

Master Builders — CBC

Commercial Building Contract

Contractor to Principal



Commercial Building Contract

SCHEDULE

(CBC) (07/2018.7)

BETWEEN**ITEM 1 - PRINCIPAL** (Clause 1)

Business name (if applicable)	The Body Corporate for Toowong Place CTS16841		
Trading name (if applicable)			
Contact name/s	Cath McAuliffe Steve McAuliffe		
Address	31 Station Road Indooroopilly QLD 4068		
ABN (if applicable)			
Phone 1	0407 653 475	Phone 2	0400 090 822
Email address	cath@bcmtrading.com		
Facsimile number	mcauliffe@bcmtrading.com		

AND**ITEM 2 - CONTRACTOR** (Clause 1)

Name	Whitrod Commercial Building Services Pty Ltd		
	(as it appears on the QBCC licence)		
Trading as	Core4 AUS		
Address	7/121 Newmarket Road Windsor QLD 4030		
ABN	34 118 244 965	QBCC licence number	1096827
Phone 1	07 3352 3196	Phone 2	
Email address	worksau@core4service.com		
Facsimile number			

ITEM 3 - CONTRACT PRICE (GST exclusive) (Clause 1)

(a) Fixed Price Component (includes Deposit in Item 4)	\$76,163.28
(b) Prime Cost Items (see Part A of the Appendix)	\$0.00
(c) Provisional Sums (see Part B of the Appendix)	\$0.00
(d) Contract Price (a+b+c) (GST exclusive)	\$76,163.28
(e) GST on Contract Price	\$7,616.33
(f) GST Inclusive Contract Price (d+e)	\$83,779.61

ITEM 4 - DEPOSIT (Clause 1 and 11.5)

Deposit (percentage of Contract Price)	20%
	\$16,755.92

ITEM 5 - SCOPE AND EXTENT OF THE CONTRACT WORKS (Clause 1)

Bathroom refurbishment works, as per annexed CORE 4 quotation # 46365_V3.





ITEM 6 - LAND (Clauses 1 and 14)

Address	50 Sherwood Road Toowong QLD 4066		
Lot no.		Plan type (e.g. RP)	
Local government	Brisbane City Council		

ITEM 7 - AUTHORISED REPRESENTATIVE/AGENT (Clause 1 and 12.1)

Contractor's Representative (if applicable)	Bruce Davie 1300 267 333 worksau@core4service.com
Principal's Agent (if applicable)	Cath McAuliffe 0407 653 475 cath@bcmtrading.com

ITEM 8 - CONTRACTOR'S MARGIN (Clause 1)

Contractor's Margin (if nothing stated, 20%)	20%
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ITEM 9 - DATE FOR PRACTICAL COMPLETION (Clauses 1 and 18.1)

Date for Practical Completion	
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ITEM 10 - DEFECTS LIABILITY PERIOD (Clauses 1 and 20)

Defects Liability Period (if nothing stated, twelve (12) months)	12 Months
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ITEM 11 - FINANCE (Clause 3)

Is this Contract conditional on the Principal obtaining loan approval from the Lender	☐ Yes ☒ No
Lender	
Loan Amount	
Loan Approval Date	

ITEM 12 - RETENTION AMOUNT (Clause 5.1)

Percentage to be retained from each progress payment (maximum 10%)	0%
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ITEM 13 - CONTRACT WORKS POLICY (Clause 9.2)

Party responsible for insuring the Works (if nothing stated, the Contractor)	☒ Contractor ☐ Principal
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ITEM 14 - PUBLIC LIABILITY INSURANCE (Clause 9.3)

Amount of Public Liability Insurance (if nothing stated, \$10 million per occurrence)	\$20,000,000.00
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ITEM 15 - ACCESS TO THE SITE (Clauses 14.1 and 14.2)

Party responsible for Site access (if nothing stated, the Principal)	☐ Contractor ☒ Principal
Date for providing free and uninterrupted occupation of the Site	

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ITEM 16 - INCLEMENT WEATHER ALLOWANCE (Clause 15.3)

Inclement Weather allowance	0 Days
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ITEM 17 - DELAY COSTS (Clause 16)

Delay costs rate	\$350.00 per Day
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ITEM 18 - LIQUIDATED DAMAGES (Clause 19.1)

Liquidated damages rate	\$0.00 per Day
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Limit on Liquidated damages	\$0.00
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ITEM 19 - PROGRESS CLAIMS (Clause 22.1)

Progress Claims are to be submitted each	☐ Week ☐ Fortnight ☒ Month
on the	Last day of each month Day of the period

ITEM 20 - PAYMENT PERIOD (Clause 22.3)

Time for payment of a progress claim or a Final Claim after the Day on which the Principal receives the claim is	
7 Days	(if nothing stated, 10 Business Days) (maximum 15 Business Days)

ITEM 21 - INTEREST (Clause 22.6)

Interest rate	20
(if nothing stated, the rate stated in section 67P of the <i>Queensland Building and Construction Commission Act 1991</i>)	

ITEM 22 - SPECIAL CONDITIONS (Clause 32)

Are there any special conditions forming part of the Contract	☒ Yes ☐ No
(if yes, complete Part E of the Appendix)	

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APPENDIX

APPENDIX

THE **APPENDIX** TO THE **SCHEDULE** MUST BE COMPLETED WHERE APPLICABLE.

APPENDIX A - ALLOWANCES FOR PRIME COST ITEMS (if applicable)

This is the read in conjunction with Clause 6 of the General Conditions

Description of each Prime Cost Item	Quantity	Allowance per unit (GST exclusive)	Total allowance for the Prime Cost Item (GST exclusive)
1.			\$0.00
		Total	\$0.00

APPENDIX B - ALLOWANCES FOR PROVISIONAL SUMS (if applicable)

This is the read in conjunction with Clause 6 of the General Conditions

Description of each Provisional Sum	Total allowance for the Provisional Sum (GST exclusive)
1.	
Total	\$0.00

APPENDIX C - DRAWINGS AND SPECIFICATIONS

DRAWINGS

Drawing No.	Issue	Prepared by	Brief description of drawing
# 46365	A	Rohini Chatterjee	Concept drawing package, Toowong Place Bathroom Refurbishment.

SPECIFICATIONS

	Details
1.	CORE 4 Quotation # 46365_V3, Toowong Place CTS16841.

APPENDIX D - OTHER DOCUMENTS

BILL OF QUANTITIES (set out relevant sections of BOQ)

	Details
1.	

OTHER DOCUMENTS

	Details
1.	



APPENDIX E - SPECIAL CONDITIONS (Item 22) (Clause 32)

Any Special Conditions in addition to, or in amendment of, the General Conditions must be set out below.
(Number each Special Condition - e.g. SC1, SC2 - or, if applicable, refer to the specific clause in the General Conditions affected).

Special Condition No.	General Condition affected	Details
SC-1.	Practical Completion	The date for practical completion may vary as it is dependant on the start date and weather conditions. Practical completion will be achieved 4 weeks after commencement of works on site.

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AGREEMENT

AGREEMENT

The **Contractor** and the **Principal** agree that the **Contractor** is to carry out and complete the **Works**, and the **Principal** is to pay the **Contractor** the **Contract Price**, as adjusted under the **Contract**, for the **Works** in accordance with the provisions of the **Contract**.

Signed by, or for and on behalf of, the **CONTRACTOR**

Signature	DocuSigned by: <i>Bruce Davie</i> 267425BED3C449F...	Printed name	BRUCE DAVIE
		Date	29/4/2024 07:06 AEST

Signed by, or for and on behalf of, the **PRINCIPAL**

Signature 1	DocuSigned by: <i>Cath McAuliffe</i> CDC53A007B084E2...	Printed name	CATH MCAULIFFE
		Date	24/4/2024 16:18 AEST

Signature 2	DocuSigned by: <i>Steve McAuliffe</i> 2E581F2E30D742E...	Printed name	STEVE MCAULIFFE
		Date	23/4/2024 12:10 AEST

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General Conditions - Commercial Building Contract

1	DEFINITIONS
	NOTE: In the Contract , certain words and phrases used throughout are defined, and are shown in bold when used (e.g. Principal).
	In the Contract , except where the context otherwise requires:
Act	means the <i>Queensland Building and Construction Commission Act 1991</i> ;
Appendix	means the Appendix to the Schedule of the Contract ;
Business Day	means a Day that is not: - a Saturday or Sunday; or - a public holiday in the place in which any relevant act is to be or may be done;
Commission	means the Queensland Building and Construction Commission;
Contract	means these general conditions, any special conditions set out in Part E of the Appendix , the Schedule , the Drawings , the Specifications , and anything else annexed to, or incorporated by reference into, the Contract ;
Contract Price	means the amount stated in Item 3 of the Schedule , as adjusted under the Contract ;
Contract Works Policy	means a policy of insurance providing indemnity to the Contractor , the Principal , any lender (if so required by the Principal), and the Contractor's subcontractors against liability for physical loss, destruction or damage to the Works , or to materials and goods on or adjacent to the Land ;
Contractor	means the person stated in Item 2 of the Schedule and includes the Contractor's permitted assignees and transferees;
Contractor's Margin	means the margin stated in Item 8 of the Schedule to be applied in accordance with the Contract ;
Contractor's Representative	means the person stated in Item 7 of the Schedule ;
Date for Practical Completion	means the date stated in Item 9 of the Schedule by which the Works are to be brought to Practical Completion , as adjusted under the Contract ;
Date of Practical Completion	means the date on which the Works reach Practical Completion ;
Days	means calendar days;
Defects Liability Period	means the period stated in Item 10 of the Schedule commencing on the Day following the Date of Practical Completion ;
Deposit	means the amount stated in Item 4 of the Schedule to be paid by the Principal to the Contractor under Clause 11.5 of the Contract ;
Direction	includes, but is not limited to, any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
Drawings	means the plans (including, but not limited to, elevations, sections and details relating to the Works) and designs relating to the Works described in Part C of the Appendix ;
Inclement Weather	means the existence of weather conditions, including, but not limited to, rain, wind, heat, cold, humidity, hail, snow, sleet, dew, fog, storm, dust, or flood, and their after-effects which have an adverse impact on the diligent, usual or safe carrying out of the Works by the Contractor or the Contractor's subcontractors;
Information System	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;
Land	means the land described in Item 6 of the Schedule on which the Works are to be carried out;
Land Owner	means a registered owner of the Land as stated on the relevant certificate of title;
Land Owner's Consent	means the written consent obtained by the Principal (if required) under Clause 14.4(b) from all Land Owners consenting to the carrying out of the Works by the Contractor on the Land ;
Latent Condition	means any physical condition, including artificial things, on or around the Land , including surface and subsurface conditions, which differ materially from the physical conditions reasonably expected by the Contractor at the date of the formation of the Contract ;
Possession	means when the Works , or any part of the Works , are taken over, occupied or used by the Principal or the Principal's employees, other contractors or agents;

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Practical Completion	means that stage of the Works when the Works are completed in compliance with the Contract , including all Drawings and Specifications , without any defects or omissions other than minor defects or minor omissions that will not unreasonably affect occupation;
President	means the President of Master Builders Queensland;
Prime Cost Item	means an item (for example, a fixture or fitting) that either has not been selected, or the price of which is not known, at the date of the formation of the Contract , and the cost for the supply and delivery of which the Contractor has made a reasonable allowance in the Contract ;
Principal	means the person stated in Item 1 of the Schedule and includes the Principal's administrators, permitted assignees and transferees;
Principal's Agent	means the person stated in Item 7 of the Schedule ;
Provisional Sum	means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under the Contract for which the Contractor , after having made all reasonable enquiries, could not state a definite amount at the date of the formation of the Contract ;
Schedule	means the schedule contained in the Contract ;
Security	means any moneys, bank guarantees, bonds or other valuable security provided pursuant to Clause 5;
Site	means that part of the Land necessary to be occupied and used by the Contractor for the construction of the Works ;
Specifications	means the specifications relating to the Works described in Part C of the Appendix ;
Statutory Requirements	includes, but is not limited to, any legislation, delegated (including, but not limited to, subordinate) legislation, permit, approval, or other law or legal requirement, and any Direction from, or requirement of, a local government or other entity having jurisdiction over the carrying out of the Works ;
Submission Date	means the date on which the Contractor submits (as the case may be) a progress claim or the Final Claim to the Principal ;
Substantial Breach	means a party's failure or refusal to perform a substantial obligation under the Contract ;
Tribunal	means the Queensland Civil and Administrative Tribunal established under the <i>Queensland Civil and Administrative Tribunal Act 2009</i> ;
Variation	whether agreed by the parties, deemed under the Contract or otherwise, means to vary the Works by: - changing the nature or scope of the Work that the Contractor is required to carry out under the Contract, including the omission of work from the Works; or - changing the manner or sequencing in which the Contractor is required to carry out the Work under the Contract;
WHS Act	means (separately and together) the <i>Work Health and Safety Act 2011</i> (Qld) as amended from time to time and includes related Acts and Regulations;
WHS Management Plan	means a document prepared by the Contractor in respect of the Works which sets out the way in which the Works are to be carried out in order to comply with the requirements of the WHS Act ; and
Works	means the whole of the work to be carried out by the Contractor under the Contract , a description of which is contained in Item 5 of the Schedule , and includes Variations to the Works .

2 INTERPRETATION

In the **Contract**:

- headings and explanatory notes do not form part of the **Contract**, and cannot be used in its interpretation;
- words in the singular include the plural and vice versa, according to the requirements of the context;
- references to a person include an individual, firm or body corporate or unincorporated; and
- if the time for making any payment or doing any other act required or permitted by the **Contract** falls on a **Day** which is not a **Business Day**, then the time for making the payment or doing the act is deemed to be the next **Business Day**.

3 FINANCE

3.1 **Contract subject to loan approval**

If stated in Item 11 of the **Schedule** that the **Contract** is conditional on the **Principal** obtaining from the Lender stated in that Item, on or before the Loan Approval Date stated in that Item, approval for a loan not less than the Loan Amount stated in that Item, the **Principal** must:

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- a) apply to the Lender for the loan approval within five (5) **Business Days** after the date of the formation of the **Contract**; and
- b) give the **Contractor** a written notice within one (1) **Business Day** after the Loan Approval Date stating whether the **Principal** has obtained the loan approval.

3.2 **Right to terminate Contract if loan approval rejected**

If the **Principal** has not obtained the loan approval by the Loan Approval Date stated in Item 11 of the **Schedule**, then, within two (2) **Business Days** after the Loan Approval Date, the **Principal** may notify the **Contractor** in writing that the **Contract** is terminated for failure to obtain the loan approval, and provide evidence satisfactory to the **Contractor** that the Lender has assessed and rejected the **Principal's** loan application.

3.3 **Consequence of failure to notify under Clause 3.1(b) or 3.2**

If no notice under Clause 3.1(b) or 3.2 is given by the **Principal** to the **Contractor** within two (2) **Business Days** after the Loan Approval Date stated in Item 11 of the **Schedule**, then the **Contractor** may terminate the **Contract** by giving a written notice of termination to the **Principal** within five (5) **Business Days** of the Loan Approval Date stated in Item 11 of the **Schedule**.

3.4 **Termination of the Contract**

If the **Contract** is terminated under this Clause, the **Contractor** must refund to the **Principal** the **Deposit** less any costs incurred by the **Contractor** that were incurred with the agreement of the **Principal** up to the date of termination of the **Contract** under this Clause.

4 **DISCREPANCIES AND AMBIGUITIES**

4.1 **Parties to consult if discrepancy or ambiguity found**

If either party finds any discrepancy or ambiguity in the **Contract**, that party must notify the other party in writing. The parties agree to consult with each other in an attempt to resolve the discrepancy or ambiguity. Failing resolution, the discrepancy or ambiguity is to be resolved in accordance with Clause 4.2, or if that Clause should not resolve the discrepancy or ambiguity, then in accordance with Clause 28. If the resolution of the discrepancy or ambiguity causes the **Contractor** to incur more or less cost than the **Contractor** could reasonably have anticipated at the date of the formation of the **Contract**, the difference shall be valued under Clause 21.7.

4.2 **Order of precedence of documents**

Subject to Clause 4.1, any discrepancy or ambiguity in or between any documents comprising the **Contract** is to be resolved by adopting the following order of precedence:

- a) any special conditions set out in Part E of the **Appendix**;
- b) these general conditions;
- c) the **Drawings**;
- d) the **Specifications**; and
- e) any other contract documents.

4.3 **Figured dimensions prevail over scaled dimensions**

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions prevail.

5 **SECURITY**

5.1 **Contractor's Security**

Subject to the **Contract**, the **Principal** may deduct from any amount due to the **Contractor**, and retain, the percentage of the amount due stated in Item 12 in the **Schedule** until the total amount retained by the **Principal** equals 5% of the **Contract Price** as agreed at the date of the formation of the **Contract**.

5.2 **Secure Contractor's performance**

The amount retained by the **Principal** under Clause 5.1 shall secure the performance of the **Contractor's** obligations under the **Contract** including the **Contractor's** obligation to rectify defects.

5.3 **Replacement Security**

- a) In replacement of, or instead of, all or any part of the amount retained, or that could be retained, by the **Principal** under Clause 5.1, the **Contractor** may, at any time, give to the **Principal** one or more bank guarantees, bonds or other valuable securities. Within two (2) **Business Days** after receipt of replacement security, the **Principal** shall release all or that part of the amount retained by the **Principal** under Clause 5.1 for which the **Contractor** has given to the **Principal** replacement security.
- b) In replacement of, or instead of, a bank guarantee, bond or other valuable security provided under Clause 5.3(a), the **Contractor** may, at any time, elect to replace the bank guarantee, bond or other valuable security with cash retention. The **Principal** shall retain the amount so elected by the **Contractor** from the next payment made to the **Contractor** under Clause 22 and shall return the bank guarantee, bond or other valuable security to the **Contractor** within two (2) **Business Days** of doing so.

5.4 **Recourse to Security**

The **Principal** may use, or convert and use, all or any part of the **Security** held under this Clause to obtain an amount due from the **Contractor** to the **Principal** under the **Contract** only if:

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- a) the **Principal** gives the **Contractor** a written notice of the **Principal's** intention to use, or convert and use, the **Security**;
- b) the notice was given within 28 **Days** after the **Principal** becomes aware, or ought reasonably to have become aware, of the **Principal's** right to obtain the amount due from the **Contractor**; and
- c) the notice sets out the proposed use and the amount owed.

5.5 Reduction of Security

Upon **Practical Completion**, the **Principal's** entitlement to the **Security** is reduced to 2.5% of the **Contract Price**.

5.6 Release of Security

Within five (5) **Business Days** after the expiration of the **Defects Liability Period**, the **Principal** shall release to the **Contractor** any **Security** held by the **Principal** under the **Contract**.

6 PRIME COST ITEMS AND PROVISIONAL SUMS
6.1 Principal to provide Directions relating to Prime Cost Items or Provisional Sums

If the **Contract** includes any **Prime Cost Items** or **Provisional Sums** in Part A or Part B of the **Appendix**, the **Principal** must give to the **Contractor** all necessary written and signed **Directions** requested by the **Contractor** regarding the selection or supply of the item or work represented by a **Prime Cost Item** or **Provisional Sum** within five (5) **Business Days** of the **Contractor's** request.

6.2 Contractor to provide notice to Principal where a Prime Cost Item is unavailable

If any **Prime Cost Item** selected by the **Principal** is unavailable or will, in the opinion of the **Contractor**, unduly delay the progress of the **Works**, the **Principal** must specify in writing to the **Contractor** an alternative item within five (5) **Business Days** of the **Contractor's** request to do so.

6.3 If Principal fails to specify alternative Prime Cost Item

If the **Principal** fails to comply with Clause 6.2, the **Contractor** may select and supply an alternative **Prime Cost Item** as near as reasonably possible in quality to the originally selected **Prime Cost Item**.

6.4 Contract Price adjustment where cost is less than allowance

If the actual cost of a **Prime Cost Item**, or the actual cost of the work in respect of a **Provisional Sum**, is less than the total amount allowed for that item or work in Part A or Part B of the **Appendix**, the difference is to be deducted from the **Contract Price**.

6.5 Contract Price adjustment where cost exceeds allowance

If the actual cost of a **Prime Cost Item**, or the actual cost of the work in respect of a **Provisional Sum**, exceeds the total amount allowed for that item or work in Part A or Part B of the **Appendix**, the excess amount plus the **Contractor's Margin** is to be added to the **Contract Price**.

7 LATENT CONDITIONS
7.1 Contractor to notify Principal of Latent Condition

The **Contractor** must, on becoming aware of a **Latent Condition**, promptly give to the **Principal** a written notice describing the **Latent Condition**, the **Contractor's** estimate of the work required to overcome the **Latent Condition**, and the **Contractor's** estimate of the time required to overcome the **Latent Condition**.

7.2 Principal's written notice

Within two (2) **Business Days** after receiving a notice under Clause 7.1 provided by the **Contractor**, the **Principal** must give to the **Contractor** a written notice setting out full details of the work that the **Contractor** is required to carry out to remedy or otherwise overcome the **Latent Condition**, together with all necessary specifications, drawings and other design documents for that work.

7.3 Variation due to Latent Condition

The **Contractor** must vary the **Works** to overcome any notified **Latent Condition** by undertaking the works as directed by the **Principal** under Clause 7.2. The **Variation** will be valued in accordance with Clause 21.7.

7.4 Principal's failure to agree to Variation

If the **Principal** fails to agree to a **Variation** required to overcome a **Latent Condition** in writing, then the dispute arising as a result is to be resolved in accordance with Clause 28.

8 STATUTORY REQUIREMENTS
8.1 Compliance with Statutory Requirements

The **Contractor** must:

- a) comply with all **Statutory Requirements** relating to the **Works**;
- b) obtain any consent, approval and permit that are expressly required to be obtained and paid for by the **Contractor** under the **Contract**; and
- c) give any notice or report, and pay any fee, in order to comply with Clause 8.1(a).

8.2 Increased cost of compliance

If the cost to the **Contractor**:

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- a) in complying with all **Statutory Requirements**, increases after the date that is two (2) weeks prior to the date of the formation of the **Contract**; or
- b) in carrying out the **Works**, increases after the date that is two (2) weeks prior to the date of the formation of the **Contract** as a result of the introduction or increase of any fee, tax, duty, charge, levy, other impost or regulation, the amount of the increase is to be added to the **Contract Price**.

8.3 **Variation due to compliance with Statutory Requirements**

If the **Contractor's** compliance with a **Statutory Requirement** requires a **Variation** to the **Works**, the **Principal** must, within five (5) **Business Days** after receiving a variation document provided by the **Contractor** that complies with the requirements set out in Clause 21.6, give to the **Contractor** a written notice agreeing to the **Variation**.

8.4 **Principal's failure to agree to Variation**

If the **Principal** fails to agree to a **Variation** required to comply with a **Statutory Requirement** in writing, then the dispute arising as a result is to be resolved in accordance with Clause 28.

9 **INSURANCE**

9.1 **Statutory insurance obligations**

The **Contractor** must effect and maintain all policies of insurance, including, for example, WorkCover in respect of its workers, required to be effected by the **Contractor** by a **Statutory Requirement** relating to the **Works**.

9.2 **Contract Works Policy**

The party stated in Item 13 of the **Schedule** must effect and maintain a **Contract Works Policy** for the full insurable value of the **Works** from the date that is five (5) **Business Days** after the date of the formation of the **Contract**, but no later than two (2) **Business Days** prior to the date stated in Item 15 of the **Schedule**, until the **Date of Practical Completion**. The **Contract Works Policy** must note the **Principal**, the **Contractor** and any lender (if so required by the **Principal**) as interested parties to the policy.

9.3 **Public liability insurance to be provided by Contractor**

The **Contractor** must effect and maintain a public liability insurance policy for an amount not less than the amount stated in Item 14 of the **Schedule** from the date that is five (5) **Business Days** after the date of the formation of the **Contract**, but no later than two (2) **Business Days** prior to the date stated in Item 15 of the **Schedule**, until the expiry of the **Defects Liability Period**. The public liability insurance policy must cover the **Contractor** and the **Principal** for their liabilities to third parties in respect of personal injury to, or death of, any person (other than liability which is required by law to be insured under a workers compensation policy of insurance), and loss or damage to property except the **Works**, arising out of, or in connection with, the **Works**.

9.4 **Responsibility if loss caused by Principal**

To the maximum extent permitted by law, the **Contractor** is not liable, and does not provide any indemnity, to the **Principal**, the **Principal's** employees or agents, or any other person for whom the **Principal** is responsible for any injury or death to any person, or loss or damage to any property, which arises as a result of any act or omission by the **Principal**, or any person for whom the **Principal** is responsible, and in respect of such claims the **Principal** must indemnify the **Contractor**.

9.5 **Evidence of policies to be provided on written request**

A party required to effect and maintain a policy of insurance under this Clause shall:

- a) effect and maintain the policy of insurance with an insurer; and
- b) if the other party gives a written notice requesting to view the policy of insurance, make available for the other party to view the current policy of insurance within five (5) **Business Days** after the giving of the notice.

9.6 **Principal's responsibility for insurance**

If the **Works** involve the alteration, addition to, or repair of an existing building, then the **Principal** must effect and maintain an insurance policy for the duration of the **Contract** which provides cover for the full replacement value of any existing building affected by the **Works**, and any contents thereof, against any loss or damage, and must make a copy of the policy available to the **Contractor** to view if the **Contractor** makes a request in writing.

10 **CONTRACTOR'S WARRANTIES**

10.1 **Warranties relating to the carrying out of the Works**

The **Contractor** warrants that the **Contractor** will carry out the **Works**:

- a) with reasonable care and skill;
- b) in accordance with the **Drawings** and the **Specifications**;
- c) with reasonable diligence; and
- d) in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975*.

10.2 **Warranties relating to suitability of materials**

Subject to Clause 10.3, the **Contractor** warrants that all materials to be supplied by the **Contractor** for use in the **Works**:

- a) will be free from defects and, having regard to generally accepted practices or standards applied in the building and construction industry for the materials, or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, suitable for the purpose for which they are to be used; and

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- b) unless expressly stated otherwise elsewhere in the **Contract** or the parties have agreed in writing otherwise, will be new.

10.3 **Applicability of Clause 10.2**

Clause 10.2 does not apply if:

- a) an architect is the **Principal's Agent**, or the **Contract** is to be administered by an architect engaged by the **Principal**, and the **Contractor** is subject to the **Direction** of the architect for the materials that are to be supplied by the **Contractor**; or
- b) the **Principal** is responsible for nominating the materials to be supplied by the **Contractor** for use in the **Works** notwithstanding any recommendation, representation, suggestion or other approach having been made to the **Principal** by the **Contractor**:
- i) supporting, or approving, the use of the materials; or
 - ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the **Principal** are to be used,
- and there are no reasonable grounds for not using the materials or, if there are reasonable grounds for not using the materials, the **Principal** insists on the materials being used despite written advice to the contrary given to the **Principal** by the **Contractor**.

11 **PRINCIPAL'S OBLIGATIONS**

11.1 **Evidence of capacity to pay the Contract Price**

The **Principal** must, within five (5) **Business Days** of the date of the formation of the **Contract**, but no later than two (2) **Business Days** prior to the date stated in Item 15 of the **Schedule**, provide evidence satisfactory to the **Contractor** that the **Principal** has the financial capacity to pay the **Contract Price**.

11.2 **Contractor may request evidence of capacity to pay**

The **Contractor** may, at any time prior to the **Works** reaching **Practical Completion**, request that the **Principal** provide satisfactory evidence of its capacity to pay the unpaid balance of the **Contract Price**, or the price of any **Variation**, and the **Principal** must, within five (5) **Business Days** of the request, provide such evidence to the **Contractor**.

11.3 **Principal's obligation if capacity to pay is reduced or ceases**

The **Principal** must immediately notify the **Contractor** if at any time during the **Contract**, the **Principal's** capacity to pay the unpaid balance of the **Contract Price** is in any way reduced or ceases.

11.4 **Principal's obligation to pay the Contract Price**

The **Principal** must pay the **Contractor** the **Contract Price** in accordance with the **Contract**.

11.5 **Principal's obligation to pay Deposit**

The **Principal** must pay the **Deposit** to the **Contractor** within five (5) **Business Days** after the date of the formation of the **Contract** or two (2) **Business Days** prior to the date stated in Item 15 of the **Schedule**, whichever is the earlier.

11.6 **Materials supplied by Principal to be new, good and suitable for their purposes**

Unless expressly stated otherwise elsewhere in the **Contract**, if the **Principal** is to supply materials for use in the **Works**, the **Principal** must supply materials which are new, good and suitable for the purposes for which they are to be used and comply with any relevant Australian Standards or Codes, and where requested by the **Contractor**, provide written evidence of the materials' compliance.

11.7 **Documents supplied by Principal**

If the **Principal** supplies any documents to the **Contractor**, the **Principal**:

- a) warrants that the documents or data are, or will be, accurate, suitable for the purposes for which they will be used and appropriate in all respects for the **Land** (including the **Site**);
- b) warrants that the documents or data comply with all **Statutory Requirements** relating to the **Works**;
- c) warrants that all consents, approvals and permits necessary for the lawful commencement of, and the carrying out of, the **Works** have been obtained, and all related fees and charges have been paid, except to that extent which any such necessary consent, approval or permit is expressly required to be obtained and paid for by the **Contractor** under the **Contract**;
- d) acknowledges that it is, and will continue to be, reasonable for the **Contractor** to rely on the documents or data; and
- e) must supply a sufficient number of copies to enable the **Contractor** to perform the **Works**, and to obtain necessary approvals if the **Contractor** is required to do so under the **Contract**.

11.8 **Principal not to interfere with the carrying out of the Works**

- a) The **Principal** must not obstruct, interfere with or hinder the carrying out of the **Works**. The **Principal** must take all reasonable steps to prevent all others from obstructing, interfering with or hindering the carrying out of the **Works**.

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- b) If the **Principal** or any person authorised by the **Principal** obstructs, interferes with or hinders the carrying out of the **Works**, the **Principal** must indemnify the **Contractor** against the consequences of any delay, and any additional costs incurred by the **Contractor** as a result, if the **Contractor** gives to the **Principal** a written notice advising of the delay or the additional costs within ten (10) **Business Days** of the **Contractor** becoming aware of the obstruction, interference or hindrance.

11.9 **Communications between Principal and Contractor**

The **Principal** must not give **Directions** to the **Contractor's** employees or subcontractors. The **Principal** is not entitled to rely on any statements made or representations given by the **Contractor's** employees or subcontractors other than those personally made or given by the **Contractor** or the **Contractor's Representative** and later confirmed in writing.

11.10 **Principal to pay QLeave levy**

The **Principal** shall arrange and pay all fees associated with the QLeave Portable Long Service Leave levy unless expressly required to be arranged and paid for by the **Contractor** under the **Contract**.

11.11 **Intellectual property rights warranty if Principal provides design**

The **Principal** warrants that:

- a) any **Drawings** or **Specifications** supplied by the **Principal** or the **Principal's Agent**; or
- b) any document which incorporates designs which were prepared:
 - i) under instruction, supervision or direction from the **Principal** or the **Principal's Agent**; or
 - ii) from sketches supplied by the **Principal** or the **Principal's Agent**;

do not infringe any copyright, moral right or other intellectual property right. The **Principal** indemnifies the **Contractor** against all actions, proceedings, claims, demands, costs, losses and damages in respect of any actual or alleged infringement of any copyright, moral right or other intellectual property right by the **Contractor** as a result of the carrying out of the **Works**.

12 **PRINCIPAL'S AGENT**

12.1 **Principal's Agent**

The person stated in Item 7 of the **Schedule** is to act as the **Principal's Agent**. Where no person is stated in Item 7 of the **Schedule**, the **Principal** may, with the prior written consent of the **Contractor** (which must not be unreasonably withheld), appoint a person to act as the **Principal's Agent**. The **Principal's Agent** is to act on the **Principal's** behalf with respect to the administration of the **Contract** and the performance of the **Principal's** obligations under the **Contract**.

12.2 **Acts of Principal's Agent deemed to be those of the Principal**

Any act or omission by the **Principal's Agent** is deemed to be an act or omission of the **Principal** under the **Contract**. Any **Direction** or instruction given by the **Principal's Agent** in writing is deemed to be a **Direction** or instruction given by the **Principal**.

12.3 **Replacement of Principal's Agent**

The **Principal** may, with the prior written consent of the **Contractor** (which must not be unreasonably withheld), replace the **Principal's Agent**.

12.4 **Direction of Principal's Agent**

If the **Principal's Agent** gives the **Contractor** a **Direction** that is not in writing, the **Contractor** may, in the **Contractor's** absolute discretion, disregard the **Direction** (and to avoid doubt, the **Contractor** shall not be obliged to comply with, or otherwise recognise, the **Direction**) until such time as the **Principal's Agent** or the **Principal** has confirmed the **Direction** to the **Contractor** in writing.

13 **PRINCIPAL'S INDEMNITY**

The **Principal** indemnifies, and will keep indemnified, the **Contractor** against any claim, demand, loss, damage, cost, expenses, or liability arising out of:

- a) any negligent act or omission of the **Principal**, the **Principal's** consultants, agents or contractors, or authorised officers of the Lender;
- b) any breach of contract or statutory duty by the **Principal**, the **Principal's** consultants, agents or contractors, or authorised officers of the Lender;
- c) damage which is the unavoidable result of the construction of the **Works** in accordance with the **Contract**;
- d) any claim in respect of the **Principal's** right to have the **Works** carried out;
- e) any defect in the design of the **Works**; and
- f) any claim in respect of any occupier or subsequent owner or occupier of the **Land** or any part of it not covered by Clause 27.1.

The **Contractor** shall take reasonable steps to mitigate any loss or damage caused, or contributed to, by the causes listed in this Clause.

14 **THE LAND**

14.1 **Contractor to have free and uninterrupted occupation of the Site and existing buildings**

By the date stated in Item 15 of the **Schedule**, the **Principal** must provide to the **Contractor** free and uninterrupted occupation of the **Site**, and all reasonably required access to any existing buildings on the **Land** necessary to carry out the **Works**.

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14.2 Access to the Site

- a) The party stated in Item 15 of the **Schedule** is responsible for providing and maintaining access to the **Site** for any persons, vehicles or machinery reasonably necessary for the carrying out of the **Works**.
- b) If the **Site** becomes inaccessible due to any reason beyond the control of the **Contractor**, any costs incurred by the **Contractor** in obtaining sufficient access to the **Site**, together with the **Contractor's Margin**, is to be added to the **Contract Price**.

14.3 Principal's right to inspect Works

- a) On written request by the **Principal**, the **Contractor** must give to the **Principal**, or a person authorised by the **Principal**:
 - i) reasonable supervised access to designated construction areas at the **Site**; and
 - ii) a reasonable opportunity to view any part of the **Works**, provided that the **Contractor's** performance is not obstructed and the **Principal** or authorised person complies with any reasonable direction by the **Contractor** in respect of workplace health and safety.
- b) Access by the **Principal**, or a person authorised by the **Principal**, under this Clause must be during usual business hours or other times as agreed.

14.4 Evidence of title or Land Owner's consent to carry out the Works

If requested in writing by the **Contractor**, the **Principal** must provide to the **Contractor** within five (5) **Business Days** after the **Contractor's** request, either:

- a) satisfactory written evidence of the **Principal's** title to the **Land**, together with full details of any easements, restrictions or covenants which may affect the performance of the **Works**; or
- b) if the **Principal** is not the **Land Owner**, written consent from all **Land Owners** consenting to the carrying out of the **Works** by the **Contractor** on the **Land**, together with satisfactory written evidence of their title to the **Land** and full details of any easements, restrictions or covenants which may affect the performance of the **Works**.

14.5 Evidence of boundaries or position of the Land to be provided by Principal

If requested in writing by the **Contractor**, the **Principal** must, within five (5) **Business Days** after the **Contractor's** request, give to the **Contractor** satisfactory written evidence of the boundaries or position of the **Land**, and the **Principal** warrants that such evidence will be accurate.

14.6 Principal's failure to provide evidence of boundaries or position of the Land

If the **Principal** fails to comply with Clause 14.4 or 14.5, the **Contractor** may, in writing, request the **Principal** to obtain a survey of the **Land**. If the **Principal** fails to obtain a survey within five (5) **Business Days** after the date of the **Contractor's** request, the **Contractor** may arrange for a survey of the **Land** and the cost of the survey, plus the **Contractor's Margin**, is to be added to the **Contract Price**.

14.7 Caveat

The **Principal**:

- a) charges the **Principals** interests in the **Land** with due payment to the **Contractor** of all amounts that may become due to the **Contractor** arising out of, or otherwise in connection with, the **Contract**;
- b) must, if requested by the **Contractor**, promptly deliver an executed mortgage, in terms to the satisfaction of the **Contractor**, acting reasonably, in registrable form to secure the charge;
- c) consents to the **Contractor** lodging a caveat over all or any part of the **Land** to secure the **Contractors** interest in the **Land**;
- d) must, if requested by the **Contractor**, do all things and sign all documents necessary to enable the **Contractor** to lodge a caveat; and
- e) must pay to the **Contractor**, on demand, all stamp duty and registration fees that are payable or paid on the lodgement, withdrawal or release of any caveat or mortgage under this Clause.

15 DELAYS AND EXTENSION OF TIME CLAIMS
15.1 Contractor's claim for an extension of time

Subject to Clause 15.2, the **Contractor** is entitled to an extension of the **Date for Practical Completion** if the progress of the **Works** is delayed as a result of any of the following causes:

- a) a Variation of the **Works** under the **Contract**;
- b) an act or omission of the **Principal**, the **Principal's Agent**, the **Principal's** consultants, other agents or other contractors, or authorised representatives of the Lender stated in Item 11 of the **Schedule**;
- c) a **Latent Condition**;
- d) a breach of the **Contract** by the **Principal**;
- e) a lawful suspension of the **Works**;
- f) claims or proceedings being taken, or threatened to be taken, by a third party that did not arise as a result of any breach by the **Contractor** of the **Contract**;
- g) proceedings being taken, or threatened by, or disputes with, adjoining neighbouring owner or occupier that did not arise as a result of any breach by the **Contractor** of the **Contract**;

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- h) an act of prevention by the **Principal** not otherwise covered by this Clause;
- i) **Inclement Weather**, or any conditions arising as a direct or indirect consequence resulting from **Inclement Weather** (subject to Clause 15.3);
- j) industrial action or civil commotion affecting the **Works**, any persons employed in respect of the **Works**, or the manufacture or supply of materials for the **Works**; or
- k) any other cause not reasonably foreseeable at the date of the formation of the **Contract**, and beyond the reasonable control of the **Contractor**.

15.2 Notice of extension of time

If, at any time prior to the **Works** reaching **Practical Completion**, the **Contractor** believes that the progress of the **Works** was, or will be delayed, as a result of a cause set out in Clause 15.1, the **Contractor** must, within twenty (20) **Business Days** of the **Contractor** becoming, or ought reasonably to have become, aware of the cause and extent of the delay, give to the **Principal** a written claim, signed by or on behalf of the **Contractor**, for a reasonable extension of the **Date for Practical Completion** that sets out the cause and consequences of the delay.

15.3 Extension for delays involving Inclement Weather

With respect to a cause of delay referred to in Clause 15.1(i), the **Contractor** is not entitled to an extension of the **Date for Practical Completion** for any delays resulting from that cause until the allowance for that cause stated in Item 16 of the **Schedule** has been fully exhausted.

15.4 Principal's assessment of claim

Within ten (10) **Business Days** after receiving the **Contractor's** written claim for an extension of the **Date for Practical Completion**, the **Principal** must assess the claim and give written notice to the **Contractor**:

- a) accepting the claimed extension of the **Date for Practical Completion**; or
- b) if the **Principal** disputes the **Contractor's** entitlement to all or any part of the claimed extension of the **Date for Practical Completion**, give the **Contractor** a written notice:
 - i) stating that the **Principal** disputes the claimed extension of the **Date for Practical Completion**;
 - ii) setting out full details of the **Principal's** reasons for the dispute; and
 - iii) granting any part of the claimed extension of the **Date for Practical Completion** that is not disputed by the **Principal**.

15.5 Deemed acceptance

If the **Principal** fails to give written notice in accordance with Clause 15.4, the **Principal** is deemed to have accepted the **Contractor's** entitlement to, and granted, all of the claimed extension of the **Date for Practical Completion**.

15.6 Principal's discretion

Notwithstanding that the **Contractor** is not entitled to an extension of the **Date for Practical Completion** under this Clause, the **Principal** may, at any time prior to the submission by the **Contractor** of a Final Claim in accordance with Clause 22.2, extend the **Date for Practical Completion** for any reason by giving the **Contractor** a written notice setting out the extension of the **Date for Practical Completion**.

16 DELAY COSTS

If the **Contractor** is granted an extension of the **Date for Practical Completion** under Clause 15 for a cause set out in Clause 15.1(a) to (h), and (k), the **Contractor** is entitled to:

- a) if a rate is stated for delay costs in Item 17 of the **Schedule**, delay costs at that rate for each **Day** that the progress of the **Works** is delayed as a result of the relevant cause; or
- b) if a rate is not stated for delay costs in Item 17 of the **Schedule**, the reasonable costs (including any additional administration, management or supervisory costs, and overhead) the **Contractor** incurs as a consequence of the delay resulting from the relevant cause,

provided that the **Contractor** gives to the **Principal**, a written claim for such delay costs and, if Clause 16(b) applies, details of the reasonable costs incurred by the **Contractor**, by no later than the date that is twenty (20) **Business Days** after the extension of the **Date for Practical Completion** is granted under Clause 15.

17 SUSPENSION OF THE WORKS
17.1 Contractor's entitlement to suspend the Works

The **Contractor** may, without prejudice to any of the **Contractor's** other rights or remedies under the **Contract** or at law, suspend performance of the **Works** where the **Principal** is in **Substantial Breach** of the **Contract**.

17.2 Written notice to suspend the Works

The **Contractor** must immediately notify the **Principal** in writing of the suspension and the grounds for the suspension (including the **Substantial Breach** or **Breaches** by the **Principal**).

17.3 Principal to remedy Substantial Breach within 5 Business Days

The **Principal** must remedy the **Substantial Breach** or **Breaches** set out in the suspension notice given to the **Principal** in accordance with Clause 17.2 within five (5) **Business Days** after receiving the notice from the **Contractor**.

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17.4	Contractor must recommence the Works within 5 Business Days of Principal remedying breach The Contractor must recommence the carrying out of the Works within five (5) Business Days of the Substantial Breach or Breaches set out in the suspension notice being remedied by the Principal .
18	PRACTICAL COMPLETION
18.1	Date for Practical Completion The Contractor must bring the Works to Practical Completion by the Date for Practical Completion .
18.2	Contractor's notice of anticipated Practical Completion Not less than five (5) Business Days before the Day on which the Contractor anticipates bringing the Works to Practical Completion , the Contractor must give to the Principal written notice of the Day on which the Contractor anticipates bringing the Works to Practical Completion .
18.3	Contractor's notice of Practical Completion The Contractor must give a written notice to the Principal when the Contractor believes that the Works have reached Practical Completion .
18.4	Principal's response to notice of Practical Completion If the Principal disputes that the Works have reached Practical Completion , the Principal shall, within five (5) Business Days after receipt of the notice under Clause 18.3, give the Contractor a written notice: a) stating that the Principal disputes that the Works have reached Practical Completion ; and b) setting out full details of the further work that the Principal believes is required to be carried out for the Works to reach Practical Completion .
18.5	Principal's failure to give a notice under Clause 18.4 If the Principal does not give the Contractor a notice in accordance with Clause 18.4, the Works are deemed to have reached Practical Completion on the date of the giving of the notice under Clause 18.3.
18.6	Contractor's response to Principal's notice If the Principal gives the Contractor a notice under Clause 18.4, the Contractor shall: a) if the Contractor disputes that any further work is necessary for the Works to reach Practical Completion , give the Principal a written notice of dispute under Clause 28; or b) if the Contractor does not dispute that further work is necessary for the Works to reach Practical Completion , carry out the further work necessary for the Works to reach Practical Completion and then give the Principal a further written notice under Clause 18.3.
18.7	Possession of the Site On the Works reaching Practical Completion , the Contractor shall give the Principal possession of the Site and the Works .
18.8	Consequences of Principal taking Possession of, occupies, or uses the Works when not entitled to do so If, for any reason, the Principal : a) takes Possession of; b) occupies; or c) uses, the Works , or any part of the Works , when not entitled to do so under the Contract and without the prior consent of the Contractor , the Works , or the relevant part of the Works , are deemed to have reached Practical Completion on the Day that the Principal takes Possession of, occupies, or uses the Works , or that part of the Works , and the Principal is liable to the Contractor for any loss or damage that the Contractor may incur or suffer as a result.
19	LIQUIDATED DAMAGES
19.1	Principal's entitlement to liquidated damages If the Contractor fails to bring the Works to Practical Completion by the Date for Practical Completion , the Principal may give to the Contractor a written claim for liquidated damages at the rate stated in Item 18 of the Schedule for each Day after the Date for Practical Completion until the Date of Practical Completion , or the Day on which the Contract is terminated, whichever is earlier.
19.2	Time for liquidated damages claim The Principal will not be entitled to liquidated damages, or any other monetary consideration (including damages for breach of contract), for any failure by the Contractor to bring the Works to Practical Completion by the Date for Practical Completion unless the Principal gives to the Contractor a written claim for liquidated damages in accordance with Clause 19.1 within twenty-eight (28) Days after the Date of Practical Completion .
19.3	Contractor's obligations on receipt of claim for liquidated damages Subject to Clauses 19.1 and 19.2, the Contractor must within ten (10) Business Days after receiving a written claim from the Principal for liquidated damages: a) pay or allow to the Principal the liquidated damages claimed; or b) give to the Principal a written notice of dispute in accordance with Clause 28.1 that sets out:

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- i) the amount of the liquidated damages claimed by the **Principal** that the **Contractor** disputes; and
- ii) the **Contractor's** reasons for disputing that amount of the liquidated damages claimed, and pay or allow to the **Principal** any undisputed amount of the liquidated damages claimed.

19.4 Limit on Liquidated Damages

The **Contractor's** liability under Clause 19.1 is limited to the amount stated in Item 18 of the **Schedule**.

19.5 Sole remedy

Notwithstanding Clause 19.2, the **Principal's** entitlement to liquidated damages pursuant to Clause 19.1 is the sole remedy for any failure by the **Contractor** to bring the **Works** to **Practical Completion** by the **Date for Practical Completion**.

20 DEFECTS LIABILITY PERIOD
20.1 Defects Liability Period

If, after the **Works** have reached **Practical Completion** but prior to the expiration of the **Defects Liability Period**, the **Principal** becomes aware of any defects in, or omissions from, the **Works**, the **Principal** shall give the **Contractor** a written notice setting out full details of the defect or omission.

20.2 Contractor must rectify defects identified during the Defects Liability Period

Subject to reasonable access being provided, the **Contractor** must, within the **Defects Liability Period** and, if reasonably required by the **Contractor**, a further period of twenty (20) **Business Days** after the expiry of the **Defects Liability Period**, rectify any defects in, and omissions from, the **Works** notified to the **Contractor** in accordance with Clause 20.1, during usual business hours and at no cost to the **Principal**.

21 VARIATIONS
21.1 Variations to the Works

The **Contractor** must not vary the **Works** except as directed in writing by the **Principal**, or approved or permitted in writing by the **Principal**.

21.2 Request for a Variation

Either party may request a **Variation** to the **Works**.

21.3 Principal's Directions to vary the Works

The **Principal** may direct the **Contractor** to vary the **Works** so as to:

- a) increase, decrease or omit any part of the **Works**;
- b) change the character or quality of any material or work;
- c) change the levels, lines, positions or dimensions of any part of the **Works**;
- d) carry out additional work; and/or
- e) demolish or remove material or work no longer required by the **Principal**.

21.4 Variation within general scope of the Works

The **Contractor** is bound only to carry out a **Variation** which is within the general scope of the **Contract**.

21.5 Variations after Practical Completion

The **Works** may not be varied after the **Works** reach **Practical Completion** unless the **Contractor**, at its discretion, agrees otherwise.

21.6 Variation document

Within twenty (20) **Business Days** of receiving a **Direction** from the **Principal** under Clause 21.3, and before any work the subject of the **Variation** is started, the **Contractor** must provide the **Principal** with a variation document that is:

- a) readily legible;
- b) describes the **Variation** and sets out the details of the scope of work which is the subject of the **Variation**;
- c) states the date of the request for the **Variation**;
- d) states the **Contractor's** estimate of any period of delay to the progress of the **Works** as a result of the **Variation**; and
- e) states any adjustment to the **Contract Price** because of the **Variation**, or the method for calculating the adjustment.

21.7 Valuation of the Variation

Variations shall be valued:

- a) if the parties agree to a price for, or the methodology for calculating the price of, the **Variation**, the agreed price; or
- b) in the absence of agreement on, or the methodology for calculating the price of, the **Variation**, the reasonable valuation of the **Variation** plus the **Contractor's Margin**. For the avoidance of doubt, in the case of a negative valuation of the **Variation**, the **Contractor's Margin** is added to the negative valuation of the **Variation**.

21.8 Principal's written notice agreeing to Variation

The **Principal** must give to the **Contractor** a written notice agreeing to the **Variation** within five (5) **Business Days** after receiving the variation document provided by the **Contractor** under Clause 21.6.

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21.9 No work before receipt of Principal's notice

The **Contractor** must not start to carry out any work the subject of a **Variation** until the **Contractor** receives the written notice from the **Principal** under Clause 21.8 agreeing to the **Variation**.

21.10 Disputed Variations

If the **Principal** fails to agree to a **Variation** claimed by the **Contractor** under this Clause, then the dispute arising as a result is to be resolved in accordance with Clause 28.

22 PAYMENT
22.1 Progress claims

- a) The **Contractor** may submit progress claims to the **Principal** on the following reference dates:
 - i) the times stated in Item 19 of the **Schedule** (or, if any time stated in Item 19 of the **Schedule** is not a **Business Day**, the next **Business Day**) up to the expiration of the **Defects Liability Period**;
 - ii) on the **Works** reaching **Practical Completion**;
 - iii) if, after the **Works** reach **Practical Completion** and prior to the expiration of the **Defects Liability Period**, the parties agree to a **Variation** to the **Works**, on the completion of the work which is the subject of the **Variation**; and
 - iv) on the expiration of the **Defects Liability Period** in accordance with Clause 22.2.
- b) A progress claim shall set out:
 - i) details of:
 - A) the work carried out by the **Contractor** to which the progress claim relates;
 - B) the amount that the **Contractor** claims for payment by the **Principal** for that work; and
 - C) any other amount arising out of, or in connection with, the **Contract** that the **Contractor** claims for payment by the **Principal**; and
 - ii) the total amount that the **Contractor** claims for payment by the **Principal**.

22.2 Final Claim

No later than fifteen (15) **Business Days** after the expiration of the **Defects Liability Period**, the **Contractor** shall submit a Final Claim to the **Principal** that sets out:

- a) the total amount of the progress claims submitted by the **Contractor** to the **Principal** under Clause 22.1;
- b) the total amount of the payments made by the **Principal** to the **Contractor** under the **Contract** up to and including the date on which the **Contractor** submits the Final Claim;
- c) details of:
 - i) any work carried out by the **Contractor** to which the Final Claim relates;
 - ii) any amount that the **Contractor** claims for payment by the **Principal** in respect of any such work; and
 - iii) any other amount arising out of, or in connection with, the **Contract** that the **Contractor** claims for payment by the **Principal**; and
- d) the total amount that the **Contractor** claims for payment by the **Principal** in the Final Claim.

22.3 Payment by Principal

The **Principal** must pay to the **Contractor** the total amount of the progress claims and the Final Claim no later than the time stated in Item 20 of the **Schedule**, unless the **Principal** gives a notice in accordance with Clause 22.4.

22.4 Dispute of progress claim or Final Claim

If the **Principal** disputes all or any part of the total amount of the progress claim or the **Final Claim**, the **Principal** shall:

- a) give the **Contractor** a written notice of dispute in accordance with Clause 28.1 setting out the amount in dispute and details of the dispute by the time stated in Item 20 of the **Schedule** or the date ten (10) **Business Days** after the **Submission Date**, whichever is the earlier; and
- b) pay to the **Contractor** the amount of the progress claim or the Final Claim that is not disputed by the **Principal** by the time stated in Item 20 of the **Schedule**.

22.5 Failure to issue notice under Clause 22.4

- a) In relation to a progress claim, if the **Principal** fails to give the **Contractor** a notice in accordance with Clause 22.4, the **Principal** shall pay to the **Contractor** the total amount of the progress claim without any deduction.
- b) In relation to a Final Claim, if the **Principal** fails to give the **Contractor** a notice in accordance with Clause 22.4:
 - i) the **Principal** shall pay to the **Contractor** the total amount of the Final Claim without any deduction; and
 - ii) the **Contractor's** Final Claim shall be conclusive evidence that:
 - A) the **Contractor** has carried out and completed the **Works** in accordance with the **Contract**; and
 - B) the **Contractor** has otherwise discharged the **Contractor's** obligations in connection with, or arising out of, the **Contract** except where the **Contractor** has fraudulently, or otherwise deliberately, concealed from the **Principal** evidence within the **Contractor's** knowledge to the contrary.

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22.6 Outstanding payments

If the **Principal** fails to make any payment to the **Contractor** within the times for payment under the **Contract**:

- a) the **Contractor** is entitled to interest on the outstanding amount at the rate stated in Item 21 of the **Schedule**, payable from the **Day** after the date that payment was due until the date of payment; and
- b) the **Principal** must pay to the **Contractor** any debt collection costs, including any legal costs on a full indemnity basis, associated with recovering, or the attempted recovery of, the outstanding amount.

22.7 Payment on account only

Payment, other than payment of the **Contractor's** Final Claim, is payment on account only.

22.8 Deductions

The **Principal** may only deduct from moneys owing to the **Contractor** under the **Contract** money due to the **Principal** from the **Contractor** under the **Contract**.

22.9 Reference date on termination of Contract

In the event that the **Contract** is terminated for any reason, a reference date for the purposes of a progress claim pursuant to Clause 22.1 arises on the date of termination.

23 PRINCIPAL'S RIGHT TO TERMINATE CONTRACT
23.1 Principal's right to give notice of intention to terminate Contract

If the **Contractor**:

- a) fails to proceed with the **Works** with reasonable diligence or with reasonable care and skill;
- b) unlawfully suspends the carrying out of the **Works**;
- c) refuses or persistently neglects to remove or remedy defective work or improper materials so that the progress of the **Works** is significantly adversely affected;
- d) is unable to complete the **Works**;
- e) fails to effect or maintain any insurance policy required by the **Contract**; or
- f) is otherwise in **Substantial Breach** of the **Contract**,

the **Principal** may give a written notice to the **Contractor** by hand, registered post or facsimile transmission:

- g) describing each alleged breach of the **Contract** by the **Contractor**; and
- h) stating the **Principal's** intention to terminate the **Contract** unless the **Contractor** remedies the alleged breach or breaches within ten (10) **Business Days** after receiving the **Principal's** notice.

23.2 If Contractor fails to remedy the breach, Principal may terminate Contract

If the **Contractor** fails to remedy the breach or breaches set out in a notice given to it by the **Principal** in accordance with Clause 23.1 within the time stated in that notice, the **Principal** may, without prejudice to any other rights or remedies, terminate the **Contract** by further written notice to the **Contractor** provided that such a notice of termination must not be given unreasonably or vexatiously and, if so given, then such purported notice of termination is void, and of no force and effect.

23.3 Principal may not terminate Contract in certain circumstances

The **Principal** may not terminate the **Contract** if the **Principal** is in **Substantial Breach** of the **Contract**.

23.4 Principal's right to engage another contractor to complete the Works

If the **Principal** terminates the **Contract** in accordance with Clause 23.2, the **Principal** may engage another contractor to complete the **Works**.

23.5 Contractor entitled to reasonable remuneration if Contract terminated

If the **Contract** is terminated in accordance with Clause 23.2, the **Contractor** is entitled to a reasonable remuneration for the unpaid value of that part of the **Works** it carried out under the **Contract** up to, and including, the **Day** on which the **Contract** is terminated.

24 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT
24.1 Contractor's right to give notice of intention to terminate Contract

If the **Principal**:

- a) fails to comply with any of its obligations under Clause 9;
- b) fails to comply with any of its obligations under Clause 11;
- c) fails to comply with any of its obligations under Clause 14;
- d) fails to comply with any of its obligations under Clause 22;
- e) fails to remedy any **Substantial Breach** of the **Contract** set out in a suspension notice given in accordance with Clause 17.2 within five (5) **Business Days** after receiving that notice; or
- f) is otherwise in **Substantial Breach** of the **Contract**,

the **Contractor** may give a written notice to the **Principal**:

- g) describing the relevant breach or breaches of the **Contract** by the **Principal**; and
- h) stating the **Contractor's** intention to terminate the **Contract** unless the **Principal** remedies the breach or breaches within ten (10) **Business Days** after receiving the **Contractor's** notice.

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24.2 If Principal fails to remedy breach, Contractor may terminate Contract

If the **Principal** fails to remedy the **Principal's** breach or breaches of the **Contract** set out in a notice given to the **Principal** by the **Contractor** in accordance with Clause 24.1 within the time stated in that notice, the **Contractor** may, without prejudice to any other rights or remedies, terminate the **Contract** by further written notice to the **Principal**.

24.3 Contractor's right to recover on termination

If the **Contract** is terminated in accordance with Clause 24.2, the **Contractor** is entitled to, without prejudice to any other rights or remedies, recover from the **Principal** all losses, costs, expenses, and damages it incurs or suffers as a result of, or otherwise in connection with, the **Principal's** breach or breaches, and the termination, as if the **Principal** had repudiated the **Contract** at law, and the **Contractor** had accepted the repudiation and elected to terminate the **Contract**. The **Contractor** may also remove from the **Land**, and retain, all unfixed materials, goods, plant and equipment previously provided by the **Contractor**.

25 TERMINATION FOR INSOLVENCY
25.1 Either party may terminate Contract for insolvency

Subject to Clause 25.3, either the **Contractor** or the **Principal** may terminate the **Contract** immediately on giving written notice to the other party, if the other party:

- a) commits an act of bankruptcy, or is made bankrupt;
- b) makes a composition or other arrangement with creditors;
- c) assigns assets for the benefit of creditors generally;
- d) being a company, becomes insolvent, enters into a deed of company arrangement, has a controller, administrator or receiver appointed, or is in liquidation.

25.2 Requirements of notice

A written notice under Clause 25.1 must set out the ground or grounds relied on by the relevant party for the termination.

25.3 Enforceability of Clause 25.1 if the other party is a company

If 'the other party' referred to in Clause 25.1 is a company and enters into certain arrangements for the purpose of avoiding being wound up in insolvency or appoints an administrator, then the right to terminate the **Contract** pursuant to Clause 25.1 may be limited by the *Corporations Act 2001* (Cth).

26 NOTICES AND ELECTRONIC COMMUNICATIONS
26.1 Copies of notices to be provided by one party to the other

The **Contractor** or the **Principal** must provide to the other party a copy of any:

- a) report, notice, order or other document given in relation to the **Works** by any supplier of services (such as, for example, gas, electricity, telephone, water and sewerage); and
- b) certificate of inspection of the **Works**,
as soon as practicable after receipt.

26.2 Methods for giving notices and other documents

Unless expressly stated otherwise elsewhere in this **Contract**, and subject to Clause 23.3, any written notice, or other document, to be given by a party under this **Contract** is deemed to have been given and received:

- a) if delivered by hand to the other party, at the time of delivery;
- b) if the other party is a company and the notice is left at its registered office or a principal place of business, at the time that the notice is left at the registered office or principal place of business;
- c) if sent by pre-paid or registered post to the other party at the address of the other party stated in this **Contract**, or another address notified by the other party in writing, at 9.00am on the date that is two (2) **Business Days** after the date of posting;
- d) if sent by facsimile transmission to the other party at the facsimile number of the other party stated in this **Contract**, or another facsimile number notified by the other party in writing, at the time set out in a written confirmation of the successful transmission of the facsimile; or
- e) if sent by email to the other party at the email address of the other party stated in this **Contract**, or another email address notified by the other party in writing, at the time when the email leaves the **Information System** used by the party whom, or on whose behalf, the email has been sent.

26.3 Notices given outside of usual business hours

If any written notice, or other document, is given at a time after 5.00pm on a **Business Day**, or during a **Day** that is not a **Business Day**, the notice, or other document, is deemed to have been given at 9.00am on the next **Business Day**.

26.4 Consent to electronic communications

- a) The parties agree that facsimile transmission and email communications from either party to the other constitute an 'electronic communication' as that term is defined in the *Electronic Transactions Act 1999* (Cth) and corresponding State legislation including the *Electronic Transactions (Queensland) Act 2001*.
- b) The parties agree that any written notice, or other document, to be given by a party under this **Contract** may be given and received via facsimile transmission or email, or both.

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27 LIMITATION OF CONTRACTOR'S LIABILITY
27.1 Release of Contractor from certain liabilities after expiry of limitation period

To the maximum extent permitted by law, the **Principal** agrees that the **Contractor** will not be liable to the **Principal** (including any person claiming through or under the **Principal** or any occupier or subsequent owner or occupier of the **Land** or any part of it), and will be deemed to be released and discharged by the **Principal** from all liability to the **Principal**, for:

- a) any amount due to the **Principal** under the **Contract**;
- b) any breach (including any **Substantial Breach**) of the **Contract** by the **Contractor**;
- c) any breach of a warranty by the **Contractor** under the **Contract**, or under any statute or other law or legal requirement which permits the parties to exclude, restrict or modify liability for breach of the warranty;
- d) any tort (including negligence) arising out of, or otherwise in connection with, any act or omission of the **Contractor** in respect of the **Works** or the **Contract**;
- e) any guarantee given to the **Principal** by the **Contractor** under the **Contract**, or under any statute or other law or legal requirement which permits the parties to exclude, restrict or modify liability in respect of the guarantee; and
- f) any equitable or statutory relief arising out of, or otherwise in connection with, any act or omission of the **Contractor** in respect of the **Works** or the **Contract**,

on the expiration of the period of three (3) years after the **Date of Practical Completion** unless:

- g) the **Principal** (or other person described in the first paragraph of this Clause 27.1) has started a proceeding against the **Contractor** in the **Tribunal** or a Court in respect of any such liability, or alleged liability, before the expiration of the period of three (3) years after the **Date of Practical Completion**;
- h) any such liability cannot be excluded, restricted or modified under a relevant statute or other law or legal requirement; or
- i) the **Contractor** fraudulently, or otherwise deliberately, concealed from the **Principal** facts, matters or circumstances within the **Contractor's** knowledge that gave rise to any such liability by the **Contractor** to the **Principal**, and as a result of the concealment, the **Principal** does not become aware of the facts, matters or circumstances that gave rise to such liability until after the expiration of the period of three (3) years after the **Date of Practical Completion**.

27.2 No entitlement to start a proceeding after expiry of limitation period

To the maximum extent permitted by law, the **Principal** agrees that on the expiration of the period of three (3) years after the **Date of Practical Completion**, the **Principal** will not be entitled to start any proceeding against the **Contractor** in the **Tribunal** or a Court in respect of any liability for which the **Contractor** is deemed to be released and discharged by the **Principal** under Clause 27.1.

27.3 No limitation for certain statutory warranties and guarantees

To avoid doubt, Clauses 27.1 and 27.2 do not apply to any guarantee, or statutory requirement (including any prohibition), provided for under the Australian Consumer Law (Queensland).

28 RESOLUTION OF DISPUTES
28.1 Notice of dispute

If a dispute or difference (together referred to as a 'dispute') arises out of, or in connection with, the **Contract**, either party may give the other party a written notice of dispute setting out the details of the dispute, including any amount in dispute. Notwithstanding the giving of a notice of dispute, the parties shall, subject to the **Contract**, continue to perform the **Contract**.

28.2 Without prejudice conference

- a) Within five (5) **Business Days** after receiving the notice of dispute, the parties shall arrange, and participate in, a 'without prejudice' conference between them, or their authorised representatives, in an attempt to resolve the dispute.
- b) By agreement between the parties, a dispute arising out of, or in connection with, the **Contract** may be referred to Master Builders Queensland for a 'without prejudice' conference at any time provided that one of the parties is a member of Master Builders Queensland.

28.3 Mediation or Arbitration

- a) If the parties fail to resolve all of the dispute during the 'without prejudice' conference, or if the party given the notice of dispute fails to participate in a 'without prejudice' conference in accordance with Clause 28.2, then the parties may agree to refer all or any part of the dispute to mediation or arbitration.
- b) If the parties agree to refer all or any part of the dispute to mediation or arbitration but fail to agree on the person to be appointed as the mediator or the arbitrator, then either party may give a written notice to the **President** and the other party requesting that the **President** appoint (as the case may be):
 - i) a mediator to facilitate the mediation; or
 - ii) an arbitrator to decide all or that part of the dispute referred to arbitration.

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- c) If either party gives a notice under Clause **28.3(b)**, the President shall give to the parties a written notice setting out the name and contact details of (as the case may be):
 - i) the mediator appointed by the **President** to facilitate the mediation; or
 - ii) the arbitrator appointed by the **President** to decide all or that part of the dispute referred to arbitration.
- d) Within five (5) **Business Days** of receiving a notice under Clause **28.3(c)**, the parties shall:
 - i) request the mediator or the arbitrator named in the notice to make suitable arrangements for (as the case may be) the mediation or the arbitration; and
 - ii) participate in (as the case may be) the mediation or the arbitration and pay the costs of the mediation (including the costs of the mediator) or the costs of the arbitration (including the costs of the arbitrator) in equal shares unless otherwise agreed by the parties or decided by the arbitrator.

28.4 **Legal Proceedings**

If the parties fail to:

- a) agree to refer any part of the dispute to mediation or arbitration within:
 - i) ten (10) **Business Days** after the 'without prejudice' conference; or
 - ii) if the party given the notice of dispute fails to participate in a 'without prejudice' conference, fifteen (15) **Business Days** after the giving of the notice of dispute; or
- b) resolve all of the dispute during any mediation or arbitration referred to under Clause **28.3(a)**, then either party may commence legal proceedings in relation to any part of the dispute that is not:
- c) agreed to be referred to mediation or arbitration under Clause **28.3(a)**; or
- d) resolved during any mediation or arbitration.

28.5 **Precondition to legal proceedings**

Neither party may commence legal proceedings in relation to a dispute unless the parties have undertaken the processes set out in Clauses **28.1** to **28.4** and those processes have failed to resolve the dispute, or one of the parties attempted to follow these processes and the other party has failed to participate.

28.6 **Summary relief**

Nothing in this Clause shall prejudice the right of a party to institute legal proceedings to:

- a) enforce payment under Clause **22**;
- b) enforce the provision of **Security** under Clause **5**; or
- c) for injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the **Contract**.

29 **GOODS AND SERVICES TAX**

- a) For the purposes of the **Contract**, the terms "ABN", "GST", "GST law", "registered", "tax invoice" and "taxable supply" have the meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- b) The **Contractor** warrants that the **Contractor** is:
 - i) the holder of any ABN stated in the **Schedule**; and
 - ii) registered and will continue to be registered until the expiration of the **Defects Liability Period**.
- c) The **Contract Price** includes GST unless noted otherwise.
- d) Where the **Works**, or any part of the **Works**, constitute a taxable supply, the **Contractor** shall comply in every respect with GST law.
- e) The payment claims that the **Contractor** submits under Clause **22.1** and **22.2** shall be in the form of a tax invoice.

30 **HEALTH, SAFETY & ENVIRONMENTAL PROTECTION**

30.1 **Principal contractor**

Unless otherwise agreed by the parties, the **Contractor** is engaged by the **Principal** to discharge, in respect of the **Works**, until the **Works** reach **Practical Completion**, or the **Contract** is terminated, the duties of a 'principal contractor' (as defined) under the **WHS Act**.

30.2 **Contractor's obligations**

Without limiting the obligations of the **Contractor** pursuant to the **WHS Act**, the **Contractor**, in respect of the **Works**, shall ensure that:

- a) any person carrying out any part of the **Works** complies with all relevant **Statutory Requirements** in respect of:
 - i) work, health and safety; and
 - ii) environmental protection;
- b) a **WHS Management Plan** is prepared in respect of the **Works**;
- c) every obligation holder (whether an employer, self-employed person, or other person conducting a business or undertaking) conducting a business or undertaking that includes the carrying out of high risk construction work, provides the **Contractor** with a copy of their Safe Work Method Statements prior to commencing work;

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- d) all common plant, plant, housekeeping, inductions, hazardous substances, work at height, falling objects, and the like which are required to be identified and managed by any **Statutory Requirement** are identified and managed to prevent or minimise exposure to the risk of injury or illness; and
- e) every obligation holder provides adequate information, instruction, training and supervision to prevent or minimise exposure to the risk of fatality, injury or illness.

30.3 **Exclusion from Site**

The **Contractor** may exclude or remove from the **Site** any person (including, but not limited to, the **Principal**, the **Principal's** officers, employees, consultants, agents and contractors, and authorised officers of the Lender) whose acts, omissions or other conduct in the **Contractor's** opinion does not meet the requirements of the **WHS Management Plan**.

31 **MISCELLANEOUS**

31.1 **Entire agreement**

The parties acknowledge that the terms of their contract are fully set out in the **Contract**, and may not be altered, varied, deleted or otherwise affected by reference to any prior representations, conditions or agreements, whether written or verbal.

31.2 **Unfixed and demolished materials**

All demolished materials, and unfixed building materials supplied by the **Contractor** and not paid for by the **Principal**, are the property of the **Contractor** unless expressly stated otherwise elsewhere in the **Contract**.

31.3 **Contractor's right to subcontract**

The **Contractor** may subcontract any part of the **Works**, but is not relieved in doing so from any obligation or liability under the **Contract** or the **Act** for the work that is the subject of any such subcontract.

31.4 **Parties rights to assign Contract**

Neither party may assign the **Contract**, or any right, benefit, obligation, liability or interest under the **Contract**, without the prior written consent of the other party.

31.5 **No waiver**

Unless expressly stated otherwise elsewhere in the **Contract**, none of the provisions of the **Contract**, or any entitlement, remedy, obligation or liability arising out of, or otherwise in connection with, the **Contract**, may be waived, discharged or released for any reason whatsoever except with the prior written consent of the parties.

31.6 **Governing law**

The **Contract** is governed by, and is to be construed in accordance with, the laws of the State of Queensland and the Commonwealth of Australia.

31.7 **Severance**

If any provision of the **Contract** is void, voidable, unenforceable or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from the **Contract** without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue to have effect.

31.8 **Joint and several liability**

If there is more than one person named as the **Principal** under the **Contract**, their obligations and liabilities are joint and several.

31.9 **Exchange of Contract**

- a) This Contract may be executed in counterparts.
- b) A counterpart may be a copy of this Contract printed from a facsimile or email transmission.
- c) All counterparts together are taken to constitute one instrument and will not be binding until executed counterparts are exchanged.
- d) A copy of this Contract which has been executed by a party may be relied upon by a party to the same extent as if it was an original of this Contract executed by the party.

32 **SPECIAL CONDITIONS**

Any special conditions set out in Part E of the **Appendix** form part of the **Contract**. The special conditions prevail over these general conditions to the extent of any inconsistency.

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