

The Grape Management Pty Ltd Whitrod Commercial Building Services Pty Ltd
T/AS Core4 AUS Pty Ltd

Minor Works Contract

Ferry Road Tavern
Capital Refresh Project – Gaming room, Bistro & Sports Bar

Minor Works Contract

This Agreement is made on

Parties

- 1 **The Grape Management Pty Ltd** (ABN 27 060 769 780) of Level 3, 616 St Kilda Road, Melbourne VIC 3004 (**Principal**).
- 2 **Whitrod Commercial Building Services Pty Ltd** trading as **Core4 AUS** (ABN 34 118 244 965) of 1187 Logan Road, Hollard Park QLD 4121 (**Contractor**).

Background

The Principal confirms the Contractor's appointment to provide the works, services or goods described in Item 3 of the Particulars (**Supply**) on the terms of the agreement made up of the documents listed in Item 34 of the Particulars (**Contract**).

Particulars

Item 1 Principal	The Grape Management Pty Ltd	
Item 2 Contractor	Name:	Whitrod Commercial Building Services Pty Ltd trading as Core4 AUS
	Address:	1187 Logan Road, Hollard Park QLD 4121
	Telephone:	Telephone: 1300 267 333
	Email:	Email: david.whitrod@core4group.com
	ACN/ABN:	ACN/ABN: 34 118 244 965
Item 3 Supply Description (Clause 1)	Described at Annexure 1 and in accordance with the Relevant Documents.	
Item 4 Commencement Date (Clause 1.2(b))	17/11/2022	
Item 5 Date for Completion (Clause 1.2)	31/12/2022	
Item 6 Commencement Preconditions (Clause 1.2)	- Provision of insurance certificates referred to in Clause 12.2 - Risk Assessments and WHS plan for all contractors performing works - Detailed works programme - Scaffold engineering documentation - Council CMP & CTMP documentation	

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Item 7 Completion Preconditions (Clauses 1.2(c)(ii) and 4.8(c))	All approvals relevant to the Contractor's Activities and the Supply (other than approvals for which the Principal is responsible (if any)) including final inspection or other certificates ensuring the completed Works can be lawfully used for their purpose, including but not limited to: - "As built" drawings of the Works - Documents and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Supply - Full defects lists approved by the Principal	
Item 8 Relevant Documents (Clause 1.6(d))	35742 Ferry Rd – Gaming Scope – rev 3 35742 Ferry Rd – Gaming Finishes Scope – Rev2 35742 Ferry Rd – Proposed Plans and site photos	
Item 9 Principal's Management Requirements Documents (Clauses 1.6(d) and 4.2(b))	As per Clause 1.6(d) and 4.2(b)	
Item 10 Principal Approved Subcontractors (Clause 2.3)	Principal Approved Subcontractor	Relevant Contractor's Activities
	N/A	N/A
Item 11 Key Personnel (Clause 2.4)	David Whitrod – Managing Director Bruce Davie – General Manager	
Item 12 Site Working Hours (Clause 3.1(e))	As permissible by Laws (QLD) and in working with the Venue at all times	
Item 13 Claimable Latent Conditions (Clause 3.4(c))	N/A	
Item 14 Principal Supplied Information (Clause 4.3)	As per Clause 4.3	
Item 15 Post Completion Documents and Other Deliverables (Clause 4.9)	Documents and Other Deliverables	Number of Days after Completion for Delivery
	As required by the owner of the property or any relevant authority including Heritage	5 Business Days after receipt of written notice
Item 16 Defects Liability Period (Clause 5.4)	12 months.	

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Item 17 Principal Obtained Approvals (Clause 6.1(b))	As per 6.1(b)		
Item 18 Person in Control (Clause 6.4)	The Contractor is "person in control" for those parts of the Site in relation to which the Contractor has been given effective management and control by the Principal in order to carry out the Supply from time to time.		
Item 19 Induction Documents (Clause 6.13)	Not applicable		
Item 20 Liquidated Damages Rate (Clause 7.4)	\$1,000.00 per day.		
Item 21 Milestones (Clause 7.6)	Milestone Description	Project Commencement Onsite	Project Completion Onsite
	Date for Milestone Completion	2/12/22 (Gaming Room completion date)	31/12/22(Full working Completion)
	Milestone Liquidated Damages Rate	Not applicable	Not applicable
Item 22 Separable Portions (Clause 7.7)	Separable Portion Description	Not applicable	
	Date for Completion		
	Liquidated Damages Rate		
	Relevant Completion Period		
	Associated Separable Portions		
Item 23 Design Obligations and Preliminary Design (Clause 9.2 and 9.3)	35742 Ferry Rd – Gaming Scope – rev 3 35742 Ferry Rd – Gaming Finishes Scope – Rev2 35742 Ferry Rd – Proposed Plans and site photos		
Item 24 Security (Clause 10)	Nil		
Item 25 Supply Price (Clause 11)	Calculated on a cost plus 10% model in accordance with the Supply Description up to a maximum of \$495,510.36 (plus GST) plus the Contingency \$30,000 (plus GST) (at the Special Conditions), if any.		
Item 26 Timing of Payment Claims (Clause 11.8)	The Principal paid the Contractor \$108,741 (plus GST) on 14th October 2022 towards the Supply Price (" Deposit "). The balance (Supply Price minus Deposit) is payable subject to Completion on 14 Business Day terms.		

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Item 27 Pricing Reference Documents (Clause 11.12)	Tender Documentation as per: - Ferry Rd Tavern Tender Summary – rev 1 Dated – 06/10/22 - Ferry Rd Toilets Quote #39399 Dated – 04/08/22			
Item 28 Provisional Sums (Clause 11.19)	Provisional Sum Item	Provisional Sum Amount		
	Nil	Nil Note. Provisional Sums are inclusive of Contractor's margin of 10%		
Item 29 Insurance (Clause 12.2)	Type	Required ? (Yes / No)	Period of Cover	Amount of Insurance Required
	Public Liability	Yes	Effect from the earlier of the Commencement Date and the date this Contract is executed by the Contractor and maintain while the Contractor continues to have any obligations to supply goods or perform works or services under this Contract.	\$20 million (which shall name the Principal as an insured party)

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	Contract works	Yes	Effect from the earlier of the Commencement Date and the date this Contract is executed by the Contractor and maintain while the Contractor continues to have any obligations to supply goods or perform works or services under this Contract	An amount equal to the Supply Price
	Worker's Compensation	Yes	As required by law.	As required by law
	Motor Vehicle	Yes	Effect from the earlier of the Commencement Date and the date this Contract is executed by the Contractor and maintain while the Contractor continues to have any obligations to supply goods or perform works or services under this Contract.	\$20 million per occurrence
Item 30 Claimable Delays (Clause 13.1)	Not applicable.			
Item 31 Contractor's Representative (Clause 17.1)	Name: Phone: Email:	David Whitrod 0417 575 444 david.whitrod@core4group.com		

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Item 32 Superintendent (Clause 17.2)	Name: Attention: Phone: Email:	Not applicable
Item 33 Principal's Address (Clause 21.2)	Level 3, 616 St Kilda Road, Melbourne VIC 3004 Attention of: National Maintenance Capex Manager Copied to: Company Secretary	
Item 34 Contract Documents and Order of Precedence (Clause 24.8)	This Contract is comprised of: Particulars Special Conditions (if any) Terms and Conditions (including Annexures)	
Item 35 Site	Ferry Road Tavern Corner Ferry Road and Cotlew St E, Southport QLD 4215	

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Terms and Conditions

1. (Performance of Contractor's Activities)

1.1 (**Scope of Contract**) The Contractor, as an independent contractor and at its own cost, must provide all labour, services, materials, plant, tools, equipment, services, packaging and labelling and other things (whether or not expressly described in the Contract) (**Contractor's Activities**) necessary to provide the work, services or goods identified in the Contract (including as specified in Item 3 of the Particulars) (**Supply**) in accordance with the Contract at the Site or as otherwise directed by the Principal in writing.

1.2 (**Time**) The Contractor must:

- (a) satisfy the Commencement Preconditions set out in Item 6 of the Particulars;
- (b) commence the Contractor's Activities on the commencement date specified in Item 4 of the Particulars (**Commencement Date**); and
- (c) proceed with due expedition and without delay, and achieve:
 - (i) completion of the Supply which means:
 - (A) to the extent the Supply is for the provision of goods, the delivery of the goods to the Site;
 - (B) to the extent the Supply is for the carrying out of work, the completion of the work except for immaterial defects which the Principal considers can later be conveniently rectified;
 - (C) to the extent the Supply is for the performance of services, the performance of all of the services to the Principal's satisfaction; and
 - (D) to the extent any two or more of subparagraphs (A), (B) or (C) apply to the Contract, the satisfaction of the requirements of all of the subparagraphs that apply; and
 - (ii) completion of all other Contractor's Activities and satisfaction of all conditions required by the Contract (including the Completion Preconditions set out in Item 7 of the Particulars) to be satisfied before Completion,

to the satisfaction of the Superintendent (**Completion**) before the date set out in Item 5 of the Particulars (which shall only be extended as expressly provided in the Contract) (**Date for Completion**).

1.3 (**Goods**) To the extent the Supply includes the provision of goods (**Goods**):

- (a) the Contractor warrants that the Goods are fit for their purpose, of merchantable quality and free and clear of all liens, charges or encumbrances;
- (b) risk in the Goods remains with the Contractor until Completion;
- (c) the Principal may return the Goods at the Contractor's cost and risk if the Principal finds that the Goods or any part of them are not in accordance with this Contract;

- (d) the Principal will only be taken to have accepted the Goods when the Principal advises the Contractor that the Goods are acceptable to the Principal or the Principal puts the Goods to use (other than for testing); and
- (e) the Contractor warrants that the goods are not subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) applies.

1.4 (**Works**) To the extent the Supply includes the carrying out of work (**Works**):

- (a) the Contractor must ensure the Works are carried out in a proper and workmanlike manner and that the Works incorporate only new materials or plant which are of merchantable quality and fit for that purpose; and
- (b) the Contractor must construct the Works utilising, as far as is reasonably practicable, modular elements which facilitate the ready disassembly and reuse of the Works.

1.5 (**Services**) To the extent the Supply includes the performance of services (including Design Obligations) (**Services**):

- (a) the Contractor must use reasonable skill and care in providing the Services; and
- (b) the Contractor warrants that the Services will be fit for their purpose.

1.6 (**Standard**) The Contractor must ensure and warrants that:

- (a) the Supply complies with the Contract (including by meeting all of the requirements of the Supply Description in Attachment 1);
- (b) the Supply is fit for its purpose in all respects including without limitation:
 - (i) when integrated with all other improvements (fixed or otherwise (including services and infrastructure) at the site where the Supply is installed);
 - (ii) the design of the Goods and Services comprised in the Supply and the design of the Supply as a whole; and
 - (iii) despite any comment, direction, design, specification or other information of whatever nature provided by the Principal at any time;
- (c) the Supply complies with the Contract and all drawings and specifications provided or approved by the Principal and is fit for its purpose (except to the extent of defective design provided by the Principal and for which the Contractor has not assumed responsibility);
- (d) in carrying out the Contractor's Activities, it complies with the Relevant Documents set out in Item 8 of the Particulars and the Principal's Management Requirements Documents set out in Item 9 of the Particulars; and
- (e) unless a higher standard is required under the Contract, the Contractor's Activities and the Supply comply with any applicable Australian Standards.

1.7 (**Relationship of Parties**) The Contractor acknowledges:

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- (a) the Contract does not create any relationship of employment, partnership or joint venture;
 - (b) it is not entitled to any employee benefits or entitlements; and
 - (c) it has no authority to act as the Principal's agent or on the Principal's behalf.
- 1.8 **(Contractor's Acknowledgement)** The Contractor agrees:
 - (a) the Contractor has satisfied itself as to all risks associated with the provision of the Supply (without reliance upon any information provided by or on behalf of the Principal); and
 - (b) the Contractor will have no claim (including for additional costs, time or otherwise) except to the extent expressly stated in the Contract.
- 2. **(Subcontracting, Assignment and Personnel)**
 - 2.1 **(Subcontracting and Assignment)** The Contractor must not subcontract or assign any right or obligation under this Contract without the Principal's prior written consent.
 - 2.2 **(Responsibility for Subcontracting)** If the Contractor subcontracts any of the Contractor's Activities, the Contractor:
 - (a) remains fully responsible for the Supply and obligations under the Contract; and
 - (b) will be liable to the Principal for acts or omissions of its subcontractors and their employees and agents (as if they were acts or omissions of the Contractor),

even if any subcontractor is nominated or consented to by the Principal.
 - 2.3 **(Principal Approved Subcontractors)** The parties agree:
 - (a) the Contractor must engage each Principal Approved Subcontractor set out in Item 10 of the Particulars in connection with the corresponding Relevant Contractor's Activities also set out in Item 10 of the Particulars;
 - (b) if for any reason:
 - (i) the Contractor is unable for reasons beyond its control to engage a Principal Approved Subcontractor;
 - (ii) a Principal Approved Subcontractor repudiates or abandons its subcontract; or
 - (iii) the subcontract with a Principal Approved Subcontractor is terminated or rescinded by either party for any reason,

the Contractor must seek direction from the Superintendent as to whether the Superintendent wishes to nominate an alternative Principal Approved Subcontractor to carry out the Supply being carried out under the subcontract;
 - (c) if at any time the Superintendent notifies the Contractor that it does not intend to nominate an alternative Principal Approved Subcontractor, the Contractor must engage such subcontractor as it thinks fit to carry out the Supply within a time that ensures the progress of the Supply is not delayed;
 - (d) the Principal will have no liability (including for any payment) to any Principal Approved Subcontractor; and
 - (e) the Contractor will not be entitled to any claim for or in connection with:
 - (i) the Contractor's entering into any subcontract with any Principal Approved Subcontractor; or
 - (ii) any act or omission (including breach of contract) by any Principal Approved Subcontractor.
- 2.4 **(Personnel)** The Contractor must use the Key Personnel set out in Item 11 of the Particulars or otherwise as nominated to the Principal (or other personnel acceptable to the Principal) to carry out the Contractor's Activities.
- 2.5 **(Separate Contractors)** The Contractor:
 - (a) must co-operate with and co-ordinate the Supply with works being undertaken by any contractors providing any works, services or goods (not forming part of the Supply) to the Principal while the Contractor is carrying out Contractor's Activities **(Separate Contractors)** including:
 - (i) allowing Separate Contractors to access the Site (subject to such terms as the Contractor may reasonably require to ensure the Contractor can comply with its obligations regarding health and safety matters);
 - (ii) ensuring the Works are adequately protected from damage which may be caused by Separate Contractors;
 - (iii) not damaging works carried out by Separate Contractors or interfering with any Separate Contractor's use of the Site; and
 - (iv) making available to Separate Contractors free of charge the facilities, services or other things which the Contract provides are to be made available by the Contractor;
 - (b) will not have any claim arising from or in connection with the obligations of the Contractor under paragraph (a);
 - (c) accepts that any act or omission of a Separate Contractor will in no circumstances be taken to:
 - (i) be an act or omission of the Principal (or its agents);
 - (ii) be an act of prevention; or
 - (iii) except to the extent expressly provided by the Contract, give the Contractor any claim; and
 - (d) without prejudice to any of the Contractor's other obligations, will:
 - (i) be responsible for any damage to the Works caused by the Contractor failing to comply with paragraph (a); and
 - (ii) be responsible for any damage (howsoever caused) to the work of Separate Contractors caused by the Contractor or any subcontractor.
- 2.6 **(Assignment by Principal)** The Principal may at any time assign, novate or otherwise deal with its rights or obligations under the Contract in its absolute discretion and without any consent from the Contractor and the Contractor must (if required by the Principal) execute a deed on terms reasonably required by the Principal giving effect to the assignment, novation or other dealing and arrange the provision of replacement Security and insurance in the

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name of the assignee, novatee or other party to the dealing.

3. **(Site)** To the extent the Contractor accesses or uses the areas in the Principal's ownership, possession or control relevant to the provision of the Supply **(Site)** for the purposes of providing the Supply:

- 3.1 **(Access to the Site)** the Contractor must only access and use the Site:

- (a) after giving the Principal at least 48 hours' prior notice of its intention to commence the Contractor's Activities on the Site;
- (b) after completing any safety or other training or induction required by the Principal;
- (c) for the purposes of carrying out the Contractor's Activities;
- (d) without interfering with others using the Site;
- (e) on days and during the Site Working Hours specified in Item 12 of the Particulars (except as otherwise directed by the Principal or in an emergency);
- (f) in accordance with the Principal's reasonable directions (including any directions relating to compliance with the Principal's tenure arrangements in relation to the Site);
- (g) subject to the Principal's right to require the prompt removal of any person from the Site; and
- (h) at the locations directed by the Principal;

- 3.2 **(Management of Site)** the Contractor must:

- (a) keep the Site safe, secure, clean and tidy;
- (b) clean up and make good fencing, roads, footpaths and surfaces and any common or tenancy areas that the Contractor has used, transited through or damaged, on or adjacent to the Site, to the Principal's satisfaction, before Completion;
- (c) correctly set out any Works included in the Supply on the Site; and
- (d) not allow disconnection of or disruption to any utility or other services or alteration of or disruption to existing improvements, without the Principal's prior approval;

- 3.3 **(Protection of the Supply, People and Property)** the Contractor must in carrying out the Contractor's Activities:

- (a) protect all people from death or injury (including by the provision and maintenance of barricades, guards, hoardings, fences, signs, lighting and traffic flagging);
- (b) protect the Supply (including any unfixed plant, materials and goods) and all other property (including property or works of the Principal or others) from loss or damage; and
- (c) promptly make good any damage caused by the Contractor to any property of the Principal or third parties;

- 3.4 **(Site Conditions)** despite any other provision of this Contract:

- (a) the Contractor accepts the risk of any building located on the Site **(Existing Building)** and all known and unknown conditions of the Site (including without limitation natural or artificial conditions, contamination, services and facilities and improvements on the Site installed or

constructed by other contractors) **(Site Conditions)**;

- (b) subject to paragraph (c), the Contractor shall not be entitled to any adjustment to the Supply Price or claim for any costs, expenses, damages, delay or disruption costs or other liabilities or extension of time arising from any Site Condition;
- (c) where a Claimable Latent Condition identified in Item 13 of the Particulars occurs which:
 - (i) is not disclosed in the Contract or other documents provided to the Contractor prior to the Contract Date (including in Principal Supplied Information);
 - (ii) differs materially from Site Conditions which could have been identified by a competent contractor carrying out all proper and reasonable inspections and investigations of the Site prior to the Contract Date; and
 - (iii) necessitates a change to the Contractor's Activities or the Works as they are otherwise described in the Contract,

the Contractor will be entitled to request an adjustment to the Supply Price and an extension of time, subject to the terms of the Contract. The Contractor and Principal agree to negotiate in good faith a reasonable adjustment to the Supply Price, but in no circumstances will the Contractor's margin exceed 10%.

- (d) the Contractor shall carry out all work required to ensure the Supply is in accordance with this Contract despite any Site Conditions;
- (e) the Principal gives no warranty and makes no representation as to the suitability of the Site for the Supply or the capacity of the Site to support the Supply; and
- (f) the Contractor warrants the Site is suitable for and can support the Supply and that the Contractor can carry out the Contractor's Activities in accordance with this Contract so that the completed Supply is fit for its intended purpose; and

- 3.5 **(Controlled Site)** where another contractor is in possession of any part of the Site or has management or control of any part of the Site (for which the Contractor is not the "person in control" under the Contract), the Contractor must fully cooperate with that other contractor and the Contractor must comply with that other contractor's reasonable directions (including in respect of work health and safety).

4. **(Information and Documents)**

- 4.1 **(Goods Information)** Where the Supply includes the supply of goods to the Principal, the Contractor must:

- (a) notify the Principal at the time of dispatch of the Contract Description, description and quantity of goods dispatched and the method and route of their transportation;
- (b) package the Goods safely and securely (so as to avoid any damage during transit) and otherwise as required by the Contract and the carrier's requirements;
- (c) clearly label packages with the Contract Description of the packaged goods;
- (d) ensure the goods are accompanied by a packing slip for each package (detailing the Contract

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Description, and description and quantity of the packaged goods); and

- (e) ensure the goods are signed for by an authorised representative of the Principal (and the Contractor shall not be entitled to make a claim for any progress payment for the Supply until the goods the subject of the claim for progress payment are signed for by an authorised representative of the Principal).

4.2 (Management Plans)

- (a) Subject to paragraph (b), the Contractor must prepare and submit to the Principal before commencing the Supply, comprehensive and detailed Contractor's Management Plans (**Contractor's Management Plans**).
- (b) The Contractor acknowledges that:
 - (i) the Principal has prior to the date of this Contract provided to the Contractor and the Contractor has satisfied itself as to, the Principal's Management Requirements Documents referred to in Item 9 of the Particulars (**Principal's Management Requirements Documents**); and
 - (ii) the Contractor is not entitled to any claim, including without limitation for any extension of time or cost arising out of or in connection with the preparation by the Contractor of the Contractor's Management Plans as contemplated by this clause.
- (c) The Contractor must as and when required by the Principal:
 - (i) consult openly with the Principal in respect of the preparation of the Contractor's Management Plans;
 - (ii) obtain the Principal's approval to the Contractor's Management Plans and any update to the Contractor's Management Plans; and
 - (iii) update the Contractor's Management Plans to address changed or additional matters identified by the Principal or the Contractor from time to time.
- (d) The Contractor must:
 - (i) comply with Principal's Management Requirements Documents so far as they are relevant to the provision of the Supply;
 - (ii) ensure the Contractor's Management Plans are implemented and complied with in connection with the Supply; and
 - (iii) not change a Contractor's Management Plan unless it has obtained the Principal's prior approval to the change.
- (e) The Contractor agrees:
 - (i) the Contractor's Management Plans must, as a minimum, satisfy all requirements of and be consistent with this Contract, environmental requirements, Principal's Management Requirements Documents, Work Health and Safety Law and laws and legal requirements; and
 - (ii) this Contract, laws and legal requirements and any government approvals shall prevail over the Contractor's Management Plans and Principal's Management Requirements Documents to the extent of any

inconsistency or discrepancy between them.

- (f) The Contractor agrees:
 - (i) the Contractor's obligations under the Contractor's Management Plans and Principal's Management Requirements Documents comprise only minimum obligations;
 - (ii) the Contractor shall remain fully responsible for complying with this Contract, all laws and legal requirements, and government approvals, and will not be relieved of any obligation, duty of care, warranty or liability arising out of or in connection with this Contract or the performance of the Supply; and
 - (iii) the Principal does not assume any responsibility to the Contractor arising out of or in connection with any approval or audit of any Contractor's Management Plan or any audit of the Contractor's performance in accordance with any Contractor's Management Plan,
- notwithstanding:
- (iv) the obligation of the Contractor to prepare, implement or comply with the requirements of the Contractor's Management Plans and Principal's Management Requirements Documents in accordance with this Contract; or
 - (v) any comment or direction upon, review or acceptance or approval of, direction to proceed with or request, or absence of request to vary or update a Contractor's Management Plan by or on behalf of the Principal.
- (g) The Contractor's full compliance with its obligations under clauses 4.2(a) and 4.2(c) is a condition precedent to the Contractor being entitled to submit any claim for payment under this Contract at any time.

4.3 (Principal Supplied Information) The Contractor agrees:

- (a) unless the Principal expressly agrees otherwise in writing, any information (whether documented or otherwise) supplied or made available to the Contractor by or on behalf of the Principal before or after the Contract Date not contained in the Contract Documents (whether or not it is expressly described as Principal Supplied Information) including:
 - (i) the information (or information contained in the documents) identified in Item 14 of the Particulars; and
 - (ii) the Pricing Reference Documents,
- (Principal Supplied Information):**
- (iii) has been or will be provided only for the Contractor's convenience; and
 - (iv) has not been and will not be relied upon by the Contractor for any purpose (including entering into the Contract or performing its obligations under the Contract);
- (b) the Principal does not:
 - (i) assume any responsibility or duty of care in respect of; or

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- (ii) warrant, guarantee or make any representation as to,
 - the Principal Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract); and
 - (c) without limiting the Contractor's other express rights under the Contract, the Contractor will have no claim arising from or in connection with any omission from, inaccuracy in or other inadequacy of any Principal Supplied Information.
- 4.4 **(Inadequacy of Information)** The Contractor must:
 - (a) promptly notify the Principal if any information provided to the Contractor by or on behalf of the Principal is inaccurate or inadequate for the Contractor to carry out the Contractor's Activities or provide the Supply or contains any discrepancy; and
 - (b) give the Principal reasonable prior written notice of any information or documents required from the Principal in connection with the Supply.
- 4.5 **(Intellectual Property)** The Contractor:
 - (a) grants the Principal an irrevocable and perpetual licence to use any intellectual property connected with the Contractor's Activities or the Supply for any of its own purposes including in connection with the use, operation, maintenance and repair of the Supply; and
 - (b) indemnifies the Principal against any loss or liability arising from third party claims in connection with the intellectual property.
- 4.6 **(Reporting)** The Contractor must keep the Principal fully informed as to any matters affecting the cost, timing or quality of the Contractor's Activities or the Supply or any other matters specifically requested by the Principal, including the supply of progress reports when directed by the Principal's site manager.
- 4.7 **(Ownership of Documents)** All documentation either:
 - (a) provided by or on behalf of the Principal to the Contractor; or
 - (b) provided by or on behalf of the Contractor to the Principal,
 shall remain or become, from the date it is provided to the Principal, the property of the Principal.
- 4.8 **(Documents Relating to Supply)** As a pre-condition to Completion, the Contractor must deliver to the Principal:
 - (a) all suppliers and manufacturers warranties (including those referred to in the Supply Description in Attachment 1) (on terms fully assignable and acceptable by the Principal allowing their enforcement by the Principal), inspection or testing certificates and operation or maintenance manuals available to the Contractor or required by the Contract;
 - (b) all approvals, certificates or other authorisations required for the Supply before the Supply can be applied to its intended purpose; and
 - (c) all other documents required by the Contract to be delivered by the Contractor before Completion (including the Pre-completion Documents specified in Item 7 of the Particulars).
- 4.9 **(Delivery of Documents and other Deliverables after Completion)**
 - (a) The Contractor must deliver to the Superintendent within the number of days after

the date of Completion specified in Item 15 of the Particulars each of the documents and other deliverables listed in Item 15 of the Particulars.

- (b) Despite any other provision of the Contract, the Contractor's full compliance with its obligation to deliver the documents and deliverables referred to in paragraph (a) will be a condition precedent to the Contractor being entitled to submit any claim for payment under this Contract.
 - (c) The Principal will not be obliged to release any Security due for release at or at any time after Completion until the documents and deliverables referred to in paragraph (a) are delivered.
- 4.10 **(Publicity)** The Contractor must obtain the Principal's written approval before publishing or publicising any information associated with the Principal, the Contractor's Activities or the Supply.
- 4.11 **(Confidentiality)** The Contractor must keep confidential and must not disclose for any purpose other than carrying out the Supply, any information about this Contract, the Contractor's Activities, the Supply, the Principal or information otherwise provided by or on behalf of the Principal unless such disclosure is:
 - (a) approved in writing by the Principal;
 - (b) required by law; or
 - (c) disclosed to the Contractor's legal advisers or accountants (who agree to keep the information confidential) for the purpose of obtaining professional advice in connection with this Contract.
- 4.12 **(Directions)** Where the Principal gives a direction relating to the Contractor's Activities or the Supply:
 - (a) the Contractor shall comply with the direction (and such action will not affect the Contractor's responsibility for its own actions as an independent contractor); or
 - (b) if the Contractor considers it is not for any reason bound to comply with the direction, the Contractor shall notify the Principal that it considers itself not so bound and the reason, immediately after the direction is first given.
- 5. **(Quality)**
 - 5.1 **(Principal's Property)** The Contractor must use any property, goods, materials, services or information provided by the Principal:
 - (a) at its own risk;
 - (b) only to carry out the Contractor's Activities;
 - (c) using reasonable care;
 - (d) in accordance with the Principal's instructions; and
 - (e) without the use of those items prejudicing any of the Contractor's obligations (including warranties under the Contract).
 - 5.2 **(Quality Assurance)** Unless the Principal agrees otherwise, the Contractor must implement a quality assurance plan in connection with the Supply to the Principal's requirements.
 - 5.3 **(Testing)** Where required by the Principal, the Contractor must:
 - (a) obtain the Principal's approval to a commissioning and testing program for the Supply in sufficient time to allow commissioning and testing prior to the Date for Completion;

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- (b) ensure such program establishes that the Supply complies with this Contract and the requirements of the Principal;
 - (c) successfully commission and test the Supply in accordance with such program before Completion; and
 - (d) co-operate with the Principal in connection with any additional testing or inspection required by the Principal at any time.
- 5.4 **(Defects)** Without limiting or excluding any of its other rights, the Principal may in its discretion, require the Contractor to promptly rectify, replace, repair or re-supply (**Rectification Activities**) any part of the Contractor's Activities or the Supply which the Principal finds to be defective or show deterioration to an extent that the Contractor's Activities or the Supply do not comply with the Contract at any time before expiry of the Defects Liability Period set out in Item 16 of the Particulars (which commences from Completion or, in relation to any Rectification Activities, completion of the Rectification Activities). Where the Contractor fails to carry out the Rectification Activities within the period required by the Principal, the Principal may carry out the Rectification Activities at the Contractor's cost.
- 5.5 **(Defective Goods)** If any of the goods forming part of the Supply are determined by the Principal to not be in compliance with the Contract:
- (a) the Principal may, without limiting any other rights, return the goods to the Contractor at the Contractor's risk and expense; and
 - (b) the Contractor shall without prejudice to the Principal's general law rights, be indebted to the Principal for:
 - (i) the Supply Price paid by the Principal for the returned goods (if paid); and
 - (ii) the costs incurred by the Principal in connection with the delivery and return of the returned goods.
- 5.6 **(Inspection)** The Contractor shall allow the Principal access at any time to any place where the Contractor's Activities are being undertaken to inspect the Contractor's Activities or any part of the Supply.
6. **(Laws and Legal Requirements)**
- 6.1 **(Legal and Contractual Compliance)** The Contractor must:
- (a) comply and ensure the Contractor's Activities and the Supply comply with all agreements and policies of the Principal (notified to the Contractor) including the Relevant Documents and all laws and legal requirements;
 - (b) obtain all required licences, permits, approvals, certificates and other required authorisations other than Principal Obtained Approvals; and
 - (c) except to the extent expressly provided by the Contract, pay all fees, taxes, duties and other charges relating to the Contractor's Activities or the Supply.
- 6.2 **(Industrial Relations)** The Contractor must:
- (a) ensure all its employees and its subcontractors' employees are employed in accordance with any applicable laws, awards or agreements;
 - (b) promptly notify the Principal of any industrial claim, dispute or disturbance arising in connection with the Supply and ensure as far as practicable that the Supply continues; and
 - (c) consult with the Principal as to, actively manage and do all things necessary to avoid industrial relations disputes or disturbances.
- 6.3 **(Environmental Protection)** The Contractor must take all action necessary to:
- (a) protect and preserve the environment from any harm or damage which may arise from or in connection with the carrying out the Supply; and
 - (b) ensure that it complies with and does not cause the Principal to breach any law or legal requirement relating to the protection or preservation of the environment.
- 6.4 **(Person in Control)** The Contractor agrees that to the extent Item 18 of the Particulars indicates the Contractor is "person in control":
- (a) the Principal and the Contractor agree that:
 - (i) the Contractor is the person in control of all areas of the Site specified in Item 18 of the Particulars for the purpose of legal requirements relating to health or safety in the location of the Site (**Work Health and Safety Law**);
 - (ii) without limiting sub-paragraph (i), the Contractor is appointed, and accepts appointment, as principal contractor over all areas of the Site specified in Item 18 of the Particulars for the purposes of Work Health and Safety Law; and
 - (iii) the Contractor and its personnel are not employees of the Principal and the Principal has no obligation to the Contractor or the Contractor's personnel as an employer for the purposes of Work Health and Safety Law.
 - (b) The Contractor will ensure that all subcontracts it enters into for the performance of the Contractor's Activities contain an acknowledgement similar in effect to that set out in paragraph (a).
 - (c) The Contractor agrees that as the person in control of the Site for the Contractor's Activities it must:
 - (i) prepare and maintain a Site safety management plan (the **Safety Plan**) which:
 - (A) addresses how the Contractor will deal with occupational health and safety on the Site; and
 - (B) which is, subject to paragraph (d), in a form which is prepared in accordance with industry standard or is otherwise approved by the Principal; and
 - (C) promptly provide any updated Safety Plan to the Superintendent.
 - (d) The Contractor must:
 - (i) prior to commencement of any work on Site:
 - (A) arrange for a safety auditor to review and prepare a report for the Contractor on the adequacy of the Safety Plan; and
 - (B) provide a copy of the report referred to in subparagraph (A) to the Superintendent; and
 - (C) as soon as practicable, amend the Safety Plan in accordance with any

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reasonable instructions given to the Contractor by the Superintendent and promptly provide the amended Safety Plan to the Superintendent.

- 6.5 **(Contractor's Obligations)** The Contractor is responsible for complying with and ensuring that all of the Contractor's officers, employees, agents, subcontractors or subcontractor's agents comply with all requirements (including fully discharging all duties imposed upon any of them) under or in connection with Work Health and Safety Law, whether or not the Principal is also obliged to comply with or discharge any of the duties.
- 6.6 **(Separate Contractors)** The Contractor is responsible for ensuring that Separate Contractors discharge all duties imposed upon them by Work Health and Safety Law in connection with work or other activities undertaken by them in connection with the Site except to the extent the Contractor is not appointed as the "principal contractor" in respect of the area of the Site where the activities of those Separate Contractors are being undertaken.
- 6.7 **(Site and Existing Improvements)** The Contractor must satisfy itself in all respects as to:
- (a) any risk or hazards to health or safety arising from or in connection with any Existing Building, Site, Site Conditions or other existing improvements (**Site Risks**); and
 - (b) any reports or information provided to the Contractor by or on behalf of the Principal in respect of Site Risks,
- by its own inspections, investigations and enquiries.
- 6.8 **(Legal Requirements)** Without limiting clause 6.4, the Contractor must:
- (a) 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 Contractor's Activities arising from the business or undertaking of the Contractor;
 - (b) implement and comply with all necessary security requirements for the Site;
 - (c) ensure that all Contractor's Activities are done in a safe manner;
 - (d) ensure that all construction plant is maintained in a safe working order and if the Superintendent considers that any construction plant is unsafe, the Superintendent may direct the Contractor to:
 - (i) stop using the construction plant until it has been brought into a safe working order; or
 - (ii) replace the construction plant with construction plant which is in a safe working order;
 - (e) 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 Work Health and Safety Law;
 - (f) ensure that all subcontractors and Separate Contractors complete a satisfactory site induction program in accordance with any requirements in the Contract, the Induction Requirements and Work Health and Safety Law before commencing any work on the Site or in connection with the Contractor's Activities

having regard to each subcontractor's and Separate Contractor's requirements for access to provide the Supply;

- (g) immediately comply with any direction in respect to site safety issued by any governmental, semi-governmental, regulatory or statutory authority (**Authority**) having jurisdiction over the provision of the Supply or by the Superintendent; and
- (h) notify the Superintendent and any occupational health and safety representative elected under any applicable law of any:
 - (i) work related illness;
 - (ii) injury;
 - (iii) dangerous event; or
 - (iv) direction of any Authority or worker's representative in relation to health and safety,

which occurs on the Site as soon as possible but not later than 12 hours after such occurrence.

- 6.9 **(Safety Audit)** The Contractor agrees that the Principal, the Superintendent, or a safety auditor appointed by the Superintendent may (without being under any obligation to do so) attend the Site at any time for the purpose of conducting a safety audit.
- 6.10 **(Indemnity for Breach)** The Contractor indemnifies and keeps indemnified the Principal and its officers, employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including without limitation in tort or under any law), arising from or in connection with:
- (a) any injury, accident or safety related incident on or adjacent to the Site caused or contributed to by an act or omission of the Contractor, its subcontractors or their respective employees or agents; and
 - (b) any breach by the Contractor of its obligations under this clause.
- 6.11 **(Principal's Performance of Obligations)** The Contractor agrees that if the Contractor fails to comply with an obligation under this clause the Principal may (without being under any obligation to do so) perform, or have performed, the obligation on the Contractor's behalf and recover the costs and expenses incurred as a debt from the Contractor to the Principal under the Contract.
- 6.12 **(Indemnity for Undertaking Activities)** The Contractor indemnifies the Principal and the Superintendent against any loss, expense or damage of any nature including financial loss and legal fees and expenses (on an indemnity basis), suffered or incurred by them arising out of the undertaking of the activity, giving of any direction, or performance or authorisation of the performance of any Contractor's Activities to the extent the Principal considers it necessary to:
- (a) undertake any activity;
 - (b) give any direction; or
 - (c) otherwise provide the Supply,
- for which the Contractor is responsible under this clause.
- 6.13 **(Induction Requirements)** The Contractor agrees that:
- (a) the Induction Documents made available to the Contractor as part of its safety or other training or induction (including those specified in Item 19

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- of the Particulars) and any induction and work health and safety requirements of the Principal, the Superintendent or the Principal's manager, communicated to the Contractor from time to time (**Induction Requirements**) also form part of this Contract;
- (b) the Contractor must comply in all respects with the Induction Requirements, including providing any forms or other documentary evidence of compliance required by the Principal; and
 - (c) the Principal may by written notice to the Contractor, terminate this Contract if the Contractor breaches the Induction Requirements at any time.
- 6.14 (**Portable Long Service Leave**) The Contractor agrees that:
- (a) the Supply Price includes any levy payable by either the Contractor or the Principal under any applicable legislative requirement relating to the payment of portable long service leave in relation to the Supply; and
 - (b) the Contractor shall pay or reimburse the Principal for payment of any levy.
- 6.15 (**Proportionate Liability**) The parties agree that it is their intention that all rights, liabilities or obligations under or in connection with the Contract are to apply unaffected by the operation of any applicable legislation relating to proportionate liability which but for this provision would be affected, to the extent permissible by law.
- 6.16 (**Personal Property Securities Act**)
- (a) In this clause, **PPSA** means the *Personal Property Securities Act 2009* (Cth), and **security interest** and **perfected** have the meanings given to them in the PPSA.
 - (b) The Contractor must, whenever the Principal requests, do anything to ensure any security interest granted to the Principal under this Contract is fully effective, enforceable and perfected with priority over any other claims or interests of any person.
 - (c) The Contractor must:
 - (i) not without the Principal's consent (which will not be unreasonably withheld) give or allow to exist any security interest in this Contract, the Supply, or plant, equipment, materials or other things used by the Contractor in the discharge of its obligations under this Contract; and
 - (ii) whenever requested by the Principal, provide the Principal with any form, notice, consent, agreement or other information relating to a security interest referred to in paragraph (i).
 - (d) Despite any other provision of this Contract, the Principal will not be obliged to pay for and the Contractor will not be entitled to make a claim for the value of any part of the Supply until either:
 - (i) that part has been affixed to land of the Principal; or
 - (ii) the Contractor has demonstrated to the Principal that that part is not the subject of security interests in favour of any person (other than the Principal).
- (e) The Contractor must take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available to the extent they are relevant to the subject matter of this Contract or the Contractor's performance of its obligations under this Contract.
 - (f) In relation to PPSA exclusions:
 - (i) to the extent this Contract gives rise to a security interest under the PPSA in favour of the Principal, the parties agree that all provisions of the PPSA listed in section 115(1) and 115(7) of the PPSA (other than sections 117, 118, 134 and 135) are excluded in full and will not apply to that security interest; and
 - (ii) the Contractor waives its right to receive:
 - (A) each notice which section 157(3) of the PPSA permits it to waive and, to the extent capable of being waived, notice under any other provision of the PPSA; and
 - (B) anything from the other party under section 275 of the PPSA and agrees not to make any request of the other party under that section.
 - (g) For the purposes of section 275(6) of the PPSA, the Principal and the Contractor agree, their obligations of confidentiality under this Contract apply to any information of the kind referred to in section 275(1) of the PPSA relating to any security interest given or arising under this Contract.
 - (h) Despite any other provision of this Contract, the parties agree:
 - (i) the Contractor has no right, title or interest in or in respect of retention moneys which may be retained by the Principal under this Contract; and
 - (ii) the retention moneys comprise amounts of consideration under this Contract in respect of which the Principal has no payment or other obligations,
 until those retention moneys are required by this Contract to be paid to the Contractor.
7. (**Time**)
- 7.1 (**Program**) Unless the Principal agrees otherwise, the Contractor must:
- (a) prepare and obtain the Principal's approval of a program for the Contractor's Activities (in a form approved by the Principal) before starting the Contractor's Activities;
 - (b) at all times comply with the approved program; and
 - (c) not change the program without the Principal's prior written approval.
- 7.2 (**Early Use**) The Contractor must allow the Principal or others authorised by the Principal early occupation or use of any part of the Supply which is fit for such occupation or use (without Completion being deemed to have occurred).
- 7.3 (**Prior Notice of Completion**) The Contractor must give the Principal seven (7) days' prior written notice of the date upon which the Contractor anticipates reaching Completion.

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7.4 **(Liquidated Damages)** Where Item 5 of the Particulars provides a Date for Completion, if Completion is for any reason not achieved by the Date for Completion, the Contractor shall be indebted to the Principal for liquidated damages calculated by applying the Liquidated Damages Rate set out in Item 20 of the Particulars to the period from the Date for Completion to and including the earlier of the date of Completion and the date of termination of the Contract.

7.5 **(General Damages)** If:

- (a) no Liquidated Damages Rate is specified in Item 20 of the Particulars; or
- (b) a Liquidated Damages Rate is specified in Item 20 of the Particulars but the liquidated damages are found to be void or unenforceable for any reason,

the Principal shall be entitled to claim general law damages and the Contractor indemnifies the Principal against any costs, claim, expenses, damages or other loss or liability arising from the failure by the Contractor to achieve Completion by the Date for Completion.

7.6 **(Milestones)** The parties agree:

- (a) the Contractor must achieve completion of each Milestone set out in Item 21 of the Particulars by its corresponding Date for Milestone Completion also set out in Item 21 of the Particulars;
- (b) the Contractor must give the Superintendent 7 days prior written notice of the date the Contractor anticipates completion of a Milestone will occur;
- (c) if any Milestone is for any reason not achieved by the Date for Milestone Completion, the Contractor will be indebted to the Principal for liquidated damages calculated by applying the Milestone Liquidated Damages Rate for the Milestone set out in Item 21 of the Particulars to every day from the Date for Milestone Completion to and including the earlier of the date that the relevant Milestone is achieved and the date of termination of the Contract; and
- (d) each Date for Milestone Completion will be subject to adjustment as if it were a Date for Completion under the Contract and the provisions of clause 13.1 will be given effect accordingly.

7.7 **(Separable Portions)**

- (a) For the purposes of the Contract:
 - (i) the expressions "Date for Completion", "Completion" and "Liquidated Damages Rate" will apply separately to each Separable Portion and references to the Supply will mean the Supply comprised in the relevant Separable Portion; and
 - (ii) "Separable Portion" means a portion of the Supply:
 - (A) described in Item 22 of the Particulars (if any);
 - (B) which the Superintendent has determined pursuant to clause 7.7(c) shall be a Separable Portion; or
 - (C) which is otherwise agreed by the parties to be a Separable Portion for the purposes of the Contract;

- (iii) the Separable Portion (existing as at the Contract Date) and corresponding Separable Portion Descriptions, Dates for Completion, Liquidated Damages Rates, Relevant Completion Periods and Associated Separable Portions are those set out in Item 22 of the Particulars.

- (b) If the Contract does not specify the Liquidated Damages Rate to apply to a Separable Portion, the applicable Liquidated Damages Rate will be the amount representing the same proportion of the Liquidated Damages Rate set out in Item 20 of the Particulars applicable to the whole of the Supply, as the area of the Separable Portion bears to the total area of the Supply, as determined by the Superintendent.
- (c) If:
 - (i) a part of the Supply has reached a stage of Completion; and
 - (ii) another part of the Supply has not reached a stage of Completion,
 the Superintendent may determine that the whole or any part of the Supply that has reached a stage of Completion is to be a Separable Portion.
- (d) In using a Separable Portion that has reached Completion, the Principal will not unreasonably hinder the Contractor in its performance of the Contractor's Activities.

7.8 **(Associated Separable Portions)** On any day that liquidated damages would otherwise be payable in relation to any two or more Separable Portions that are Associated Separable Portions but for the operation of this clause, the total liquidated damages for which the Contractor will be indebted to the Principal in relation to those Separable Portions will be limited to the highest Liquidated Damages Rate set out in the Particulars relevant to those Separable Portions.

8. **(Qualifications)** The Contractor must:

- 8.1 **(Contractor's Qualifications)** obtain and maintain all licences, qualifications and experience necessary for it to carry out the Contractor's Activities; and
- 8.2 **(Subcontractor's Qualifications)** ensure that its Subcontractors and personnel also hold necessary or appropriate licences, qualification or experience.

9. **(Design Services)**

9.1 **(General)** Where the Contractor is to provide professional services (including without limitation any design), the Contractor shall, in addition to its other obligations in this Contract:

- (a) ensure that in providing the Supply, it exercises the standard of skill and care expected of a competent and qualified professional; and
- (b) to the extent required by the Particulars, effect (before commencing the Supply) and maintain (for at least 6 years after Completion) professional indemnity insurance in the amount specified in the Particulars with insurers and on terms and conditions acceptable to the Principal.

9.2 **(Design Obligations)** To the extent that the Contract requires the Contractor to undertake any design or specification of or in connection with the Supply as set out in Item 23 of the Particulars (**Design Obligations**), the Contractor:

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- (a) confirms that the description of the Supply is adequate for the Contractor to complete the Contractor's Design Obligations in accordance with this Contract and has satisfied itself as to the Principal's requirements for the Contractor's Design Obligations;
- (b) must carry out all of its Design Obligations (including undertaking any design or redesign required to give effect to any change in the Principal's requirements or to ensure the Supply complies with the requirements of this Contract) despite any Site Condition or change in law taking effect after the Commencement Date;
- (c) must complete and provide to the Principal copies of all drawings, specifications or other documents or materials (**Design Deliverables**) required to give effect to the Contractor's Design Obligations prior to relying upon those Design Deliverables;
- (d) warrants that the Contractor's Design Obligations, when completed, will be fit for its purpose; and
- (e) must, as part of the Supply, carry out all design and specification of the Supply (including the provision of all design documents) and as between the Principal and the Contractor, the Contractor agrees that the involvement of the Principal or the Superintendent in specifying, reviewing or consenting to any Contractor's Activities does not constitute involvement in, or the taking of any risk or responsibility for, the design of the Supply.

9.3 (**Preliminary Design**) The Contractor agrees:

- (a) subject to paragraph (b), the Contractor must continually review, develop and update the Preliminary Design to ensure that they comply and are consistent with the Contract;
- (b) whether it is necessary to ensure the Contractor complies with its obligation under paragraph (a) or otherwise, the Contractor shall not deviate from the Preliminary Design referred to in Item 23 unless:
 - (i) the Contractor has fully advised the Principal in writing as to the benefits of the alternative design and the extent (if any) that the alternative design may affect the achievement of the Contract requirements; and
 - (ii) the Principal has consented to the use of the alternative design;
- (c) any consent given by the Principal under paragraph (b) shall not:
 - (i) be taken to prejudice or otherwise adversely affect in any way the Contractor's obligations under the Contract; or
 - (ii) give rise to any claim by the Contractor; and
- (d) the Contractor must ensure that any revision or update of the Preliminary Design provided to the Principal or Superintendent at any time clearly states both:
 - (i) the revision number of the document; and
 - (ii) a comprehensive description of every change made from the previous document.

10. (**Security**)

10.1 (**Provision of Security**) As security for the Contractor's performance of its obligations under this Contract:

- (a) Where Item 24 of the Particulars indicates that Security shall be in the form of an unconditional bank undertaking(s), the Contractor shall provide such bank undertaking(s) to the Principal which is freely assignable with no expiry date in favour of the Principal for the amount specified in Item 24 of the Particulars before the Contractor commences any Contractor's Activities.
- (b) Where Item 24 of the Particulars indicates that Security shall be in the form of Retention Money, the Principal may retain from any amount payable to the Contractor, an amount necessary to ensure that the Principal holds an amount equal to the Retention Percentage of the total amount of the Supply Price previously paid or then payable to the Contractor.

10.2 (**Security**) The Principal may:

- (a) hold the Security for its own benefit; and
- (b) use the Security at any time to pay itself any amount claimed by the Principal from the Contractor (whether in connection with this Contract or otherwise).

10.3 (**Release of Security**) The Contractor may claim:

- (a) after Completion fifty percent (50%) of Security held at Completion; and
- (b) if Item 16 of the Particulars indicates a Defects Liability Period, after the last Defects Liability Period has ended and all defects for which the Contractor is responsible have been rectified, any balance of Security held by the Principal; and
- (c) if Item 16 of the Particulars indicates there is no Defects Liability Period, 12 months after Completion, any balance of Security held by the Principal.

11. (**Payments**)

11.1 (**Entire Contract**) Where under this Contract no part of the Supply Price (other than an amount not exceeding ten percent (10%) of the Supply Price) is payable prior to Completion, if this Contract is terminated by the Principal prior to Completion (other than for the Principal's convenience), the Contractor shall have no claim for any part of the Supply Price or any other amount.

11.2 (**Supply Price**) The amount the Principal will pay the Contractor for the Supply (**Supply Price**) is to be determined by the Principal in accordance with this clause 11.

11.3 (**Lump Sum Fee**) To the extent Item 25 of the Particulars provides for payment of a lump sum (**Lump Sum Fee**), the Principal must pay the Contractor the Lump Sum Fee (which, unless otherwise expressly stated, is a lump sum covering all of the Supply).

11.4 (**Schedule of Rates**) To the extent Item 25 of the Particulars provides for payment of an amount calculated by applying a schedule of rates (**Schedule of Rates**), the Principal must pay the Contractor the amount calculated by applying the Schedule of Rates to the time spent directly by the Contractor in providing the Supply.

11.5 (**Lump Sum Fee and Schedule of Rates**) If Item 25 of the Particulars provides for a Lump Sum Fee and a Schedule of Rates to apply to the Supply, the Schedule of Rates will only apply to those parts of the Supply which are expressly referred to in this Contract as being the subject of the Schedule of Rates, and all

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other parts of the Supply are taken to be covered by the Lump Sum Fee.

11.6 **(Cost Plus)** To the extent Item 25 of the Particulars provides for payment of Reimbursable Cost plus a margin (**Cost Plus**), the Principal must pay the Contractor the Reimbursable Costs plus the fixed percentage margin on the Reimbursable Costs as stated at Item 25. **Reimbursable Costs** means the aggregate of all amounts properly and actually incurred and payable by the Contractor for the performance of the Supply excluding amounts incurred for correcting defects or by reason of any breach of the Contract or other wrongful act or omission by the Contractor.

11.7 **(Reduction of Amounts)** The amount due in respect of the Supply will be reduced by:

- (a) the value of any incomplete or defective Supply and by amounts the Principal claims from the Contractor on any account; and
- (b) if Item 24 of the Particulars indicates there are Retention Moneys, amounts which the Principal is entitled to hold as Retention Moneys.

11.8 **(Payment claims)** Payments may be claimed by the Contractor only at the times set out in Item 26 of the Particulars subject to the following:

- (a) where the time for payment is stated in Item 26 of the Particulars at the completion of a milestone, the Contractor will only be entitled to claim payment for the amounts specified in Item 26 of the Particulars in respect of each milestone after that milestone is achieved and if a milestone specified in Item 26 of the Particulars is never achieved for any reason, the Contractor will have no payment entitlement in connection with that milestone; and
- (b) where the time for payments stated in Item 26 of the Particulars are dates during the provision of the Supply and Item 26 of the Particulars does not state an amount to be paid as at any date the amount payable will be calculated in accordance with the Contract by the Superintendent as the value of the Supply provided in accordance with the Contract prior to the relevant date less previous amounts paid.

11.9 **(Timing of payment)** The Principal shall pay the Contractor within 30 days from the end of the month of the date on which the Principal receives a Valid Tax Invoice in accordance with clause 11.10.

11.10 **(Tax Invoice)** Payment claims submitted under clause 11.8 must be submitted to the address of the Principal specified in Item 33 of the Particulars in the form of a tax invoice which states the Contractor's name, ABN number, description of Supply provided, the amount claimed and such other details as the Principal reasonably requires (**Valid Tax Invoice**).

11.11 **(Payment Increase)** The Supply Price and any rates or prices set out in the Contract (including for the purposes of calculating the Supply Price or valuing changes to the Supply) shall only be increased as expressly provided in the Contract.

11.12 **(Pricing Reference Documents)** The parties agree that:

- (a) all Pricing Reference Documents will:
 - (i) not form part of the Contract or be taken to describe the nature or extent of the Contractor's Activities or the Supply;

- (ii) not give rise to any claim by the Contractor; and

- (iii) only be used for the purposes of:

- (A) assessing the value of price adjustments; or

- (B) calculating progress payments,

under the Contract, to the extent that the Superintendent determines acting in its absolute discretion and not as a certifier;

- (b) any Pricing Reference Document or part of a Pricing Reference Document prepared by or on behalf of the Principal and made available to the Contractor for any purpose in connection with the Contract shall be Principal Supplied Information;
- (c) the Superintendent may at any time request the Contractor to, and the Contractor must, provide more detailed breakdowns of any prices, rates, quantities or items contained in any Pricing Reference Document;
- (d) the Contractor shall be taken to have satisfied itself in all respects as to the quantities or estimated quantities set out in any Pricing Reference Document;
- (e) the Contractor shall have no claim arising from or in connection with the nature or extent of items or, for any item, the quantities or estimated quantities, in any Pricing Reference Document differing from the actual quantities of the Supply; and
- (f) all Pricing Reference Documents will:
 - (i) be taken to include rates or prices which are inclusive of all profit and on-site or off-site overhead and all preliminaries and supervision unless otherwise expressly stated; and
 - (ii) be taken to include rates or prices which exclude any GST unless the Pricing Reference Document states otherwise.

11.13 **(Unfixed Plant or Materials)** The Principal may in its discretion exclude from the value of the Contractor's Activities for which the Contractor may claim payment, the value of any unfixed plant or materials being plant or materials intended for incorporation into any Existing Building but which have not yet been incorporated.

11.14 **(Title to Plant, Materials and Goods)** Full unencumbered title to, and property in any plant, materials and goods provided by the Contractor as part of or in connection with the Supply passes to the Principal on the earlier of:

- (a) delivery of the plant, materials or goods to the Principal or the Site; and
- (b) the Principal making any payment for the plant, materials or goods.

11.15 **(Payment of Subcontractors/Employees)** The Principal may in its discretion require that the Contractor shall not be entitled to make a claim for any payment until the Contractor has provided to the Principal:

- (a) documentary evidence (satisfactory to the Principal) that all the Contractor's employees, subcontractors and subcontractor's employees have been paid for all work, services, plant, goods and materials provided by them in connection with the carrying out of the

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- Contractor's Activities and the Supply at the relevant award or rate specified in any applicable industrial agreement; and
- (b) a statutory declaration addressing payment of workers, currency of worker's compensation insurance and other matters as reasonably required by the Principal and in a form which is satisfactory to the Principal.
- 11.16 **(Payments Not Acceptance)** Neither payments by the Principal nor the acceptance of any Supply shall evidence the Principal's acceptance of any of the Contractor's Activities having been performed in accordance with the Contract.
- 11.17 **(Conditions Precedent to Payment)** Despite any other provision of the Contract, the Contractor shall not be entitled to make a claim for any payment until the Contractor has provided to the Principal:
- (a) any program (or updated program) required to be provided under the Contract; and
- (b) evidence of the Contractor having effected all insurances required to be effected by it under the Contract.
- 11.18 **(Set Off)** The Principal may set off against any amount claimed by the Contractor, any amounts claimed by the Principal from the Contractor (whether in connection with the Contract or otherwise).
- 11.19 **(Provisional Sums)** Where Item 28 of the Particulars includes Provisional Sum Amounts for Provisional Sum Items:
- (a) the Contractor must:
- (i) not provide the Supply comprised in any Provisional Sum Item until directed to do so by the Superintendent;
- (ii) comply with the Superintendent's directions regarding the provision of the Provisional Sum Item;
- (iii) provide the Superintendent with no less than 14 days prior notice of the last date for directions under subparagraphs (i) and (ii) to be given by the Superintendent, to enable the Contractor to avoid delay to the Supply and comply with the Contract; and
- (iv) whenever requested by the Superintendent:
- (A) assist the Superintendent in the Superintendent's determination of the Principal's requirements for any Provisional Sum Item; and
- (B) provide the Superintendent with a fixed quote for the provision by the Contractor of the Provisional Sum Item within 14 days after the Superintendent has determined and notified the Contractor of the Principal's requirements for the Provisional Sum Item; and
- (b) the parties agree:
- (i) the Supply Price includes each Provisional Sum Amount;
- (ii) if the Provisional Sum Item is provided by the Contractor the Supply Price will be reduced by the Provisional Sum Amount but the Supply Price will be adjusted by adding the value of the Provisional Sum Item reasonably determined by the Superintendent to the extent it is provided; and
- (iii) if the Superintendent does not require the Contractor to provide the Provisional Sum Item:
- (A) the Provisional Sum Amount will:
- (i) not be payable by the Principal; and
- (ii) be deducted from the Supply Price;
- (B) the Principal may itself provide or have others provide the Provisional Sum Item; and
- (C) the Contractor will have no claim.
12. **(Insurance and Indemnities)**
- 12.1 **(Risk and Reinstatement)** The Contractor:
- (a) agrees the Contractor's Activities, the Supply (including any goods comprising part of the Supply) are at the Contractor's risk in all respects; and
- (b) must at its own cost promptly make good any loss or damage to the Contractor's Activities and the Supply, until Completion.
- 12.2 **(Insurance)** The Contractor must effect and maintain the insurances in accordance with Item 29 of the Particulars and must provide the Principal with evidence that these insurances are current, upon the Principal's request. The insurances must be taken out with insurers and on terms and conditions (including as to the insured parties) acceptable to the Principal.
- 12.3 **(Subcontractors' Insurance)** The Contractor must ensure all subcontractors also effect and maintain the insurances required to be maintained by the Contractor under the Contract (unless the subcontractors are covered by the Contractor's insurance).
- 12.4 **(Notice of claims)** The Contractor must inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required to be maintained by the Contractor to the extent it arises from or in connection with the provision of the Supply.
- 12.5 **(Indemnity)** The Contractor:
- (a) indemnifies the Principal (and the Principal's agents and employees) against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss or other liability arising from or in connection with property loss or damage (including property of the Principal other than the Supply), personal injury or death (including to the Contractor's employees) or environmental damage arising out of or in connection with the carrying out of the Contractor's Activities, except to the extent directly caused by the negligence of the Principal; and
- (b) indemnifies the Principal (and the Principal's officers and employees) against any claim, damage, loss or liability the Principal suffers or incurs arising from any breach by the Contractor of this Contract or any law.
13. **(Extensions of Time)**
- 13.1 **(Requirements for Extensions)** If:
- (a) the Contractor is unavoidably:
- (i) delayed in achieving Completion; or
- (ii) prevented from performing the Supply,

Minor Works Contract

- by a Claimable Delay described in Item 30 of the Particulars beyond the Contractor's control or an act or omission of the Principal or Superintendent;
- (b) the Contractor (including its subcontractors, employees and agents) has not contributed to the cause and has used all endeavours to minimise the delay arising from the cause; and
- (c) the Contractor has notified the Superintendent in writing of:
- (i) the existence of the cause, within two (2) days after the Contractor becomes aware of the circumstances giving rise to it; and
- (ii) the length of the period of delay for which the Contractor claims an extension, within two (2) days after the cause ends,
- the Superintendent shall by notice in writing to the Contractor:
- (d) allow the Contractor a reasonable extension to the Date for Completion; or
- (e) excuse the Contractor from performance during a reasonable period,
- within a reasonable period after the Contractor's claim referred to in clause (c) is received.
- 13.2 **(Effect)** The Contractor acknowledges:
- (a) without prejudice to the Contractor's rights arising from breach by the Principal, the Contractor shall have no right to claim any delay or disruption costs for periods of extension (whether or not an allowance is granted under this clause); and
- (b) failure by the Superintendent to extend the Date for Completion shall not set time at large and the Superintendent may, at the discretion of the Principal acting in its absolute discretion, extend the Date for Completion at any time for any reason.
14. **(Changes in the Principal's Requirements)** The Principal may for any reason (including its convenience) direct the Contractor in writing to:
- 14.1 **(Timing)** accelerate or delay the progress of, change the sequence of, or suspend for any period, the Contractor's Activities or the Supply or any part of them; or
- 14.2 **(Nature of Supply)** change the extent, character or quality of the Contractor's Activities or the Supply in any way (including by adding or omitting Contractor's Activities or changing methods of Contractor's Activities),
- in which case:
- 14.3 **(Contractor's Notice)** the Contractor must within two (2) days after receipt of the Principal's direction and (unless the Principal requires otherwise in writing) before the Contractor complies with the notice, advise the Principal in writing of the costs or time which the Contractor will incur or save in complying with the Principal's directions, failing which the Contractor shall have no claim for any additional costs or extension of time; and
- 14.4 **(Adjustment to Cost and Time)** the Supply Price and Date for Completion shall be adjusted by:
- (a) the amounts set out in the Contractor's notice as the costs and time to be saved or incurred by
- the Contractor (if acceptable to the Principal), but in no circumstances will the Contractor's margin exceed 10%; or
- (b) if the amounts set out in the Contractor's notice are not acceptable to the Principal, the amount reasonably determined by the Principal having regard to the reasonable costs and time which a reasonably competent contractor would save or incur in complying with the Principal's direction,
- but if the Principal's direction arises from an act, omission or default of the Contractor, its subcontractors or their employees or agents, the Contractor shall have no claim for any additional costs or extension of time.
15. **(Principal's Action)** The Principal may perform or have others perform at the Contractor's cost any obligation of the Contractor which the Contractor has failed to perform (including undertaking Rectification Activities) after reasonable notice from the Principal requiring such performance.
16. **(Delayed Access to Site)** Despite any other provision of the Contract, the Principal will not be taken to be in breach of this Contract (or liable for damages or other costs) for delays in making the Site or any part of the Site available for the progress of the Supply unless the period of delay exceeds a continuous period of 60 days.
17. **(Representatives)**
- 17.1 **(Contractor's Representative)** The Contractor shall:
- (a) at all times that Contractor's Activities are being carried out, engage the Contractor's Representative specified in Item 31 of the Particulars; and
- (b) be taken to have authorised the Contractor's Representative to:
- (i) receive any directions or notices;
- (ii) give any directions or notices; and
- (iii) exercise any discretions or make any determinations to be exercised or made under the Contract,
- on the Contractor's behalf.
- 17.2 **(Appointment of Superintendent)** The Principal may at its discretion appoint a Superintendent. At the date of this Contract, the Superintendent will be the person (if any) specified in Item 32 of the Particulars. The Principal shall notify the Contractor of any appointment of, or replacement of, a Superintendent. Where at any time a Superintendent is not appointed by the Principal, references in this Contract to "Superintendent" shall be read as references to "Principal".
- 17.3 **(Principal's Agent)** Except where the Contract expressly requires the Superintendent to act as a certifier, the Superintendent will act as the Principal's agent (including acting in the Principal's interests and at the Principal's direction) in performing its functions under the Contract.
- 17.4 **(Directions by Superintendent)** The Contractor must:
- (a) comply with any direction given by the Superintendent pursuant to the Contract; or
- (b) if the Contractor considers it is not for any reason bound to comply with any direction by the Superintendent, give the Superintendent written notice of the reason why it considers itself not bound, immediately after the direction is first given.
- 17.5 **(Certification Functions)**

Minor Works Contract

- (a) Except to the extent the Contract states otherwise, the Superintendent acts as a certifier where the Contract requires the Superintendent to:
 - (i) assess progress payments claimed by the Contractor;
 - (ii) determine an extension of time or an adjustment to the Supply Price claimed by either party; or
 - (iii) certify Completion.
 - (b) Where the Superintendent acts as a certifier under the Contract:
 - (i) the Principal may on its own behalf make submissions to the Superintendent at any time in respect of the issues to be determined by the Superintendent;
 - (ii) the Superintendent may in its discretion (but is under no obligation to) seek submissions from the Contractor in respect of those issues;
 - (iii) the Superintendent will give due consideration to (but not be bound to accept) submissions received from either the Principal or Contractor in respect of those issues; and
 - (iv) the Principal is under no obligation to ensure the correctness or reasonableness of determinations made by the Superintendent.
- 17.6 **(Communications and Dealings)** The Contractor must communicate and deal with the Superintendent (if any) in relation to all matters under this Contract, except to the extent otherwise notified by the Principal to the Contractor.
18. **(Default/Insolvency)** If the Contractor:
- 18.1 **(Breach of Contract)** does not comply with any of its obligations in accordance with the Contract (including without limitation failing to comply with any law or legal requirement or failing to comply with a direction of the Principal) and fails to rectify the breach for two (2) days after the Principal has notified the Contractor that the Principal requires the breach to be rectified; or
 - 18.2 **(Insolvency)** informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt or becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration or a mortgagee enters into possession or takes control in respect of any of the assets of the Contractor,
- then:
- 18.3 **(Termination)** the Principal may in its discretion (and without limiting any other rights of the Principal), terminate the Contract by notice in writing to the Contractor; and
 - 18.4 **(Damages)** the Contractor shall pay the Principal any costs, losses or damages suffered or incurred by the Principal in connection with the Contractor's breach or the termination of the Contract, including, without limitation:
 - (a) any additional costs of completing the Supply and carrying out the Contractor's Activities;
 - (b) costs of delay and interference to other contractors on the Site; and
 - (c) any additional costs of funding (including interest) or other costs incurred as a result of delay in the completion of the Supply.
19. **(Termination by the Principal)** The Principal may at any time for any reason (including for its convenience where there is no default by the Contractor) terminate the Contract by two (2) days prior notice in writing to the Contractor in which case:
- 19.1 **(Cease Contractor's Activities)** the Contractor shall cease all Contractor's Activities to the extent set out in the Principal's notice and mitigate any costs incurred by the Contractor consequent upon the termination;
 - 19.2 **(Payment to Contractor)** the Principal shall pay the Contractor for the value of the Contractor's Activities provided to the Principal (to the Principal's satisfaction) in accordance with the Contract;
 - 19.3 **(No Other Claims)** the Contractor shall have no claim whatsoever for any loss of profit, damages or other amounts; and
 - 19.4 **(Other Rights)** any rights of the Principal arising from prior breaches by the Contractor shall not be affected.
20. **(Building Legislation Requirements)**
- 20.1 **(Provisions Subject to Building Legislation)** The rights and obligations of the parties under the Contract are subject to the provisions of any legislation regulating the rights and obligations of parties in relation to supplies, services or work in the nature of the Supply or Contractor's Activities (out of which the parties are not permitted to contract) **(Building Legislation)**, and where there is any inconsistency between the Contract and the Building Legislation, the Building Legislation shall prevail to the extent necessary to avoid the inconsistency.
 - 20.2 **(Contractor's Registration)** The Contractor must maintain any registration or licence required to be held by it under Building Legislation to carry out the Contractor's Activities or to provide the Supply.
 - 20.3 **(Additional Security)** Despite any other provision of this Contract, the parties agree that to the extent that this Contract provides for the total of:
 - (a) all retention amounts withheld by the Principal; and
 - (b) all securities held by the Principal,
 to exceed an amount which the Building Legislation allows the Principal to hold after Completion in respect of the need to correct defects after Completion has been reached, the amount of the excess does not relate to the need to correct defects identified in the Defects Liability Period but instead to the recovery by the Principal of any other costs, damages, liabilities or other amounts which may become payable to the Principal by the Contractor under or in connection with this Contract or any breach of contract by the Contractor.
21. **(Security of Payment Legislation)** To the extent the Supply or any of the Contractor's Activities are subject to any legislation governing payments to contractors or suppliers in the building or construction industry **(Payments Act)**:
- 21.1 **(Notification)** the Contractor must immediately notify the Principal of:
 - (a) it receiving; or

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- (b) it becoming aware of any party providing any work, services or supply required in connection with the Contractor's Activities or the Supply receiving,
- any notice pursuant to the Payments Act;
- 21.2 **(Notices)** the Contractor must, when it gives the Principal any written communication (including a claim or notice) under or in relation to the Payments Act, deliver that communication to the Principal's Address set out in Item 33 of the Particulars;
- 21.3 **(Calculation of Progress Payment)** the amount of each progress payment to which the Contractor is at any time entitled in relation to the Contract shall be calculated in accordance with all provisions of the Contract relevant to the amount which the Contractor may claim or the Principal must pay (including, without limitation, this clause, clause 10 (Security), clause 11 (Payments), and clause 22 (GST and Withholding Taxes);
- 21.4 **(Suspension by Contractor)** if the Contractor suspends the Contractor's Activities pursuant to the Payments Act, the Contractor shall have no claim other than as expressly provided for by the Payments Act;
- 21.5 **(Suspension by Others)** if a subcontractor of the Contractor suspends the provision of any work, services or supply pursuant to the Payments Act, the Contractor shall have no claim (including without limitation for an extension of time); and
- 21.6 **(Indemnity)** the Contractor shall indemnify the Principal against any costs, expenses, damages or other liability arising from:
- (a) any subcontractor suspending the provision of any work, services or supply in connection with the Contract pursuant to the Payments Act;
 - (b) any notice referred to in clause 21.1; or
 - (c) any dispute under or in connection with the Payments Act between the Contractor and any subcontractor carrying out any work, services or supply in connection with the Contractor's Activities.
22. **(GST and Withholding Taxes)**
- 22.1 **(GST Adjustment)** Where a party is obliged to pay the other party an amount (including the Supply Price) calculated by reference to an agreed rate or an agreed lump sum, where the agreed rate or lump sum is expressed to exclude GST, the party shall pay the aggregate of:
- (a) the amount calculated by reference to the agreed rate or the agreed lump sum (as the case may be) **(Agreed Amount)**; and
 - (b) GST (if any) incurred by the other party in respect of the taxable supply in respect of which the Agreed Amount is payable.
- 22.2 **(GST on Reimbursements)** Where a party is obliged to pay an amount calculated by reference to the cost, expense, loss or other liability suffered or incurred by that other party **(Reimbursable Liability)** the party shall pay the aggregate of:
- (a) the Reimbursable Liability net of input tax credits available to the other party in respect of the Reimbursable Liability; and
 - (b) GST (if any) incurred by the other party in respect of the taxable supply in respect of which the Reimbursable Liability is payable.
- 22.3 **(No Other Claims)** No other provision of the Contract shall operate to give the Contractor any claim in connection with GST.
- 22.4 **(Tax Invoices)** Despite any other provision of the Contract, the Principal shall not be obliged to pay the Contractor any amount payable in respect of a taxable supply, until the Contractor has provided to the Principal a tax invoice in respect of the amount payable.
- 22.5 **(Foreign Resident Withholding Tax)** The Contractor warrants that it is not an entity covered by the *Taxation Administration Act 1953* (Cth) **(Foreign Resident)**. If requested by the Principal the Contractor must provide the Principal with evidence to the Principal's satisfaction that the Contractor is not a Foreign Resident, failing which the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, tax calculated and to be held in accordance with the *Taxation Administration Act 1953* (Cth) in respect of Foreign Residents.
23. **(Dispute Resolution)**
- 23.1 **(Negotiation)** If there is any dispute or difference **(Dispute)** between the parties arising out of or in connection with this Contract, then within 7 days of a party notifying the other party in writing of the Dispute, a senior representative from each party (who must have authority to negotiate and settle the Dispute) must meet and use all reasonable endeavours to resolve the Dispute by joint discussions.
- 23.2 **(Litigation)** A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.
- 23.3 **(Continue Contract)** Despite the existence of a Dispute, each party must continue to perform this Contract.
24. **(General)**
- 24.1 **(Jurisdiction)** This Contract shall be governed by and construed in accordance with the laws of the State or Territory in which the Site is situated.
- 24.2 **(Acceptance of Terms by Contractor)** By accepting the Principal's order for the Supply or making any offer to the Principal to carry out the Supply, the Contractor agrees to be bound by this Contract (despite any terms and conditions provided by the Contractor on or before accepting the order from the Principal or making the offer to the Principal).
- 24.3 **(Terms and Conditions)** The Principal shall not be bound by:
- (a) any terms and conditions (including those provided by the Contractor or arising from prior dealings or trade usage); or
 - (b) any descriptions, specifications, quantities or prices,
- which are different or additional to those set out in this Contract (unless the Principal expressly agrees otherwise in writing).
- 24.4 **(Waiver)** No waiver of a breach of any provision of the Contract shall constitute a waiver of any other breach of such provision or of any other provision.
- 24.5 **(Entire Agreement)** This Contract is the entire agreement between the parties in relation to the Supply and supersedes all previous agreements, proposals, representations, correspondence and discussions in connection with the Supply.

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- 24.6 **(Notices in Writing)** Unless the Contract expressly provides otherwise, all notices to be given by either party under or in connection with the Contract must be given in writing.
- 24.7 **(Interpretation)** In interpreting the Contract:
- (a) singular includes plural and vice versa;
 - (b) a party includes its successors and permitted assigns;
 - (c) headings are for convenience only and shall not affect interpretation;
 - (d) "day" or "month" means calendar day or month; and
 - (e) "\$" means Australian dollars.
- 24.8 **(Order of Precedence)** This Contract is comprised of the documents specified in Item 34 of the Particulars. To the extent there is a conflict with the documents specified in Item 34 of the Particulars, the order of precedence of the documents is the order specified in Item 34 of the Particulars.
- 24.9 **(Severability)** If any part of this Contract is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted and this Contract will remain otherwise in full force.
25. **(Privacy Act)**
- 25.1 **(Personal Information)** In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided or to be provided by the Contractor in connection with the Supply, the Contractor warrants to the Principal:
- (a) the Contractor has obtained and will obtain the consent of each individual about which any Sensitive Information (as defined in the Privacy Act) is disclosed to the Principal; and
 - (b) the Contractor has or will within the time required by the Privacy Act ensure that each individual about whom any Personal Information is disclosed to the Principal has received or will receive a written statement setting out all of the matters required by Australian Privacy Principles 5.1 and 5.2:
 - (i) in relation to disclosure of the Personal Information to the Principal, any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Principal, the Superintendent and any consultant of the Principal requiring the information for the purposes set out in paragraph (ii); and
 - (ii) including but not limited to disclosing that the entities referred to in paragraph (i) will collect, use and disclose the Personal Information for the purposes of reviewing and assessing matters relevant to the Supply from time to time.
- 25.2 **(Information Provided by Contractor)** The Contractor must at the Principal's request consult with the Principal about the terms on which any written statements referred to in clause 25.1(b) are to be provided to the individuals whose Personal Information has been collected by the Contractor, and comply with the Principal's reasonable requests in relation to the provision of any such written statements.
- 25.3 **(Information Provided to Contractor)** The Contractor must, in relation to any Personal Information which the Contractor receives or has access to (as provided or made available by the Principal, the Superintendent and any consultant of the Principal):
- (a) comply with the provisions of the Privacy Act, the *Spam Act 2003* (Cth) and all other laws, rules and regulations in Australia which relate to the privacy, protection, collection, use or disclosure of Personal Information (**Privacy Laws**);
 - (b) only use or disclose that Personal Information for the purpose for which the Personal Information is provided or made available to the Contractor by the Principal under these terms and conditions unless the disclosure is required by law, in which case the Contractor must notify the Principal of the obligation to disclose immediately (unless notifying the fact of a request for disclosure is prohibited by law);
 - (c) take appropriate technical and organisational measures to prevent:
 - (i) unauthorised or unlawful access to or use, modification or disclosure of; and
 - (ii) misuse, interference, loss or destruction of, or damage to, Personal Information;
 - (d) immediately provide the Principal with the details of any complaint received by the Contractor regarding any such Personal Information;
 - (e) cooperate with the Principal in:
 - (i) the resolution of any complaint alleging a breach of the Privacy Laws regarding such Personal Information; and
 - (ii) providing access to any record of such Personal Information following a request from an individual;
 - (f) notify the Principal promptly in writing if there are any changes to the Contractor's information collection (including notification of collection), handling or consent procedures; and
 - (g) not transfer or disclose Personal Information outside Australia, or allow anyone outside Australia to have access to it.
- 25.4 **(Indemnity)** The Contractor indemnifies and keeps indemnified the Principal and its officers, employees and agents against all claims, actions, proceedings, judgments, damages, losses, costs, expenses or liabilities brought, made or recovered against, or incurred or suffered by the Principal in connection with any breach by the Contractor of its obligations under this clause 25.
26. **(Rights and Obligations of Multiple Parties)** To the extent that:
- 26.1 **(Multiple Principals)** the Principal comprises more than one entity:
- (a) this Contract benefits each such entity jointly and severally; and
 - (b) this Contract binds each such entity severally to the extent of their respective shares set out in this Contract or, if those shares are not stated in this Contract, the respective shares in which the entities own any interest in the Site; and
- 26.2 **(Multiple Contractors)** the Contractor comprises more than one (1) entity, each such entity is jointly and severally bound by this Contract.

Minor Works Contract

27. **(Conflict of Interest)**

27.1 **(Warranty)** The Contractor warrants to the Principal that the Contractor is not aware of any reason why the provision of the Supply will or may place the Contractor in a position of conflict as regard any other interest or duty of itself or any of the Contractor's personnel, employees, agents and subcontractors.

27.2 **(Disclosure)** The Contractor must fully disclose to the Principal any such conflict or possible conflict immediately when the Contractor becomes aware of it.

27.3 **(Future dealings)** The Contractor must not accept any other engagement, employment or enter into any agreement or dealing with any person which may place the Contractor in a position of conflict in respect of any obligation under this Contract.

28. **(Bribery and Corruption)** The Contractor:

28.1 **(Tendering)** warrants that in tendering for or entering into this Contract it has complied with all laws and legal requirements relating to bribery, corruption, money laundering, fraud or similar activities (**Anti-Bribery and Corruption Requirements**), and has not entered into any improper or anticompetitive arrangement or understanding with any other party in connection with the Supply; and

28.2 **(Contractor's Activities)** must continue to ensure its compliance with Anti-Bribery and Corruption Requirements at all times in connection with the carrying out of the Contractor's Activities or the provision of the Supply.

29. **(Builders Margin)** A Builders Margin is the percentage cost added to the price of the Supply and included in the Supply Price which represents the Contractor's profits, before tax.

29.1 The Contractor must promptly disclose to the Principal upon written demand what the Builders Margin is.

29.2 The Contractor warrants that the Builders Margin will not exceed ten percent (10%) of the Supply Price. For the avoidance of doubt, where the Builders Margin exceeds ten percent (10%) of the Supply Price, the Principal will not be liable to pay the exceeding portion of the Supply Price and this amount will be refundable to the Principal if it has been pre-paid.

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Special Conditions

The Principal acknowledges and agrees to set aside a \$30,000 (plus GST) contingency for the Works (**"Contingency"**).

The Contractor will not be eligible to claim any costs, expenses or otherwise from the Contingency unless the Contractor has sought and obtained the Principal's written consent, prior to incurring such costs. The Principal may grant or withhold consent at the Principal's sole discretion.

To the extent that the Principal approves Contractor costs from the Contingency, the Principal shall pay Valid Tax Invoices on 14 day payment terms.

To the extent that the Contractor expends costs without the prior written approval of the Principal in excess of the Supply Price, any such costs or expenses shall be borne by the Contractor.

Minor Works Contract

Annexure 1 – Supply Description

Capital Refresh Project – Gaming room, Bistro & Sports Bar



Ferry Rd Tavern

Proposal for: Gaming Room Refurbishment

Submitted: 6th September 2022

CORE4 Your partners in smarter projects.



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6th September 2022

Jeremy Ferguson on behalf of;
Queensland Venue Co
Level 3, 616 St Kilda Rd
Melbourne VIC 3004

Dear Jeremy,

On behalf of Core4, thank you for the opportunity to submit a proposal for the refurbishment of the Gaming Area and Bistro at Ferry Rd Tavern.

We are pleased to provide the attached proposal, for a **indicative cost of \$557,045.89 (GST exclusive)**.

This proposal outlines our approach, our team, the methodology for the Scope of Works, costs, exclusions and qualifications.

Since Core4 was established in 2003, our Projects Division has built a strong reputation for high-quality, innovative solutions.

Our experienced team delivers **value for money for our partners**, working efficiently and responsibly to exceed expectations.

I would welcome the opportunity to talk further with you about our proposal. Please feel free to contact me on 0417 575 444 and I look forward to hearing from you.

Yours sincerely

David Whitrod
Managing Director
P 0417 575 444
E dwhitrod@core4service.com





PROPOSAL

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THE WAY WE WORK

I. Our Approach

1.1 Project Overview

The project will be divided into three stages; 1. Pre-shutdown, 2. Shutdown, 3. Post Shutdown. The shutdown period only applies to the gaming room although other areas will need to be closed during the works; toilets and gaming room DOSA. The Shutdown programme will be forwarded after confirmation from suppliers and discussions with the venue, however It is intended to Close the Gaming Room from late Sunday night and reopen 5pm Thursday night.

The other pre and post shut down works will generally occur between the hours of 3am and 9am unless otherwise agreed with the venue. The amenities works will occur during normal hours.

A design and tender process has been completed and we can present an indicative price of **\$557,045.89 excluding GST.**

Core4 values the opportunity to continue working with you. We will deliver the same personalised service and meticulous efficiency that we believe came through in our recent project partnerships.

“Your partners in
smarter projects”

1.2 Timeframe

Core4 has a proven track record in delivering results on time. After we consult with you and before we start on-site, we will submit a program of works for your approval.

An indicative timeframe is provided below. This assumes works can be completed without delays by suppliers of fittings and fixtures, works for the internal areas are expected to take 3 weeks from on-site commencement.

Figure 1 – Pre-start Timeline

The following is indicative and yet to be confirmed with suppliers and the venue.

Project milestone	Task	Start date	Finish date
OLGR Approvals	Certification required	21/8/22	21/9/22
Ordering and manufacturing	Order and manufacture materials	21/8/22	19/9/22
Stage1 Pre shutdown	Out of hours works	19/9/21	25/9/22
Stage2 Shutdown	Gaming room closed	25/9/22	9/9/22
Stage3 Post Shut down	Out of hours works	30/9/22	7/10/22

Figure 2 – Construction Program

Yet to be confirmed.

More information on Core4 is available in the About Core4 section below,
and on our website at www.core4service.com.au



2. COST PLUS PROPOSAL

2.1 The Intent

The Cost-Plus approach is a contractual tool that is designed to provide an open-book approach. This approach reduces risk on the contractor and subsequently reduces margins and contingencies.

We intend to take ownership of this project and jointly make decisions with the client. Core4 will manage the process and the client can be as involved as they would like to be.

We will agree on different levels of approval to streamline the administration and approval process. Larger value contracts will have higher interaction with the client. This allows for quick, sometimes reactive works (for example; an accidentally burst pipe) to be actioned to minimise disruption to the occupants and the program.

2.2 Cost Plus Margin

Subcontractors and purchases – Cost Plus 10%

We propose to manage the lower value, minor sub-contractors as traditional subcontractors. However, the approach would still be open book wherever practicable. That is, all subcontractors engaged prior to works commencing onsite will be tendered and reviewed as part of the project package.



2.3 Site Management – Fixed Price

The cost for management of the site by Core4 can be predetermined and is based on the program nominated above. For this reason this component will be quoted and fixed.

Site management - \$21,820.00 + GST

- Site manager for night works
- Site manager for day works
- Site labourer for night works
- Site labourer for day works
- Provision of skips
- Ongoing site cleaning

Works to be completed by Site manager and Site labourer

- Hoarding installation
- Surface protections
- Ongoing cleaning
- Minor trades tasks necessary to avoid variations by subcontractors.
 - This is intended to limit the potential for variations, not eliminate them

2.4 Preliminaries – Fixed Price

The cost for delivery of the preliminary items by Core4 can be predetermined and is based on the program nominated above. For this reason this component will be quoted and fixed.

The preliminaries included in this proposal are:

Compilations of drawings - \$2,500.00 + GST

- Provide suitable drawings for concept agreement with AVC
- Provide suitable drawings for construction of joinery
- Provide set out drawings for construction
 - Assumes existing drawings are available
 - Includes two client revisions

Please note: No allowance for building permit compliant drawings.

Building Preliminaries - \$2,700.00 + GST

- Pay for QLeave
 - Insurances
- No allowance for building permit, certification, fire or structural engineering

Contract management - \$8,500.00 + GST

- Contract administration
- Management AVC supplied contractors
- Project Management

2.5 Trades work by Core4 – No margin

We may find that better value can be achieved by using Core4 employed staff to carry out some of the sub trade work instead of engaging third parties. Where this is the case we will provide a fixed price quotation and discuss the options with the client. There is no obligation on the client to use Core4 trades. Where works are completed by Core4 **no margin** shall apply.

2.6 Contingency

It is good practise within the construction industry to allow a contingency to cover unknown or unexpected costs. We have included an allowance of under 5% for this reason. We will not use this contingency without previous approval.

3 Scope of works

Please refer to the attachment for the included scope of works.

Where sub-trade quotes do not include the full scope we have added an allowance.





4 Tendered Cost Schedule

	Trade	Winning Co.	Amount	Margin	Sum
1	Demolition	Core4	\$16,460.00	10%	\$16,460.00
2	Electrical	KTM	\$17,280.00	10%	\$19,008.00
3	Plumber	Capital	\$3,294.00	10%	\$3,623.40
4	Plumbing Supplies	Tradelink	\$1,972.00	10%	\$2,169.20
5	Joinery and Bar modifications	CSF	\$113,644.00	10%	\$125,008.40
6	Tiling	Square	\$1,902.30	10%	\$2,092.53
7	Painters	Babis	\$48,500.00	10%	\$53,350.00
8	Electrical Fitting Supply	Various	\$8,668.00	10%	\$9,534.80
9	Tile Supply	Beaumonts	\$2,017.65	10%	\$2,219.42
10	Building works	Core4	\$101,230.00	10%	\$101,230.00
11	Cleaning	Cleaning Solutions	\$1,700.00	10%	\$1,870.00
12	Carpet replacement	FXtra	\$83,200.00	10%	\$91,520.00
13	Shade Sails	Coastwide	\$11,636.36	10%	\$12,799.60
14	Site Management	Core4		Fixed Price	\$21,820.00
15	Preliminaries	Core4		Fixed Price	\$13,700.00
16	Contingency			Allowance	\$30,000.00
				Sub Total	\$506,405.35
				GST	\$50,640.54
				TOTAL	\$557,045.89

5 CLARIFICATIONS

Please note the following assumptions, qualifications, and exclusions.

Assumptions & Qualifications:

- Compliance: We assume the building is currently compliant with the Building Act, Building Regulations, relevant Australian Standards, current Workplace Health and Safety Guidelines.
- We have assumed modifications to wall surfaces are possible without modifying structures or services contained within the enclosure.
- Client is responsible for
 - Packaging and security of high value items
 - Removal of loose items from surfaces within the works areas
 - Bills for services during the works
 - Electricity
 - Water
- Upgrades to switchboards, power and lighting circuits: It is assumed these are all functional and usable
- Product selection and warranty:
 - All products have been selected as per the tender documentation unless otherwise noted. Where they have not been specified, we have allowed for medium to high-level finishes.
 - Manufacturer's warranties will be passed to the client upon completion.
 - Should a specified product not be available we will seek approval of a suitable replacement before purchasing.
- Warranty will only apply to works directly associated with Core4's work. Warranties to be provided on completion.
- The above works have been quoted as one project, deleted items may affect the price of others.

Exclusions:

- Engineering and building permits as should not be required
- Structural repairs to subfloor
- Repairs to existing or 2nd hand equipment
- Asbestos or lead paint management
- Structural and make good works to structures unless stated above.
- Bin hire for general tenancy rubbish
- As-built drawings
- Retention
- Latent Conditions.

Minor Works Contract

Executed

Executed in accordance with section 127 of the *Corporations Act 2001* by **The Grape Management Pty Ltd**:

Director Signature

Print Name

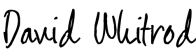
Executed in accordance with section 127 of the *Corporations Act 2001* by **Whitrod Commercial Building Services Pty Ltd**

Witness Signature

Print Name

Director/Secretary Signature

Print Name

DocuSigned by:

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Sole Director

David Raymond Whitrod

Print Name

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