obligations.

4.2 No abrogation

The Guarantor and the Secured Party agree that the guarantee and indemnity given under this Deed will not be abrogated, prejudiced or affected by the existence or occurrence of any of the following events or states of affairs:

- (a) any lack of capacity or legal disability on the part of the Secured Party or the Contractor;
- (b) the insolvency or winding up of the Secured Party or the Contractor; or
- (c) the Secured Party agreeing to an assignment of the Contractor's property to a trustee for the benefit of its creditors or to a scheme of arrangement or other form of compromise or composition with the Contractor's creditors.

4.3 No prior enforcement

The Guarantor's obligations under this Deed are principal obligations and may be enforced against the Guarantor without the Secured Party first being required to exhaust any remedy it may have against the Contractor or enforce any security it may hold relating to the provisions of the Contract.

4.4 Insolvency of Contractor

- (a) The Guarantor must not, until discharged from its obligations by the Secured Party in accordance with **clause 5**:
 - (i) directly or indirectly claim or receive the benefit of any distribution, dividend or payment; or
 - (ii) prove or claim for any distribution, dividend or payment in competition with the Secured Party,
 in the Insolvency of the Contractor so as to diminish any distribution, dividend or payment which, but for that claim or proof, the Secured Party would be entitled to receive.
- (b) The Guarantor appoints the Secured Party to be its attorney with authority to:
 - (i) prove, in the name of the Guarantor, for all for which the Contractor is liable to the Guarantor;
 - (ii) retain and carry to a separate account and appropriate at the Secured Party's discretion any distribution, dividend or payment received thereunder towards

performance of the Contract and neither the Secured Party nor any such attorney will be obliged to account to the Guarantor for any balance in such account the Guarantor has been discharged from its obligations by the Secured Party in accordance with **clause 5**; and

- (iii) do anything and exercise all rights which the Guarantor could lawfully do or exercise in such Insolvency.

5 Continuing guarantee and indemnity

- (a) This Deed:
 - (i) extends to cover the Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and
 - (ii) is a continuing guarantee and indemnity and, despite expiry or termination of the Contract, remains in full force and effect for only so long as the Contractor has any actual, contingent or prospective liability or obligation to the Secured Party under the Contract and until all of those liabilities or obligations have been fully discharged.
- (b) The Secured Party shall release the Guarantor from its obligations under this Deed once it is satisfied that all actual, contingent and prospective liabilities or obligations of the Contractor and the Guarantor have been fully discharged.

6 No inducements

The Guarantor acknowledges that it has not entered into this Deed as a result of, or by reason of, any promise, representation, warranty, inducement or information of any nature given to it, the Guarantor or the Contractor or to any person on their respective behalf by, or on behalf of, the Secured Party.

7 Limitation of liability

The obligations and liability of the Guarantor under this Deed shall not exceed the obligations and the aggregate liability of the Contractor under the Contract (assuming for the purposes of ascertaining the level of such liability that the Contract is valid, binding and enforceable in accordance with its terms).

8 Notices

A notice given under this Deed will be taken to be duly given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting; and
- (c) in the case of email:
 - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
 - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent (unless the sender receives a return email notification that the email was not delivered, undeliverable or similar) at the time which is 12 hours from the time the email was sent.

However, if the result is that a notice would be taken to be given or made on a day that is not a business day in the place to which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at 9.00am on the next business day in that place.

The Secured Party's details for notices are as follows:

Attention: [insert]

Address: [Insert]

Email: [Insert]

The Guarantor's details for notices are as follows:

Attention: [insert]

Address: [Insert]

Email: [Insert]

Each party may amend their notice details by providing written notice to the other party.

9 Marshalling

The Secured Party is not obliged to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any encumbrance that the Secured Party holds at any time or any funds or property that the Secured Party may be entitled to receive or have a claim on.

10 Void or voidable transactions

If a claim that a payment or transfer to the Secured Party under the Contract or this Deed is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Secured Party is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed as if the payment or transfer has not occurred.

11 The Guarantor's rights are suspended

As long as any obligation is required, or may be required, to be complied with in connection with this Deed, the Guarantor may not, without the Secured Party consent:

- (a) reduce its liability under this Deed by claiming that it or the Contractor or any other person has a right of set-off or counterclaim against the Secured Party;
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Contract or any other amount payable under this Deed;
- (c) claim an amount from the Contractor under a right of indemnity; or
- (d) claim an amount in relation to this guarantee in the liquidation, administration or insolvency of the Contractor.

12 Representations and warranties

12.1 Representations and warranties

The Guarantor represents and warrants to the Secured Party that:

- (a) it has full corporate power to enter into and give effect to this Deed and to complete the transactions contemplated by this Deed;

- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Deed;
- (c) at the date of this Deed, the execution, delivery and performance of this Deed by it does not contravene any contractual, legal or other obligations that apply to it;
- (d) on execution of this Deed, its obligations under this Deed will be valid, binding and enforceable;
- (e) its most recent audited accounts give a true and fair view of the matters with which they deal and there has been no subsequent change in its state of affairs which may have a material adverse effect on its financial condition, assets or business; and
- (f) the entry into and performance by it of its obligations under this Deed is for its commercial benefit and is in its commercial interests.

12.2 Continuing warranties and representations

Each warranty and representation set out in **clause 12.1** survives the execution of this Deed and is taken to be repeated with reference to the facts and circumstances existing on each day that the Secured Party makes a demand under this Deed.

13 GST

13.1 Definitions

- (a) Capitalised expressions which are not defined in this **clause 13** but which have a defined meaning in the GST Law have the same meaning in this **clause 13**.

- (b) In this **clause 13**:

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed but does not include any interest or penalty, fine, or other charge imposed on the Secured Party after it has received the relevant guarantee or indemnity payment due under this Deed.

GST Amount means, in relation to a Payment, an amount arrived at by the multiplying the Payment (or the relevant part of a payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Payment means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this **clause 13**); and
- (b) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

13.2 Payment exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Secured Party to the Guarantor, the GST Amount in respect of the Payment must be paid to the Secured Party as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the Secured Party will provide to the Guarantor a Tax Invoice, before any GST Amount is payable under this **clause 13**.

13.3 Adjustment

If a payment (including a Payment as defined in this **clause 13**) to the Secured Party is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Secured Party, then the payment will be reduced by the amount of any input tax credit to which the Secured Party is entitled for that loss, cost or expense.

14 General

14.1 Assignments and transfers

- (a) The Guarantor acknowledges and agrees that the Secured Party may assign, novate or otherwise transfer all or any part of its rights under this Deed, where the Contract is assigned, novated or otherwise transferred to the same party.
- (b) The Guarantor must not assign, novate or otherwise transfer all or any part of its rights or obligations under this Deed without the prior written consent of the Secured Party provided that such consent will not be unreasonably withheld where the Secured Party is reasonably satisfied that the proposed transferee has the capacity to meet the obligations of the Guarantor under this Deed.

14.2 Costs

The Guarantor agrees to pay or reimburse the Secured Party on demand for all costs, duties, fees, Taxes and charges which are payable in connection with this Deed or a payment or receipt or other transaction contemplated by it.

14.3 No merger

This Deed is in addition to and is not in any way prejudiced by any collateral security, judgment, order or other thing and the Secured Party's rights under this Deed will not merge with any collateral security, judgment, order or other thing.

14.4 Payments

The Guarantor agrees to make payments under this Deed:

- (a) on demand and at a place and in a manner reasonably required by the Secured Party;
- (b) in immediately available funds and without set-off, counter claim, or condition, unless required by law, deduction or withholding; and
- (c) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

14.5 No withholding

- (a) If:
 - (i) the Guarantor is required to make a deduction or withholding in respect of any Tax from any payment it is required to make under this Deed; or

- (ii) the Secured Party is required to pay any Tax in respect of any payment made by the Guarantor under this Deed,
- then the Guarantor:
- (iii) indemnifies the Secured Party against that Tax; and
 - (iv) must pay to the Secured Party an additional amount which the Secured Party determines to be necessary to ensure that the Secured Party receives when due a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount it would have received had a deduction or withholding or payment of that Tax not been made.
- (b) If the Guarantor is required to make a deduction or withholding in respect of Tax from any payment to be made by it under this Deed, then:
- (i) the Guarantor must pay the amount deducted or withheld to the appropriate government agency as required by applicable law; and
 - (ii) the Guarantor must use reasonable endeavours to obtain official receipts or other documentation from that government agency and, within 10 Business Days after receipt, the Guarantor must deliver them to the Secured Party.

14.6 Indemnities

- (a) Each guarantee and indemnity in this Deed:
- (i) is a continuing obligation despite any intervening payment, settlement or other thing;
 - (ii) extends to all of the obligations of the Contractor and the Guarantor;
 - (iii) is separate and independent from the other obligations of the parties; and
 - (iv) survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before claiming under a guarantee or enforcing a right of indemnity conferred by this Deed.

14.7 Severability

Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

14.8 Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by the Guarantor and the Secured Party.

14.9 Waivers

- (a) A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

14.10 Liability

An obligation of two or more persons binds them separately and together.

14.11 Rights cumulative

The rights of the Secured Party under this Deed are cumulative and are in addition to any other of its rights.

14.12 Further assurances

The Guarantor must promptly execute all deeds and do all things that the Secured Party from time to time reasonably requires of the Guarantor to:

- (a) effect, perfect or complete the provisions of this Deed and any transaction contemplated by it; and
- (b) give to the Secured Party any collateral security agreed to be given by the Guarantor to the Secured Party.

14.13 Survival

Unless the Secured Party expressly agrees otherwise in writing, this Deed, and all obligations and liabilities under or arising out of this Deed, continue after termination or expiry of the Contract.

14.14 Governing law and jurisdiction

- (a) This Deed is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

Executed as a deed

Executed by [Insert Guarantor name
and ACN])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by [Insert Principal and ACN])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Schedule 5

Schedule of Key Personnel

[DRAFTING NOTE: example only included below. This should be adjusted for actual key personnel.]

Title of key personnel	Name of key personnel	Liquidated damages (for breach of clause 4.3 obligations in relation to retention of Key Personnel)
Director/construction manager	[#]	[\$#]
Project manager	[#]	[\$#]
Site manager	[#]	[\$#]
Contracts administrator	[#]	[\$#]
Services engineer	[#]	[\$#]
Project engineer	[#]	[\$#]
Maintenance engineer	[#]	[\$#]
Other	[#]	[\$#]

Schedule 6

Schedule of Pre-Contract Information

[DRAFTING NOTE – this schedule should list the documents provided by the Principal to the Contractor prior to the date of the Contract in connection with Site Conditions which the Contractor is required to review. E.g. geotechnical reports, site surveys etc.]

Schedule 7

Schedule of Existing Approvals

[Note – Principal's approvals to be included]

No.	Approval obtained by Principal
1	
2	
3	
4	

Schedule 8

Schedule of Provisional Items

Provisional Item	Description	Amount (\$)
1	[Insert]	[Insert]
Total for Provisional Items		[Insert]

Schedule 9

Schedule of Separable Portions

[DRAFTING NOTE – complete the table below for each Separable Portion]

SEPARABLE PORTION							
Description of Separable Portion	[Insert]						
Contract Price	[Insert]						
Date for Practical Completion	[Insert]						
Liquidated Damages (\$/day)*	[Insert]						
Security (clause 10.6(i)(A))	Amount of each unconditional undertaking: <table><thead><tr><th>Undertaking</th><th>Value</th></tr></thead><tbody><tr><td>Unconditional undertaking No. 1</td><td>#% of the estimated value</td></tr><tr><td>Unconditional undertaking No. 2</td><td>#% of the estimated value</td></tr></tbody></table>	Undertaking	Value	Unconditional undertaking No. 1	#% of the estimated value	Unconditional undertaking No. 2	#% of the estimated value
Undertaking	Value						
Unconditional undertaking No. 1	#% of the estimated value						
Unconditional undertaking No. 2	#% of the estimated value						
Date by which security must be provided	[If nothing stated, to be provided in accordance with clause 10.6]						

Schedule 10

Schedule of Site Information

[Insert]

Schedule 11

Schedule of Program

[Insert]

Schedule 12

Schedule of Construction Method Statement

[Insert]

Schedule 13

Schedule of Quality Manual

[Insert quality manual provided by contractor with tender response and approved by Pilbara Minerals]

Schedule 14

Schedule of Collateral Warranty

Date

Pilbara Minerals Limited

[Subcontractor]

Collateral Warranty

Date

Parties

Pilbara Minerals Limited ABN 95 112 425 788 of Level 2, 88 Colin Street, West Perth, WA (**Principal**)

[TBA] [TBA] of [TBA] (**Subcontractor**)

Background

- A The Principal and the Contractor have entered into the Contract.
 - B The Contractor and the Subcontractor have entered (or will enter) into the Subcontract.
 - C The Principal and the Subcontractor have agreed that the Subcontractor will, in addition to its obligations under the Subcontract, owe obligations directly to the Principal on the terms set out in this deed.
-

Agreed terms

1 Definitions

In this deed these terms have the following meanings:

Business Day	A day which is not a Saturday, Sunday or bank or public holiday in the capital city of the Relevant Jurisdiction.
Contract	The agreement between the Principal and the Contractor described in the schedule .
Contractor	The Contractor specified in the schedule .
Defect	A defect in the Subcontract Works, including: <ul style="list-style-type: none">(a) any failure to comply with this deed;(b) any failure to comply with the Subcontract; or(c) any work not completed which the Subcontractor was required to complete under this deed or the Subcontract.
Relevant Jurisdiction	The jurisdiction specified in the schedule .

Subcontract	The agreement between the Contractor and the Subcontractor dated the date specified in the schedule .
Subcontract Works	The work or services carried out, or required to be carried out, by the Subcontractor pursuant to the Subcontract.

2 Quality of Works

2.1 Warranty

- (a) The Subcontractor warrants to the Principal that:
 - (i) the Subcontractor will fully comply with all of its obligations under this deed and the Subcontract;
 - (ii) the Subcontract Works will be performed and completed:
 - (A) in accordance with this deed and the Subcontract;
 - (B) in accordance with:
 - (1) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the Relevant Jurisdiction or local or other government in force in the Relevant Jurisdiction, irrespective of where enacted; and
 - (2) the common law (including the principles of equity) as applied from time to time in the Relevant Jurisdiction;
 - (B) in a good and workmanlike manner;
 - (C) using materials of merchantable quality and which are fit for their intended purpose; and
 - (D) so that the Subcontract Works will be free from Defects and fit for the purpose for which they are required; and
 - (iii) it has, and will maintain, the skill and experience to properly fulfil its obligations under this deed and the Subcontract.
- (b) The Subcontractor indemnifies and holds harmless the Principal and its officers, employees and agents from and against all costs, loss, expenses, damage or liability (including all consequential or subsequent loss, expense or damage sustained by the Principal) arising out of or in any way connected with a breach of this deed.
- (c) The Subcontractor agrees that the warranties and indemnities set out in this deed extend to any act, omission, default or negligence of any subcontractor, supplier, employee or agent of the Subcontractor as fully as if it were the act, omission, default or negligence of the Subcontractor.

2.2 Reduction of indemnity

If any loss, damage or expense is caused partly by an act, default or omission of the Principal or the Principal's agents or employees, any entitlement of the

Principal pursuant to the indemnity provided in **clause 2.1(b)** will be reduced proportionally having regard to the impact of the act, default or omission.

2.3 Rectification of Defects in Subcontract Works

(a) Principal's notice

The Principal may give the Subcontractor written notice of any Defect appearing in the Subcontract Works. The notice may specify the Principal's estimate of the cost of rectifying the Defect and the time within which the Subcontractor must rectify the Defect.

(b) Subcontract to rectify

(i) The Subcontractor must rectify any Defect in respect of which the Principal has served a notice on the Subcontractor.

(ii) The Defect must be rectified:

(E) to the satisfaction of the Principal;

(F) at the Subcontractor's expense; and

(G) within the time specified in the Principal's notice, or if the Principal does not specify a time, within a reasonable time from receipt of the Principal's notice.

(c) Principal may rectify

If the Subcontractor fails to rectify any Defect within the time required, the Principal may arrange for the Defect to be rectified at the Subcontractor's expense and may recover any cost, loss, expense or damage suffered or incurred by the Principal from the Subcontractor as a debt.

3 Notices

3.1 General

A notice, demand, certification, process or other communication relating to this deed must be in writing in English and may be given by an agent of the sender.

3.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

(a) personally delivered;

(b) left at the party's current delivery address for notices; or

(c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail.

3.3 Particulars for delivery of notices

(a) The particulars for delivery of notices are initially those set out in the **schedule**.

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

3.4 Communications by post

Subject to **clause 3.6**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

3.5 Communications by fax

Subject to **clause 3.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

3.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

3.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this deed may be served by any method contemplated by this **clause 3** or in accordance with any applicable law.

4 General

4.1 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

4.2 Amendment

This deed may only be varied or replaced by a document executed by the parties.

4.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

4.4 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

4.5 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold any consent to be given under this deed and is not obliged to give its reasons for doing so.

4.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

4.7 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in the Relevant Jurisdiction.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Relevant Jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

4.8 Assignment

- (a) The Principal may, at any time (in whole or part), assign, novate or transfer its rights under this deed to any person without the consent of the Subcontractor.
- (b) The Subcontractor must not assign or deal with any right under this deed without the prior written consent of the Principal.
- (c) Any purported dealing in breach of **clause 4.8(b)** is of no effect.

4.9 Liability

An obligation of two or more persons binds them separately and together.

4.10 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

4.11 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed are merged in and superseded by this deed and are of no effect. No party is liable to any other party in respect of those matters.

- (c) No oral explanation or information provided by any party to another:
 - (ii) affects the meaning or interpretation of this deed; or
 - (iii) constitutes any collateral agreement, warranty or understanding between any of the parties.

4.12 Relationship of parties

This deed is not intended to create a partnership, joint venture or agency relationship between the parties.

4.13 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in the capital of the Relevant Jurisdiction;
 - (vii) '\$' or 'dollars' is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and

- (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this deed;
- (g) if the date on or by which any act must be done under this deed is not a Business Day, the act must be done on or by the next Business Day;
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (i) headings do not affect the interpretation of this deed.

Schedule

Principal:

ACN/ABN:

Delivery address:

Postal address:

Telephone no:

Email:

Pilgangoora Operations Pty Limited

75 616 560 395

Level 2, 88 Colin Street

West Perth WA 6005

PO Box 884

West Perth WA 6872

(08) 6266 6266

Subcontractor:

ACN/ABN:

Delivery address:

Postal address:

Telephone no:

Email:

Contractor:

Delivery address:

Postal address:

Telephone no:

Email:

Contract:

(clause 1)

Date of Subcontract:

(clause 1)

Relevant Jurisdiction (State or Territory):

(clause 1)

Western Australia

Execution

Executed as a deed.

Executed by **Pilgangoora Operations**)
Pty Limited in accordance with)
Section 127 of the *Corporations Act*
2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by **[Subcontractor]**, in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Schedule 15

Schedule of Pricing

SECTION 1: Contract Price

[Insert explanation of lump sum items and schedule of rates items. This needs to set out the lump sum items, and confirmation of the rest as schedule of rates / confirmation of what the commercial deal is. Please see definition of 'Contract Price' and Item 3, which ultimately refer out to this schedule]

SECTION 2: Schedule of Rates

[Insert]

- 2.1 Plant required to be working
- 2.2 Plant required to be on standby
- 2.3 Supervision and management
- 2.4 Site Office, Water tanks, Communications, Sewerage and Waste Disposal and other stationary plant
- 2.5 Surveyor and other subcontractors
- 2.6 Mobilisation and Demobilisation
- 2.7 Insurances and Fees

SECTION 3: Flights and Accommodation

(a) In this Schedule of Pricing, these terms have the following meanings:

Camp Accommodation	means a reasonable standard of accommodation, breakfast, crib lunch and evening meal and all reasonable ancillary or related services including messing and servicing of the rooms, either at the accommodation camp at the Site (if applicable) or such other location determined by the Principal (acting reasonably) which are booked and organised by the Contractor through the Principal's travel management system and in accordance with the requirements and policies of the Principal (as amended from time to time). This does not include the provision of a laundry service, and while the Principal will provide access to washing machines and dryers, the Contractor and its personnel must launder their own clothes.
Camp Accommodation	means a one month rolling forecast of the Contractor's Camp Accommodation and Flights requirements, in a form prescribed or otherwise approved by the Principal, and as more particularly required in accordance with

and Flights Forecast the requirements set out in Section 3 of the Schedule of Pricing.

Flights means return flights between Perth and Port Hedland, which are booked and organised by the Contractor through the Principal's travel management system, and in accordance with the requirements and policies of the Principal (as amended from time to time), but excludes Other Transport.

Other Transport means all transport other than Flights (including, without limitation, interstate and overseas flights).

- (b) Subject to paragraph (e) of this Section 3, the Principal agrees to provide the Camp Accommodation free of charge to the Contractor for the Contractor's personnel who are necessarily involved in performing the work under the Contract, provided that:
- (i) the Contractor is not entitled to Camp Accommodation or Flights which are in excess of the requirements set out in the man-power histogram at Attachment A to this Schedule;
 - (ii) the Contractor's personnel comply with all of the Principal's rules and policies, which the Principal may from time to time amend in relation to the Camp Accommodation, including the Principal's accommodation rules;
 - (iii) all occupants of the Principal's accommodation or provided accommodation that are Contractor's personnel comply with the Principal's relevant lease or occupancy documents;
 - (iv) the Principal may, at the Contractor's cost, evict or refuse to accommodate any person whose conduct is, in the sole discretion of the Principal, inappropriate, or whose behaviour is such as to make their continued presence undesirable; and
 - (v) the Contractor will make good any damage to the Principal supplied accommodation beyond normal wear and tear, or pay the Principal for the damage caused, and the Principal may claim the cost as a debt due from the Contractor to the Principal.
- (c) If the Contractor requires Camp Accommodation or Flights above that set out in the man-power histogram at Attachment A, the Contractor must make a request to the Principal in writing for the extra Camp Accommodation or Flights immediately (**Extra Room Request**).
- (d) The Principal may, at its absolute discretion, agree to provide all or any such Camp Accommodation or Flights in an Extra Room Request. If the Principal rejects all or any part of an Extra Room Request, the Contractor will be liable for all costs, delays and other risks arising from or in connection with the rejection and cannot make any claims against the Principal in connection with such rejection.

- (e) The Principal may charge the Contractor under paragraph (f) of this Section 3:
 - (i) for any Camp Accommodation or Flights provided as a result of an Extra Room Request;
 - (ii) if the Contractor or its subcontractors book(s) any Camp Accommodation or Flights with the Principal under Section 3 of this **schedule 15**, but does not utilise the relevant service, unless the reason for the failure to utilise the service is approved in writing by the Principal as a Variation, or approved by the Principal for the purpose of mitigating loss or delay from a Compensable Cause; and
 - (iii) for any Other Transport costs which in some way accrue to the Principal.
- (f) The fees which the Principal may charge under **paragraph (d)** of Part 3 of this **schedule 15**, and which are recoverable from the Contractor as a debt due from the Contractor to the Principal, are as follows:
 - (i) accommodation = daily rate for accommodation+ messing+ transport via bus to Site at direct cost + 20%;
 - (ii) flights = cost per round trip flight from Perth/Site or vice versa at direct cost + 20%; and
 - (iii) Other Transport = direct cost + 20%.

Section 4: Fuel

- (a) Where directed by the Principal's Representative from time to time, the Contractor must provide to the Principal for approval a monthly rolling forecast of its requirements for diesel fuel for its plant and equipment necessary for performing the work under the Contract (**Fuel Histogram**). The Contractor must provide any other information or breakdown that the Principal requires so that the Principal can identify how the diesel fuel is to be used by the Contractor including the relationship between the estimated fuel usage and the work to which that usage relates.
- (b) The Principal will supply to the Contractor diesel fuel, at no cost, to be collected by the Contractor from the Principal's designated fuel farm on Site for use by the Contractor in operating its plant and equipment used in performing the work under the Contract, but only up to the volume of diesel fuel nominated in the Contractor's current Fuel Histogram (which must be approved by the Principal). If the Contractor requires any diesel fuel in excess of this volume, it must obtain the written approval of the Principal and the Principal may charge the Contractor for this diesel fuel at a price to be determined by the Principal.
- (c) The Contractor acknowledges and agrees that it will maintain detailed records regarding all diesel fuel supplied by the Principal to the Contractor including records which show that all diesel fuel supplied was used by the Contractor in the performance of the work under the Contract. The Principal has a right to audit the Contractor's records to verify that all diesel fuel supplied by the Principal was used in the performance of the work under the Contract.

Attachment A

Man-Power Histogram

[Insert requirements for Camp Accommodation and Flights]

Schedule 16

Schedule of Native Title Key Obligations

Schedule 17

Schedule of Interface Works

[DRAFTING NOTE - Management of, and mitigation of, risks associated with, physical works interfaces, safety, co-ordination, prioritisation and site control will require careful consideration and a detailed understanding of the practical aspects of the expected project sequence.]

Examples of possible mitigation options include:

- (a) careful sequencing of works to minimise practical / physical overlaps and interfaces;***
- (b) requiring contractors to accede to a formal Co-ordination Deed which establishes a structure for ensuring visibility of, and communication regarding, interface issues;***
- (c) head contractor / managing contractor arrangements;***
- (d) development of detailed final management plans prior to work commencing.]***

Schedule 18

Schedule of Pastoral Access Deed Key Obligations

Schedule 19

Schedule of Policies

Schedule 20

Schedule of CDRL

Schedule 21

Schedule of Reporting Requirements

Schedule 22

Schedule of Rules of Credit

Schedule 23

Deed of Novation

Date

Parties

[Principal] ABN [insert] of [insert] (**Principal**)

[Contractor] ABN [insert] of [insert] (**Contractor**)

[Subcontractor] ABN [insert] of [insert] (**Subcontractor**)

Background

- A The Principal and the Contractor have entered into the Contract.
 - B The Contractor and Subcontractor have entered into the Subcontract.
 - C Pursuant to the Contract, the Principal has notified the Contractor that it is required to novate its rights under the Subcontract to the Principal
 - D The parties have agreed to novate the Subcontract in order to substitute the Principal for the Contractor on the terms contained in this deed.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this deed:

Date of Novation means the date upon which the Subcontractor executes this Deed.

Contract means the contract between Principal and the Contractor dated [date] in relation to [describe].

Security means the guarantees (including deeds of guarantee and indemnity) required to be issued by a bank, insurer or guarantor under the Subcontract in respect of the performance by the Subcontractor.

Subcontract means the contract between the Contractor and the Subcontractor dated [date] in relation to [describe].

1.2 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (viii) this deed includes all schedules and annexures to it; and

- (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this deed; and
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this deed.

2 Novation of Contract

2.1 Novation

The parties agree to novate the Subcontract in order to substitute the Principal for the Contractor, on and from the Date of Novation.

2.2 Principal's obligations

- (a) The Principal must perform the obligations and assume all of the liabilities of the Contractor under the Subcontract in favour of the Subcontractor, except obligations and liabilities of the Contractor which were incurred before the Date of Novation.
- (b) The Principal will be bound by the Subcontract as if it was an original party to the Subcontract in place of the Contractor.

2.3 Acknowledgment

The Principal and the Subcontractor acknowledge that the Subcontract continues in full force on and from the Date of Novation in accordance with its terms as novated by this deed.

3 Adjustment of Relationships

3.1 Release by Subcontractor

- (a) The Subcontractor releases the Contractor from all obligations and liabilities of the Contractor arising out of or in connection with the Subcontract, except those obligations and liabilities which have been notified by the Contractor to the Principal in accordance with **clause 6.2** before the Date of Novation.
- (b) The Subcontractor releases the Principal from all obligations and liabilities arising out of or in connection with the Subcontract in relation to events which occurred or work which was performed prior to the Date of Novation.

3.2 Release by Contractor

The Contractor releases and discharges the Subcontractor from all obligations and liabilities of the Subcontractor arising out of or in connection with the Subcontract, except those obligation and liabilities which arose before the Date of Novation.

4 Subcontractor's obligations

4.1 Subcontractor's Performance

The Subcontractor must perform its obligations under the Subcontract in favour of the Principal, including obligations which were incurred or which relate to events occurring before the Date of Novation.

4.2 Subcontractor to be Bound

The Subcontractor will continue to be bound by the Subcontract as if the Principal was an original party to the Subcontract in place of the Contractor.

4.3 Rights of Principal

The Principal is entitled to exercise all of the rights to which the Contractor was entitled in relation to the Subcontract, including rights which arose before the Date of Novation.

5 Insurance and Security

- (a) The Subcontractor must take the necessary steps to ensure that, for all insurances required to be effected by the Subcontractor under the Subcontract, the Principal is named in place of the Contractor as required by the Subcontract.
- (b) The Subcontractor must replace or procure the replacement of the Security with security on similar terms in favour of the Principal.

6 Representations and Warranties

6.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Date of Novation:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed; and

- (c) this deed is its valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms, subject to principles of equity and rules affecting creditors' rights generally.

6.2 Notification of Claims

The Subcontractor represents and warrants that all claims that it may have against the Contractor as at the Date of Novation have been notified in writing to the Principal and the Contractor with reasonable details. Any such claims made against the Contractor as at the Date of Novation and not so notified by the Date of Novation shall be absolutely barred on and from that date.

6.3 Survival

The representations and warranties in this **clause 6** survive the execution of this deed and the novation of the Contract.

7 General

7.1 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

7.2 Amendment

This deed may only be varied or replaced by a document executed by the parties.

7.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

7.4 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

7.5 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold any consent to be given under this deed and is not obliged to give its reasons for doing so.

7.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

7.7 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of that place and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

7.8 Liability

If the Subcontractor comprises more than one person:

- (a) the obligations of those persons are joint and several; and
- (b) subject to the terms of this deed, the Principal may proceed against any or all of them for any failure of the Subcontractor to comply with an obligation under this deed.

7.9 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

7.10 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed are merged in and superseded by this deed and are of no effect whatever. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed; or

- (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as a deed.

Executed by [Insert Principal name and ACN])
)

.....

Company Secretary/Director

.....

Director

.....

Name of Company Secretary/Director
(print)

.....

Name of Director (print)

Executed by [Insert Contractor name and ACN/ABN])
)

.....

Company Secretary/Director

.....

Director

.....

Name of Company Secretary/Director
(print)

.....

Name of Director (print)

Executed by [Insert Subcontractor name and ACN/ABN])

.....

Company Secretary/Director

.....

Director

.....

Name of Company Secretary/Director
(print)

.....

Name of Director (print)