



SHORT FORM WORKS AGREEMENT

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Airservices Australia
ABN 59 698 720 886
(**Airservices**)

Enviropacific Services Limited
ABN 43 111 372 064
(**Contractor**)

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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Term	Definition
Agreement	the contractual relationship between the parties evidenced by this document which includes the Design Documents and all schedules and annexures to this document.
Agreement Commencement Date	the date on which this Agreement commences, as specified in Item 6 of Schedule 1.
Agreement Material	means all material: (a) created by, for, or on behalf of, the Contractor (including by subcontractors) in connection with this Agreement; (b) provided, or required to be provided, to Airservices in connection with the Contractor's Activities; or (c) at any time derived (in connection with this Agreement) from, or based on, the material described in paragraphs (a) or (b).
Agreement Period	the period of time during which this Agreement operates.
Airport Building Controller	has the meaning given in the <i>Airports (Building Control) Regulations 1996</i> (Cth).
Airport Operator	the operator of an airport at which Works are undertaken.
Airservices	Airservices Australia ABN 59 698 720 886.
Airservices Contract Manager	the person(s) identified in Item 2 of Schedule 1, or any other person nominated as an Airservices representative from time to time.
Airservices Material	any tangible equipment or material, software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, manuals, user guides, operations manuals and instructions, and the subject matter of any category of Intellectual Property Rights, provided to the Contractor by Airservices.
Airservices Risk	s47G

Airside Area	any part of the Site or any land and/or building which is an airside area as defined in the <i>Aviation Transport Security Act 2004</i> (Cth) or otherwise designated by Airservices as being an airside area.
Airside Works	Works that are: (a) within an Airside Area; (b) to be executed in such a way or in such a location that they may directly or indirectly affect (or have the potential to affect) the operations or safety of aircraft movements; or (c) otherwise notified by Airservices to the Contractor to be Airside Works.
Applicable Policies	the policies and procedures provided to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Applicable Standard	each standard notified to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Approval	any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Proper Authority having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Law which must be obtained or satisfied to: (a) carry out the Contractor's Activities; or (b) service, occupy and use the completed Works or a completed Stage.
Approved Security	one or more unconditional bank guarantees each of which is in a form and given by a financial institution with an Australian banking licence issued under the <i>Banking Act 1959</i> (Cth), approved by Airservices.
ASIC	an Aviation Security Identification Card.
Australian Privacy Principle	has the same meaning as in the Privacy Act.
Building Certificate	a certificate or other Approval issued pursuant to Law which will allow the full occupation and use of the completed Works.
Business Day	a day specified in Item 36 of Schedule 1.
Claim	any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Commonwealth Regulatory Requirements	the requirements specified in Schedule 4 and any other requirement or policy of the Commonwealth applicable to the Works or the Contractor's Activities.
Completion	s47G

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Completion Certificate	a certificate issued by Airservices Contract Manager under clause 23.1, certifying that the Contractor has achieved Completion of the Works or a Stage.
Confidential Information	information that is by its nature confidential and is: (a) designated by a party as confidential; (b) described in this Agreement as confidential; or (c) information of Airservices that the Contractor knows or ought to know is confidential,

	but does not include information which is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Contract Price	the price specified in Schedule 3 adjusted from time to time by any additions or deductions approved / agreed or required to be made under this Agreement.
Contractor	the party specified in Item 3 of Schedule 1 and includes its Representatives.
Contractor's Activities	includes all things or tasks which are necessary for the Contractor to do to comply with its obligations under this Agreement.
Contractor Contract Manager	the person identified in Item 4 of Schedule 1.
Contractor Liability Cap	the amount identified in Item 32 of Schedule 1.
Contractor Site Representative	the person identified in Item 5 of Schedule 1.
Date for Completion	the date for Completion specified in Item 17 of Schedule 1 in relation to the Works or a Stage (as applicable) as adjusted under this Agreement.
Date of Completion	the date that a Completion Certificate is issued pursuant to this Agreement in respect of the Works or a Stage.
Defects Liability Period	the period specified in Item 18 of Schedule 1 which commences on the Date of Completion, or is otherwise adjusted pursuant to clause 17.3.
Design Documents	those: (a) documents referred to in Item 8 of Schedule 1; and (b) further drawings or specifications supplied to the Contractor by Airservices Contract Manager during the course of this Agreement (if any).
Direction	includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
Exempted Approvals	means those Approvals that the Contractor is not required to obtain, as specified in Item 14 of Schedule 1.
GST	has the meaning given to that term in the GST Law.
GST Law	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Harmful Code	any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, virus, trojan horses, spyware or adware.
Hazardous Substance	any material suspected of containing or likely to contain a substance defined or listed in the National Occupation Health and Safety Commission's (NOHSC) Guidance Notes (NOHSC 1008-2004:

	"Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1999: "List of Designated Hazardous Substances").
Illegal Worker	a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after the person's visa has expired; or is working in breach of the person's visa conditions.
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy available at: http://www.dpmc.gov.au/sites/default/files/publications/indigenous_procurement_policy_1.pdf , as updated from time to time.
Industrial Requirements	any requirement (whether legislative or merely reflective of good industrial practice) including without limitation any industrial or workplace requirement, obligation or prohibition arising under: (a) any applicable legislation regarding workers compensation; (b) any superannuation scheme, redundancy scheme or other such scheme established under any applicable legislation or building industry agreement; (c) any code of conduct which is included in or referred to in this Agreement; (d) any applicable WHS Law or regulations and any codes of practice issued from time to time under them; (e) any site agreement relevant to or applicable to the Site; (f) any enterprise bargaining agreement executed between the Contractor and any relevant union; and (g) the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Insurance Requirements	the insurance requirements in Item 31 of Schedule 1.
Intellectual Property Rights	all intellectual property rights, including the following rights: (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Latent Conditions	s47G

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Law	(a) any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time; and (b) any Approval (including conditions or requirements).
Loss	damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any amount agreed to be paid by way of settlement or compromise.
Milestone	any fixed date to be met by the Contractor in performing any of its obligations under this Agreement.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
National Construction Code	is comprised of the Building Code of Australia and the Plumbing Code of Australia.
Personal Information	has the meaning given in section 6 of the Privacy Act.
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Proper Authority	each government and statutory authority having authority or jurisdiction in relation to the Site or the Works whether under Law or otherwise, and includes a person supplying communications, drainage, electricity, gas, sewerage, water or other services which may be affected by the performance of the Works.
Proportionate Liability Legislation	Chapter 7A of the <i>Civil Law (Wrongs) Act 2002</i> (ACT) or any equivalent legislation applying in another jurisdiction applicable to a Claim made against a party in relation to this Agreement.
Provisional Sum Work	the work or goods referred to in Item 21 of Schedule 1 for which the sum of money referred to in that Item has been included in the Contract Price.
QBCC Act	the <i>Queensland Building and Construction Commission Act 1991</i> (Qld).
Representative	in relation to a party, any natural person who is an employee, volunteer, officer, agent, contractor or professional adviser of that party or, in the case of the Contractor, of a subcontractor.

Secure Area	has the meaning prescribed in the <i>Aviation Transport Security Regulations 2005</i> (Cth) and includes any other area where an ASIC is required for access.
Site	the site for Works as described in Item 11 of Schedule 1.
SOP Act	has the meaning given in Item 37 of Schedule 1.
Special Site Conditions	those conditions described as special site conditions in the Statement of Works.
Specified Acts	(a) failing to acknowledge or attribute the Contractor's or any other person's authorship of any Agreement Material or any part of the Works; (b) falsely attributing authorship of any Agreement Material or any part of the Works; (c) making any modification, variation or amendment of any nature whatsoever to any Agreement Material or any part of the Works, whether or not: (i) it results in a material distortion of or destruction or mutilation of the Agreement Material or any part of the Works; or (ii) it is prejudicial to the honour or reputation of the Contractor or any other author of any Agreement Material or any part of the Works; (d) using any Agreement Material or any part of the Works other than for the purpose for which it was intended at the time the Agreement Material or any part of the Works (as the case may be) was created; (e) altering any Agreement Material or any part of the Works by adding to or removing elements from, or rearranging elements of the Agreement Material or any part of the Works, including by combining elements of any of the Agreement Material or any part of the Works with any other material; (f) changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Agreement Material; (g) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; or (h) adding any additional content or information to Agreement Material.
Stage	a stage of the Works as outlined in the Statement of Works (if any).
Statement of Works	Schedule 2.
Table of Rates	the table of rates at Item Error! Reference source not found. of Schedule 3.
Table of Works Variation Rates and Prices	the table in Item Error! Reference source not found. of Schedule 3 and any document referred to in that Item which shows the rates or any lump sum, quantities or other sums of payment to be applied for the execution of any Work to be carried out pursuant to a Works Variation.

Waste	s47G
Waste Management Legislation	any Commonwealth, State or Territory legislation relating to the management, regulation or reduction of Waste.
WHS Accreditation Scheme	the Australian Government building and construction industry Work Health and Safety Accreditation Scheme established by section 43 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
WGE Act	the <i>Workplace Gender Equality Act 2012</i> (Cth).
WHS Act	the <i>Work Health and Safety Act 2011</i> (Cth).
WHS entry permit holder	has the meaning given in the WHS Act.
WHS Law	the WHS Act and any corresponding WHS law as defined in section 4 of the WHS Act.
WHS Regulations	the regulations made under the WHS Act.
Work Health and Safety Plan	the work health and safety plan prepared by the Contractor pursuant to clause 10.4(f), which can be either Agreement specific or Site specific, and must: (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective; and (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with statutory requirements in relation to work health and safety.
Works	the physical works described in the Statement of Works which the Contractor must design (to the extent required by this Agreement), complete (including the installation of any plant and equipment forming part of those Works) and hand over to Airservices. Work has a corresponding meaning.
Works Commencement Date	means the date specified in Item 12 of Schedule 1.
Works Variation	any change to the Works within the general scope of this Agreement, and includes: (a) increases, decreases or omissions of any part; (b) a change in character or quality of any requirements; (c) changes to the levels, lines, positions or any dimensions;

	(d) additional work; (e) the demolition or removal of material or work no longer required by Airservices; and (f) where Airservices notifies the Contractor that the Works are Airside Works after the Agreement Commencement Date, as set out in a "Works Variation Order".

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a unit of measurement is taken to be expressed in Australian legal units of measurement;
- (d) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) time is to local time in the place where the Site is located and, in all other cases, where the Airservices Contract Manager is located;
 - (iii) "\$" or "dollars" is a reference to Australian currency; and
 - (iv) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

1.3 Inconsistent terms

- (a) If there is any ambiguity, discrepancy or inconsistency in the documents which make up this Agreement, the following order of precedence applies:
 - (i) the terms and conditions of this Agreement;
 - (ii) any Schedules or documents forming part of this Agreement; and
 - (iii) the Design Documents.
- (b) If the Contractor Contract Manager considers there is any ambiguity, discrepancy or inconsistency in this Agreement, he or she must give notice to the Airservices Contract Manager who must, within five Business Days of the notice, give the Contractor a Direction as to the course it must adopt.

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3. Design

3.1 Application of this clause

This clause will apply if the Contractor is required to design any part of the Works as set out in Item 7 of Schedule 1.

3.2 Design to be prepared by the Contractor

The Contractor must:

- (a) design the parts of the Works or a Stage which the Design Documents expressly or impliedly require it to design;
- (b) provide its design to the Airservices Contract Manager in accordance with the requirements in Items 9 and 10 of Schedule 1; and
- (c) obtain permission from the Airservices Contract Manager to use the design.

3.3 Design certification

The Contractor must, with each payment claim under clause 20.2, provide Airservices Contract Manager with a certificate in the form required by Airservices which certifies that (to the extent then applicable):

- (a) the design carried out by it or its Representatives complies with, subject to clause 5.2(a)(i), Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law) and the other requirements of this Agreement; and
- (b) the Works or the Stage comply with the design which has been the subject of Airservices Contract Manager's permission under clause 3.2(c).

4. The Site

4.1 Access to the Site

Provided the Contractor has met the preconditions to Site access specified in Item 13 of Schedule 1, Airservices must ensure that the Contractor has sufficient access to the Site from the date specified in Item 13 of Schedule 1.

4.2 Airservices' right of entry

The Contractor must give Airservices access to the Site or any areas off-Site where Work is being performed.

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4.4 Cleaning up

The Contractor must keep the Site, the Works and the environment at the Site clean and tidy. At the end of each day the Contractor must ensure that the Site is maintained so as not to create a hazard.

4.5 Urgent protection

Airservices may take any action necessary to protect the Works, other property, the environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor is required to take but does not take. The reasonable costs incurred by Airservices in taking such action shall be a debt due and payable by the Contractor and maybe set off against any payment claim under clause 20.2.

4.6 Conduct at Airservices' premises

The Contractor must, if using or accessing Airservices' premises or facilities, comply with all reasonable directions and procedures relating to workplace health and safety and security, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

5. Construction

5.1 Description of Works

- (a) The Contractor must construct the Works strictly in accordance with:
 - (i) the Design Documents;
 - (ii) any design prepared by the Contractor that the Contractor has received permission to use in accordance with clause 3.2(c); and
 - (iii) any Direction of Airservices Contract Manager, including (without limitation) a Works Variation directed by Airservices Contract Manager by a written document titled "Works Variation Order".
- (b) The Contractor must perform all work and supply materials necessary for the carrying out of the Contractor's Activities and the Works.

5.2 Authority requirements

- (a) The Contractor must:
 - (i) unless otherwise specified, perform the Contractor's Activities and complete the Works so that they comply with all Approvals, the National Construction Code, any other requirements imposed by Law and this Agreement;
 - (ii) apply for all relevant permits, consents or Approvals, give all notices and pay all fees necessary to perform this Agreement;
 - (iii) obtain, and give to Airservices, a Building Certificate (if a Building Certificate is obtainable) in respect of the completed Works; and
 - (iv) give Airservices copies of all other relevant documents issued by Proper Authorities in respect of the Works.
- (b) If the requirements that the Contractor must comply with under this clause change after the Agreement Commencement Date, the Contractor must give written notice to Airservices Contract Manager seeking Direction(s). Any Direction issued by Airservices Contract Manager that requires the Contractor to do more or less work than could reasonably have been anticipated at the Agreement Commencement Date will:
 - (i) if more work is required, subject to the Contractor complying with clause 22, entitle the Contractor to payment for the extra work as a Works Variation; or

- (ii) if less work is required, entitle Airservices to reduce the Contract Price by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by Airservices Contract Manager.

5.3 Provisional Sum Work

- (a) Unless otherwise approved by the Airservices Contract Manager, Provisional Sum Work must be performed under subcontracts entered into by the Contractor.
- (b) After the Contractor is directed by the Airservices Contract Manager to enter into a subcontract for Provisional Sum Work:
 - (i) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in Item 21 of Schedule 1 for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
 - (ii) any Works Variation to that work will be dealt with under clause 19.
- (c) Where Provisional Sum Work is to be performed, the work will be, and will always be deemed to have been, part of the Work to be brought to completion by the Date for Completion.

6. Airside Works

6.1 Application

This clause applies where the Works (or part of the Works) are Airside Works.

6.2 Airside Works

- (a) The Contractor must, at its cost, comply with any Laws applicable to the Site, including the *Airports Act 1996* (Cth), the *Airports (Transitional) Act 1996* (Cth), the *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) and all relevant rules and regulations imposed by Airservices and the Airport Operator from time to time.
- (b) The Contractor must ensure that a direction given by a representative of the Civil Aviation Safety Authority or the Airport Operator is complied with immediately.
- (c) If the Airport Operator declares an emergency in relation to the airport where the Site is located, the Contractor must vacate the Site and ensure that the Site is vacated and remains vacated until the Airport Operator gives notice that the Contractor can re-enter the Site.
- (d) The Contractor must at its cost and without limiting its obligations under this clause:
 - (i) comply with and ensure that the Contractor's Representatives comply with all security and access arrangements and other requirements of Airservices and/or the Airport Operator in respect of Works conducted at an airport. The Contractor is not entitled to seek any extensions of time, costs or variation in relation to such arrangements or requirements;
 - (ii) provide site security and parking facilities for Contractor Representatives to the satisfaction of the Airservices Contract Manager and the Airport Operator; and
 - (iii) submit details of its proposed Site access and circulate to the Airservices Contract Manager for approval at least 10 Business Days prior to commencing any part of the Works.

6.3 Airport Building Controller requirements

- (a) The Contractor must provide all necessary certificates of compliance and other information to the Airport Building Controller for the purpose of obtaining an occupation certificate in relation to the Works.
- (b) The Contractor must comply with all requirements of the Airport Building Controller (if any) in relation to the Works.

- (c) If, at any time, the Airport Building Controller identifies that the Contractor has not complied with any of its requirements, the Contractor must, as soon as practicable, remedy the non-compliance to the satisfaction of the Airport Building Controller and the Airservices Contract Manager.

7. Hazardous Substances on Site

7.1 Discovery of Hazardous Substances on Site

- (a) If at any time the Contractor discovers the presence on the Site of any Hazardous Substance, it must inform Airservices Contract Manager, not disturb the material under any circumstances, and ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- (b) Airservices Contract Manager must inspect the Site and must issue Directions to the Contractor in respect of further action to be taken.
- (c) If Directed by the Airservices Contract Manager, the Contractor must ensure that all Hazardous Substances on the Site must be treated or removed in accordance with the requirements of the Worksafe Australia "Code of Practice" for the safe removal of such materials and any other Laws in the State or Territory in which the Works are situated relating to the removal of such materials.
- (d) Other than to the extent that the Contractor is entitled to make, and makes, a claim under clause 4.3 of this Agreement, the Contractor will have no entitlement to make any other claim under this Agreement (including for an adjustment to the Contract Price or an extension of time) arising out of or in connection with complying with any Directions from the Airservices Contract Manager in respect of the Hazardous Substance(s).

7.2 Use Of Hazardous Substances

Without limiting clause 7.1, the Contractor:

- (a) must ensure that the Works do not contain any Hazardous Substances or substances which would breach the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth);
- (b) must, on request of Airservices Contract Manager, be able to show compliance with clause 7.2(a); and
- (c) is responsible for all materials used by its subcontractors under this clause.

8. Prior Work

- (a) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality or completeness of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after Airservices gives the Contractor access to the Site;
 - (ii) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify Airservices Contract Manager in writing providing:
 - (A) full particulars of the defects or matters identified; and
 - (B) the reasons for the opinion formed by it in respect to the defects or matters identified; and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in clause 8(a)(ii).

- (b) On receipt of the Contractor's notice, Airservices Contract Manager will investigate the Prior Work the subject of the notice and issue a Direction as to the course of action to be taken.
- (c) Failure of the Contractor to follow the process in clause 8(a) will prevent the Contractor from making a claim in respect of any adverse financial or time impact the Prior Work has on the Contractor's performance under this Agreement.

9. Existing services and structures

- (a) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Design Documents.
- (b) The Contractor must obtain the prior written approval from Airservices Contract Manager in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (c) The Contractor must notify Airservices Contract Manager immediately upon the discovery of services or obstructions not shown in the Design Documents or identified by inspection.
- (d) The Contractor must immediately notify Airservices Contract Manager in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services and associated infrastructure in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.

10. Representatives and other requirements

10.1 Airservices Contract Manager

Airservices Contract Manager will act as the agent of Airservices (not as an independent certifier, assessor or valuer) in issuing Directions and discharging each of the functions of Airservices Contract Manager under this Agreement.

10.2 The Contractor Site Representative

The Contractor must ensure that the Contractor Site Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under this Agreement.

10.3 Removal of persons

Airservices Contract Manager may by notice in writing direct the Contractor to remove any person from the Site and / or the performance of the Contractor's Activities. The Contractor must, on receipt of Airservices Contract Manager's notice, and at its own cost, promptly arrange for removal and replacement of the person. The replacement must be acceptable and approved by Airservices Contract Manager.

10.4 Workplace health and safety requirements

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all legislative requirements and other requirements of this Agreement for work health and safety management;
 - (ii) all subcontractors comply with the requirements referred to in this clause 10.4; and
 - (iii) it complies with its duty under the WHS Law to consult, cooperate and coordinate activities with all other persons who have a work and health safety duty in relation to the same matter;

- (b) notify Airservices Contract Manager immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Contractor's Activities or the Works;
- (c) if the WHS Accreditation Scheme is applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- (d) carry out the Contractor's Activities and the Works safely and in a manner that does not put the health and safety of persons at risk;
- (e) comply with any Direction issued by Airservices Contract Manager to change its manner of working or to cease working if Airservices Contract Manager reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works;
- (f) prepare and submit to Airservices Contract Manager a Work Health and Safety Plan in accordance with the WHS Law and continue to update and amend that plan and submit it (as necessary);
- (g) institute systems to obtain regular written assurances from other contractors, consultants and subcontractors performing work on or in the vicinity of the Site about their ongoing compliance with the WHS Law including the due diligence obligation contained in the WHS Law;
- (h) provide the written assurances obtained under clause 10.4(g), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Law, to Airservices Contract Manager;
- (i) provide Airservices Contract Manager on a monthly basis with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause), or any other relevant matters as Airservices Contract Manager may require from time to time, including a summary of the Contractor's compliance with the WHS Law; and
- (j) if requested by Airservices Contract Manager or required by the WHS Law, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of Airservices Contract Manager before the Contractor or any subcontractor commences such work.

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11. Subcontracting

- (a) The Contractor must:
 - (i) not subcontract any aspect of the provision of the Contractor's Activities or the Works without the prior written approval of Airservices, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Workplace Gender Equality Agency as not complying with the WGE Act; and

- (iii) ensure that any subcontractor approved under this Agreement complies with all applicable Laws, Applicable Policies and the Commonwealth Regulatory Requirements.
- (b) The Contractor is fully responsible for the performance of the Contractor's Activities even if the Contractor subcontracts any aspect of the provision of the Contractor's Activities or Works.
- (c) The Contractor must, prior to Completion, procure and provide Airservices with those warranties described in Item 19 of Schedule 1 from the relevant subcontractor or supplier. These warranties must be on such terms and in such form as approved by Airservices Contract Manager.
- (d) In relation to the provision of the Works and the Contractor's Activities, the Contractor:
 - (i) must, on request by Airservices, provide Airservices with the names of any of the Contractor's subcontractors;
 - (ii) agrees that Airservices may disclose publicly the names of any of the Contractor's subcontractors; and
 - (iii) must ensure that any subcontractor agrees that Airservices may disclose the subcontractor's name publicly.

12. Approved Security

12.1 Amount and Timing

- (a) The Contractor must provide to Airservices within 10 Business Days of the Agreement Commencement Date the Approved Security for the value(s) specified in Item 23 of Schedule 1.
- (b) If the Contractor does not comply with clause 12.1(a), Airservices may retain any amount up to the amount of the Approved Security required, from any amount payable by Airservices under clause 20.3.

12.2 Recourse and replacement

- (a) Airservices may have recourse to the Approved Security where Airservices considers in good faith that:
 - (i) the Contractor is in persistent breach of any of its obligations under this Agreement or in breach of an obligation that is not capable of remedy;
 - (ii) it has a claim against the Contractor for damages for breach of this Agreement or otherwise for the payment of moneys under or in connection with this Agreement;
 - (iii) it has a right to terminate this Agreement either at Law or under the terms of this Agreement;
 - (iv) that the Contractor is unable to pay its debts as and when they fall due, including a debt due and payable to Airservices.
- (b) The Approved Security shall be treated as a credit allocation risk pending the resolution of any dispute relating to the matters referred to in clause 12.2(a).
- (c) If Airservices has recourse to the Approved Security, Airservices may, by written notice directed to the Contractor, require the Contractor to provide further Approved Security in an amount equivalent to the amount called upon by Airservices. If Airservices serves a notice under this clause for a further Approved Security, notwithstanding clause 20, the Contractor will not be entitled to submit a payment claim under clause 20.2, and Airservices may withhold payment of moneys (including any moneys certified as due and owing, to the Contractor) until the Contractor complies with Airservices' notice.

12.3 Release

Airservices must release:

- (a) the proportion specified in Item 24 of Schedule 1 of any Approved Security held under this clause when a Completion Certificate has been issued for the Works or a Stage; and
- (b) the balance of the Approved Security held under this clause within 15 Business Days after the final certificate is issued pursuant to clause 20.6.

12.4 QBCC Act

- (a) The parties acknowledge that to the extent that the QBCC Act (and in particular, section 67K(2) of the QBCC Act) applies to this Agreement, under the QBCC Act, unless the parties expressly agree otherwise, section 67K(2) makes this Agreement subject to a condition that at any time before Completion (as defined in the QBCC Act) the total of Approved Security held by Airservices under this Agreement (other than those referred to in section 67K(3) of the QBCC Act) is not to exceed 5% of the amount payable under this Agreement for carrying out building work including any Works Variations.
- (b) By initialling this clause 12.4 in the space provided below, the parties expressly agree that this Agreement is not subject to the condition imposed by section 67K(2) and explained above.

[Airservices' initials]

[Contractor's initials]

- (c) Notwithstanding any other provision of this Agreement, the parties agree that to the extent that:
 - (i) the QBCC Act applies to this Agreement; and
 - (ii) this Agreement provides for the total of Approved Security held by Airservices to exceed 2.5% of the Contract Price for this Agreement (which under the QBCC Act includes adjustments for variations) after practical completion of building work (within the meaning of the QBCC Act) has been reached, the amount of the excess does not relate to the need to correct defects in the Works identified during the Defects Liability Period, but instead relates to the recovery by Airservices of any moneys that may become payable to Airservices by the Contractor under or in connection with this Agreement, the Contractor's performance of this Agreement or any breach of this Agreement by the Contractor.
- (d) The Contractor agrees that any direction, notice or certificate issued by Airservices' Representative under or in connection with this Agreement which refers to an amount that Airservices is owed by the Contractor under this Agreement, constitutes a notice for the purposes of section 67J of the QBCC Act that Airservices may use any Approved Security provided under this Agreement, in whole or in part, to obtain the amount owed.

13. Unfixed goods and materials

13.1 Payment for Unfixed Goods and Materials

Unfixed goods or materials must not be included in the value of work in a payment claim under clause 20 unless the Contractor has provided to Airservices Contract Manager additional Approved Security equal to the amount to be claimed for the unfixed goods and materials.

13.2 Title and Risk

- (a) Title to unfixed goods and materials will vest in Airservices upon payment by Airservices.

- (b) Unfixed goods and materials remain at the risk of the Contractor until those unfixed goods and materials have been incorporated into the Works notwithstanding that title may have already vested in Airservices.

14. Risks

14.1 Risk of the Works

Except where it arises from an Airservices Risk, the Contractor will bear the risk of:

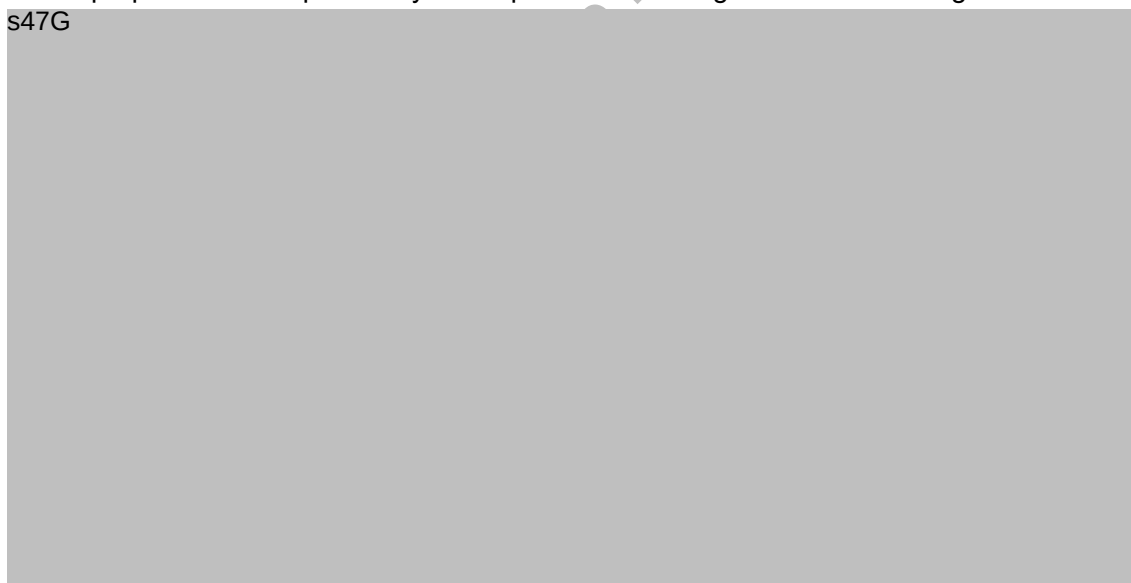
- (a) before the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage, any plant, equipment, temporary works or other things used in the Contractor's Activities; and
- (b) after the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage arising from any act or omission of the Contractor in rectifying defects during the Defects Liability Period or from an act, omission, event or any other thing which occurred prior to the issue of a Completion Certificate for the Works or a Stage.

14.2 Reinstatement

- (a) The Contractor must, at its cost, make good any loss of or damage to the Works or a Stage that occurs during the period of the Contractor's responsibility under clause 14.1, excluding loss or damage which is the result of an Airservices Risk.
- (b) If pursuant to a Direction issued by the Airservices Contract Manager, the Contractor is required to make good any loss of or damage to the Works or a Stage which is the result of an Airservices Risk, such Direction shall be deemed a Works Variation. The Airservices Contract Manager will price the Works Variation having regard to the proportionate responsibility of the parties in causing that loss or damage.

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14.4 Contribution

- (a) Subject to clause 14.4(b), each party's liability to the other party for any Claim or Loss arising out of this Agreement is reduced to the extent that the other party or its Representative contributed to the Claim or Loss.
- (b) Clause 14.4(a) does not apply in respect of any contribution made by an act or omission that the other party or its Representatives was lawfully entitled to make.
- (c) Apportionment under clause 14.4(a) is applied prior to any limitation of liability under clause 14.5(a).
- (d) To the extent permitted at Law, the operation of any Proportionate Liability Legislation is expressly excluded in determining the rights, obligations and liabilities of the parties in any Claim arising under this Agreement, including the rights, obligations and liabilities of the parties arising under any indemnity in this Agreement.

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16. Compliance with Directions

16.1 Notice by Contractor as to time and cost implications

- (a) If the Contractor believes that a Direction given by Airservices Contract Manager:
 - (i) constitutes a Works Variation, the Contractor must comply with the requirements of clause 19.3; or
 - (ii) will involve or result in a claim by the Contractor for additional payment or for an extension of time, the Contractor must, prior to complying with the Direction, and within two Business Days of the Direction, provide written notice to Airservices Contract Manager of the anticipated claim.

- (b) The Airservices Contract Manager may rescind, confirm or modify the Direction previously given by Airservices Contract Manager. If the Airservices Contract Manager does not confirm the Direction within five Business Days of receiving the advice from the Contractor, it will be deemed that Airservices Contract Manager rescinded the Direction.
- (c) If the Contractor does not comply with the requirements of clause 19.3 or provide a written notice to Airservices Contract Manager as required by clause 16.1(a)(ii), prior to commencing any additional work in complying with the Direction, the Contractor will not be entitled to make a claim for additional payment or for an extension of time.

16.2 Action by Airservices

- (a) If the Contractor fails to comply with a Direction of Airservices Contract Manager after Airservices Contract Manager has given reasonable notice in writing to the Contractor, in addition to any other remedies, Airservices may, have work carried out by other persons such that the Direction is complied with. The reasonable costs incurred by Airservices will be a debt due from the Contractor and may be set off against a payment claim under clause 20.2.
- (b) Any action taken by Airservices pursuant to this clause will not affect any warranties given or provided by the Contractor in relation to that Work.

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18. Time

18.1 Programming

- (a) The Contractor must give Airservices Contract Manager a construction program in a form and by a timeframe reasonably requested by Airservices.
- (b) Airservices may defer payment until the Contractor satisfies clause 18.1(a).

18.2 Progress

- (a) The Contractor must progress the Contractor's Activities and the Works in accordance with the construction program (and any amended construction program).

- (b) The Contractor must not suspend the progress of the whole or any part of the Contractor's Activities or the Works except where suspension is Directed or approved by Airservices Contract Manager.

18.3 Amended construction program and monthly reports

During the Works the Contractor must review the construction program monthly and give the Airservices Contract Manager notice of any potential delays and recommended adjustments to ensure completion by the Date for Completion. The Airservices Contract Manager may direct the Contractor to give an updated construction program.

18.4 Time for Completion

- (a) The Contractor must achieve Completion by the Date for Completion.
- (b) The Contractor may, if it chooses, accelerate progress to reach Completion before the Date for Completion.
- (c) The time for performance of Airservices' or Airservices Contract Manager's obligations is not affected by the Contractor's decision to accelerate.

18.5 Delay

The Contractor will be entitled to claim an extension of time if it will be delayed reaching Completion of the Works or a Stage by the Date for Completion due to a cause other than:

- (a) acts or omissions of the Contractor;
- (b) civil commotion or industrial dispute confined to the Contractor; or
- (c) events occurring after the Date for Completion,

and within 14 Business Days of the commencement of the delay the Contractor gives Airservices Contract Manager written detailed particulars of the delay and the required extension to the critical path.

18.6 Concurrent delay

- (a) Where more than one event causes a concurrent delay and the cause of at least one of those events does not entitle the Contractor to an extension of time, to the extent to which the delays are concurrent, the Contractor will not be entitled to an extension of time.
- (b) Despite anything else in this Agreement, if a claim for an extension of time would be concurrent with a claim for a cause of delay that is permitted, the Contractor will not be entitled to claim an extension of time to the Date for Completion under clause 18.7 for the second cause of delay.

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- (a) is the maximum damages which will be payable by Airservices per day in these circumstances; and
- (b) will be a limitation upon Airservices' liability to the Contractor for any delay or disruption which the Contractor encounters in performing the Contractor's Activities and arises from a breach of this Agreement by Airservices.

18.9 Suspension

- (a) Airservices Contract Manager may Direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities or the Works.
- (b) Unless the suspension is the result of the Contractor's failure to perform its obligations under this Agreement, a Direction to suspend under this clause will entitle the Contractor to:
 - (i) claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 18.5; and
 - (ii) the Contractor's direct, reasonably and properly evidenced extra costs necessarily incurred by the Contractor in respect of the suspension, calculated in accordance with clause 18.8.
- (c) The Contractor's entitlement under clause 18.9(b)(ii) will be its only right to payment of money arising from a Direction to suspend and will be subject to the Contractor complying with clause 22 and taking all steps possible to mitigate its extra costs, as assessed by Airservices Contract Manager.

19. Works Variations

19.1 Works Variation Order

- (a) Airservices Contract Manager may Direct the Contractor to carry out a Works Variation by a written document titled "Works Variation Order".
- (b) Airservices Contract Manager may seek from the Contractor a notice in regard to any proposed Works Variation from Airservices Contract Manager on whether or not a proposed Works Variation can be effected by the Contractor. The Contractor must provide a response within the timeframe specified by the Airservices Contract Manager and in doing so must identify:
 - (i) whether the proposed Works Variation will have an impact on the construction program and achieving Completion of the Works by the Date for Completion; and
 - (ii) the proposed cost of carrying out such a Works Variation.
- (c) If, in relation to a proposed Works Variation, Airservices Contract Manager is satisfied with the notification from the Contractor as to the carrying out of the proposed Works Variation, Airservices Contract Manager may issue a Works Variation Order on the Contractor to carry out that Works Variation. If Airservices Contract Manager does not issue a Works Variation Order, the Contractor must not carry out the proposed Works Variation.

19.2 Cost of Works Variation

- (a) Subject to clauses 17.1 and 19.2(b), the Contract Price will be adjusted for the value of all Works Variations carried out by the Contractor by:
 - (i) the cost of carrying out the Works Variation as proposed by the Contractor under clause 19.1(b)(ii); or
 - (ii) if Airservices Contract Manager does not agree to the cost of carrying out the Works Variation proposed by the Contractor under clause 19.1(b)(ii), then:
 - (A) if there is a Table of Works Variation Rates and Prices and / or Table of Rates which can apply to calculate the additional costs of the Contractor under this clause and the Contractor did not calculate its additional costs and expenses by reference to the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant), Airservices

will only be liable to pay an amount determined by using any rates or prices in the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant); or

- (B) if there are no relevant rates or prices specified in the Table of Works Variation Rates and Prices and / or the Table of Rates that are applicable to calculate the additional costs under this clause, Airservices will only be liable to pay a reasonable amount as agreed between the parties or, in the absence of such agreement, as determined by Airservices Contract Manager acting reasonably.

In either case the value of the Works Variation shall include:

- (C) a reasonable amount for profit and overheads and any deductions to the Contract Price shall include a reasonable amount for profit but not overheads; and
 - (D) any reasonable costs and expenses incurred by the Contractor arising from the Works Variation delaying the Contractor.
- (b) To the extent that a Works Variation involves an omission from the Works, Airservices may thereafter carry out the omitted work either itself or by engaging third parties.

19.3 Notice of Works Variation

- (a) If the Contractor believes a Direction by Airservices Contract Manager, other than a Direction under clause 5.2 or a "Works Variation Order" under clause 19.1, constitutes or involves a Works Variation it must, within five Business Days of, and before complying with, the Direction, give notice to Airservices Contract Manager that it considers that the Direction constitutes or involves a Works Variation.
- (b) On receipt of such notice Airservices Contract Manager may rescind, confirm or amend the Direction and advise whether it accepts that the Direction constitutes or involves a Works Variation.
- (c) If Airservices Contract Manager does not confirm or vary the Direction:
 - (i) within five Business Days of receiving the Contractor's notice under clause 19.3(a), it will be deemed that Airservices Contract Manager has rescinded the Direction;
 - (ii) the Contract Price will not be adjusted as a result of that Direction; and
 - (iii) Airservices will not be liable upon any claim by the Contractor arising out of or in connection with that Direction, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law.
- (d) If Airservices Contract Manager confirms or varies the Direction and indicates that it considers the Direction constitutes or involves a Works Variation, that notice will be taken to be a request under clause 19.1(b).
- (e) If Airservices Contract Manager confirms or varies the Direction and indicates that it does not consider the Direction constitutes or involves a Works Variation, the Contractor must continue to perform the Contractor's Activities and progress the Works to the full extent possible in accordance with this Agreement and all Directions of Airservices Contract Manager.

20. Payment

20.1 Payment obligation

- (a) Subject to due and proper performance by the Contractor of its obligations under this Agreement and any right to set-off which Airservices may have, Airservices must pay the Contractor the Contract Price and any other amounts to which it is entitled under this Agreement at the times and in accordance with the methods prescribed in this Agreement.
- (b) The Contractor acknowledges, subject to clauses 18 and 19 of this Agreement, that the Contract Price:

- (i) includes all risks, hazards and additional costs, including all employment related payments and allowances under any industrial awards or other such agreements; and
- (ii) will not be varied as a result of any rise or fall in the costs of material or labour, relevant to or associated with carrying out and completing the Works and the Contractor's Activities.

20.2 Payment claims

- (a) Subject to clause 20.5, the Contractor must claim payments under this Agreement progressively in accordance with the Milestone Schedule in Schedule 3.
- (b) Any payment claim must be submitted to Airservices Contract Manager and must include:
 - (i) details of the percentage of the Works covered by the claim;
 - (ii) confirmation that the Works comply with all relevant Approvals and authorisations;
 - (iii) details of any unfixed plant and materials of which the Contractor is claiming payment;
 - (iv) the items required by clause 20.7; and
 - (v) any further information that Airservices Contract Manager reasonably requires in relation to the payment claim.
- (c) If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement will not require:
 - (i) Airservices Contract Manager to issue a payment certificate; or
 - (ii) Airservices to pay the Contractor,
 in respect of that payment claim earlier than would have been the case had the Contractor submitted a payment claim in accordance with this Agreement.

20.3 Payment certificate

- (a) Airservices Contract Manager must within 10 Business Days of receipt of a payment claim give Airservices and the Contractor, on behalf of Airservices, a payment certificate in the form reasonably determined by Airservices Contract Manager and which sets out:
 - (i) the value of the work completed in accordance with this Agreement;
 - (ii) amounts already paid to the Contractor;
 - (iii) the amount (if any) which Airservices Contract Manager believes to be then payable by Airservices to the Contractor;
 - (iv) amounts Airservices is entitled to retain under clause 12.1(b), withhold under clause 20.7, set-off in accordance with clause 32.3 or otherwise withhold or deduct in accordance with this Agreement;
 - (v) the amount (if any) which Airservices proposes to pay to the Contractor; and
 - (vi) if the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim:
 - (A) the reason why the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim; and
 - (B) if the reason for the difference is that Airservices has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) Unfixed goods and materials must not be included in the value of the Work unless the Contractor has given Airservices additional Approved Security equal to the payment claimed.

- (c) At any time and from time to time, Airservices Contract Manager may by a further certificate correct any error or omission which has been discovered in any previous payment certificate, other than a Completion Certificate or a final certificate.

20.4 Tax invoice and payment

- (a) Upon receipt of a payment certificate under clause 20.3:
 - (i) the Contractor must (without affecting its rights under this Agreement) give to Airservices (and a copy to Airservices Contract Manager), a tax invoice for the amount specified in the payment certificate under clause 20.3(a)(v); and
 - (ii) Airservices must, within the time stated in Item 29 of Schedule 1 of receipt of the tax invoice under clause 20.4(a)(i) pay to the Contractor, the amount specified in the tax invoice.
- (b) A payment certificate or payment is not:
 - (i) evidence of the value of work but is only on account of the Contract Price;
 - (ii) an admission of liability; or
 - (iii) acceptance by Airservices or Airservices Contract Manager of the Contractor's performance or compliance with this Agreement.
- (c) Airservices Contract Manager may modify or amend any payment certificate.

20.5 Conditions precedent to entitlement to payment

If at the time that the Contractor purports to submit a payment claim under clause 20.2, the Contractor has not:

- (a) complied with its programming obligations under clause 18;
- (b) provided all relevant information as required under the WHS Law or under this Agreement arising out of or in connection with work health and safety; or
- (c) complied with clause 20.7,

then the Contractor will not be entitled to submit a payment claim under clause 20.2; and

- (d) Airservices Contract Manager will not be obliged to include in any payment certificate under clause 20.3; and
 - (e) Airservices will not be liable to pay,
- any amount included in the payment claim if otherwise submitted by the Contractor.

20.6 Final payment claim

- (a) The Contractor must give Airservices a final payment claim within 20 Business Days after the end of the Defects Liability Period for the Works or, where the Works are to be performed in Stages, the end of the Defects Liability Period in respect of the final Stage.
- (b) That claim must include all amounts which the Contractor claims from Airservices under this Agreement or otherwise.
- (c) After the date for submitting the final payment claim has passed, Airservices will not be liable for any claim by the Contractor arising out of or in connection with the Contractor's Activities or the Works, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, unless the Contractor has given Airservices a final payment claim within the time required and the claim is included in the final payment claim.
- (d) The final payment claim is in addition to the other notices which the Contractor must give to Airservices Contract Manager under this Agreement in order to preserve its entitlements under this Agreement.
- (e) Within 10 Business Days after receipt of the Contractor's final payment claim issued under this clause 20.6, Airservices Contract Manager will issue to the Contractor a final certificate confirming the moneys finally due and payable as between Airservices and the Contractor pursuant to the terms of this Agreement. Within 20 Business Days of receipt of the final certificate Airservices must pay to the

Contractor, or the Contractor must pay to Airservices, as the case may be pursuant to the final certificate, any amounts stated in the final certificate as being due and payable either by Airservices or the Contractor.

- (f) The final certificate issued by Airservices Contract Manager is conclusive evidence of the full and final satisfaction and discharge of each party's obligation pursuant to the requirements of this Agreement except in relation to:
- (i) any fraud or dishonesty in relation to the Contractor's Activities or any matter referred to in the final certificate;
 - (ii) any defect or omission in the Works or the performance by the Contractor of its obligations under this Agreement that was not readily apparent at the end of the Defects Liability Period or was not capable of identification upon reasonable inspection at the time of issue of the final certificate;
 - (iii) any accidental or mistaken inclusion or exclusion of any work in performing the Works; and
 - (iv) any unresolved disputes referred to resolution pursuant to this Agreement.

20.7 Payment of workers and subcontractors

- (a) The Contractor must with each payment claim under clause 20.2 provide Airservices Contract Manager with:
- (i) a statutory declaration in the form at Schedule 5 by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the request been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities;
 - (ii) documentary evidence that at the date of the request all workers who have been employed by a subcontractor, supplier or consultant of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities; and
 - (iii) a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors, suppliers and consultants have been paid all moneys due and payable to them in respect of the Contractor's Activities.
- (b) Without limiting clause 20.5, Airservices is entitled to withhold from any payment which would otherwise be due to the Contractor under this Agreement the amount disclosed as unpaid under this clause 20.7, and Airservices may pay unpaid moneys directly to a worker or a subcontractor where permitted by Law, in accordance with a Court order given in favour of the worker or subcontractor, or if requested in writing by the Contractor.
- (c) Any such payment made by Airservices to a worker or a subcontractor in accordance with this clause will be deemed to be part satisfaction of Airservices' obligation to pay a Contractor's claim pursuant to this Agreement.

20.8 Security of payment legislation

- (a) The parties agree:
- (i) a payment claim submitted to Airservices Contract Manager under clause 20.2 which also purports to be (or is by Law) a payment claim under the relevant SOP Act is received by Airservices Contract Manager as agent for Airservices;
 - (ii) unless otherwise notified to the Contractor by Airservices in writing, Airservices Contract Manager will give payment certificates and carry out all other functions of Airservices under the relevant SOP Act as the agent of Airservices;

- (iii) to the extent permitted by and for the purposes of the relevant SOP Act, the "reference dates" are those dates prescribed in clause 20.2 on which the Contractor has satisfied any conditions precedent to the Contractor's entitlement to submit a payment claim; and
 - (iv) a reference to a "payment certificate" is also a reference to a "payment schedule" for the purposes of the relevant SOP Act.
- (b) Failure by Airservices Contract Manager to set out in a payment certificate issued under the relevant SOP Act or otherwise an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices will not prejudice:
 - (i) Airservices Contract Manager's ability or power to set out in a subsequent payment certificate an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices; or
 - (ii) Airservices' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Agreement.
- (c) The Contractor agrees that the amount set out in the payment certificate in accordance with clause 20.3(a) is, to the extent permitted by and for the purposes of the relevant SOP Act, the amount of the "progress payment" calculated in accordance with the terms of this Agreement, which the Contractor is entitled to in respect of this Agreement.
- (d) The Contractor irrevocably chooses the person set out in Item 33 of Schedule 1 (Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority) as, to the extent permitted by and for the purposes of the relevant SOP Act and to the extent that the Works are to be carried out in:
 - (i) the Northern Territory or Western Australia, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer; or
 - (ii) any other State or Territory in which the relevant SOP Act applies, the authorised nominating authority.
- (e) The Contractor must not at any time, without the written consent of Airservices, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by Airservices or any details thereof in respect of an adjudication application made under the relevant SOP Act (in this paragraph, the **Information**).
- (f) For the avoidance of doubt:
 - (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of the Information;
 - (ii) notwithstanding the Contractor's obligation in respect of the Information, Airservices has sole and unfettered discretion to divulge or suffer or permit its servants, subcontractors or agents to divulge to any person the Information;
 - (iii) Airservices may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant SOP Act; and
 - (iv) any Information which Airservices provides or relies upon in respect of an adjudication application made under the relevant SOP Act is made without prejudice to Airservices' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

20.9 Limits of accuracy

If a Table of Rates exists and:

- (a) the actual quantity of an item required to carry out the Contractor's Activities is greater or less than the quantity shown in the Table of Rates;
- (b) Airservices has accepted a rate for the item referred to in clause 20.9(a); and
- (c) the actual quantity of the item referred to in clause 20.9(a) is outside the limits of accuracy stated in Item 27 of Schedule 1,

the rate will only apply to the quantities within those limits of accuracy and quantities outside those limits of accuracy will have their value determined by agreement between the Contractor and Airservices Contract Manager or failing agreement, Airservices Contract Manager using reasonable rates.

21. GST

21.1 Interpretation

In this clause 21, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

21.2 GST warranty

The Contractor warrants that, unless otherwise advised to Airservices in writing, it is registered for GST and will immediately advise Airservices if it ceases to be registered for GST.

21.3 Prices GST exclusive

Unless stated otherwise, all prices in this Agreement are exclusive of GST.

21.4 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

21.5 Reimbursements

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 21.4.

21.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

21.7 Adjustment event

If and to the extent an adjustment event arises in respect of a supply made by the Contractor to Airservices under this Agreement, then:

- (a) if the Contractor's corrected GST amount is less than the previously attributed GST amount, the Contractor must refund the difference to Airservices; and
- (b) if the Contractor's corrected GST amount is greater than the previously attributed GST amount, Airservices will pay the difference to the Contractor,

and the Contractor must issue an adjustment note to Airservices.

21.8 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

22. Notification of claims

22.1 Notices

If the Contractor wishes to make a claim against Airservices, other than a claim for an extension of time under clause 18.5 or a payment claim under clause 20.2, in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give Airservices Contract Manager the following:

- (a) within five Business Days of the Contractor becoming aware, or within 20 Business days of the occurrence (whichever is the shorter) of the events on which the claim is based, written notice that it proposes to make the claim, the details of the nature of the claim, and the events upon which the claim will be based; and
- (b) within 20 Business Days of giving the notice under clause 22.1(a), a written claim setting out detailed particulars of the events on which the claim is based, the legal basis for the claim, the facts relied upon in support of the claim and details of the quantification of the amount claimed.

22.2 Continuing events

If the events upon which the claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 22.1(b) every 20 Business Days after the claim under clause 22.1(b) was given until after the events or the consequences have ceased.

22.3 Bar

If the Contractor fails to comply with clauses 22.1 and 22.2:

- (a) the Contract Price will not be adjusted as a result of; and
- (b) Airservices will not be liable for any claim by the Contractor, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, arising out of or in connection with,

the relevant fact, matter or thing.

23. Completion

23.1 Completion Certificate

- (a) The Contractor must notify Airservices Contract Manager at least 10 Business Days prior to the date upon which the Contractor anticipates that Completion will be achieved.
- (b) When the Contractor believes that Completion has been achieved, the Contractor must request, by written notice to Airservices Contract Manager, that:
 - (i) Airservices Contract Manager inspect the Works or the Stage; and
 - (ii) if satisfied that Completion has been achieved, that Airservices Contract Manager issues a Completion Certificate stating the date Completion was achieved.
- (c) Airservices Contract Manager must within 10 Business Days of receipt of the notice from the Contractor pursuant to clause 23.1(b) inspect the Works or the Stage and if satisfied that the Works or the Stage have achieved Completion, issue a Completion Certificate stating the date Completion was achieved together with a defects list identifying minor defects in the Works or the Stage as at the Date of Completion.
- (d) If Airservices Contract Manager is not satisfied that Completion has been achieved, Airservices Contract Manager must issue a notice to the Contractor setting out the reasons why Airservices Contract Manager does not believe Completion has been achieved. The Contractor must then proceed to bring the Works to Completion and the process in clauses 23.1(b) to 23.1(d) will reapply.

23.2 Possession upon Completion

On Completion, Airservices may take possession of the Works or the Stage.

23.3 Part of the Works or Stage

- (a) Airservices may use a part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.
- (b) Such use will not affect the Contractor's obligations under this Agreement but Airservices must endeavour to use that part so as to not interfere with the Contractor's performance.

23.4 Effect of Completion Certificate

A Completion Certificate is not acceptance by Airservices of the Contractor's performance of its obligations under this Agreement.

23.5 s47G



24. Security

24.1 Compliance with security obligations

The Contractor must, and must ensure that its Representatives:

- (a) have awareness of, and fully comply with:
 - (i) Airservices' security requirements, policies and procedures that are notified by Airservices to the Contractor from time to time, including those specified in this clause 24.1 and
 - (ii) all reasonable security directions and any mandatory training issued by Airservices relating to the use of Airservices' premises, facilities or Airservices Material;
- (b) implement appropriate security measures to protect Airservices Material and ensure that Airservices Material, including official, classified, sensitive or commercial information or documents, is not accessible by any means by unauthorised persons; and
- (c) immediately report any security incidents of which it may become aware (confirmed promptly in writing to Airservices), including actual, suspected or apparent violations and breaches of this clause 24, and the steps taken by the Contractor to address these.

24.2 Authorisation of Representatives

The Contractor must ensure that any person (including any Representative) the Contractor proposes to carry out work or perform duties under this Agreement and who will be required to:

- (a) enter any secure locations in Airservices' buildings or places;
- (b) have access to, or be responsible for the physical custody of, Confidential Information or Airservices Material; or
- (c) hold a particular kind of security clearance the details of which have been notified to the Contractor by Airservices,

does not carry out that work or perform those duties unless authorised to do so by Airservices.

24.3 Security checks

- (a) The Contractor must, and must ensure that any Representative of the Contractor providing the Works or performing the Contractor's Activities:
 - (i) obtains all security clearances or authorisations or undergoes any security checks (including a police history check) as required in relation to performing this Agreement; and
 - (ii) provides to Airservices, in the form required by Airservices, such information as Airservices from time to time reasonably requests for the purpose of allowing Airservices to undertake reasonable investigations for the purposes of this clause 24.
- (b) All costs associated with obtaining security clearances or authorisations, or undergoing security checks, reviews or audits, or security performance monitoring must be borne by the Contractor, unless otherwise agreed in writing by Airservices.

24.4 Airport security

If the Works or the Contractor's Activities are to be provided at any Secure Area:

- (a) the Contractor must meet with Airservices, promptly after the Agreement Commencement Date (or within such other period as notified by Airservices) and before commencing any work in a Secure Area, to discuss access and airport security, and must comply, at the sole cost of the Contractor, with any safety or security directions given by the Airport Operator and/or Airservices in respect of the Works or Contractor's Activities at an airport; and
- (b) before commencing any Works or Contractor's Activities in a Secure Area every Representative of the Contractor who will be working in, or who will be required to have unaccompanied access to, a Secure Area must obtain an ASIC.

24.5 ASIC applications

- (a) The Contractor must ensure that all necessary applications are made in respect of those Representatives required to hold an ASIC and that those persons obtain ASICs. The Contractor will not be entitled to make any Claim arising out of any delay in obtaining an ASIC, loss of an ASIC, refusal to issue an ASIC to any person or withdrawal of an ASIC.
- (b) The Contractor acknowledges that:
 - (i) all persons applying for ASICs will be subject to those checks required under the relevant Laws;
 - (ii) a fee is payable to the ASIC issuing entity at the time of application;
 - (iii) the fees payable under this Agreement include all such fees to issuing entities and the Contractor is responsible for payment of them; and
 - (iv) no assurance is given by Airservices as to the minimum period for processing of applications, and the time required to do so should be taken into consideration by the Contractor in planning performance of this Agreement.
- (c) The Contractor must ensure that any ASICs issued by Airservices that have expired, are cancelled or damaged, or are no longer required, are promptly returned to Airservices.
- (d) Any costs incurred by Airservices to replace lost, stolen or destroyed ASICs must be reimbursed by the Contractor.

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26. Use and protection of Airservices Material

- (a) Subject to any conditions or limitations (including of third parties) notified by Airservices to the Contractor, or specified in Item 23 of Schedule 1, Airservices grants the Contractor a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any Airservices Material for the sole purpose of performing the Contractor's Activities and the Works pursuant to this Agreement, and the Contractor indemnifies Airservices for any infringement of Airservices' Intellectual Property Rights.
- (b) On expiry or termination of this Agreement, or on written request from Airservices, the Contractor must:
 - (i) immediately return to Airservices all Airservices Material;
 - (ii) if requested by Airservices, destroy all Airservices Material comprising of documentation (including all archival copies) in its custody or control; or
 - (iii) pay the cost of repair or replacement (at Airservices' option) of any Airservices Material comprising equipment which has been degraded or destroyed beyond fair wear and tear.
- (c) The obligation in clause 26(b) does not prevent the Contractor from retaining and using one copy of Airservices Material:
 - (i) solely for the purposes of complying with its record keeping, reporting and regulatory obligations; or
 - (ii) that is stored in electronic back-up tapes or records maintained in the ordinary course of the Contractor's business that are not readily capable of search or destruction,provided that the Airservices Material is always treated as confidential to Airservices.

27. Confidentiality

- (a) Each party must protect the Confidential Information of the other party and must not make public, disclose or use any Confidential Information of the other party except in accordance with this Agreement, if required to do so by Law or a stock exchange or as strictly required in relation to legal proceedings relating to this Agreement.
- (b) If the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 27, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

28. Monitoring progress

28.1 Notification

If, in the performance of the Contractor's Activities, the Contractor becomes aware of something that may affect the safety of air navigation or Airservices' capacity to perform its statutory functions, the Contractor must notify Airservices as soon as possible.

28.2 Progress meetings

The parties will meet at the times and in the manner set out in the Statement of Works (or otherwise as agreed in writing between the parties) and as reasonably requested by Airservices from time to time, to discuss any issues in relation to this Agreement or the provision of the Works.

29. Dispute resolution

29.1 Agreed procedure

Subject to clause 29.6, if there is a dispute in relation to this Agreement, the parties must comply with this clause 29 to seek to resolve the dispute before initiating legal proceedings. If a party does not comply with this clause 29 in relation to a dispute, the other party does not have to comply with this clause in relation to the dispute.

29.2 Notice

If a party believes a dispute has arisen in relation to this Agreement that party must give written notice to the other party, adequately identifying and providing details of the dispute.

29.3 Internal escalation

On receipt of a dispute notice under clause 29.2, the parties must use their best efforts to resolve the dispute without delay, including by escalating the dispute to authorised representatives of the parties who have authority to resolve the dispute.

29.4 Next steps

If the parties are unable to resolve a dispute in accordance with clause 29.3, and the dispute is in relation to a Direction of Airservices Contract Manager, the parties must escalate the matter to executive management specified in Item 36 of Schedule 1 who must meet at least once within 14 Business Days to attempt to resolve the dispute.

29.5 Confidentiality and costs

- (a) Any information or documents disclosed by a party under this clause 29 must be kept confidential and may only be used to attempt to resolve the dispute.
- (b) Each party must pay its own costs of complying with this clause 29.

29.6 Exclusions

This dispute resolution procedure does not:

- (a) prevent a party from applying to a court for urgent interlocutory relief or any relief to protect Intellectual Property Rights or Confidential Information; or
- (b) apply to any dispute in relation to a set off of payment by Airservices under this Agreement or termination or reduction by Airservices under clause 30.4.

29.7 Continuation of performance

Despite the existence of a dispute, the Contractor must, unless directed by Airservices in writing not to do so, continue to provide the Works and perform the Contractor's Activities.

30. s47G

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s47G

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31. Notices and other communications

- (a) A notice or other communication in relation to this Agreement must be in writing, marked for the attention of the Contractor Contract Manager or the Airservices Contract Manager (as appropriate) and delivered by hand delivery, express post for Australian domestic mail, air mail for international post or email, to the address specified in Item 35 of Schedule 1 as appropriate (as updated from time to time by notice from the recipient to the sender).
- (b) A notice or communication provided in accordance with clause 31(a) takes effect when it is received (or at a later time specified in the communication) and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if posted by express post in Australia on the first Business Day after posting;
 - (iii) if posted to or from a place outside Australia, on the tenth Business Day after posting; or
 - (iv) if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).
- (c) A communication made under clauses 29 and 30 must be sent to the Airservices Contract Manager and the following email address:
contract.notices@airservicesaustralia.com.

32. Miscellaneous

32.1 Applicable law

This Agreement is governed by the Law of the jurisdiction where the Site is located and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

32.2 Special Site Conditions

Unless otherwise agreed by Airservices Contract Manager, the hours of work applicable to the Contractor's Activities, methods of access, permissions and consents and other relevant matters to be carried out on-Site are those specified in the Special Site Conditions.

32.3 Right of set-off

Airservices may at any time deduct from moneys otherwise due to the Contractor or make demand against the Approved Security any debt or other moneys due from the Contractor to Airservices or any claim to money which Airservices may have against the Contractor whether for damages or otherwise.

32.4 Entire agreement

This Agreement represents the entire agreement of the parties and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, by the parties, or their Representatives, relating to its subject matter.

32.5 Relationship

- (a) A party is not, and must not represent itself as, an employee, agent, partner or joint venturer of the other party. The relationship between Airservices and the Contractor is and will remain for the term of this Agreement one of principal and independent contractor.
- (b) The Contractor's Representatives involved in the performance of this Agreement are not, and the Contractor must ensure they do not represent themselves as, legal representatives, agents, officers, partners, servants or employees of Airservices.

32.6 Assignment of rights

The Contractor may not assign any of its rights under this Agreement without Airservices' written consent, which will not be unreasonably withheld.

32.7 Variation

Subject to clause 19, this Agreement may be varied only in writing signed by both parties.

32.8 Waiver

A provision of, or a right created under, this Agreement may not be waived except in writing signed by the party or parties to be bound.

32.9 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

32.10 Counterparts

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

32.11 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

32.12 Survival

Clauses 11 (Subcontracting), 14 (Risks), 15 (Insurance), 17 (Defects liability), 21 (GST), 24.1 (Compliance with security obligations), 25 (Intellectual Property Rights and Moral Rights), 27 (Confidentiality), 29 (Dispute resolution), 30.4 (Termination for convenience), 32 (Miscellaneous) and clauses 5, 6, 7, 8 and 9 of Schedule 4 (Commonwealth Regulatory Requirements) survive the termination and expiry of this Agreement as do any other provisions that by implication from their nature are intended to survive termination or expiry of this Agreement.

Schedule 1 – Agreement Details

Item	Description	Details
1.	Airservices	Legal entity name: Airservices Australia ABN: 59 698 720 886 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Postal address: GPO Box 367, Canberra ACT 2601
2.	Airservices Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com
3.	Contractor	Name: Enviropacific Services Limited ABN: 43 111 372 064 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Postal address: 591 Blackburn Road, Notting Hill, VIC 3168
4.	Contractor Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
5.	Contractor Site Representative	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
6.	Agreement Commencement Date	s47G
7.	Scope of Agreement	
8.	Design Documents	
9.	Design hard copy requirements	
10.	Design electronic copy requirements	
11.	Site	
12.	Works Commencement	

Item	Description	Details
	Date	s47G
13.	Site access	
14.	Excepted Approvals	
15.	Additional security requirements	
16.	Hazardous Substances	
17.	Date for Completion	
18.	Defects Liability Period	
19.	Warranties	
20.	Milestones	
21.	Provisional Sum Work	

Item	Description	Details
22.	Airservices Material	s47G
23.	Approved Security	
24.	Release of Approved Security	
25.	Delay Damages	
26.	SOP Act	
27.	Limits of accuracy for quantities	
28.	Business Day	
29.	Number of Business Days for payment	
30.	Liquidated damages	
31.	Insurance Requirements	

Item	Description	Details
		s47G
32.	Contractor Liability Cap	s47G
33.	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority	Any one of the following: - Victorian Chapter of the Resolution Institute; - Australian Solutions Centre Pty Limited; - RICS Dispute Resolution Service; - Adjudicate Today Pty Limited; - Australian Solutions Centre Pty Limited; or - Rialto Adjudications Pty Limited.
34.	Applicable Policies and Applicable Standards	• s47G • Managing WHS Risk for Design, Projects, and Construction-AA PROC-SAF-0012 Version 5 (Effective 26 February 2019)

Item	Description	Details
35.	Address for notices	Airservices: Addressee: s47F , Airservices Australia Postal address: GPO Box 367, Canberra ACT 2601 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Email: s47F @airservicesaustralia.com Contractor: Addressee s47F s47F Postal address: 591 Blackburn Road, Notting Hill, VIC 3163 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Email: s47F @enviropacific.com.au
36.	Dispute resolution	Airservices executive management nominee: Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com Contractor executive management nominee: Name: s47F Position: s47F – Phone: s47F Email: s47F @enviropacific.com.au

Schedule 2 – Statement of Works

Works

1.1 Description of the Works

- a. The Contractor must provide Works in accordance Scope of Works detailed in the following document
 - s47G 
- b. Application for Airport Building Controller Online (ABCO) and Permit to Commence Work (PERCOW) permits.

Schedule 2 – Appendix 1

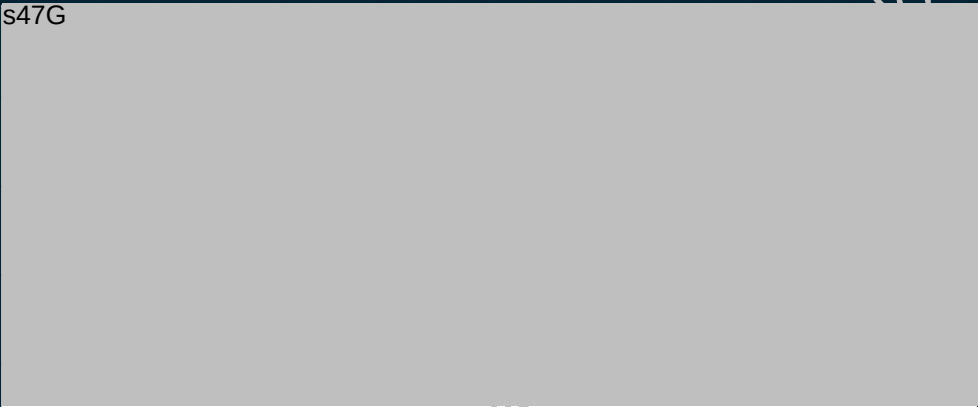
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Released by Airservices Australia under the Freedom of Information Act 1982



s47G



M: s47F

E: s47F enviropacific.com.au

enviropacific.com.au

Schedule 4 – Commonwealth Regulatory Requirements

1. The WHS Accreditation Scheme

1.1 Application

Where the Contract Price is \$4 million (GST inclusive) or more, the Contractor must:

- (a) where the Contractor is the builder of the Works:
 - (i) maintain accreditation under the WHS Accreditation Scheme while building work is carried out; and
 - (ii) comply with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials; and
- (b) where the Contractor is engaging the builder of the Works, ensure that the builder:
 - (i) is accredited under the WHS Accreditation Scheme at the time the contract for building work is signed;
 - (ii) is contractually required to maintain its accreditation under the WHS Accreditation Scheme while carrying out the building work; and
 - (iii) complies with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials.

2. Engagement of Illegal Workers prohibited

- (a) The Contractor must ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Contractor must make compliance by any subcontractors with the provisions of this clause a condition of any subcontract.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Contractor's Activities or Works.
- (d) When requested in writing to do, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied, and is complying with, its obligations under this clause.

3. Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- (b) The Contractor must use its best endeavours to increase its purchasing from Indigenous Enterprises and employment of Indigenous Australians, in the supply of the Works.
- (c) On request by Airservices, the Contractor must provide a report to Airservices on how it has met its obligations in clause 3(b).

4. Workplace Gender Equality Act

- (a) This clause applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the WGE Act.
- (b) The Contractor must comply with its obligations under the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the Agreement Period, the Contractor must promptly notify Airservices Contract Manager of that fact.
- (d) If the Agreement Period exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Agreement Commencement Date and following this, annually, to Airservices Contract Manager.

5. Protection of Personal Information

5.1 Application of this clause

This clause 5 applies only where the Contractor deals with Personal Information when, and for the purposes of, performing Contractor Activities or the Works under this Agreement.

5.2 Obligations

The Contractor must:

- (a) only use that Personal Information for the purposes of performing its obligations under this Agreement;
- (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by Airservices and must not do or omit to do anything that causes Airservices to be in breach of an Australian Privacy Principle;
- (c) ensure that any subcontract entered into for the purpose of fulfilling the Contractor's obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 5, including this requirement in relation to any further contracts entered into by the subcontractor; and
- (d) if the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 5, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

6. Accounts, books and records

The Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by Airservices under this Agreement to be determined.

7. Freedom of information

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Freedom of Information Act 1982* (Cth) (the **FOI Act**); and
 - (ii) this Agreement may be a 'Commonwealth contract' and the Contractor may be a 'contracted service provider', within the meaning of the FOI Act.
- (b) Where Airservices has received a request under the FOI Act for access to a document created by, or in the possession of, the Contractor or its subcontractors that relates to this Agreement, the Contractor must provide the document to Airservices, on request.
- (c) The parties must promptly comply with their obligations under the FOI Act, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 7 and the FOI Act.

8. Public interest disclosure

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Public Interest Disclosure Act 2013* (Cth) (the **PID Act**);
 - (ii) this Agreement may be a 'Commonwealth contract', the Contractor and its subcontractors may be a 'contracted service provider' and any officers and employees of the Contractor or its subcontractors may be a 'public official', within the meaning of the PID Act; and
 - (iii) conduct engaged in by the Contractor or any subcontractor in relation to entering into, or giving effect to this Agreement, may be 'disclosable conduct' under the PID Act.

- (b) The parties must promptly comply with their obligations under the PID Act and Airservices' public interest disclosure policies, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 8 and the PID Act.

9. Audit and access

- (a) At any time during the execution of the Contractor's Activities and the period of 10 years following expiration of the Defects Liability Period in respect of the Works or, where the Works are being performed in Stages, the expiry of the Defects Liability Period in respect of the final Stage of the Works, the Contractor and its Representatives must grant Airservices, its nominees and the Auditor-General access at reasonable times and on reasonable notice (except where there is a suspected breach of this Agreement in which case no notice is required) to:
 - (i) any premises or site of the Contractor and its Representatives used in relation to this Agreement;
 - (ii) any Representatives of the Contractor engaged in relation to the performance of this Agreement; and
 - (iii) any Airservices Material, data, records, account and other material relevant to the performance of this Agreement under the control or custody of the Contractor or its Representatives for inspection and copying.
- (b) In complying with this clause the Contractor must:
 - (i) provide all such facilities and assistance and answer all questions of Airservices Contract Manager or any nominated person;
 - (ii) in the case of documents or records stored on a medium other than in writing, the Contractor and its Representatives must make available on request at no additional cost to Airservices such reasonable facilities as may be necessary to enable a legible reproduction to be created; and
 - (iii) ensure that any subcontract made in connection with this Agreement contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 9 as if the subcontractor were the Contractor.

Schedule 5 – Statutory Declaration for payment of Contractor Representatives

STATUTORY DECLARATION

Statutory declaration in the matter of s47G
s47G dated [Insert date of Works Agreement] (Contract)

between Airservices Australia ABN 59 698 720 886 (Airservices)

and Enviropacific Services Limited ABN 43 111 372 064 (Contractor).

I, [Insert full name of declarant], of [Insert address of declarant] in [Insert state/territory], [Insert declarant's occupation], do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 20.7(a) [Note: Ensure correct clause of Contract] of the Contract in relation to payment claim no. [Insert payment claim no.] submitted by the Contractor on [Insert date for submission of claim].
3. All remuneration payable to employees of the Contractor for Works under the Contract during the period from the date of commencement of any Works under the Contract to the date of this statutory declaration, has been paid.
4. All amounts properly payable by the Contractor to consultants, suppliers and subcontractors in respect of the Works under the Contract have been paid.
5. 'Works' has the same meaning as in the Contract.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the [Insert legislation applicable to the state/territory in which statutory declaration is to be made].

DECLARED at [Insert place])
this [Insert date (day)] day of [insert (month)])
before me:)

Signature of authorised witness

Signature of declarant

Name of authorised witness (block letters)

Address of authorised witness

Justice of the Peace */ Solicitor of the Supreme Court of [Insert state/territory] holding a current practising certificate under the [Insert legislation under which practising certificates are issued in the state/territory]*

Capacity in which authorised witness takes the statutory declaration *Delete whichever is not applicable

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of **Airservices Australia ABN 59 698 720 886** by a duly authorised representative

s47F



Name of witness (print)

Signature of witness

Date

SIGNED by by Enivropacific Services Limited **ABN 43 111 372 064** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

s47F



Name of Director / Company Secretary (print)

Signature of Director / Company Secretary

Date



Certificate Of Completion
s47F

Record Tracking
s47F

Signer Events	Signature	Timestamp
s47F		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Envelope Summary Events	Status	Timestamps
s47G		
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

Electronic Record and Signature Disclosure created on: s47G

Parties agreed to: s47F

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Airservices Australia (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Airservices Australia:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: S47F [REDACTED]@airservicesaustralia.com

To advise Airservices Australia of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at S47F [REDACTED]@airservicesaustralia.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Airservices Australia

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to S47F [REDACTED]@airservicesaustralia.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Airservices Australia

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to **S47F** @airservicesaustralia.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Airservices Australia as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Airservices Australia during the course of your relationship with Airservices Australia.



SHORT FORM WORKS AGREEMENT

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Airservices Australia
ABN 59 698 720 886
(**Airservices**)

Enviropacific Services Limited
ABN 43 111 372 064
(**Contractor**)

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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Term	Definition
Agreement	the contractual relationship between the parties evidenced by this document which includes the Design Documents and all schedules and annexures to this document.
Agreement Commencement Date	the date on which this Agreement commences, as specified in Item 6 of Schedule 1.
Agreement Material	means all material: (a) created by, for, or on behalf of, the Contractor (including by subcontractors) in connection with this Agreement; (b) provided, or required to be provided, to Airservices in connection with the Contractor's Activities; or (c) at any time derived (in connection with this Agreement) from, or based on, the material described in paragraphs (a) or (b).
Agreement Period	the period of time during which this Agreement operates.
Airport Building Controller	has the meaning given in the <i>Airports (Building Control) Regulations 1996</i> (Cth).
Airport Operator	the operator of an airport at which Works are undertaken.
Airservices	Airservices Australia ABN 59 698 720 886.
Airservices Contract Manager	the person(s) identified in Item 2 of Schedule 1, or any other person nominated as an Airservices representative from time to time.
Airservices Material	any tangible equipment or material, software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, manuals, user guides, operations manuals and instructions, and the subject matter of any category of Intellectual Property Rights, provided to the Contractor by Airservices.
Airservices Risk	s47G

Airside Area	any part of the Site or any land and/or building which is an airside area as defined in the <i>Aviation Transport Security Act 2004</i> (Cth) or otherwise designated by Airservices as being an airside area.
Airside Works	Works that are: (a) within an Airside Area; (b) to be executed in such a way or in such a location that they may directly or indirectly affect (or have the potential to affect) the operations or safety of aircraft movements; or (c) otherwise notified by Airservices to the Contractor to be Airside Works.
Applicable Policies	the policies and procedures provided to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Applicable Standard	each standard notified to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Approval	any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Proper Authority having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Law which must be obtained or satisfied to: (a) carry out the Contractor's Activities; or (b) service, occupy and use the completed Works or a completed Stage.
Approved Security	one or more unconditional bank guarantees each of which is in a form and given by a financial institution with an Australian banking licence issued under the <i>Banking Act 1959</i> (Cth), approved by Airservices.
ASIC	an Aviation Security Identification Card.
Australian Privacy Principle	has the same meaning as in the Privacy Act.
Building Certificate	a certificate or other Approval issued pursuant to Law which will allow the full occupation and use of the completed Works.
Business Day	a day specified in Item 36 of Schedule 1.
Claim	any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Commonwealth Regulatory Requirements	the requirements specified in Schedule 4 and any other requirement or policy of the Commonwealth applicable to the Works or the Contractor's Activities.
Completion	s47G

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Completion Certificate	a certificate issued by Airservices Contract Manager under clause 23.1, certifying that the Contractor has achieved Completion of the Works or a Stage.
Confidential Information	information that is by its nature confidential and is: (a) designated by a party as confidential; (b) described in this Agreement as confidential; or (c) information of Airservices that the Contractor knows or ought to know is confidential,

	but does not include information which is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Contract Price	the price specified in Schedule 3 adjusted from time to time by any additions or deductions approved / agreed or required to be made under this Agreement.
Contractor	the party specified in Item 3 of Schedule 1 and includes its Representatives.
Contractor's Activities	includes all things or tasks which are necessary for the Contractor to do to comply with its obligations under this Agreement.
Contractor Contract Manager	the person identified in Item 4 of Schedule 1.
Contractor Liability Cap	the amount identified in Item 32 of Schedule 1.
Contractor Site Representative	the person identified in Item 5 of Schedule 1.
Date for Completion	the date for Completion specified in Item 17 of Schedule 1 in relation to the Works or a Stage (as applicable) as adjusted under this Agreement.
Date of Completion	the date that a Completion Certificate is issued pursuant to this Agreement in respect of the Works or a Stage.
Defects Liability Period	the period specified in Item 18 of Schedule 1 which commences on the Date of Completion, or is otherwise adjusted pursuant to clause 17.3.
Design Documents	those: (a) documents referred to in Item 8 of Schedule 1; and (b) further drawings or specifications supplied to the Contractor by Airservices Contract Manager during the course of this Agreement (if any).
Direction	includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
Exempted Approvals	means those Approvals that the Contractor is not required to obtain, as specified in Item 14 of Schedule 1.
GST	has the meaning given to that term in the GST Law.
GST Law	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Harmful Code	any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, virus, trojan horses, spyware or adware.
Hazardous Substance	any material suspected of containing or likely to contain a substance defined or listed in the National Occupation Health and Safety Commission's (NOHSC) Guidance Notes (NOHSC 1008-2004:

	"Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1999: "List of Designated Hazardous Substances").
Illegal Worker	a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after the person's visa has expired; or is working in breach of the person's visa conditions.
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy available at: http://www.dpmc.gov.au/sites/default/files/publications/indigenous_procurement_policy_1.pdf , as updated from time to time.
Industrial Requirements	any requirement (whether legislative or merely reflective of good industrial practice) including without limitation any industrial or workplace requirement, obligation or prohibition arising under: (a) any applicable legislation regarding workers compensation; (b) any superannuation scheme, redundancy scheme or other such scheme established under any applicable legislation or building industry agreement; (c) any code of conduct which is included in or referred to in this Agreement; (d) any applicable WHS Law or regulations and any codes of practice issued from time to time under them; (e) any site agreement relevant to or applicable to the Site; (f) any enterprise bargaining agreement executed between the Contractor and any relevant union; and (g) the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Insurance Requirements	the insurance requirements in Item 31 of Schedule 1.
Intellectual Property Rights	all intellectual property rights, including the following rights: (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Latent Conditions	s47G

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Law	(a) any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time; and (b) any Approval (including conditions or requirements).
Loss	damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any amount agreed to be paid by way of settlement or compromise.
Milestone	any fixed date to be met by the Contractor in performing any of its obligations under this Agreement.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
National Construction Code	is comprised of the Building Code of Australia and the Plumbing Code of Australia.
Personal Information	has the meaning given in section 6 of the Privacy Act.
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Proper Authority	each government and statutory authority having authority or jurisdiction in relation to the Site or the Works whether under Law or otherwise, and includes a person supplying communications, drainage, electricity, gas, sewerage, water or other services which may be affected by the performance of the Works.
Proportionate Liability Legislation	Chapter 7A of the <i>Civil Law (Wrongs) Act 2002</i> (ACT) or any equivalent legislation applying in another jurisdiction applicable to a Claim made against a party in relation to this Agreement.
Provisional Sum Work	the work or goods referred to in Item 21 of Schedule 1 for which the sum of money referred to in that Item has been included in the Contract Price.
QBCC Act	the <i>Queensland Building and Construction Commission Act 1991</i> (Qld).
Representative	in relation to a party, any natural person who is an employee, volunteer, officer, agent, contractor or professional adviser of that party or, in the case of the Contractor, of a subcontractor.

Secure Area	has the meaning prescribed in the <i>Aviation Transport Security Regulations 2005</i> (Cth) and includes any other area where an ASIC is required for access.
Site	the site for Works as described in Item 11 of Schedule 1.
SOP Act	has the meaning given in Item 37 of Schedule 1.
Special Site Conditions	those conditions described as special site conditions in the Statement of Works.
Specified Acts	(a) failing to acknowledge or attribute the Contractor's or any other person's authorship of any Agreement Material or any part of the Works; (b) falsely attributing authorship of any Agreement Material or any part of the Works; (c) making any modification, variation or amendment of any nature whatsoever to any Agreement Material or any part of the Works, whether or not: (i) it results in a material distortion of or destruction or mutilation of the Agreement Material or any part of the Works; or (ii) it is prejudicial to the honour or reputation of the Contractor or any other author of any Agreement Material or any part of the Works; (d) using any Agreement Material or any part of the Works other than for the purpose for which it was intended at the time the Agreement Material or any part of the Works (as the case may be) was created; (e) altering any Agreement Material or any part of the Works by adding to or removing elements from, or rearranging elements of the Agreement Material or any part of the Works, including by combining elements of any of the Agreement Material or any part of the Works with any other material; (f) changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Agreement Material; (g) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; or (h) adding any additional content or information to Agreement Material.
Stage	a stage of the Works as outlined in the Statement of Works (if any).
Statement of Works	Schedule 2.
Table of Rates	the table of rates at Item Error! Reference source not found. of Schedule 3.
Table of Works Variation Rates and Prices	the table in Item Error! Reference source not found. of Schedule 3 and any document referred to in that Item which shows the rates or any lump sum, quantities or other sums of payment to be applied for the execution of any Work to be carried out pursuant to a Works Variation.

Waste	s47G
Waste Management Legislation	any Commonwealth, State or Territory legislation relating to the management, regulation or reduction of Waste.
WHS Accreditation Scheme	the Australian Government building and construction industry Work Health and Safety Accreditation Scheme established by section 43 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
WGE Act	the <i>Workplace Gender Equality Act 2012</i> (Cth).
WHS Act	the <i>Work Health and Safety Act 2011</i> (Cth).
WHS entry permit holder	has the meaning given in the WHS Act.
WHS Law	the WHS Act and any corresponding WHS law as defined in section 4 of the WHS Act.
WHS Regulations	the regulations made under the WHS Act.
Work Health and Safety Plan	the work health and safety plan prepared by the Contractor pursuant to clause 10.4(f), which can be either Agreement specific or Site specific, and must: (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective; and (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with statutory requirements in relation to work health and safety.
Works	the physical works described in the Statement of Works which the Contractor must design (to the extent required by this Agreement), complete (including the installation of any plant and equipment forming part of those Works) and hand over to Airservices. Work has a corresponding meaning.
Works Commencement Date	means the date specified in Item 12 of Schedule 1.
Works Variation	any change to the Works within the general scope of this Agreement, and includes: (a) increases, decreases or omissions of any part; (b) a change in character or quality of any requirements; (c) changes to the levels, lines, positions or any dimensions;

	(d) additional work; (e) the demolition or removal of material or work no longer required by Airservices; and (f) where Airservices notifies the Contractor that the Works are Airside Works after the Agreement Commencement Date, as set out in a "Works Variation Order".

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a unit of measurement is taken to be expressed in Australian legal units of measurement;
- (d) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) time is to local time in the place where the Site is located and, in all other cases, where the Airservices Contract Manager is located;
 - (iii) "\$" or "dollars" is a reference to Australian currency; and
 - (iv) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

1.3 Inconsistent terms

- (a) If there is any ambiguity, discrepancy or inconsistency in the documents which make up this Agreement, the following order of precedence applies:
 - (i) the terms and conditions of this Agreement;
 - (ii) any Schedules or documents forming part of this Agreement; and
 - (iii) the Design Documents.
- (b) if the Contractor Contract Manager considers there is any ambiguity, discrepancy or inconsistency in this Agreement, he or she must give notice to the Airservices Contract Manager who must, within five Business Days of the notice, give the

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3. Design

3.1 Application of this clause

This clause will apply if the Contractor is required to design any part of the Works as set out in Item 7 of Schedule 1.

3.2 Design to be prepared by the Contractor

The Contractor must:

- (a) design the parts of the Works or a Stage which the Design Documents expressly or impliedly require it to design;
- (b) provide its design to the Airservices Contract Manager in accordance with the requirements in Items 9 and 10 of Schedule 1; and
- (c) obtain permission from the Airservices Contract Manager to use the design.

3.3 Design certification

The Contractor must, with each payment claim under clause 20.2, provide Airservices Contract Manager with a certificate in the form required by Airservices which certifies that (to the extent then applicable):

- (a) the design carried out by it or its Representatives complies with, subject to clause 5.2(a)(i), Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law) and the other requirements of this Agreement; and
- (b) the Works or the Stage comply with the design which has been the subject of Airservices Contract Manager's permission under clause 3.2(c).

4. The Site

4.1 Access to the Site

Provided the Contractor has met the preconditions to Site access specified in Item 13 of Schedule 1, Airservices must ensure that the Contractor has sufficient access to the Site from the date specified in Item 13 of Schedule 1.

4.2 Airservices' right of entry

The Contractor must give Airservices access to the Site or any areas off-Site where Work is being performed.

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4.4 Cleaning up

The Contractor must keep the Site, the Works and the environment at the Site clean and tidy. At the end of each day the Contractor must ensure that the Site is maintained so as not to create a hazard.

4.5 Urgent protection

Airservices may take any action necessary to protect the Works, other property, the environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor is required to take but does not take. The reasonable costs incurred by Airservices in taking such action shall be a debt due and payable by the Contractor and maybe set off against any payment claim under clause 20.2.

4.6 Conduct at Airservices' premises

The Contractor must, if using or accessing Airservices' premises or facilities, comply with all reasonable directions and procedures relating to workplace health and safety and security, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

5. Construction**5.1 Description of Works**

- (a) The Contractor must construct the Works strictly in accordance with:
 - (i) the Design Documents;
 - (ii) any design prepared by the Contractor that the Contractor has received permission to use in accordance with clause 3.2(c); and
 - (iii) any Direction of Airservices Contract Manager, including (without limitation) a Works Variation directed by Airservices Contract Manager by a written document titled "Works Variation Order".
- (b) The Contractor must perform all work and supply materials necessary for the carrying out of the Contractor's Activities and the Works.

5.2 Authority requirements

- (a) The Contractor must:
 - (i) unless otherwise specified, perform the Contractor's Activities and complete the Works so that they comply with all Approvals, the National Construction Code, any other requirements imposed by Law and this Agreement;
 - (ii) apply for all relevant permits, consents or Approvals, give all notices and pay all fees necessary to perform this Agreement;
 - (iii) obtain, and give to Airservices, a Building Certificate (if a Building Certificate is obtainable) in respect of the completed Works; and
 - (iv) give Airservices copies of all other relevant documents issued by Proper Authorities in respect of the Works.
- (b) If the requirements that the Contractor must comply with under this clause change after the Agreement Commencement Date, the Contractor must give written notice to Airservices Contract Manager seeking Direction(s). Any Direction issued by Airservices Contract Manager that requires the Contractor to do more or less work than could reasonably have been anticipated at the Agreement Commencement Date will:
 - (i) if more work is required, subject to the Contractor complying with clause 22, entitle the Contractor to payment for the extra work as a Works Variation; or

- (ii) if less work is required, entitle Airservices to reduce the Contract Price by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by Airservices Contract Manager.

5.3 Provisional Sum Work

- (a) Unless otherwise approved by the Airservices Contract Manager, Provisional Sum Work must be performed under subcontracts entered into by the Contractor.
- (b) After the Contractor is directed by the Airservices Contract Manager to enter into a subcontract for Provisional Sum Work:
 - (i) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in Item 21 of Schedule 1 for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
 - (ii) any Works Variation to that work will be dealt with under clause 19.
- (c) Where Provisional Sum Work is to be performed, the work will be, and will always be deemed to have been, part of the Work to be brought to completion by the Date for Completion.

6. Airside Works

6.1 Application

This clause applies where the Works (or part of the Works) are Airside Works.

6.2 Airside Works

- (a) The Contractor must, at its cost, comply with any Laws applicable to the Site, including the *Airports Act 1996* (Cth), the *Airports (Transitional) Act 1996* (Cth), *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) and all relevant rules and regulations imposed by Airservices and the Airport Operator from time to time.
- (b) The Contractor must ensure that a direction given by a representative of the Civil Aviation Safety Authority or the Airport Operator is complied with immediately.
- (c) If the Airport Operator declares an emergency in relation to the airport where the Site is located, the Contractor must vacate the Site and ensure that the Site is vacated and remains vacated until the Airport Operator gives notice that the Contractor can re-enter the Site.
- (d) The Contractor must at its cost and without limiting its obligations under this clause:
 - (i) comply with and ensure that the Contractor's Representatives comply with all security and access arrangements and other requirements of Airservices and/or the Airport Operator in respect of Works conducted at an airport. The Contractor is not entitled to seek any extensions of time, costs or variation in relation to such arrangements or requirements;
 - (ii) provide site security and parking facilities for Contractor Representatives to the satisfaction of the Airservices Contract Manager and the Airport Operator; and
 - (iii) submit details of its proposed Site access and circulate to the Airservices Contract Manager for approval at least 10 Business Days prior to commencing any part of the Works.

6.3 Airport Building Controller requirements

- (a) The Contractor must provide all necessary certificates of compliance and other information to the Airport Building Controller for the purpose of obtaining an occupation certificate in relation to the Works.
- (b) The Contractor must comply with all requirements of the Airport Building Controller (if any) in relation to the Works.

- (c) If, at any time, the Airport Building Controller identifies that the Contractor has not complied with any of its requirements, the Contractor must, as soon as practicable, remedy the non-compliance to the satisfaction of the Airport Building Controller and the Airservices Contract Manager.

7. Hazardous Substances on Site

7.1 Discovery of Hazardous Substances on Site

- (a) If at any time the Contractor discovers the presence on the Site of any Hazardous Substance, it must inform Airservices Contract Manager, not disturb the material under any circumstances, and ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- (b) Airservices Contract Manager must inspect the Site and must issue Directions to the Contractor in respect of further action to be taken.
- (c) If Directed by the Airservices Contract Manager, the Contractor must ensure that all Hazardous Substances on the Site must be treated or removed in accordance with the requirements of the Worksafe Australia "Code of Practice" for the safe removal of such materials and any other Laws in the State or Territory in which the Works are situated relating to the removal of such materials.
- (d) Other than to the extent that the Contractor is entitled to make, and makes, a claim under clause 4.3 of this Agreement, the Contractor will have no entitlement to make any other claim under this Agreement (including for an adjustment to the Contract Price or an extension of time) arising out of or in connection with complying with any Directions from the Airservices Contract Manager in respect of the Hazardous Substance(s).

7.2 Use Of Hazardous Substances

Without limiting clause 7.1, the Contractor:

- (a) must ensure that the Works do not contain any Hazardous Substances or substances which would breach the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth);
- (b) must, on request of Airservices Contract Manager, be able to show compliance with clause 7.2(a); and
- (c) is responsible for all materials used by its subcontractors under this clause.

8. Prior Work

- (a) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality or completeness of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after Airservices gives the Contractor access to the Site;
 - (ii) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify Airservices Contract Manager in writing providing:
 - (A) full particulars of the defects or matters identified; and
 - (B) the reasons for the opinion formed by it in respect to the defects or matters identified; and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in clause 8(a)(ii).

- (b) On receipt of the Contractor's notice, Airservices Contract Manager will investigate the Prior Work the subject of the notice and issue a Direction as to the course of action to be taken.
- (c) Failure of the Contractor to follow the process in clause 8(a) will prevent the Contractor from making a claim in respect of any adverse financial or time impact the Prior Work has on the Contractor's performance under this Agreement.

9. Existing services and structures

- (a) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Design Documents.
- (b) The Contractor must obtain the prior written approval from Airservices Contract Manager in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (c) The Contractor must notify Airservices Contract Manager immediately upon the discovery of services or obstructions not shown in the Design Documents or identified by inspection.
- (d) The Contractor must immediately notify Airservices Contract Manager in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services and associated infrastructure in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.

10. Representatives and other requirements

10.1 Airservices Contract Manager

Airservices Contract Manager will act as the agent of Airservices (not as an independent certifier, assessor or valuer) in issuing Directions and discharging each of the functions of Airservices Contract Manager under this Agreement.

10.2 The Contractor Site Representative

The Contractor must ensure that the Contractor Site Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under this Agreement.

10.3 Removal of persons

Airservices Contract Manager may by notice in writing direct the Contractor to remove any person from the Site and / or the performance of the Contractor's Activities. The Contractor must, on receipt of Airservices Contract Manager's notice, and at its own cost, promptly arrange for removal and replacement of the person. The replacement must be acceptable and approved by Airservices Contract Manager.

10.4 Workplace health and safety requirements

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all legislative requirements and other requirements of this Agreement for work health and safety management;
 - (ii) all subcontractors comply with the requirements referred to in this clause 10.4; and
 - (iii) it complies with its duty under the WHS Law to consult, cooperate and coordinate activities with all other persons who have a work and health safety duty in relation to the same matter;

- (b) notify Airservices Contract Manager immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Contractor's Activities or the Works;
- (c) if the WHS Accreditation Scheme is applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- (d) carry out the Contractor's Activities and the Works safely and in a manner that does not put the health and safety of persons at risk;
- (e) comply with any Direction issued by Airservices Contract Manager to change its manner of working or to cease working if Airservices Contract Manager reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works;
- (f) prepare and submit to Airservices Contract Manager a Work Health and Safety Plan in accordance with the WHS Law and continue to update and amend that plan and submit it (as necessary);
- (g) institute systems to obtain regular written assurances from other contractors, consultants and subcontractors performing work on or in the vicinity of the Site about their ongoing compliance with the WHS Law including the due diligence obligation contained in the WHS Law;
- (h) provide the written assurances obtained under clause 10.4(g), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Law, to Airservices Contract Manager;
- (i) provide Airservices Contract Manager on a monthly basis with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause), or any other relevant matters as Airservices Contract Manager may require from time to time, including a summary of the Contractor's compliance with the WHS Law; and
- (j) if requested by Airservices Contract Manager or required by the WHS Law, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of Airservices Contract Manager before the Contractor or any subcontractor commences such work.

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11. Subcontracting

- (a) The Contractor must:
 - (i) not subcontract any aspect of the provision of the Contractor's Activities or the Works without the prior written approval of Airservices, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Workplace Gender Equality Agency as not complying with the WGE Act; and

- (iii) ensure that any subcontractor approved under this Agreement complies with all applicable Laws, Applicable Policies and the Commonwealth Regulatory Requirements.
- (b) The Contractor is fully responsible for the performance of the Contractor's Activities even if the Contractor subcontracts any aspect of the provision of the Contractor's Activities or Works.
- (c) The Contractor must, prior to Completion, procure and provide Airservices with those warranties described in Item 19 of Schedule 1 from the relevant subcontractor or supplier. These warranties must be on such terms and in such form as approved by Airservices Contract Manager.
- (d) In relation to the provision of the Works and the Contractor's Activities, the Contractor:
 - (i) must, on request by Airservices, provide Airservices with the names of any of the Contractor's subcontractors;
 - (ii) agrees that Airservices may disclose publicly the names of any of the Contractor's subcontractors; and
 - (iii) must ensure that any subcontractor agrees that Airservices may disclose the subcontractor's name publicly.

12. Approved Security

12.1 Amount and Timing

- (a) The Contractor must provide to Airservices within 10 Business Days of the Agreement Commencement Date the Approved Security for the value(s) specified in Item 23 of Schedule 1.
- (b) If the Contractor does not comply with clause 12.1(a), Airservices may retain any amount up to the amount of the Approved Security required, from any amount payable by Airservices under clause 20.3.

12.2 Recourse and replacement

- (a) Airservices may have recourse to the Approved Security where Airservices considers in good faith that:
 - (i) the Contractor is in persistent breach of any of its obligations under this Agreement or in breach of an obligation that is not capable of remedy;
 - (ii) it has a claim against the Contractor for damages for breach of this Agreement or otherwise for the payment of moneys under or in connection with this Agreement;
 - (iii) it has a right to terminate this Agreement either at Law or under the terms of this Agreement;
 - (iv) that the Contractor is unable to pay its debts as and when they fall due, including a debt due and payable to Airservices.
- (b) The Approved Security shall be treated as a credit allocation risk pending the resolution of any dispute relating to the matters referred to in clause 12.2(a).
- (c) If Airservices has recourse to the Approved Security, Airservices may, by written notice directed to the Contractor, require the Contractor to provide further Approved Security in an amount equivalent to the amount called upon by Airservices. If Airservices serves a notice under this clause for a further Approved Security, notwithstanding clause 20, the Contractor will not be entitled to submit a payment claim under clause 20.2, and Airservices may withhold payment of moneys (including any moneys certified as due and owing, to the Contractor) until the Contractor complies with Airservices' notice.

12.3 Release

Airservices must release:

- (a) the proportion specified in Item 24 of Schedule 1 of any Approved Security held under this clause when a Completion Certificate has been issued for the Works or a Stage; and
- (b) the balance of the Approved Security held under this clause within 15 Business Days after the final certificate is issued pursuant to clause 20.6.

12.4 QBCC Act

- (a) The parties acknowledge that to the extent that the QBCC Act (and in particular, section 67K(2) of the QBCC Act) applies to this Agreement, under the QBCC Act, unless the parties expressly agree otherwise, section 67K(2) makes this Agreement subject to a condition that at any time before Completion (as defined in the QBCC Act) the total of Approved Security held by Airservices under this Agreement (other than those referred to in section 67K(3) of the QBCC Act) is not to exceed 5% of the amount payable under this Agreement for carrying out building work including any Works Variations.
- (b) By initialling this clause 12.4 in the space provided below, the parties expressly agree that this Agreement is not subject to the condition imposed by section 67K(2) and explained above.

[Airservices' initials]

[Contractor's initials]

- (c) Notwithstanding any other provision of this Agreement, the parties agree that to the extent that:
 - (i) the QBCC Act applies to this Agreement; and
 - (ii) this Agreement provides for the total of Approved Security held by Airservices to exceed 2.5% of the Contract Price for this Agreement (which under the QBCC Act includes adjustments for variations) after practical completion of building work (within the meaning of the QBCC Act) has been reached, the amount of the excess does not relate to the need to correct defects in the Works identified during the Defects Liability Period, but instead relates to the recovery by Airservices of any moneys that may become payable to Airservices by the Contractor under or in connection with this Agreement, the Contractor's performance of this Agreement or any breach of this Agreement by the Contractor.
- (d) The Contractor agrees that any direction, notice or certificate issued by Airservices' Representative under or in connection with this Agreement which refers to an amount that Airservices is owed by the Contractor under this Agreement, constitutes a notice for the purposes of section 67J of the QBCC Act that Airservices may use any Approved Security provided under this Agreement, in whole or in part, to obtain the amount owed.

13. Unfixed goods and materials

13.1 Payment for Unfixed Goods and Materials

Unfixed goods or materials must not be included in the value of work in a payment claim under clause 20 unless the Contractor has provided to Airservices Contract Manager additional Approved Security equal to the amount to be claimed for the unfixed goods and materials.

13.2 Title and Risk

- (a) Title to unfixed goods and materials will vest in Airservices upon payment by Airservices.

- (b) Unfixed goods and materials remain at the risk of the Contractor until those unfixed goods and materials have been incorporated into the Works notwithstanding that title may have already vested in Airservices.

14. Risks

14.1 Risk of the Works

Except where it arises from an Airservices Risk, the Contractor will bear the risk of:

- (a) before the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage, any plant, equipment, temporary works or other things used in the Contractor's Activities; and
- (b) after the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage arising from any act or omission of the Contractor in rectifying defects during the Defects Liability Period or from an act, omission, event or any other thing which occurred prior to the issue of a Completion Certificate for the Works or a Stage.

14.2 Reinstatement

- (a) The Contractor must, at its cost, make good any loss of or damage to the Works or a Stage that occurs during the period of the Contractor's responsibility under clause 14.1, excluding loss or damage which is the result of an Airservices Risk.
- (b) If pursuant to a Direction issued by the Airservices Contract Manager, the Contractor is required to make good any loss of or damage to the Works or a Stage which is the result of an Airservices Risk, such Direction shall be deemed a Works Variation. The Airservices Contract Manager will price the Works Variation having regard to the proportionate responsibility of the parties in causing that loss or damage.

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14.4 Contribution

- (a) Subject to clause 14.4(b), each party's liability to the other party for any Claim or Loss arising out of this Agreement is reduced to the extent that the other party or its Representative contributed to the Claim or Loss.
- (b) Clause 14.4(a) does not apply in respect of any contribution made by an act or omission that the other party or its Representatives was lawfully entitled to make.
- (c) Apportionment under clause 14.4(a) is applied prior to any limitation of liability under clause 14.5(a).
- (d) To the extent permitted at Law, the operation of any Proportionate Liability Legislation is expressly excluded in determining the rights, obligations and liabilities of the parties in any Claim arising under this Agreement, including the rights, obligations and liabilities of the parties arising under any indemnity in this Agreement.

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16. Compliance with Directions

16.1 Notice by Contractor as to time and cost implications

- (a) If the Contractor believes that a Direction given by Airservices Contract Manager:
 - (i) constitutes a Works Variation, the Contractor must comply with the requirements of clause 19.3; or
 - (ii) will involve or result in a claim by the Contractor for additional payment or for an extension of time, the Contractor must, prior to complying with the Direction, and within two Business Days of the Direction, provide written notice to Airservices Contract Manager of the anticipated claim.

- (b) The Airservices Contract Manager may rescind, confirm or modify the Direction previously given by Airservices Contract Manager. If the Airservices Contract Manager does not confirm the Direction within five Business Days of receiving the advice from the Contractor, it will be deemed that Airservices Contract Manager rescinded the Direction.
- (c) If the Contractor does not comply with the requirements of clause 19.3 or provide a written notice to Airservices Contract Manager as required by clause 16.1(a)(ii), prior to commencing any additional work in complying with the Direction, the Contractor will not be entitled to make a claim for additional payment or for an extension of time.

16.2 Action by Airservices

- (a) If the Contractor fails to comply with a Direction of Airservices Contract Manager after Airservices Contract Manager has given reasonable notice in writing to the Contractor, in addition to any other remedies, Airservices may, have work carried out by other persons such that the Direction is complied with. The reasonable costs incurred by Airservices will be a debt due from the Contractor and may be set off against a payment claim under clause 20.2.
- (b) Any action taken by Airservices pursuant to this clause will not affect any warranties given or provided by the Contractor in relation to that Work.

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18. Time

18.1 Programming

- (a) The Contractor must give Airservices Contract Manager a construction program in a form and by a timeframe reasonably requested by Airservices.
- (b) Airservices may defer payment until the Contractor satisfies clause 18.1(a).

18.2 Progress

- (a) The Contractor must progress the Contractor's Activities and the Works in accordance with the construction program (and any amended construction program).

- (b) The Contractor must not suspend the progress of the whole or any part of the Contractor's Activities or the Works except where suspension is Directed or approved by Airservices Contract Manager.

18.3 Amended construction program and monthly reports

During the Works the Contractor must review the construction program monthly and give the Airservices Contract Manager notice of any potential delays and recommended adjustments to ensure completion by the Date for Completion. The Airservices Contract Manager may direct the Contractor to give an updated construction program.

18.4 Time for Completion

- (a) The Contractor must achieve Completion by the Date for Completion.
- (b) The Contractor may, if it chooses, accelerate progress to reach Completion before the Date for Completion.
- (c) The time for performance of Airservices' or Airservices Contract Manager's obligations is not affected by the Contractor's decision to accelerate.

18.5 Delay

The Contractor will be entitled to claim an extension of time if it will be delayed reaching Completion of the Works or a Stage by the Date for Completion due to a cause other than:

- (a) acts or omissions of the Contractor;
- (b) civil commotion or industrial dispute confined to the Contractor; or
- (c) events occurring after the Date for Completion,

and within 14 Business Days of the commencement of the delay the Contractor gives Airservices Contract Manager written detailed particulars of the delay and the required extension to the critical path.

18.6 Concurrent delay

- (a) Where more than one event causes a concurrent delay and the cause of at least one of those events does not entitle the Contractor to an extension of time, to the extent to which the delays are concurrent, the Contractor will not be entitled to an extension of time.
- (b) Despite anything else in this Agreement, if a claim for an extension of time would be concurrent with a claim for a cause of delay that is permitted, the Contractor will not be entitled to claim an extension of time to the Date for Completion under clause 18.7 for the second cause of delay.

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- (a) is the maximum damages which will be payable by Airservices per day in these circumstances; and
- (b) will be a limitation upon Airservices' liability to the Contractor for any delay or disruption which the Contractor encounters in performing the Contractor's Activities and arises from a breach of this Agreement by Airservices.

18.9 Suspension

- (a) Airservices Contract Manager may Direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities or the Works.
- (b) Unless the suspension is the result of the Contractor's failure to perform its obligations under this Agreement, a Direction to suspend under this clause will entitle the Contractor to:
 - (i) claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 18.5; and
 - (ii) the Contractor's direct, reasonably and properly evidenced extra costs necessarily incurred by the Contractor in respect of the suspension, calculated in accordance with clause 18.8.
- (c) The Contractor's entitlement under clause 18.9(b)(ii) will be its only right to payment of money arising from a Direction to suspend and will be subject to the Contractor complying with clause 22 and taking all steps possible to mitigate its extra costs, as assessed by Airservices Contract Manager.

19. Works Variations

19.1 Works Variation Order

- (a) Airservices Contract Manager may Direct the Contractor to carry out a Works Variation by a written document titled "Works Variation Order".
- (b) Airservices Contract Manager may seek from the Contractor a notice in regard to any proposed Works Variation from Airservices Contract Manager on whether or not a proposed Works Variation can be effected by the Contractor. The Contractor must provide a response within the timeframe specified by the Airservices Contract Manager and in doing so must identify:
 - (i) whether the proposed Works Variation will have an impact on the construction program and achieving Completion of the Works by the Date for Completion; and
 - (ii) the proposed cost of carrying out such a Works Variation.
- (c) If, in relation to a proposed Works Variation, Airservices Contract Manager is satisfied with the notification from the Contractor as to the carrying out of the proposed Works Variation, Airservices Contract Manager may issue a Works Variation Order on the Contractor to carry out that Works Variation. If Airservices Contract Manager does not issue a Works Variation Order, the Contractor must not carry out the proposed Works Variation.

19.2 Cost of Works Variation

- (a) Subject to clauses 17.1 and 19.2(b), the Contract Price will be adjusted for the value of all Works Variations carried out by the Contractor by:
 - (i) the cost of carrying out the Works Variation as proposed by the Contractor under clause 19.1(b)(ii); or
 - (ii) if Airservices Contract Manager does not agree to the cost of carrying out the Works Variation proposed by the Contractor under clause 19.1(b)(ii), then:
 - (A) if there is a Table of Works Variation Rates and Prices and / or Table of Rates which can apply to calculate the additional costs of the Contractor under this clause and the Contractor did not calculate its additional costs and expenses by reference to the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant), Airservices

will only be liable to pay an amount determined by using any rates or prices in the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant); or

- (B) if there are no relevant rates or prices specified in the Table of Works Variation Rates and Prices and / or the Table of Rates that are applicable to calculate the additional costs under this clause, Airservices will only be liable to pay a reasonable amount as agreed between the parties or, in the absence of such agreement, as determined by Airservices Contract Manager acting reasonably.

In either case the value of the Works Variation shall include:

- (C) a reasonable amount for profit and overheads and any deductions to the Contract Price shall include a reasonable amount for profit but not overheads; and
 - (D) any reasonable costs and expenses incurred by the Contractor arising from the Works Variation delaying the Contractor.
- (b) To the extent that a Works Variation involves an omission from the Works, Airservices may thereafter carry out the omitted work either itself or by engaging third parties.

19.3 Notice of Works Variation

- (a) If the Contractor believes a Direction by Airservices Contract Manager, other than a Direction under clause 5.2 or a "Works Variation Order" under clause 19.1, constitutes or involves a Works Variation it must, within five Business Days of, and before complying with, the Direction, give notice to Airservices Contract Manager that it considers that the Direction constitutes or involves a Works Variation.
- (b) On receipt of such notice Airservices Contract Manager may rescind, confirm or amend the Direction and advise whether it accepts that the Direction constitutes or involves a Works Variation.
- (c) If Airservices Contract Manager does not confirm or vary the Direction:
 - (i) within five Business Days of receiving the Contractor's notice under clause 19.3(a), it will be deemed that Airservices Contract Manager has rescinded the Direction;
 - (ii) the Contract Price will not be adjusted as a result of that Direction; and
 - (iii) Airservices will not be liable upon any claim by the Contractor arising out of or in connection with that Direction, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law.
- (d) If Airservices Contract Manager confirms or varies the Direction and indicates that it considers the Direction constitutes or involves a Works Variation, that notice will be taken to be a request under clause 19.1(b).
- (e) If Airservices Contract Manager confirms or varies the Direction and indicates that it does not consider the Direction constitutes or involves a Works Variation, the Contractor must continue to perform the Contractor's Activities and progress the Works to the full extent possible in accordance with this Agreement and all Directions of Airservices Contract Manager.

20. Payment

20.1 Payment obligation

- (a) Subject to due and proper performance by the Contractor of its obligations under this Agreement and any right to set-off which Airservices may have, Airservices must pay the Contractor the Contract Price and any other amounts to which it is entitled under this Agreement at the times and in accordance with the methods prescribed in this Agreement.
- (b) The Contractor acknowledges, subject to clauses 18 and 19 of this Agreement, that the Contract Price:

- (i) includes all risks, hazards and additional costs, including all employment related payments and allowances under any industrial awards or other such agreements; and
- (ii) will not be varied as a result of any rise or fall in the costs of material or labour, relevant to or associated with carrying out and completing the Works and the Contractor's Activities.

20.2 Payment claims

- (a) Subject to clause 20.5, the Contractor must claim payments under this Agreement progressively in accordance with the Milestone Schedule in Schedule 3.
- (b) Any payment claim must be submitted to Airservices Contract Manager and must include:
 - (i) details of the percentage of the Works covered by the claim;
 - (ii) confirmation that the Works comply with all relevant Approvals and authorisations;
 - (iii) details of any unfixed plant and materials of which the Contractor is claiming payment;
 - (iv) the items required by clause 20.7; and
 - (v) any further information that Airservices Contract Manager reasonably requires in relation to the payment claim.
- (c) If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement will not require:
 - (i) Airservices Contract Manager to issue a payment certificate; or
 - (ii) Airservices to pay the Contractor,
 in respect of that payment claim earlier than would have been the case had the Contractor submitted a payment claim in accordance with this Agreement.

20.3 Payment certificate

- (a) Airservices Contract Manager must within 10 Business Days of receipt of a payment claim give Airservices and the Contractor, on behalf of Airservices, a payment certificate in the form reasonably determined by Airservices Contract Manager and which sets out:
 - (i) the value of the work completed in accordance with this Agreement;
 - (ii) amounts already paid to the Contractor;
 - (iii) the amount (if any) which Airservices Contract Manager believes to be then payable by Airservices to the Contractor;
 - (iv) amounts Airservices is entitled to retain under clause 12.1(b), withhold under clause 20.7, set-off in accordance with clause 32.3 or otherwise withhold or deduct in accordance with this Agreement;
 - (v) the amount (if any) which Airservices proposes to pay to the Contractor; and
 - (vi) if the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim:
 - (A) the reason why the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim; and
 - (B) if the reason for the difference is that Airservices has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) Unfixed goods and materials must not be included in the value of the Work unless the Contractor has given Airservices additional Approved Security equal to the payment claimed.

- (c) At any time and from time to time, Airservices Contract Manager may by a further certificate correct any error or omission which has been discovered in any previous payment certificate, other than a Completion Certificate or a final certificate.

20.4 Tax invoice and payment

- (a) Upon receipt of a payment certificate under clause 20.3:
 - (i) the Contractor must (without affecting its rights under this Agreement) give to Airservices (and a copy to Airservices Contract Manager), a tax invoice for the amount specified in the payment certificate under clause 20.3(a)(v); and
 - (ii) Airservices must, within the time stated in Item 29 of Schedule 1 of receipt of the tax invoice under clause 20.4(a)(i) pay to the Contractor, the amount specified in the tax invoice.
- (b) A payment certificate or payment is not:
 - (i) evidence of the value of work but is only on account of the Contract Price;
 - (ii) an admission of liability; or
 - (iii) acceptance by Airservices or Airservices Contract Manager of the Contractor's performance or compliance with this Agreement.
- (c) Airservices Contract Manager may modify or amend any payment certificate.

20.5 Conditions precedent to entitlement to payment

If at the time that the Contractor purports to submit a payment claim under clause 20.2, the Contractor has not:

- (a) complied with its programming obligations under clause 18;
- (b) provided all relevant information as required under the WHS Law or under this Agreement arising out of or in connection with work health and safety; or
- (c) complied with clause 20.7,

then the Contractor will not be entitled to submit a payment claim under clause 20.2; and

- (d) Airservices Contract Manager will not be obliged to include in any payment certificate under clause 20.3; and
- (e) Airservices will not be liable to pay, any amount included in the payment claim if otherwise submitted by the Contractor.

20.6 Final payment claim

- (a) The Contractor must give Airservices a final payment claim within 20 Business Days after the end of the Defects Liability Period for the Works or, where the Works are to be performed in Stages, the end of the Defects Liability Period in respect of the final Stage.
- (b) That claim must include all amounts which the Contractor claims from Airservices under this Agreement or otherwise.
- (c) After the date for submitting the final payment claim has passed, Airservices will not be liable for any claim by the Contractor arising out of or in connection with the Contractor's Activities or the Works, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, unless the Contractor has given Airservices a final payment claim within the time required and the claim is included in the final payment claim.
- (d) The final payment claim is in addition to the other notices which the Contractor must give to Airservices Contract Manager under this Agreement in order to preserve its entitlements under this Agreement.
- (e) Within 10 Business Days after receipt of the Contractor's final payment claim issued under this clause 20.6, Airservices Contract Manager will issue to the Contractor a final certificate confirming the moneys finally due and payable as between Airservices and the Contractor pursuant to the terms of this Agreement. Within 20 Business Days of receipt of the final certificate Airservices must pay to the

Contractor, or the Contractor must pay to Airservices, as the case may be pursuant to the final certificate, any amounts stated in the final certificate as being due and payable either by Airservices or the Contractor.

- (f) The final certificate issued by Airservices Contract Manager is conclusive evidence of the full and final satisfaction and discharge of each party's obligation pursuant to the requirements of this Agreement except in relation to:
- (i) any fraud or dishonesty in relation to the Contractor's Activities or any matter referred to in the final certificate;
 - (ii) any defect or omission in the Works or the performance by the Contractor of its obligations under this Agreement that was not readily apparent at the end of the Defects Liability Period or was not capable of identification upon reasonable inspection at the time of issue of the final certificate;
 - (iii) any accidental or mistaken inclusion or exclusion of any work in performing the Works; and
 - (iv) any unresolved disputes referred to resolution pursuant to this Agreement.

20.7 Payment of workers and subcontractors

- (a) The Contractor must with each payment claim under clause 20.2 provide Airservices Contract Manager with:
- (i) a statutory declaration in the form at Schedule 5 by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the request been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities;
 - (ii) documentary evidence that at the date of the request all workers who have been employed by a subcontractor, supplier or consultant of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities; and
 - (iii) a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors, suppliers and consultants have been paid all moneys due and payable to them in respect of the Contractor's Activities.
- (b) Without limiting clause 20.5, Airservices is entitled to withhold from any payment which would otherwise be due to the Contractor under this Agreement the amount disclosed as unpaid under this clause 20.7, and Airservices may pay unpaid moneys directly to a worker or a subcontractor where permitted by Law, in accordance with a Court order given in favour of the worker or subcontractor, or if requested in writing by the Contractor.
- (c) Any such payment made by Airservices to a worker or a subcontractor in accordance with this clause will be deemed to be part satisfaction of Airservices' obligation to pay a Contractor's claim pursuant to this Agreement.

20.8 Security of payment legislation

- (a) The parties agree:
- (i) a payment claim submitted to Airservices Contract Manager under clause 20.2 which also purports to be (or is by Law) a payment claim under the relevant SOP Act is received by Airservices Contract Manager as agent for Airservices;
 - (ii) unless otherwise notified to the Contractor by Airservices in writing, Airservices Contract Manager will give payment certificates and carry out all other functions of Airservices under the relevant SOP Act as the agent of Airservices;

- (iii) to the extent permitted by and for the purposes of the relevant SOP Act, the "reference dates" are those dates prescribed in clause 20.2 on which the Contractor has satisfied any conditions precedent to the Contractor's entitlement to submit a payment claim; and
- (iv) a reference to a "payment certificate" is also a reference to a "payment schedule" for the purposes of the relevant SOP Act.
- (b) Failure by Airservices Contract Manager to set out in a payment certificate issued under the relevant SOP Act or otherwise an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices will not prejudice:
 - (i) Airservices Contract Manager's ability or power to set out in a subsequent payment certificate an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices; or
 - (ii) Airservices' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Agreement.
- (c) The Contractor agrees that the amount set out in the payment certificate in accordance with clause 20.3(a) is, to the extent permitted by and for the purposes of the relevant SOP Act, the amount of the "progress payment" calculated in accordance with the terms of this Agreement, which the Contractor is entitled to in respect of this Agreement.
- (d) The Contractor irrevocably chooses the person set out in Item 33 of Schedule 1 (Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority) as, to the extent permitted by and for the purposes of the relevant SOP Act and to the extent that the Works are to be carried out in:
 - (i) the Northern Territory or Western Australia, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer; or
 - (ii) any other State or Territory in which the relevant SOP Act applies, the authorised nominating authority.
- (e) The Contractor must not at any time, without the written consent of Airservices, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by Airservices or any details thereof in respect of an adjudication application made under the relevant SOP Act (in this paragraph, the **Information**).
- (f) For the avoidance of doubt:
 - (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of the Information;
 - (ii) notwithstanding the Contractor's obligation in respect of the Information, Airservices has sole and unfettered discretion to divulge or suffer or permit its servants, subcontractors or agents to divulge to any person the Information;
 - (iii) Airservices may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant SOP Act; and
 - (iv) any Information which Airservices provides or relies upon in respect of an adjudication application made under the relevant SOP Act is made without prejudice to Airservices' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

20.9 Limits of accuracy

If a Table of Rates exists and:

- (a) the actual quantity of an item required to carry out the Contractor's Activities is greater or less than the quantity shown in the Table of Rates;
- (b) Airservices has accepted a rate for the item referred to in clause 20.9(a); and
- (c) the actual quantity of the item referred to in clause 20.9(a) is outside the limits of accuracy stated in Item 27 of Schedule 1,

the rate will only apply to the quantities within those limits of accuracy and quantities outside those limits of accuracy will have their value determined by agreement between the Contractor and Airservices Contract Manager or failing agreement, Airservices Contract Manager using reasonable rates.

21. GST

21.1 Interpretation

In this clause 21, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

21.2 GST warranty

The Contractor warrants that, unless otherwise advised to Airservices in writing, it is registered for GST and will immediately advise Airservices if it ceases to be registered for GST.

21.3 Prices GST exclusive

Unless stated otherwise, all prices in this Agreement are exclusive of GST.

21.4 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

21.5 Reimbursements

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 21.4.

21.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

21.7 Adjustment event

If and to the extent an adjustment event arises in respect of a supply made by the Contractor to Airservices under this Agreement, then:

- (a) if the Contractor's corrected GST amount is less than the previously attributed GST amount, the Contractor must refund the difference to Airservices; and
- (b) if the Contractor's corrected GST amount is greater than the previously attributed GST amount, Airservices will pay the difference to the Contractor,

and the Contractor must issue an adjustment note to Airservices.

21.8 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

22. Notification of claims

22.1 Notices

If the Contractor wishes to make a claim against Airservices, other than a claim for an extension of time under clause 18.5 or a payment claim under clause 20.2, in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give Airservices Contract Manager the following:

- (a) within five Business Days of the Contractor becoming aware, or within 20 Business days of the occurrence (whichever is the shorter) of the events on which the claim is based, written notice that it proposes to make the claim, the details of the nature of the claim, and the events upon which the claim will be based; and
- (b) within 20 Business Days of giving the notice under clause 22.1(a), a written claim setting out detailed particulars of the events on which the claim is based, the legal basis for the claim, the facts relied upon in support of the claim and details of the quantification of the amount claimed.

22.2 Continuing events

If the events upon which the claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 22.1(b) every 20 Business Days after the claim under clause 22.1(b) was given until after the events or the consequences have ceased.

22.3 Bar

If the Contractor fails to comply with clauses 22.1 and 22.2:

- (a) the Contract Price will not be adjusted as a result of; and
- (b) Airservices will not be liable for any claim by the Contractor, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, arising out of or in connection with,

the relevant fact, matter or thing.

23. Completion

23.1 Completion Certificate

- (a) The Contractor must notify Airservices Contract Manager at least 10 Business Days prior to the date upon which the Contractor anticipates that Completion will be achieved.
- (b) When the Contractor believes that Completion has been achieved, the Contractor must request, by written notice to Airservices Contract Manager, that:
 - (i) Airservices Contract Manager inspect the Works or the Stage; and
 - (ii) if satisfied that Completion has been achieved, that Airservices Contract Manager issues a Completion Certificate stating the date Completion was achieved.
- (c) Airservices Contract Manager must within 10 Business Days of receipt of the notice from the Contractor pursuant to clause 23.1(b) inspect the Works or the Stage and if satisfied that the Works or the Stage have achieved Completion, issue a Completion Certificate stating the date Completion was achieved together with a defects list identifying minor defects in the Works or the Stage as at the Date of Completion.
- (d) If Airservices Contract Manager is not satisfied that Completion has been achieved, Airservices Contract Manager must issue a notice to the Contractor setting out the reasons why Airservices Contract Manager does not believe Completion has been achieved. The Contractor must then proceed to bring the Works to Completion and the process in clauses 23.1(b) to 23.1(d) will reapply.

23.2 Possession upon Completion

On Completion, Airservices may take possession of the Works or the Stage.

23.3 Part of the Works or Stage

- (a) Airservices may use a part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.
- (b) Such use will not affect the Contractor's obligations under this Agreement but Airservices must endeavour to use that part so as to not interfere with the Contractor's performance.

23.4 Effect of Completion Certificate

A Completion Certificate is not acceptance by Airservices of the Contractor's performance of its obligations under this Agreement.

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24. Security**24.1 Compliance with security obligations**

The Contractor must, and must ensure that its Representatives:

- (a) have awareness of, and fully comply with:
 - (i) Airservices' security requirements, policies and procedures that are notified by Airservices to the Contractor from time to time, including those specified in this clause 24; and
 - (ii) all reasonable security directions and any mandatory training issued by Airservices relating to the use of Airservices' premises, facilities or Airservices Material;
- (b) implement appropriate security measures to protect Airservices Material and ensure that Airservices Material, including official, classified, sensitive or commercial information or documents, is not accessible by any means by unauthorised persons; and
- (c) immediately report any security incidents of which it may become aware (confirmed promptly in writing to Airservices), including actual, suspected or apparent violations and breaches of this clause 24, and the steps taken by the Contractor to address these.

24.2 Authorisation of Representatives

The Contractor must ensure that any person (including any Representative) the Contractor proposes to carry out work or perform duties under this Agreement and who will be required to:

- (a) enter any secure locations in Airservices' buildings or places;
- (b) have access to, or be responsible for the physical custody of, Confidential Information or Airservices Material; or
- (c) hold a particular kind of security clearance the details of which have been notified to the Contractor by Airservices,

does not carry out that work or perform those duties unless authorised to do so by Airservices.

24.3 Security checks

- (a) The Contractor must, and must ensure that any Representative of the Contractor providing the Works or performing the Contractor's Activities:
 - (i) obtains all security clearances or authorisations or undergoes any security checks (including a police history check) as required in relation to performing this Agreement; and
 - (ii) provides to Airservices, in the form required by Airservices, such information as Airservices from time to time reasonably requests for the purpose of allowing Airservices to undertake reasonable investigations for the purposes of this clause 24.
- (b) All costs associated with obtaining security clearances or authorisations, or undergoing security checks, reviews or audits, or security performance monitoring must be borne by the Contractor, unless otherwise agreed in writing by Airservices.

24.4 Airport security

If the Works or the Contractor's Activities are to be provided at any Secure Area:

- (a) the Contractor must meet with Airservices, promptly after the Agreement Commencement Date (or within such other period as notified by Airservices) and before commencing any work in a Secure Area, to discuss access and airport security, and must comply, at the sole cost of the Contractor, with any safety or security directions given by the Airport Operator and/or Airservices in respect of the Works or Contractor's Activities at an airport; and
- (b) before commencing any Works or Contractor's Activities in a Secure Area every Representative of the Contractor who will be working in, or who will be required to have unaccompanied access to, a Secure Area must obtain an ASIC.

24.5 ASIC applications

- (a) The Contractor must ensure that all necessary applications are made in respect of those Representatives required to hold an ASIC and that those persons obtain ASICs. The Contractor will not be entitled to make any Claim arising out of any delay in obtaining an ASIC, loss of an ASIC, refusal to issue an ASIC to any person or withdrawal of an ASIC.
- (b) The Contractor acknowledges that:
 - (i) all persons applying for ASICs will be subject to those checks required under the relevant Laws;
 - (ii) a fee is payable to the ASIC issuing entity at the time of application;
 - (iii) the fees payable under this Agreement include all such fees to issuing entities and the Contractor is responsible for payment of them; and
 - (iv) no assurance is given by Airservices as to the minimum period for processing of applications, and the time required to do so should be taken into consideration by the Contractor in planning performance of this Agreement.
- (c) The Contractor must ensure that any ASICs issued by Airservices that have expired, are cancelled or damaged, or are no longer required, are promptly returned to Airservices.
- (d) Any costs incurred by Airservices to replace lost, stolen or destroyed ASICs must be reimbursed by the Contractor.

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26. Use and protection of Airservices Material

- (a) Subject to any conditions or limitations (including of third parties) notified by Airservices to the Contractor, or specified in Item 23 of Schedule 1, Airservices grants the Contractor a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any Airservices Material for the sole purpose of performing the Contractor's Activities and the Works pursuant to this Agreement, and the Contractor indemnifies Airservices for any infringement of Airservices' Intellectual Property Rights.
- (b) On expiry or termination of this Agreement, or on written request from Airservices, the Contractor must:
 - (i) immediately return to Airservices all Airservices Material;
 - (ii) if requested by Airservices, destroy all Airservices Material comprising of documentation (including all archival copies) in its custody or control; or
 - (iii) pay the cost of repair or replacement (at Airservices' option) of any Airservices Material comprising equipment which has been degraded or destroyed beyond fair wear and tear.
- (c) The obligation in clause 26(b) does not prevent the Contractor from retaining and using one copy of Airservices Material:
 - (i) solely for the purposes of complying with its record keeping, reporting and regulatory obligations; or
 - (ii) that is stored in electronic back-up tapes or records maintained in the ordinary course of the Contractor's business that are not readily capable of search or destruction,

provided that the Airservices Material is always treated as confidential to Airservices.

27. Confidentiality

- (a) Each party must protect the Confidential Information of the other party and must not make public, disclose or use any Confidential Information of the other party except in accordance with this Agreement, if required to do so by Law or a stock exchange or as strictly required in relation to legal proceedings relating to this Agreement.
- (b) If the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 27, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

28. Monitoring progress

28.1 Notification

If, in the performance of the Contractor's Activities, the Contractor becomes aware of something that may affect the safety of air navigation or Airservices' capacity to perform its statutory functions, the Contractor must notify Airservices as soon as possible.

28.2 Progress meetings

The parties will meet at the times and in the manner set out in the Statement of Works (or otherwise as agreed in writing between the parties) and as reasonably requested by Airservices from time to time, to discuss any issues in relation to this Agreement or the provision of the Works.

29. Dispute resolution

29.1 Agreed procedure

Subject to clause 29.6, if there is a dispute in relation to this Agreement, the parties must comply with this clause 29 to seek to resolve the dispute before initiating legal proceedings. If a party does not comply with this clause 29 in relation to a dispute, the other party does not have to comply with this clause in relation to the dispute.

29.2 Notice

If a party believes a dispute has arisen in relation to this Agreement that party must give written notice to the other party, adequately identifying and providing details of the dispute.

29.3 Internal escalation

On receipt of a dispute notice under clause 29.2, the parties must use their best efforts to resolve the dispute without delay, including by escalating the dispute to authorised representatives of the parties who have authority to resolve the dispute.

29.4 Next steps

If the parties are unable to resolve a dispute in accordance with clause 29.3, and the dispute is in relation to a Direction of Airservices Contract Manager, the parties must escalate the matter to executive management specified in Item 36 of Schedule 1 who must meet at least once within 14 Business Days to attempt to resolve the dispute.

29.5 Confidentiality and costs

- (a) Any information or documents disclosed by a party under this clause 29 must be kept confidential and may only be used to attempt to resolve the dispute.
- (b) Each party must pay its own costs of complying with this clause 29.

29.6 Exclusions

This dispute resolution procedure does not:

- (a) prevent a party from applying to a court for urgent interlocutory relief or any relief to protect Intellectual Property Rights or Confidential Information; or
- (b) apply to any dispute in relation to a set off of payment by Airservices under this Agreement or termination or reduction by Airservices under clause 30.4.

29.7 Continuation of performance

Despite the existence of a dispute, the Contractor must, unless directed by Airservices in writing not to do so, continue to provide the Works and perform the Contractor's Activities.

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31. Notices and other communications

- (a) A notice or other communication in relation to this Agreement must be in writing, marked for the attention of the Contractor Contract Manager or the Airservices Contract Manager (as appropriate) and delivered by hand delivery, express post for Australian domestic mail, air mail for international post or email, to the address specified in Item 35 of Schedule 1 as appropriate (as updated from time to time by notice from the recipient to the sender).
- (b) A notice or communication provided in accordance with clause 31(a) takes effect when it is received (or at a later time specified in the communication) and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if posted by express post in Australia on the first Business Day after posting;
 - (iii) if posted to or from a place outside Australia, on the tenth Business Day after posting; or
 - (iv) if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).
- (c) A communication made under clauses 29 and 30 must be sent to the Airservices Contract Manager and the following email address:
contract.notices@airservicesaustralia.com.

32. Miscellaneous

32.1 Applicable law

This Agreement is governed by the Law of the jurisdiction where the Site is located and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

32.2 Special Site Conditions

Unless otherwise agreed by Airservices Contract Manager, the hours of work applicable to the Contractor's Activities, methods of access, permissions and consents and other relevant matters to be carried out on-Site are those specified in the Special Site Conditions.

32.3 Right of set-off

Airservices may at any time deduct from moneys otherwise due to the Contractor or make demand against the Approved Security any debt or other moneys due from the Contractor to Airservices or any claim to money which Airservices may have against the Contractor whether for damages or otherwise.

32.4 Entire agreement

This Agreement represents the entire agreement of the parties and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, by the parties, or their Representatives, relating to its subject matter.

32.5 Relationship

- (a) A party is not, and must not represent itself as, an employee, agent, partner or joint venturer of the other party. The relationship between Airservices and the Contractor is and will remain for the term of this Agreement one of principal and independent contractor.
- (b) The Contractor's Representatives involved in the performance of this Agreement are not, and the Contractor must ensure they do not represent themselves as, legal representatives, agents, officers, partners, servants or employees of Airservices.

32.6 Assignment of rights

The Contractor may not assign any of its rights under this Agreement without Airservices' written consent, which will not be unreasonably withheld.

32.7 Variation

Subject to clause 19, this Agreement may be varied only in writing signed by both parties.

32.8 Waiver

A provision of, or a right created under, this Agreement may not be waived except in writing signed by the party or parties to be bound.

32.9 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

32.10 Counterparts

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

32.11 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

32.12 Survival

Clauses 11 (Subcontracting), 14 (Risks), 15 (Insurance), 17 (Defects liability), 21 (GST), 24.1 (Compliance with security obligations), 25 (Intellectual Property Rights and Moral Rights), 27 (Confidentiality), 29 (Dispute resolution), 30.4 (Termination for convenience), 32 (Miscellaneous) and clauses 5, 6, 7, 8 and 9 of Schedule 4 (Commonwealth Regulatory Requirements) survive the termination and expiry of this Agreement as do any other provisions that by implication from their nature are intended to survive termination or expiry of this Agreement.

Schedule 1 – Agreement Details

Item	Description	Details
1.	Airservices	Legal entity name: Airservices Australia ABN: 59 698 720 886 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Postal address: GPO Box 367, Canberra ACT 2601
2.	Airservices Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com
3.	Contractor	Name: Enviropacific Services Limited ABN: 43 111 372 064 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Postal address: 591 Blackburn Road, Notting Hill, VIC 3168
4.	Contractor Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
5.	Contractor Site Representative	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
6.	Agreement Commencement Date	s47G
7.	Scope of Agreement	
8.	Design Documents	
9.	Design hard copy requirements	
10.	Design electronic copy requirements	
11.	Site	
12.	Works Commencement Date	

Item	Description	Details
		s47G
13.	Site access	
14.	Excepted Approvals	
15.	Additional security requirements	
16.	Hazardous Substances	
17.	Date for Completion	
18.	Defects Liability Period	
19.	Warranties	
20.	Milestones	
21.	Provisional Sum Work	

Item	Description	Details
22.	Airservices Material	s47G
23.	Approved Security	
24.	Release of Approved Security	
25.	Delay Damages	
26.	SOP Act	
27.	Limits of accuracy for quantities	
28.	Business Day	
29.	Number of Business Days for payment	
30.	Liquidated damages	
31.	Insurance Requirements	

Item	Description	Details
		s47G
32.	Contractor Liability Cap	
33.	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority	Any one of the following: - Australian Solutions Centre Pty Limited; - RICS Dispute Resolution Service; - Adjudicate Today Pty Limited; - Australian Solutions Centre Pty Limited; or - Rialto Adjudications Pty Limited.
34.	Applicable Policies and Applicable Standards	• s47G • Managing WHS Risk for Design, Projects, and Construction-AA PROC-SAF-0012 Version 5 (Effective 26 February 2019)
35.	Address for	Airservices:

Item	Description	Details
	notices	Addressee: s47F , Airservices Australia Postal address: GPO Box 367, Canberra ACT 2601 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Email: s47F @airservicesaustralia.com Contractor: Addressee: s47F Enviropacific Services Limited Postal address: 591 Blackburn Road, Notting Hill, VIC 3168 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Email: s47F @enviropacific.com.au
36.	Dispute resolution	Airservices executive management nominee: Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com Contractor executive management nominee: Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au

Schedule 2 – Statement of Works

Works

1.1 Description of the Works

- a. The Contractor must provide Works in accordance Scope of Works detailed in the following document

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- b. Application for Airport Building Controller Online (ABCO) and Permit to Commence Work (PERCOW) permits.

Schedule 2 – Appendix 1

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Released by Airservices Australia under the Freedom of Information Act 1982

30 August 2022

s47F

s47F

Airservices Australia
25 Constitution Ave.
Canberra City

Email: s47F @airservicesaustralia.com

s47

Dear s47F

s47



Regards,

s47F

s47F

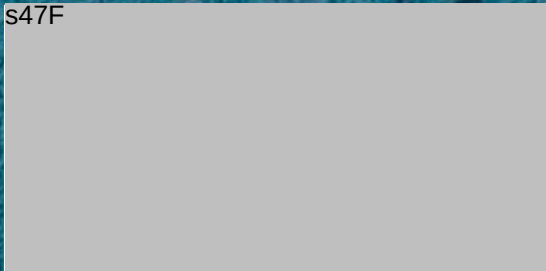
ENVIROPACIFIC SERVICES PTY LTD

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CONTACT DETAILS

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ENVIROPACIFIC

Schedule 4 – Commonwealth Regulatory Requirements

1. The WHS Accreditation Scheme

1.1 Application

Where the Contract Price is \$4 million (GST inclusive) or more, the Contractor must:

- (a) where the Contractor is the builder of the Works:
 - (i) maintain accreditation under the WHS Accreditation Scheme while building work is carried out; and
 - (ii) comply with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials; and
- (b) where the Contractor is engaging the builder of the Works, ensure that the builder:
 - (i) is accredited under the WHS Accreditation Scheme at the time the contract for building work is signed;
 - (ii) is contractually required to maintain its accreditation under the WHS Accreditation Scheme while carrying out the building work; and
 - (iii) complies with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials.

2. Engagement of Illegal Workers prohibited

- (a) The Contractor must ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Contractor must make compliance by any subcontractors with the provisions of this clause a condition of any subcontract.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Contractor's Activities or Works.
- (d) When requested in writing to do, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied, and is complying with, its obligations under this clause.

3. Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- (b) The Contractor must use its best endeavours to increase its purchasing from Indigenous Enterprises and employment of Indigenous Australians, in the supply of the Works.
- (c) On request by Airservices, the Contractor must provide a report to Airservices on how it has met its obligations in clause 3(b).

4. Workplace Gender Equality Act

- (a) This clause applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the WGE Act.
- (b) The Contractor must comply with its obligations under the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the Agreement Period, the Contractor must promptly notify Airservices Contract Manager of that fact.
- (d) If the Agreement Period exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Agreement Commencement Date and following this, annually, to Airservices Contract Manager.

5. Protection of Personal Information

5.1 Application of this clause

This clause 5 applies only where the Contractor deals with Personal Information when, and for the purposes of, performing Contractor Activities or the Works under this Agreement.

5.2 Obligations

The Contractor must:

- (a) only use that Personal Information for the purposes of performing its obligations under this Agreement;
- (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by Airservices and must not do or omit to do anything that causes Airservices to be in breach of an Australian Privacy Principle;
- (c) ensure that any subcontract entered into for the purpose of fulfilling the Contractor's obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 5, including this requirement in relation to any further contracts entered into by the subcontractor; and
- (d) if the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 5, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

6. Accounts, books and records

The Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by Airservices under this Agreement to be determined.

7. Freedom of information

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Freedom of Information Act 1982* (Cth) (the **FOI Act**); and
 - (ii) this Agreement may be a 'Commonwealth contract' and the Contractor may be a 'contracted service provider', within the meaning of the FOI Act.
- (b) Where Airservices has received a request under the FOI Act for access to a document created by, or in the possession of, the Contractor or its subcontractors that relates to this Agreement, the Contractor must provide the document to Airservices, on request.
- (c) The parties must promptly comply with their obligations under the FOI Act, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 7 and the FOI Act.

8. Public interest disclosure

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Public Interest Disclosure Act 2013* (Cth) (the **PID Act**);
 - (ii) this Agreement may be a 'Commonwealth contract', the Contractor and its subcontractors may be a 'contracted service provider' and any officers and employees of the Contractor or its subcontractors may be a 'public official', within the meaning of the PID Act; and
 - (iii) conduct engaged in by the Contractor or any subcontractor in relation to entering into, or giving effect to this Agreement, may be 'disclosable conduct' under the PID Act.

- (b) The parties must promptly comply with their obligations under the PID Act and Airservices' public interest disclosure policies, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 8 and the PID Act.

9. Audit and access

- (a) At any time during the execution of the Contractor's Activities and the period of 10 years following expiration of the Defects Liability Period in respect of the Works or, where the Works are being performed in Stages, the expiry of the Defects Liability Period in respect of the final Stage of the Works, the Contractor and its Representatives must grant Airservices, its nominees and the Auditor-General access at reasonable times and on reasonable notice (except where there is a suspected breach of this Agreement in which case no notice is required) to:
 - (i) any premises or site of the Contractor and its Representatives used in relation to this Agreement;
 - (ii) any Representatives of the Contractor engaged in relation to the performance of this Agreement; and
 - (iii) any Airservices Material, data, records, account and other material relevant to the performance of this Agreement under the control or custody of the Contractor or its Representatives for inspection and copying.
- (b) In complying with this clause the Contractor must:
 - (i) provide all such facilities and assistance and answer all questions of Airservices Contract Manager or any nominated person;
 - (ii) in the case of documents or records stored on a medium other than in writing, the Contractor and its Representatives must make available on request at no additional cost to Airservices such reasonable facilities as may be necessary to enable a legible reproduction to be created; and
 - (iii) ensure that any subcontract made in connection with this Agreement contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 9 as if the subcontractor were the Contractor.

Schedule 5 – Statutory Declaration for payment of Contractor Representatives

STATUTORY DECLARATION

Statutory declaration in the matter of s47G dated
[Insert date of Works Agreement] (Contract)

between Airservices Australia ABN 59 698 720 886 (Airservices)

and Enviropacific Services Limited ABN 43 111 372 064 (Contractor).

I, **[Insert full name of declarant]**, of **[Insert address of declarant]** in **[Insert state/territory]**,
[Insert declarant's occupation], do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 20.7(a) **[Note: Ensure correct clause of Contract]** of the Contract in relation to payment claim no. **[Insert payment claim no.]** submitted by the Contractor on **[Insert date for submission of claim]**.
3. All remuneration payable to employees of the Contractor for Works under the Contract during the period from the date of commencement of any Works under the Contract to the date of this statutory declaration, has been paid.
4. All amounts properly payable by the Contractor to consultants, suppliers and subcontractors in respect of the Works under the Contract have been paid.
5. 'Works' has the same meaning as in the Contract.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **[Insert legislation applicable to the state/territory in which statutory declaration is to be made]**.

DECLARED at **[Insert place]**)
 this **[Insert date (day)]** day of **[Insert (month)]**)
 before me:)

Signature of authorised witness

Signature of declarant

Name of authorised witness (block letters)

Address of authorised witness

Justice of the Peace */ Solicitor of the Supreme Court of **[Insert state/territory]** holding a current practising certificate under the **[Insert legislation under which practising certificates are issued in the state/territory]***

Capacity in which authorised witness takes the
 statutory declaration *Delete whichever is not applicable

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of **Airservices Australia ABN 59 698 720 886** by a duly authorised representative

Name of authorised representative (print)

Signature of authorised representative

Date

Name of witness (print)

Signature of witness

Date

SIGNED by by Enivropacific Services Limited **ABN 43 111 372 064** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

Name of Director (print)

Signature of Director

Date

Name of Director / Company Secretary (print)

Signature of Director / Company Secretary

Date



SHORT FORM WORKS AGREEMENT

s47G

s47G

Airservices Australia
ABN 59 698 720 886
(**Airservices**)

Enviropacific Services Limited
ABN 43 111 372 064
(**Contractor**)

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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Term	Definition
Agreement	the contractual relationship between the parties evidenced by this document which includes the Design Documents and all schedules and annexures to this document.
Agreement Commencement Date	the date on which this Agreement commences, as specified in Item 6 of Schedule 1.
Agreement Material	means all material: (a) created by, for, or on behalf of, the Contractor (including by subcontractors) in connection with this Agreement; (b) provided, or required to be provided, to Airservices in connection with the Contractor's Activities; or (c) at any time derived (in connection with this Agreement) from, or based on, the material described in paragraphs (a) or (b).
Agreement Period	the period of time during which this Agreement operates.
Airport Building Controller	has the meaning given in the <i>Airports (Building Control) Regulations 1996</i> (Cth).
Airport Operator	the operator of an airport at which Works are undertaken.
Airservices	Airservices Australia ABN 59 698 720 886.
Airservices Contract Manager	the person(s) identified in Item 2 of Schedule 1, or any other person nominated as an Airservices representative from time to time.
Airservices Material	any tangible equipment or material, software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, manuals, user guides, operations manuals and instructions, and the subject matter of any category of Intellectual Property Rights, provided to the Contractor by Airservices.
Airservices Risk	s47G

Airside Area	any part of the Site or any land and/or building which is an airside area as defined in the <i>Aviation Transport Security Act 2004</i> (Cth) or otherwise designated by Airservices as being an airside area.
Airside Works	Works that are: (a) within an Airside Area; (b) to be executed in such a way or in such a location that they may directly or indirectly affect (or have the potential to affect) the operations or safety of aircraft movements; or (c) otherwise notified by Airservices to the Contractor to be Airside Works.
Applicable Policies	the policies and procedures provided to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Applicable Standard	each standard notified to the Contractor by Airservices from time to time or specified in Item 34 of Schedule 1.
Approval	any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Proper Authority having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Law which must be obtained or satisfied to: (a) carry out the Contractor's Activities; or (b) service, occupy and use the completed Works or a completed Stage.
Approved Security	one or more unconditional bank guarantees each of which is in a form and given by a financial institution with an Australian banking licence issued under the <i>Banking Act 1959</i> (Cth), approved by Airservices.
ASIC	an Aviation Security Identification Card.
Australian Privacy Principle	has the same meaning as in the Privacy Act.
Building Certificate	a certificate or other Approval issued pursuant to Law which will allow the full occupation and use of the completed Works.
Business Day	a day specified in Item 36 of Schedule 1.
Claim	any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Commonwealth Regulatory Requirements	the requirements specified in Schedule 4 and any other requirement or policy of the Commonwealth applicable to the Works or the Contractor's Activities.
Completion	s47G

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Completion Certificate	a certificate issued by Airservices Contract Manager under clause 23.1, certifying that the Contractor has achieved Completion of the Works or a Stage.
Confidential Information	information that is by its nature confidential and is: (a) designated by a party as confidential; (b) described in this Agreement as confidential; or (c) information of Airservices that the Contractor knows or ought to know is confidential,

	but does not include information which is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Contract Price	the price specified in Schedule 3 adjusted from time to time by any additions or deductions approved / agreed or required to be made under this Agreement.
Contractor	the party specified in Item 3 of Schedule 1 and includes its Representatives.
Contractor's Activities	includes all things or tasks which are necessary for the Contractor to do to comply with its obligations under this Agreement.
Contractor Contract Manager	the person identified in Item 4 of Schedule 1.
Contractor Liability Cap	the amount identified in Item 32 of Schedule 1.
Contractor Site Representative	the person identified in Item 5 of Schedule 1.
Date for Completion	the date for Completion specified in Item 17 of Schedule 1 in relation to the Works or a Stage (as applicable) as adjusted under this Agreement.
Date of Completion	the date that a Completion Certificate is issued pursuant to this Agreement in respect of the Works or a Stage.
Defects Liability Period	the period specified in Item 18 of Schedule 1 which commences on the Date of Completion, or is otherwise adjusted pursuant to clause 17.3.
Design Documents	those: (a) documents referred to in Item 8 of Schedule 1; and (b) further drawings or specifications supplied to the Contractor by Airservices Contract Manager during the course of this Agreement (if any).
Direction	includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
Exempted Approvals	means those Approvals that the Contractor is not required to obtain, as specified in Item 14 of Schedule 1.
GST	has the meaning given to that term in the GST Law.
GST Law	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Harmful Code	any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, virus, trojan horses, spyware or adware.
Hazardous Substance	any material suspected of containing or likely to contain a substance defined or listed in the National Occupation Health and Safety Commission's (NOHSC) Guidance Notes (NOHSC 1008-2004:

	"Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1999: "List of Designated Hazardous Substances").
Illegal Worker	a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after the person's visa has expired; or is working in breach of the person's visa conditions.
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy available at: http://www.dpmc.gov.au/sites/default/files/publications/indigenous_procurement_policy_1.pdf , as updated from time to time.
Industrial Requirements	any requirement (whether legislative or merely reflective of good industrial practice) including without limitation any industrial or workplace requirement, obligation or prohibition arising under: (a) any applicable legislation regarding workers compensation; (b) any superannuation scheme, redundancy scheme or other such scheme established under any applicable legislation or building industry agreement; (c) any code of conduct which is included in or referred to in this Agreement; (d) any applicable WHS Law or regulations and any codes of practice issued from time to time under them; (e) any site agreement relevant to or applicable to the Site; (f) any enterprise bargaining agreement executed between the Contractor and any relevant union; and (g) the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Insurance Requirements	the insurance requirements in Item 31 of Schedule 1.
Intellectual Property Rights	all intellectual property rights, including the following rights: (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Latent Conditions	s47G

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Law	(a) any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time; and (b) any Approval (including conditions or requirements).
Loss	damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any amount agreed to be paid by way of settlement or compromise.
Milestone	any fixed date to be met by the Contractor in performing any of its obligations under this Agreement.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
National Construction Code	is comprised of the Building Code of Australia and the Plumbing Code of Australia
Personal Information	has the meaning given in section 6 of the Privacy Act.
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Proper Authority	each government and statutory authority having authority or jurisdiction in relation to the Site or the Works whether under Law or otherwise, and includes a person supplying communications, drainage, electricity, gas, sewerage, water or other services which may be affected by the performance of the Works.
Proportionate Liability Legislation	Chapter 7A of the <i>Civil Law (Wrongs) Act 2002</i> (ACT) or any equivalent legislation applying in another jurisdiction applicable to a Claim made against a party in relation to this Agreement.
Provisional Sum Work	the work or goods referred to in Item 21 of Schedule 1 for which the sum of money referred to in that Item has been included in the Contract Price.
QBCC Act	the <i>Queensland Building and Construction Commission Act 1991</i> (Qld).
Representative	in relation to a party, any natural person who is an employee, volunteer, officer, agent, contractor or professional adviser of that party or, in the case of the Contractor, of a subcontractor.

Secure Area	has the meaning prescribed in the <i>Aviation Transport Security Regulations 2005</i> (Cth) and includes any other area where an ASIC is required for access.
Site	the site for Works as described in Item 11 of Schedule 1.
SOP Act	has the meaning given in Item 37 of Schedule 1.
Special Site Conditions	those conditions described as special site conditions in the Statement of Works.
Specified Acts	(a) failing to acknowledge or attribute the Contractor's or any other person's authorship of any Agreement Material or any part of the Works; (b) falsely attributing authorship of any Agreement Material or any part of the Works; (c) making any modification, variation or amendment of any nature whatsoever to any Agreement Material or any part of the Works, whether or not: (i) it results in a material distortion of or destruction or mutilation of the Agreement Material or any part of the Works; or (ii) it is prejudicial to the honour or reputation of the Contractor or any other author of any Agreement Material or any part of the Works; (d) using any Agreement Material or any part of the Works other than for the purpose for which it was intended at the time the Agreement Material or any part of the Works (as the case may be) was created; (e) altering any Agreement Material or any part of the Works by adding to or removing elements from, or rearranging elements of the Agreement Material or any part of the Works, including by combining elements of any of the Agreement Material or any part of the Works with any other material; (f) changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Agreement Material; (g) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; or (h) adding any additional content or information to Agreement Material.
Stage	a stage of the Works as outlined in the Statement of Works (if any).
Statement of Works	Schedule 2.
Table of Rates	the table of rates at Item Error! Reference source not found. of Schedule 3.
Table of Works Variation Rates and Prices	the table in Item Error! Reference source not found. of Schedule 3 and any document referred to in that Item which shows the rates or any lump sum, quantities or other sums of payment to be applied for the execution of any Work to be carried out pursuant to a Works Variation.

Waste	s47G
Waste Management Legislation	any Commonwealth, State or Territory legislation relating to the management, regulation or reduction of Waste.
WHS Accreditation Scheme	the Australian Government building and construction industry Work Health and Safety Accreditation Scheme established by section 43 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
WGE Act	the <i>Workplace Gender Equality Act 2012</i> (Cth).
WHS Act	the <i>Work Health and Safety Act 2011</i> (Cth).
WHS entry permit holder	has the meaning given in the WHS Act.
WHS Law	the WHS Act and any corresponding WHS law as defined in section 4 of the WHS Act.
WHS Regulations	the regulations made under the WHS Act.
Work Health and Safety Plan	the work health and safety plan prepared by the Contractor pursuant to clause 10.4(f), which can be either Agreement specific or Site specific, and must: (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective; and (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with statutory requirements in relation to work health and safety.
Works	the physical works described in the Statement of Works which the Contractor must design (to the extent required by this Agreement), complete (including the installation of any plant and equipment forming part of those Works) and hand over to Airservices. Work has a corresponding meaning.
Works Commencement Date	means the date specified in Item 12 of Schedule 1.
Works Variation	any change to the Works within the general scope of this Agreement, and includes: (a) increases, decreases or omissions of any part; (b) a change in character or quality of any requirements; (c) changes to the levels, lines, positions or any dimensions;

	(d) additional work; (e) the demolition or removal of material or work no longer required by Airservices; and (f) where Airservices notifies the Contractor that the Works are Airside Works after the Agreement Commencement Date, as set out in a "Works Variation Order".

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a unit of measurement is taken to be expressed in Australian legal units of measurement;
- (d) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) time is to local time in the place where the Site is located and, in all other cases, where the Airservices Contract Manager is located;
 - (iii) "\$" or "dollars" is a reference to Australian currency; and
 - (iv) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

1.3 Inconsistent terms

- (a) If there is any ambiguity, discrepancy or inconsistency in the documents which make up this Agreement, the following order of precedence applies:
 - (i) the terms and conditions of this Agreement;
 - (ii) any Schedules or documents forming part of this Agreement; and
 - (iii) the Design Documents.
- (b) If the Contractor Contract Manager considers there is any ambiguity, discrepancy or inconsistency in this Agreement, he or she must give notice to the Airservices Contract Manager who must, within five Business Days of the notice, give the Contractor a Direction as to the course it must adopt.

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3. Design

3.1 Application of this clause

This clause will apply if the Contractor is required to design any part of the Works as set out in Item 7 of Schedule 1.

3.2 Design to be prepared by the Contractor

The Contractor must:

- (a) design the parts of the Works or a Stage which the Design Documents expressly or impliedly require it to design;
- (b) provide its design to the Airservices Contract Manager in accordance with the requirements in Items 9 and 10 of Schedule 1; and
- (c) obtain permission from the Airservices Contract Manager to use the design.

3.3 Design certification

The Contractor must, with each payment claim under clause 20.2, provide Airservices Contract Manager with a certificate in the form required by Airservices which certifies that (to the extent then applicable):

- (a) the design carried out by it or its Representatives complies with, subject to clause 5.2(a)(i), Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law) and the other requirements of this Agreement; and
- (b) the Works or the Stage comply with the design which has been the subject of Airservices Contract Manager's permission under clause 3.2(c).

4. The Site

4.1 Access to the Site

Provided the Contractor has met the preconditions to Site access specified in Item 13 of Schedule 1, Airservices must ensure that the Contractor has sufficient access to the Site from the date specified in Item 13 of Schedule 1.

4.2 Airservices' right of entry

The Contractor must give Airservices access to the Site or any areas off-Site where Work is being performed.

4.3

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4.4 Cleaning up

The Contractor must keep the Site, the Works and the environment at the Site clean and tidy. At the end of each day the Contractor must ensure that the Site is maintained so as not to create a hazard.

4.5 Urgent protection

Airservices may take any action necessary to protect the Works, other property, the environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor is required to take but does not take. The reasonable costs incurred by Airservices in taking such action shall be a debt due and payable by the Contractor and maybe set off against any payment claim under clause 20.2.

4.6 Conduct at Airservices' premises

The Contractor must, if using or accessing Airservices' premises or facilities, comply with all reasonable directions and procedures relating to workplace health and safety and security, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

5. Construction

5.1 Description of Works

- (a) The Contractor must construct the Works strictly in accordance with:
 - (i) the Design Documents;
 - (ii) any design prepared by the Contractor that the Contractor has received permission to use in accordance with clause 3.2(c); and
 - (iii) any Direction of Airservices Contract Manager, including (without limitation) a Works Variation directed by Airservices Contract Manager by a written document titled "Works Variation Order".
- (b) The Contractor must perform all work and supply materials necessary for the carrying out of the Contractor's Activities and the Works.

5.2 Authority requirements

- (a) The Contractor must:
 - (i) unless otherwise specified, perform the Contractor's Activities and complete the Works so that they comply with all Approvals, the National Construction Code, any other requirements imposed by Law and this Agreement;
 - (ii) apply for all relevant permits, consents or Approvals, give all notices and pay all fees necessary to perform this Agreement;
 - (iii) obtain, and give to Airservices, a Building Certificate (if a Building Certificate is obtainable) in respect of the completed Works; and
 - (iv) give Airservices copies of all other relevant documents issued by Proper Authorities in respect of the Works.
- (b) If the requirements that the Contractor must comply with under this clause change after the Agreement Commencement Date, the Contractor must give written notice to Airservices Contract Manager seeking Direction(s). Any Direction issued by Airservices Contract Manager that requires the Contractor to do more or less work than could reasonably have been anticipated at the Agreement Commencement Date will:
 - (i) if more work is required, subject to the Contractor complying with clause 22, entitle the Contractor to payment for the extra work as a Works Variation; or

- (ii) if less work is required, entitle Airservices to reduce the Contract Price by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by Airservices Contract Manager.

5.3 Provisional Sum Work

- (a) Unless otherwise approved by the Airservices Contract Manager, Provisional Sum Work must be performed under subcontracts entered into by the Contractor.
- (b) After the Contractor is directed by the Airservices Contract Manager to enter into a subcontract for Provisional Sum Work:
 - (i) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in Item 21 of Schedule 1 for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
 - (ii) any Works Variation to that work will be dealt with under clause 19.
- (c) Where Provisional Sum Work is to be performed, the work will be, and will always be deemed to have been, part of the Work to be brought to completion by the Date for Completion.

6. Airside Works

6.1 Application

This clause applies where the Works (or part of the Works) are Airside Works.

6.2 Airside Works

- (a) The Contractor must, at its cost, comply with any Laws applicable to the Site, including the *Airports Act 1996* (Cth), the *Airports (Transitional) Act 1996* (Cth), *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) and all relevant rules and regulations imposed by Airservices and the Airport Operator from time to time.
- (b) The Contractor must ensure that a direction given by a representative of the Civil Aviation Safety Authority or the Airport Operator is complied with immediately.
- (c) If the Airport Operator declares an emergency in relation to the airport where the Site is located, the Contractor must vacate the Site and ensure that the Site is vacated and remains vacated until the Airport Operator gives notice that the Contractor can re-enter the Site.
- (d) The Contractor must at its cost and without limiting its obligations under this clause:
 - (i) comply with and ensure that the Contractor's Representatives comply with all security and access arrangements and other requirements of Airservices and/or the Airport Operator in respect of Works conducted at an airport. The Contractor is not entitled to seek any extensions of time, costs or variation in relation to such arrangements or requirements;
 - (ii) provide site security and parking facilities for Contractor Representatives to the satisfaction of the Airservices Contract Manager and the Airport Operator; and
 - (iii) submit details of its proposed Site access and circulate to the Airservices Contract Manager for approval at least 10 Business Days prior to commencing any part of the Works.

6.3 Airport Building Controller requirements

- (a) The Contractor must provide all necessary certificates of compliance and other information to the Airport Building Controller for the purpose of obtaining an occupation certificate in relation to the Works.
- (b) The Contractor must comply with all requirements of the Airport Building Controller (if any) in relation to the Works.

- (c) If, at any time, the Airport Building Controller identifies that the Contractor has not complied with any of its requirements, the Contractor must, as soon as practicable, remedy the non-compliance to the satisfaction of the Airport Building Controller and the Airservices Contract Manager.

7. Hazardous Substances on Site

7.1 Discovery of Hazardous Substances on Site

- (a) If at any time the Contractor discovers the presence on the Site of any Hazardous Substance, it must inform Airservices Contract Manager, not disturb the material under any circumstances, and ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- (b) Airservices Contract Manager must inspect the Site and must issue Directions to the Contractor in respect of further action to be taken.
- (c) If Directed by the Airservices Contract Manager, the Contractor must ensure that all Hazardous Substances on the Site must be treated or removed in accordance with the requirements of the Worksafe Australia "Code of Practice" for the safe removal of such materials and any other Laws in the State or Territory in which the Works are situated relating to the removal of such materials.
- (d) Other than to the extent that the Contractor is entitled to make, and makes, a claim under clause 4.3 of this Agreement, the Contractor will have no entitlement to make any other claim under this Agreement (including for an adjustment to the Contract Price or an extension of time) arising out of or in connection with complying with any Directions from the Airservices Contract Manager in respect of the Hazardous Substance(s).

7.2 Use Of Hazardous Substances

Without limiting clause 7.1, the Contractor:

- (a) must ensure that the Works do not contain any Hazardous Substances or substances which would breach the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth);
- (b) must, on request of Airservices Contract Manager, be able to show compliance with clause 7.2(a); and
- (c) is responsible for all materials used by its subcontractors under this clause.

8. Prior Work

- (a) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality or completeness of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after Airservices gives the Contractor access to the Site;
 - (ii) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify Airservices Contract Manager in writing providing:
 - (A) full particulars of the defects or matters identified; and
 - (B) the reasons for the opinion formed by it in respect to the defects or matters identified; and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in clause 8(a)(ii).

- (b) On receipt of the Contractor's notice, Airservices Contract Manager will investigate the Prior Work the subject of the notice and issue a Direction as to the course of action to be taken.
- (c) Failure of the Contractor to follow the process in clause 8(a) will prevent the Contractor from making a claim in respect of any adverse financial or time impact the Prior Work has on the Contractor's performance under this Agreement.

9. Existing services and structures

- (a) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Design Documents.
- (b) The Contractor must obtain the prior written approval from Airservices Contract Manager in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (c) The Contractor must notify Airservices Contract Manager immediately upon the discovery of services or obstructions not shown in the Design Documents or identified by inspection.
- (d) The Contractor must immediately notify Airservices Contract Manager in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services and associated infrastructure in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.

10. Representatives and other requirements

10.1 Airservices Contract Manager

Airservices Contract Manager will act as the agent of Airservices (not as an independent certifier, assessor or valuer) in issuing Directions and discharging each of the functions of Airservices Contract Manager under this Agreement.

10.2 The Contractor Site Representative

The Contractor must ensure that the Contractor Site Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under this Agreement.

10.3 Removal of persons

Airservices Contract Manager may by notice in writing direct the Contractor to remove any person from the Site and / or the performance of the Contractor's Activities. The Contractor must, on receipt of Airservices Contract Manager's notice, and at its own cost, promptly arrange for removal and replacement of the person. The replacement must be acceptable and approved by Airservices Contract Manager.

10.4 Workplace health and safety requirements

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all legislative requirements and other requirements of this Agreement for work health and safety management;
 - (ii) all subcontractors comply with the requirements referred to in this clause 10.4; and
 - (iii) it complies with its duty under the WHS Law to consult, cooperate and coordinate activities with all other persons who have a work and health safety duty in relation to the same matter;

- (b) notify Airservices Contract Manager immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Contractor's Activities or the Works;
- (c) if the WHS Accreditation Scheme is applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- (d) carry out the Contractor's Activities and the Works safely and in a manner that does not put the health and safety of persons at risk;
- (e) comply with any Direction issued by Airservices Contract Manager to change its manner of working or to cease working if Airservices Contract Manager reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works;
- (f) prepare and submit to Airservices Contract Manager a Work Health and Safety Plan in accordance with the WHS Law and continue to update and amend that plan and submit it (as necessary);
- (g) institute systems to obtain regular written assurances from other contractors, consultants and subcontractors performing work on or in the vicinity of the Site about their ongoing compliance with the WHS Law including the due diligence obligation contained in the WHS Law;
- (h) provide the written assurances obtained under clause 10.4(g), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Law, to Airservices Contract Manager;
- (i) provide Airservices Contract Manager on a monthly basis with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause), or any other relevant matters as Airservices Contract Manager may require from time to time, including a summary of the Contractor's compliance with the WHS Law; and
- (j) if requested by Airservices Contract Manager or required by the WHS Law, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of Airservices Contract Manager before the Contractor or any subcontractor commences such work.

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11. Subcontracting

- (a) The Contractor must:
 - (i) not subcontract any aspect of the provision of the Contractor's Activities or the Works without the prior written approval of Airservices, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Workplace Gender Equality Agency as not complying with the WGE Act; and

- (iii) ensure that any subcontractor approved under this Agreement complies with all applicable Laws, Applicable Policies and the Commonwealth Regulatory Requirements.
- (b) The Contractor is fully responsible for the performance of the Contractor's Activities even if the Contractor subcontracts any aspect of the provision of the Contractor's Activities or Works.
- (c) The Contractor must, prior to Completion, procure and provide Airservices with those warranties described in Item 19 of Schedule 1 from the relevant subcontractor or supplier. These warranties must be on such terms and in such form as approved by Airservices Contract Manager.
- (d) In relation to the provision of the Works and the Contractor's Activities, the Contractor:
 - (i) must, on request by Airservices, provide Airservices with the names of any of the Contractor's subcontractors;
 - (ii) agrees that Airservices may disclose publicly the names of any of the Contractor's subcontractors; and
 - (iii) must ensure that any subcontractor agrees that Airservices may disclose the subcontractor's name publicly.

12. Approved Security

12.1 Amount and Timing

- (a) The Contractor must provide to Airservices within 10 Business Days of the Agreement Commencement Date the Approved Security for the value(s) specified in Item 23 of Schedule 1.
- (b) If the Contractor does not comply with clause 12.1(a), Airservices may retain any amount up to the amount of the Approved Security required, from any amount payable by Airservices under clause 20.3.

12.2 Recourse and replacement

- (a) Airservices may have recourse to the Approved Security where Airservices considers in good faith that:
 - (i) the Contractor is in persistent breach of any of its obligations under this Agreement or in breach of an obligation that is not capable of remedy;
 - (ii) it has a claim against the Contractor for damages for breach of this Agreement or otherwise for the payment of moneys under or in connection with this Agreement;
 - (iii) it has a right to terminate this Agreement either at Law or under the terms of this Agreement;
 - (iv) that the Contractor is unable to pay its debts as and when they fall due, including a debt due and payable to Airservices.
- (b) The Approved Security shall be treated as a credit allocation risk pending the resolution of any dispute relating to the matters referred to in clause 12.2(a).
- (c) If Airservices has recourse to the Approved Security, Airservices may, by written notice directed to the Contractor, require the Contractor to provide further Approved Security in an amount equivalent to the amount called upon by Airservices. If Airservices serves a notice under this clause for a further Approved Security, notwithstanding clause 20, the Contractor will not be entitled to submit a payment claim under clause 20.2, and Airservices may withhold payment of moneys (including any moneys certified as due and owing, to the Contractor) until the Contractor complies with Airservices' notice.

12.3 Release

Airservices must release:

- (a) the proportion specified in Item 24 of Schedule 1 of any Approved Security held under this clause when a Completion Certificate has been issued for the Works or a Stage; and
- (b) the balance of the Approved Security held under this clause within 15 Business Days after the final certificate is issued pursuant to clause 20.6.

12.4 QBCC Act

- (a) The parties acknowledge that to the extent that the QBCC Act (and in particular, section 67K(2) of the QBCC Act) applies to this Agreement, under the QBCC Act, unless the parties expressly agree otherwise, section 67K(2) makes this Agreement subject to a condition that at any time before Completion (as defined in the QBCC Act) the total of Approved Security held by Airservices under this Agreement (other than those referred to in section 67K(3) of the QBCC Act) is not to exceed 5% of the amount payable under this Agreement for carrying out building work including any Works Variations.
- (b) By initialling this clause 12.4 in the space provided below, the parties expressly agree that this Agreement is not subject to the condition imposed by section 67K(2) and explained above.

[Airservices' initials]

[Contractor's initials]

- (c) Notwithstanding any other provision of this Agreement, the parties agree that to the extent that:
 - (i) the QBCC Act applies to this Agreement; and
 - (ii) this Agreement provides for the total of Approved Security held by Airservices to exceed 2.5% of the Contract Price for this Agreement (which under the QBCC Act includes adjustments for variations) after practical completion of building work (within the meaning of the QBCC Act) has been reached, the amount of the excess does not relate to the need to correct defects in the Works identified during the Defects Liability Period, but instead relates to the recovery by Airservices of any moneys that may become payable to Airservices by the Contractor under or in connection with this Agreement, the Contractor's performance of this Agreement or any breach of this Agreement by the Contractor.
- (d) The Contractor agrees that any direction, notice or certificate issued by Airservices' Representative under or in connection with this Agreement which refers to an amount that Airservices is owed by the Contractor under this Agreement, constitutes a notice for the purposes of section 67J of the QBCC Act that Airservices may use any Approved Security provided under this Agreement, in whole or in part, to obtain the amount owed.

13. Unfixed goods and materials

13.1 Payment for Unfixed Goods and Materials

Unfixed goods or materials must not be included in the value of work in a payment claim under clause 20 unless the Contractor has provided to Airservices Contract Manager additional Approved Security equal to the amount to be claimed for the unfixed goods and materials.

13.2 Title and Risk

- (a) Title to unfixed goods and materials will vest in Airservices upon payment by Airservices.

- (b) Unfixed goods and materials remain at the risk of the Contractor until those unfixed goods and materials have been incorporated into the Works notwithstanding that title may have already vested in Airservices.

14. Risks

14.1 Risk of the Works

Except where it arises from an Airservices Risk, the Contractor will bear the risk of:

- (a) before the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage, any plant, equipment, temporary works or other things used in the Contractor's Activities; and
- (b) after the issue of a Completion Certificate for the Works or a Stage, any loss of or damage to the Works or a Stage arising from any act or omission of the Contractor in rectifying defects during the Defects Liability Period or from an act, omission, event or any other thing which occurred prior to the issue of a Completion Certificate for the Works or a Stage.

14.2 Reinstatement

- (a) The Contractor must, at its cost, make good any loss of or damage to the Works or a Stage that occurs during the period of the Contractor's responsibility under clause 14.1, excluding loss or damage which is the result of an Airservices Risk.
- (b) If pursuant to a Direction issued by the Airservices Contract Manager, the Contractor is required to make good any loss of or damage to the Works or a Stage which is the result of an Airservices Risk, such Direction shall be deemed a Works Variation. The Airservices Contract Manager will price the Works Variation having regard to the proportionate responsibility of the parties in causing that loss or damage.

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14.4 Contribution

- (a) Subject to clause 14.4(b), each party's liability to the other party for any Claim or Loss arising out of this Agreement is reduced to the extent that the other party or its Representative contributed to the Claim or Loss.
- (b) Clause 14.4(a) does not apply in respect of any contribution made by an act or omission that the other party or its Representatives was lawfully entitled to make.
- (c) Apportionment under clause 14.4(a) is applied prior to any limitation of liability under clause 14.5(a).
- (d) To the extent permitted at Law, the operation of any Proportionate Liability Legislation is expressly excluded in determining the rights, obligations and liabilities of the parties in any Claim arising under this Agreement, including the rights, obligations and liabilities of the parties arising under any indemnity in this Agreement.

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Compliance with Directions

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Notice by Contractor as to time and cost implications

- (a) If the Contractor believes that a Direction given by Airservices Contract Manager:
 - (i) constitutes a Works Variation, the Contractor must comply with the requirements of clause 19.3; or
 - (ii) will involve or result in a claim by the Contractor for additional payment or for an extension of time, the Contractor must, prior to complying with the Direction, and within two Business Days of the Direction, provide written notice to Airservices Contract Manager of the anticipated claim.

- (b) The Airservices Contract Manager may rescind, confirm or modify the Direction previously given by Airservices Contract Manager. If the Airservices Contract Manager does not confirm the Direction within five Business Days of receiving the advice from the Contractor, it will be deemed that Airservices Contract Manager rescinded the Direction.
- (c) If the Contractor does not comply with the requirements of clause 19.3 or provide a written notice to Airservices Contract Manager as required by clause 16.1(a)(ii), prior to commencing any additional work in complying with the Direction, the Contractor will not be entitled to make a claim for additional payment or for an extension of time.

16.2 Action by Airservices

- (a) If the Contractor fails to comply with a Direction of Airservices Contract Manager after Airservices Contract Manager has given reasonable notice in writing to the Contractor, in addition to any other remedies, Airservices may, have work carried out by other persons such that the Direction is complied with. The reasonable costs incurred by Airservices will be a debt due from the Contractor and may be set off against a payment claim under clause 20.2.
- (b) Any action taken by Airservices pursuant to this clause will not affect any warranties given or provided by the Contractor in relation to that Work.

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18.1 Programming

- (a) The Contractor must give Airservices Contract Manager a construction program in a form and by a timeframe reasonably requested by Airservices.
- (b) Airservices may defer payment until the Contractor satisfies clause 18.1(a).

18.2 Progress

- (a) The Contractor must progress the Contractor's Activities and the Works in accordance with the construction program (and any amended construction program).

- (b) The Contractor must not suspend the progress of the whole or any part of the Contractor's Activities or the Works except where suspension is Directed or approved by Airservices Contract Manager.

18.3 Amended construction program and monthly reports

During the Works the Contractor must review the construction program monthly and give the Airservices Contract Manager notice of any potential delays and recommended adjustments to ensure completion by the Date for Completion. The Airservices Contract Manager may direct the Contractor to give an updated construction program.

18.4 Time for Completion

- (a) The Contractor must achieve Completion by the Date for Completion.
- (b) The Contractor may, if it chooses, accelerate progress to reach Completion before the Date for Completion.
- (c) The time for performance of Airservices' or Airservices Contract Manager's obligations is not affected by the Contractor's decision to accelerate.

18.5 Delay

The Contractor will be entitled to claim an extension of time if it will be delayed reaching Completion of the Works or a Stage by the Date for Completion due to a cause other than:

- (a) acts or omissions of the Contractor;
- (b) civil commotion or industrial dispute confined to the Contractor; or
- (c) events occurring after the Date for Completion,

and within 14 Business Days of the commencement of the delay the Contractor gives Airservices Contract Manager written detailed particulars of the delay and the required extension to the critical path.

18.6 Concurrent delay

- (a) Where more than one event causes a concurrent delay and the cause of at least one of those events does not entitle the Contractor to an extension of time, to the extent to which the delays are concurrent, the Contractor will not be entitled to an extension of time.
- (b) Despite anything else in this Agreement, if a claim for an extension of time would be concurrent with a claim for a cause of delay that is permitted, the Contractor will not be entitled to claim an extension of time to the Date for Completion under clause 18.7 for the second cause of delay.

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- (a) is the maximum damages which will be payable by Airservices per day in these circumstances; and
- (b) will be a limitation upon Airservices' liability to the Contractor for any delay or disruption which the Contractor encounters in performing the Contractor's Activities and arises from a breach of this Agreement by Airservices.

18.9 Suspension

- (a) Airservices Contract Manager may Direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities or the Works.
- (b) Unless the suspension is the result of the Contractor's failure to perform its obligations under this Agreement, a Direction to suspend under this clause will entitle the Contractor to:
 - (i) claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 18.5; and
 - (ii) the Contractor's direct, reasonably and properly evidenced extra costs necessarily incurred by the Contractor in respect of the suspension, calculated in accordance with clause 18.8.
- (c) The Contractor's entitlement under clause 18.9(b)(ii) will be its only right to payment of money arising from a Direction to suspend and will be subject to the Contractor complying with clause 22 and taking all steps possible to mitigate its extra costs, as assessed by Airservices Contract Manager.

19. Works Variations

19.1 Works Variation Order

- (a) Airservices Contract Manager may Direct the Contractor to carry out a Works Variation by a written document titled "Works Variation Order".
- (b) Airservices Contract Manager may seek from the Contractor a notice in regard to any proposed Works Variation from Airservices Contract Manager on whether or not a proposed Works Variation can be effected by the Contractor. The Contractor must provide a response within the timeframe specified by the Airservices Contract Manager and in doing so must identify:
 - (i) whether the proposed Works Variation will have an impact on the construction program and achieving Completion of the Works by the Date for Completion; and
 - (ii) the proposed cost of carrying out such a Works Variation.
- (c) If, in relation to a proposed Works Variation, Airservices Contract Manager is satisfied with the notification from the Contractor as to the carrying out of the proposed Works Variation, Airservices Contract Manager may issue a Works Variation Order on the Contractor to carry out that Works Variation. If Airservices Contract Manager does not issue a Works Variation Order, the Contractor must not carry out the proposed Works Variation.

19.2 Cost of Works Variation

- (a) Subject to clauses 17.1 and 19.2(b), the Contract Price will be adjusted for the value of all Works Variations carried out by the Contractor by:
 - (i) the cost of carrying out the Works Variation as proposed by the Contractor under clause 19.1(b)(ii); or
 - (ii) if Airservices Contract Manager does not agree to the cost of carrying out the Works Variation proposed by the Contractor under clause 19.1(b)(ii), then:
 - (A) if there is a Table of Works Variation Rates and Prices and / or Table of Rates which can apply to calculate the additional costs of the Contractor under this clause and the Contractor did not calculate its additional costs and expenses by reference to the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant), Airservices

will only be liable to pay an amount determined by using any rates or prices in the Table of Works Variation Rates and Prices and / or the Table of Rates (to the extent relevant); or

- (B) if there are no relevant rates or prices specified in the Table of Works Variation Rates and Prices and / or the Table of Rates that are applicable to calculate the additional costs under this clause, Airservices will only be liable to pay a reasonable amount as agreed between the parties or, in the absence of such agreement, as determined by Airservices Contract Manager acting reasonably.

In either case the value of the Works Variation shall include:

- (C) a reasonable amount for profit and overheads and any deductions to the Contract Price shall include a reasonable amount for profit but not overheads; and
 - (D) any reasonable costs and expenses incurred by the Contractor arising from the Works Variation delaying the Contractor.
- (b) To the extent that a Works Variation involves an omission from the Works, Airservices may thereafter carry out the omitted work either itself or by engaging third parties.

19.3 Notice of Works Variation

- (a) If the Contractor believes a Direction by Airservices Contract Manager, other than a Direction under clause 5.2 or a "Works Variation Order" under clause 19.1, constitutes or involves a Works Variation it must, within five Business Days of, and before complying with, the Direction, give notice to Airservices Contract Manager that it considers that the Direction constitutes or involves a Works Variation.
- (b) On receipt of such notice Airservices Contract Manager may rescind, confirm or amend the Direction and advise whether it accepts that the Direction constitutes or involves a Works Variation.
- (c) If Airservices Contract Manager does not confirm or vary the Direction:
 - (i) within five Business Days of receiving the Contractor's notice under clause 19.3(a), it will be deemed that Airservices Contract Manager has rescinded the Direction;
 - (ii) the Contract Price will not be adjusted as a result of that Direction; and
 - (iii) Airservices will not be liable upon any claim by the Contractor arising out of or in connection with that Direction, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law.
- (d) If Airservices Contract Manager confirms or varies the Direction and indicates that it considers the Direction constitutes or involves a Works Variation, that notice will be taken to be a request under clause 19.1(b).
- (e) If Airservices Contract Manager confirms or varies the Direction and indicates that it does not consider the Direction constitutes or involves a Works Variation, the Contractor must continue to perform the Contractor's Activities and progress the Works to the full extent possible in accordance with this Agreement and all Directions of Airservices Contract Manager.

20. Payment

20.1 Payment obligation

- (a) Subject to due and proper performance by the Contractor of its obligations under this Agreement and any right to set-off which Airservices may have, Airservices must pay the Contractor the Contract Price and any other amounts to which it is entitled under this Agreement at the times and in accordance with the methods prescribed in this Agreement.
- (b) The Contractor acknowledges, subject to clauses 18 and 19 of this Agreement, that the Contract Price:

- (i) includes all risks, hazards and additional costs, including all employment related payments and allowances under any industrial awards or other such agreements; and
- (ii) will not be varied as a result of any rise or fall in the costs of material or labour, relevant to or associated with carrying out and completing the Works and the Contractor's Activities.

20.2 Payment claims

- (a) Subject to clause 20.5, the Contractor must claim payments under this Agreement progressively in accordance with the Milestone Schedule in Schedule 3.
- (b) Any payment claim must be submitted to Airservices Contract Manager and must include:
 - (i) details of the percentage of the Works covered by the claim;
 - (ii) confirmation that the Works comply with all relevant Approvals and authorisations;
 - (iii) details of any unfixed plant and materials of which the Contractor is claiming payment;
 - (iv) the items required by clause 20.7; and
 - (v) any further information that Airservices Contract Manager reasonably requires in relation to the payment claim.
- (c) If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement will not require:
 - (i) Airservices Contract Manager to issue a payment certificate; or
 - (ii) Airservices to pay the Contractor,
 in respect of that payment claim earlier than would have been the case had the Contractor submitted a payment claim in accordance with this Agreement.

20.3 Payment certificate

- (a) Airservices Contract Manager must within 10 Business Days of receipt of a payment claim give Airservices and the Contractor, on behalf of Airservices, a payment certificate in the form reasonably determined by Airservices Contract Manager and which sets out:
 - (i) the value of the work completed in accordance with this Agreement;
 - (ii) amounts already paid to the Contractor;
 - (iii) the amount (if any) which Airservices Contract Manager believes to be then payable by Airservices to the Contractor;
 - (iv) amounts Airservices is entitled to retain under clause 12.1(b), withhold under clause 20.7, set-off in accordance with clause 32.3 or otherwise withhold or deduct in accordance with this Agreement;
 - (v) the amount (if any) which Airservices proposes to pay to the Contractor; and
 - (vi) if the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim:
 - (A) the reason why the amount in clause 20.3(a)(v) is less than the amount claimed in the payment claim; and
 - (B) if the reason for the difference is that Airservices has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) Unfixed goods and materials must not be included in the value of the Work unless the Contractor has given Airservices additional Approved Security equal to the payment claimed.

- (c) At any time and from time to time, Airservices Contract Manager may by a further certificate correct any error or omission which has been discovered in any previous payment certificate, other than a Completion Certificate or a final certificate.

20.4 Tax invoice and payment

- (a) Upon receipt of a payment certificate under clause 20.3:
 - (i) the Contractor must (without affecting its rights under this Agreement) give to Airservices (and a copy to Airservices Contract Manager), a tax invoice for the amount specified in the payment certificate under clause 20.3(a)(v); and
 - (ii) Airservices must, within the time stated in Item 29 of Schedule 1 of receipt of the tax invoice under clause 20.4(a)(i) pay to the Contractor, the amount specified in the tax invoice.
- (b) A payment certificate or payment is not:
 - (i) evidence of the value of work but is only on account of the Contract Price;
 - (ii) an admission of liability; or
 - (iii) acceptance by Airservices or Airservices Contract Manager of the Contractor's performance or compliance with this Agreement.
- (c) Airservices Contract Manager may modify or amend any payment certificate.

20.5 Conditions precedent to entitlement to payment

If at the time that the Contractor purports to submit a payment claim under clause 20.2, the Contractor has not:

- (a) complied with its programming obligations under clause 18;
- (b) provided all relevant information as required under the WHS Law or under this Agreement arising out of or in connection with work health and safety; or
- (c) complied with clause 20.7,

then the Contractor will not be entitled to submit a payment claim under clause 20.2; and

- (d) Airservices Contract Manager will not be obliged to include in any payment certificate under clause 20.3; and
 - (e) Airservices will not be liable to pay,
- any amount included in the payment claim if otherwise submitted by the Contractor.

20.6 Final payment claim

- (a) The Contractor must give Airservices a final payment claim within 20 Business Days after the end of the Defects Liability Period for the Works or, where the Works are to be performed in Stages, the end of the Defects Liability Period in respect of the final Stage.
- (b) That claim must include all amounts which the Contractor claims from Airservices under this Agreement or otherwise.
- (c) After the date for submitting the final payment claim has passed, Airservices will not be liable for any claim by the Contractor arising out of or in connection with the Contractor's Activities or the Works, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, unless the Contractor has given Airservices a final payment claim within the time required and the claim is included in the final payment claim.
- (d) The final payment claim is in addition to the other notices which the Contractor must give to Airservices Contract Manager under this Agreement in order to preserve its entitlements under this Agreement.
- (e) Within 10 Business Days after receipt of the Contractor's final payment claim issued under this clause 20.6, Airservices Contract Manager will issue to the Contractor a final certificate confirming the moneys finally due and payable as between Airservices and the Contractor pursuant to the terms of this Agreement. Within 20 Business Days of receipt of the final certificate Airservices must pay to the

Contractor, or the Contractor must pay to Airservices, as the case may be pursuant to the final certificate, any amounts stated in the final certificate as being due and payable either by Airservices or the Contractor.

- (f) The final certificate issued by Airservices Contract Manager is conclusive evidence of the full and final satisfaction and discharge of each party's obligation pursuant to the requirements of this Agreement except in relation to:
- (i) any fraud or dishonesty in relation to the Contractor's Activities or any matter referred to in the final certificate;
 - (ii) any defect or omission in the Works or the performance by the Contractor of its obligations under this Agreement that was not readily apparent at the end of the Defects Liability Period or was not capable of identification upon reasonable inspection at the time of issue of the final certificate;
 - (iii) any accidental or mistaken inclusion or exclusion of any work in performing the Works; and
 - (iv) any unresolved disputes referred to resolution pursuant to this Agreement.

20.7 Payment of workers and subcontractors

- (a) The Contractor must with each payment claim under clause 20.2 provide Airservices Contract Manager with:
- (i) a statutory declaration in the form at Schedule 5 by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the request been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities;
 - (ii) documentary evidence that at the date of the request all workers who have been employed by a subcontractor, supplier or consultant of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities; and
 - (iii) a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors, suppliers and consultants have been paid all moneys due and payable to them in respect of the Contractor's Activities.
- (b) Without limiting clause 20.5, Airservices is entitled to withhold from any payment which would otherwise be due to the Contractor under this Agreement the amount disclosed as unpaid under this clause 20.7, and Airservices may pay unpaid moneys directly to a worker or a subcontractor where permitted by Law, in accordance with a Court order given in favour of the worker or subcontractor, or if requested in writing by the Contractor.
- (c) Any such payment made by Airservices to a worker or a subcontractor in accordance with this clause will be deemed to be part satisfaction of Airservices' obligation to pay a Contractor's claim pursuant to this Agreement.

20.8 Security of payment legislation

- (a) The parties agree:
- (i) a payment claim submitted to Airservices Contract Manager under clause 20.2 which also purports to be (or is by Law) a payment claim under the relevant SOP Act is received by Airservices Contract Manager as agent for Airservices;
 - (ii) unless otherwise notified to the Contractor by Airservices in writing, Airservices Contract Manager will give payment certificates and carry out all other functions of Airservices under the relevant SOP Act as the agent of Airservices;

- (iii) to the extent permitted by and for the purposes of the relevant SOP Act, the "reference dates" are those dates prescribed in clause 20.2 on which the Contractor has satisfied any conditions precedent to the Contractor's entitlement to submit a payment claim; and
 - (iv) a reference to a "payment certificate" is also a reference to a "payment schedule" for the purposes of the relevant SOP Act.
- (b) Failure by Airservices Contract Manager to set out in a payment certificate issued under the relevant SOP Act or otherwise an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices will not prejudice:
 - (i) Airservices Contract Manager's ability or power to set out in a subsequent payment certificate an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices; or
 - (ii) Airservices' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Agreement.
- (c) The Contractor agrees that the amount set out in the payment certificate in accordance with clause 20.3(a) is, to the extent permitted by and for the purposes of the relevant SOP Act, the amount of the "progress payment" calculated in accordance with the terms of this Agreement, which the Contractor is entitled to in respect of this Agreement.
- (d) The Contractor irrevocably chooses the person set out in Item 33 of Schedule 1 (Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority) as, to the extent permitted by and for the purposes of the relevant SOP Act and to the extent that the Works are to be carried out in:
 - (i) the Northern Territory or Western Australia, the appointed adjudicator or, where there is no appointed adjudicator, the prescribed appointer; or
 - (ii) any other State or Territory in which the relevant SOP Act applies, the authorised nominating authority.
- (e) The Contractor must not at any time, without the written consent of Airservices, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by Airservices or any details thereof in respect of an adjudication application made under the relevant SOP Act (in this paragraph, the **Information**).
- (f) For the avoidance of doubt:
 - (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of the Information;
 - (ii) notwithstanding the Contractor's obligation in respect of the Information, Airservices has sole and unfettered discretion to divulge or suffer or permit its servants, subcontractors or agents to divulge to any person the Information;
 - (iii) Airservices may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant SOP Act; and
 - (iv) any Information which Airservices provides or relies upon in respect of an adjudication application made under the relevant SOP Act is made without prejudice to Airservices' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

20.9 Limits of accuracy

If a Table of Rates exists and:

- (a) the actual quantity of an item required to carry out the Contractor's Activities is greater or less than the quantity shown in the Table of Rates;
- (b) Airservices has accepted a rate for the item referred to in clause 20.9(a); and
- (c) the actual quantity of the item referred to in clause 20.9(a) is outside the limits of accuracy stated in Item 27 of Schedule 1,

the rate will only apply to the quantities within those limits of accuracy and quantities outside those limits of accuracy will have their value determined by agreement between the Contractor and Airservices Contract Manager or failing agreement, Airservices Contract Manager using reasonable rates.

21. GST

21.1 Interpretation

In this clause 21, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

21.2 GST warranty

The Contractor warrants that, unless otherwise advised to Airservices in writing, it is registered for GST and will immediately advise Airservices if it ceases to be registered for GST.

21.3 Prices GST exclusive

Unless stated otherwise, all prices in this Agreement are exclusive of GST.

21.4 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

21.5 Reimbursements

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 21.4.

21.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

21.7 Adjustment event

If and to the extent an adjustment event arises in respect of a supply made by the Contractor to Airservices under this Agreement, then:

- (a) if the Contractor's corrected GST amount is less than the previously attributed GST amount, the Contractor must refund the difference to Airservices; and
- (b) if the Contractor's corrected GST amount is greater than the previously attributed GST amount, Airservices will pay the difference to the Contractor,

and the Contractor must issue an adjustment note to Airservices.

21.8 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

22. Notification of claims

22.1 Notices

If the Contractor wishes to make a claim against Airservices, other than a claim for an extension of time under clause 18.5 or a payment claim under clause 20.2, in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give Airservices Contract Manager the following:

- (a) within five Business Days of the Contractor becoming aware, or within 20 Business days of the occurrence (whichever is the shorter) of the events on which the claim is based, written notice that it proposes to make the claim, the details of the nature of the claim, and the events upon which the claim will be based; and
- (b) within 20 Business Days of giving the notice under clause 22.1(a), a written claim setting out detailed particulars of the events on which the claim is based, the legal basis for the claim, the facts relied upon in support of the claim and details of the quantification of the amount claimed.

22.2 Continuing events

If the events upon which the claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 22.1(b) every 20 Business Days after the claim under clause 22.1(b) was given until after the events or the consequences have ceased.

22.3 Bar

If the Contractor fails to comply with clauses 22.1 and 22.2:

- (a) the Contract Price will not be adjusted as a result of; and
- (b) Airservices will not be liable for any claim by the Contractor, whether under this Agreement or (insofar as is permitted by Law) any other principle of Law, arising out of or in connection with,

the relevant fact, matter or thing.

23. Completion

23.1 Completion Certificate

- (a) The Contractor must notify Airservices Contract Manager at least 10 Business Days prior to the date upon which the Contractor anticipates that Completion will be achieved.
- (b) When the Contractor believes that Completion has been achieved, the Contractor must request, by written notice to Airservices Contract Manager, that:
 - (i) Airservices Contract Manager inspect the Works or the Stage; and
 - (ii) if satisfied that Completion has been achieved, that Airservices Contract Manager issues a Completion Certificate stating the date Completion was achieved.
- (c) Airservices Contract Manager must within 10 Business Days of receipt of the notice from the Contractor pursuant to clause 23.1(b) inspect the Works or the Stage and if satisfied that the Works or the Stage have achieved Completion, issue a Completion Certificate stating the date Completion was achieved together with a defects list identifying minor defects in the Works or the Stage as at the Date of Completion.
- (d) If Airservices Contract Manager is not satisfied that Completion has been achieved, Airservices Contract Manager must issue a notice to the Contractor setting out the reasons why Airservices Contract Manager does not believe Completion has been achieved. The Contractor must then proceed to bring the Works to Completion and the process in clauses 23.1(b) to 23.1(d) will reapply.

23.2 Possession upon Completion

On Completion, Airservices may take possession of the Works or the Stage.

23.3 Part of the Works or Stage

- (a) Airservices may use a part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.
- (b) Such use will not affect the Contractor's obligations under this Agreement but Airservices must endeavour to use that part so as to not interfere with the Contractor's performance.

23.4 Effect of Completion Certificate

A Completion Certificate is not acceptance by Airservices of the Contractor's performance of its obligations under this Agreement.

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24. Security

24.1 Compliance with security obligations

The Contractor must, and must ensure that its Representatives:

- (a) have awareness of, and fully comply with:
 - (i) Airservices' security requirements, policies and procedures that are notified by Airservices to the Contractor from time to time, including those specified in this clause 24; and
 - (ii) all reasonable security directions and any mandatory training issued by Airservices relating to the use of Airservices' premises, facilities or Airservices Material;
- (b) implement appropriate security measures to protect Airservices Material and ensure that Airservices Material, including official, classified, sensitive or commercial information or documents, is not accessible by any means by unauthorised persons; and
- (c) immediately report any security incidents of which it may become aware (confirmed promptly in writing to Airservices), including actual, suspected or apparent violations and breaches of this clause 24, and the steps taken by the Contractor to address these.

24.2 Authorisation of Representatives

The Contractor must ensure that any person (including any Representative) the Contractor proposes to carry out work or perform duties under this Agreement and who will be required to:

- (a) enter any secure locations in Airservices' buildings or places;
- (b) have access to, or be responsible for the physical custody of, Confidential Information or Airservices Material; or
- (c) hold a particular kind of security clearance the details of which have been notified to the Contractor by Airservices,

does not carry out that work or perform those duties unless authorised to do so by Airservices.

24.3 Security checks

- (a) The Contractor must, and must ensure that any Representative of the Contractor providing the Works or performing the Contractor's Activities:
 - (i) obtains all security clearances or authorisations or undergoes any security checks (including a police history check) as required in relation to performing this Agreement; and
 - (ii) provides to Airservices, in the form required by Airservices, such information as Airservices from time to time reasonably requests for the purpose of allowing Airservices to undertake reasonable investigations for the purposes of this clause 24.
- (b) All costs associated with obtaining security clearances or authorisations, or undergoing security checks, reviews or audits, or security performance monitoring must be borne by the Contractor, unless otherwise agreed in writing by Airservices.

24.4 Airport security

If the Works or the Contractor's Activities are to be provided at any Secure Area:

- (a) the Contractor must meet with Airservices, promptly after the Agreement Commencement Date (or within such other period as notified by Airservices) and before commencing any work in a Secure Area, to discuss access and airport security, and must comply, at the sole cost of the Contractor, with any safety or security directions given by the Airport Operator and/or Airservices in respect of the Works or Contractor's Activities at an airport; and
- (b) before commencing any Works or Contractor's Activities in a Secure Area every Representative of the Contractor who will be working in, or who will be required to have unaccompanied access to, a Secure Area must obtain an ASIC.

24.5 ASIC applications

- (a) The Contractor must ensure that all necessary applications are made in respect of those Representatives required to hold an ASIC and that those persons obtain ASICs. The Contractor will not be entitled to make any Claim arising out of any delay in obtaining an ASIC, loss of an ASIC, refusal to issue an ASIC to any person or withdrawal of an ASIC.
- (b) The Contractor acknowledges that:
 - (i) all persons applying for ASICs will be subject to those checks required under the relevant Laws;
 - (ii) a fee is payable to the ASIC issuing entity at the time of application;
 - (iii) the fees payable under this Agreement include all such fees to issuing entities and the Contractor is responsible for payment of them; and
 - (iv) no assurance is given by Airservices as to the minimum period for processing of applications, and the time required to do so should be taken into consideration by the Contractor in planning performance of this Agreement.
- (c) The Contractor must ensure that any ASICs issued by Airservices that have expired, are cancelled or damaged, or are no longer required, are promptly returned to Airservices.
- (d) Any costs incurred by Airservices to replace lost, stolen or destroyed ASICs must be reimbursed by the Contractor.

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26. Use and protection of Airservices Material

- (a) Subject to any conditions or limitations (including of third parties) notified by Airservices to the Contractor, or specified in Item 23 of Schedule 1, Airservices grants the Contractor a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any Airservices Material for the sole purpose of performing the Contractor's Activities and the Works pursuant to this Agreement, and the Contractor indemnifies Airservices for any infringement of Airservices' Intellectual Property Rights.
- (b) On expiry or termination of this Agreement, or on written request from Airservices, the Contractor must:
 - (i) immediately return to Airservices all Airservices Material;
 - (ii) if requested by Airservices, destroy all Airservices Material comprising of documentation (including all archival copies) in its custody or control; or
 - (iii) pay the cost of repair or replacement (at Airservices' option) of any Airservices Material comprising equipment which has been degraded or destroyed beyond fair wear and tear.
- (c) The obligation in clause 26(b) does not prevent the Contractor from retaining and using one copy of Airservices Material:
 - (i) solely for the purposes of complying with its record keeping, reporting and regulatory obligations; or
 - (ii) that is stored in electronic back-up tapes or records maintained in the ordinary course of the Contractor's business that are not readily capable of search or destruction,provided that the Airservices Material is always treated as confidential to Airservices.

27. Confidentiality

- (a) Each party must protect the Confidential Information of the other party and must not make public, disclose or use any Confidential Information of the other party except in accordance with this Agreement, if required to do so by Law or a stock exchange or as strictly required in relation to legal proceedings relating to this Agreement.
- (b) If the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 27, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

28. Monitoring progress

28.1 Notification

If, in the performance of the Contractor's Activities, the Contractor becomes aware of something that may affect the safety of air navigation or Airservices' capacity to perform its statutory functions, the Contractor must notify Airservices as soon as possible.

28.2 Progress meetings

The parties will meet at the times and in the manner set out in the Statement of Works (or otherwise as agreed in writing between the parties) and as reasonably requested by Airservices from time to time, to discuss any issues in relation to this Agreement or the provision of the Works.

29. Dispute resolution

29.1 Agreed procedure

Subject to clause 29.6, if there is a dispute in relation to this Agreement, the parties must comply with this clause 29 to seek to resolve the dispute before initiating legal proceedings. If a party does not comply with this clause 29 in relation to a dispute, the other party does not have to comply with this clause in relation to the dispute.

29.2 Notice

If a party believes a dispute has arisen in relation to this Agreement that party must give written notice to the other party, adequately identifying and providing details of the dispute.

29.3 Internal escalation

On receipt of a dispute notice under clause 29.2, the parties must use their best efforts to resolve the dispute without delay, including by escalating the dispute to authorised representatives of the parties who have authority to resolve the dispute.

29.4 Next steps

If the parties are unable to resolve a dispute in accordance with clause 29.3, and the dispute is in relation to a Direction of Airservices Contract Manager, the parties must escalate the matter to executive management specified in Item 36 of Schedule 1 who must meet at least once within 14 Business Days to attempt to resolve the dispute.

29.5 Confidentiality and costs

- (a) Any information or documents disclosed by a party under this clause 29 must be kept confidential and may only be used to attempt to resolve the dispute.
- (b) Each party must pay its own costs of complying with this clause 29.

29.6 Exclusions

This dispute resolution procedure does not:

- (a) prevent a party from applying to a court for urgent interlocutory relief or any relief to protect Intellectual Property Rights or Confidential Information; or
- (b) apply to any dispute in relation to a set off of payment by Airservices under this Agreement or termination or reduction by Airservices under clause 30.4.

29.7 Continuation of performance

Despite the existence of a dispute, the Contractor must, unless directed by Airservices in writing not to do so, continue to provide the Works and perform the Contractor's Activities.

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- (a) A notice or other communication in relation to this Agreement must be in writing, marked for the attention of the Contractor Contract Manager or the Airservices Contract Manager (as appropriate) and delivered by hand delivery, express post for Australian domestic mail, air mail for international post or email, to the address specified in Item 35 of Schedule 1 as appropriate (as updated from time to time by notice from the recipient to the sender).
- (b) A notice or communication provided in accordance with clause 31(a) takes effect when it is received (or at a later time specified in the communication) and is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if posted by express post in Australia on the first Business Day after posting;
 - (iii) if posted to or from a place outside Australia, on the tenth Business Day after posting; or
 - (iv) if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).
- (c) A communication made under clauses 29 and 30 must be sent to the Airservices Contract Manager and the following email address:
contract.notices@airservicesaustralia.com.

32. Miscellaneous

32.1 Applicable law

This Agreement is governed by the Law of the jurisdiction where the Site is located and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

32.2 Special Site Conditions

Unless otherwise agreed by Airservices Contract Manager, the hours of work applicable to the Contractor's Activities, methods of access, permissions and consents and other relevant matters to be carried out on-Site are those specified in the Special Site Conditions.

32.3 Right of set-off

Airservices may at any time deduct from moneys otherwise due to the Contractor or make demand against the Approved Security any debt or other moneys due from the Contractor to Airservices or any claim to money which Airservices may have against the Contractor whether for damages or otherwise.

32.4 Entire agreement

This Agreement represents the entire agreement of the parties and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, by the parties, or their Representatives, relating to its subject matter.

32.5 Relationship

- (a) A party is not, and must not represent itself as, an employee, agent, partner or joint venturer of the other party. The relationship between Airservices and the Contractor is and will remain for the term of this Agreement one of principal and independent contractor.
- (b) The Contractor's Representatives involved in the performance of this Agreement are not, and the Contractor must ensure they do not represent themselves as, legal representatives, agents, officers, partners, servants or employees of Airservices.

32.6 Assignment of rights

The Contractor may not assign any of its rights under this Agreement without Airservices' written consent, which will not be unreasonably withheld.

32.7 Variation

Subject to clause 19, this Agreement may be varied only in writing signed by both parties.

32.8 Waiver

A provision of, or a right created under, this Agreement may not be waived except in writing signed by the party or parties to be bound.

32.9 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

32.10 Counterparts

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

32.11 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

32.12 Survival

Clauses 11 (Subcontracting), 14 (Risks), 15 (Insurance), 17 (Defects liability), 21 (GST), 24.1 (Compliance with security obligations), 25 (Intellectual Property Rights and Moral Rights), 27 (Confidentiality), 29 (Dispute resolution), 30.4 (Termination for convenience), 32 (Miscellaneous) and clauses 5, 6, 7, 8 and 9 of Schedule 4 (Commonwealth Regulatory Requirements) survive the termination and expiry of this Agreement as do any other provisions that by implication from their nature are intended to survive termination or expiry of this Agreement.

Schedule 1 – Agreement Details

Item	Description	Details
1.	Airservices	Legal entity name: Airservices Australia ABN: 59 698 720 886 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Postal address: GPO Box 367, Canberra ACT 2601
2.	Airservices Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com
3.	Contractor	Name: Enviropacific Services Limited ABN: 43 111 372 064 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Postal address: 591 Blackburn Road, Notting Hill, VIC 3168
4.	Contractor Contract Manager	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
5.	Contractor Site Representative	Name: s47F Position: s47F Phone: s47F Email: s47F @enviropacific.com.au
6.	Agreement Commencement Date	The date this Agreement is signed by the last party to do so.
7.	Scope of Agreement	s47G
8.	Design Documents	
9.	Design hard copy requirements	
10.	Design electronic copy requirements	
11.	Site	

Item	Description	Details
		s47G
12.	Works Commencement Date	
13.	Site access	
14.	Excepted Approvals	
15.	Additional security requirements	
16.	Hazardous Substances	
17.	Date for Completion	
18.	Defects Liability Period	
19.	Warranties	
20.	Milestones	

Item	Description	Details
21.	Provisional Sum Work	s47G
22.	Airservices Material	
23.	Approved Security	
24.	Release of Approved Security	
25.	Delay Damages	
26.	SOP Act	
27.	Limits of accuracy for quantities	
28.	Business Day	
29.	Number of Business Days for payment	
30.	Liquidated damages	
31.	Insurance Requirements	

Item	Description	Details
		s47G
32.	Contractor Liability Cap	s47G
33.	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority	Any one of the following: - Victorian Chapter of the Resolution Institute; - Australian Solutions Centre Pty Limited; - RICS Dispute Resolution Service; - Adjudicate Today Pty Limited; - Australian Solutions Centre Pty Limited; or - Rialto Adjudications Pty Limited.
34.	Applicable Policies and	• s47G

Item	Description	Details
	Applicable Standards	Managing WHS Risk for Design, Projects, and Construction-AA PROC-SAF-0012 Version 5 (Effective 26 February 2019)
35.	Address for notices	Airservices: Addressee: s47F , Airservices Australia Postal address: GPO Box 367, Canberra ACT 2601 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Email: s47F @airservicesaustralia.com Contractor: Addressee: s47F , Enviropacific Services Limited Postal address: 591 Blackburn Road, Notting Hill, VIC 3168 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Email: s47F @enviropacific.com.au
36.	Dispute resolution	Airservices executive management nominee: Name: s47F Position: s47F Phone: s47F Email: s47F @airservicesaustralia.com Contractor executive management nominee: Name: s47F Position: s47F Phone: s47F Email: s47F enviropacific.com.au

Schedule 2 – Statement of Works

1. Works

The Statement of Requirements details the Contractors Works and Technical Design documents to which the works must be constructed and is comprised in the following document

- s47G
- 

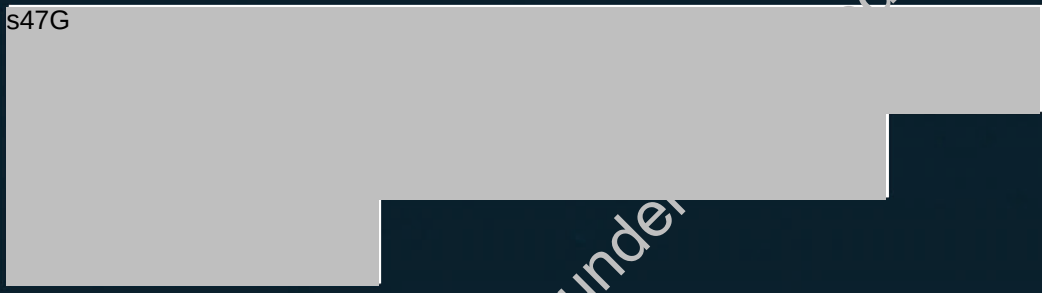
Schedule 2 – Appendix 1

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Released by Airservices Australia under the Freedom of Information Act 1982

Released by Airservices Australia under the Freedom of Information Act 1982

s47G



Prepared by: s47F

Version: Revision 2

Date: s47G

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Schedule 4 – Commonwealth Regulatory Requirements

1. The WHS Accreditation Scheme

1.1 Application

Where the Contract Price is \$4 million (GST inclusive) or more, the Contractor must:

- (a) where the Contractor is the builder of the Works:
 - (i) maintain accreditation under the WHS Accreditation Scheme while building work is carried out; and
 - (ii) comply with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials; and
- (b) where the Contractor is engaging the builder of the Works, ensure that the builder:
 - (i) is accredited under the WHS Accreditation Scheme at the time the contract for building work is signed;
 - (ii) is contractually required to maintain its accreditation under the WHS Accreditation Scheme while carrying out the building work; and
 - (iii) complies with all conditions of its accreditation under the WHS Accreditation Scheme and the National Construction Code performance requirements in relation to building materials.

2. Engagement of Illegal Workers prohibited

- (a) The Contractor must ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Contractor must make compliance by any subcontractors with the provisions of this clause a condition of any subcontract.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Contractor's Activities or Works.
- (d) When requested in writing to do, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied, and is complying with, its obligations under this clause.

3. Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- (b) The Contractor must use its best endeavours to increase its purchasing from Indigenous Enterprises and employment of Indigenous Australians, in the supply of the Works.
- (c) On request by Airservices, the Contractor must provide a report to Airservices on how it has met its obligations in clause 3(b).

4. Workplace Gender Equality Act

- (a) This clause applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the WGE Act.
- (b) The Contractor must comply with its obligations under the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the Agreement Period, the Contractor must promptly notify Airservices Contract Manager of that fact.
- (d) If the Agreement Period exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Agreement Commencement Date and following this, annually, to Airservices Contract Manager.

5. Protection of Personal Information

5.1 Application of this clause

This clause 5 applies only where the Contractor deals with Personal Information when, and for the purposes of, performing Contractor Activities or the Works under this Agreement.

5.2 Obligations

The Contractor must:

- (a) only use that Personal Information for the purposes of performing its obligations under this Agreement;
- (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by Airservices and must not do or omit to do anything that causes Airservices to be in breach of an Australian Privacy Principle;
- (c) ensure that any subcontract entered into for the purpose of fulfilling the Contractor's obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 5, including this requirement in relation to any further contracts entered into by the subcontractor; and
- (d) if the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 5, or the corresponding obligations of any of its Representatives, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

6. Accounts, books and records

The Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by Airservices under this Agreement to be determined.

7. Freedom of information

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Freedom of Information Act 1982* (Cth) (the **FOI Act**); and
 - (ii) this Agreement may be a 'Commonwealth contract' and the Contractor may be a 'contracted service provider', within the meaning of the FOI Act.
- (b) Where Airservices has received a request under the FOI Act for access to a document created by, or in the possession of, the Contractor or its subcontractors that relates to this Agreement, the Contractor must provide the document to Airservices, on request.
- (c) The parties must promptly comply with their obligations under the FOI Act, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 7 and the FOI Act.

8. Public interest disclosure

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Public Interest Disclosure Act 2013* (Cth) (the **PID Act**);
 - (ii) this Agreement may be a 'Commonwealth contract', the Contractor and its subcontractors may be a 'contracted service provider' and any officers and employees of the Contractor or its subcontractors may be a 'public official', within the meaning of the PID Act; and
 - (iii) conduct engaged in by the Contractor or any subcontractor in relation to entering into, or giving effect to this Agreement, may be 'disclosable conduct' under the PID Act.

- (b) The parties must promptly comply with their obligations under the PID Act and Airservices' public interest disclosure policies, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 8 and the PID Act.

9. Audit and access

- (a) At any time during the execution of the Contractor's Activities and the period of 10 years following expiration of the Defects Liability Period in respect of the Works or, where the Works are being performed in Stages, the expiry of the Defects Liability Period in respect of the final Stage of the Works, the Contractor and its Representatives must grant Airservices, its nominees and the Auditor-General access at reasonable times and on reasonable notice (except where there is a suspected breach of this Agreement in which case no notice is required) to:
 - (i) any premises or site of the Contractor and its Representatives used in relation to this Agreement;
 - (ii) any Representatives of the Contractor engaged in relation to the performance of this Agreement; and
 - (iii) any Airservices Material, data, records, account and other material relevant to the performance of this Agreement under the control or custody of the Contractor or its Representatives for inspection and copying.
- (b) In complying with this clause the Contractor must:
 - (i) provide all such facilities and assistance and answer all questions of Airservices Contract Manager or any nominated person;
 - (ii) in the case of documents or records stored on a medium other than in writing, the Contractor and its Representatives must make available on request at no additional cost to Airservices such reasonable facilities as may be necessary to enable a legible reproduction to be created; and
 - (iii) ensure that any subcontract made in connection with this Agreement contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 9 as if the subcontractor were the Contractor.

Schedule 5 – Statutory Declaration for payment of Contractor Representatives

STATUTORY DECLARATION

Statutory declaration in the matter of **s47G** dated **[Insert date of Works Agreement]** (Contract)

between Airservices Australia ABN 59 698 720 886 (Airservices)

and Enviropacific Services Limited ABN 43 111 372 064 (Contractor).

I, **[Insert full name of declarant]**, of **[Insert address of declarant]** in **[Insert state/territory]**, **[Insert declarant's occupation]**, do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 20.7(a) **[Note: Ensure correct clause of Contract]** of the Contract in relation to payment claim no. **[Insert payment claim no.]** submitted by the Contractor on **[Insert date for submission of claim]**.
3. All remuneration payable to employees of the Contractor for Works under the Contract during the period from the date of commencement of any Works under the Contract to the date of this statutory declaration, has been paid.
4. All amounts properly payable by the Contractor to consultants, suppliers and subcontractors in respect of the Works under the Contract have been paid.
5. 'Works' has the same meaning as in the Contract.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **[Insert legislation applicable to the state/territory in which statutory declaration is to be made]**.

DECLARED at **[Insert place]**)
 this **[Insert date (day)]** day of **[insert (month)]**)
 before me:)

 Signature of authorised witness

 Signature of declarant

 Name of authorised witness (block letters)

 Address of authorised witness

Justice of the Peace */ Solicitor of the Supreme Court of **[Insert state/territory]** holding a current practising certificate under the **[Insert legislation under which practising certificates are issued in the state/territory]***

 Capacity in which authorised witness takes the statutory declaration *Delete whichever is not applicable

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of **Airservices Australia ABN 59 698 720 886** by a duly authorised representative

s47F



Name of witness (print)

Signature of witness

Date

SIGNED by by Enivropacific Services Limited **ABN 43 111 372 064** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

s47F



Name of Director / Company Secretary (print)

Signature of Director / Company Secretary

Date

s47F

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Signer Events	Signature	Timestamp
[Redacted]		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Envelope Summary Events	Status	Timestamps
s47G		

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Electronic Record and Signature Disclosure created on: S47G

Parties agreed to: S47F

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- ii. send us an email to **S47F** @airservicesaustralia.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Airservices Australia
ABN 59 698 720 886
(Airservices)

Enviropacific Services Pty Ltd
ABN 43 11 372 064
(Contractor)

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Unclassified

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Recitals

- A. Airservices and the Contractor are parties to the Existing Agreement.
- B. The Parties seek to vary the Existing Agreement in accordance with the terms and conditions of this Deed.

Terms and conditions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

Airservices means that person specified in Item 1 of Schedule 1.

Contractor means that person specified in Item 2 of Schedule 1.

Deed means this document and includes the schedules and any attachments.

Effective Date means the date specified in Item 4 of Schedule 1.

Existing Agreement means the agreement described in Item 3 of Schedule 1.

Party means a party to this Deed and **Parties** has a corresponding meaning.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a term defined in the Existing Agreement has the same meaning in this Deed;
- (b) words in the singular includes the plural and vice versa;
- (c) headings are inserted for convenience and do not affect the interpretation of this Deed;
- (d) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (e) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (f) a reference to a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal representatives, successors, assigns and persons substituted by novation.
- (g) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it.

2 Variation to Existing Agreement

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3 Confirmation

3.1 Continuation of terms

The Existing Agreement continues in full force and effect, as amended by this Deed.

3.2 Inconsistency

If there is any inconsistency between the terms and conditions of the Existing Agreement and the terms and conditions of this Deed, this Deed will prevail to the extent of any inconsistency.

4 Law and jurisdiction

This Deed will be governed by and construed in accordance with the laws in force under the Existing Agreement.

5 Miscellaneous

5.1 Counterparts

This Deed may be executed in any number of counterparts and the counterparts taken together constitute one and the same instrument.

5.2 Waiver

A provision of, or a right created under, this Deed may not be waived except in writing signed by the Party or Parties to be bound.

5.3 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Deed and to perform its obligations under it, including to sign, execute or otherwise deal with any document.

5.4 Stamp duty

Each Party must bear its own costs arising out of the negotiation and execution of this Deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed will be borne by the Contractor.

5.5 Use of electronic signatures

The parties agree that this Deed may be signed and witnessed by applying an electronic signature.

5.6 Consideration

The parties agree to comply with the terms of this Deed in consideration of the payment by each party to the other of the sum of \$1.00, the receipt and sufficiency of which is acknowledged by each party.

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Schedule 1 – Deed details

Item	Description	Details
1.	Airservices details	Legal entity name: Airservices Australia ABN: 59 698 720 886 Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra, ACT 2601 Postal address: GPO Box 367, Canberra ACT 2601
2.	Contractor	Name: Enviropacific Services Ltd ABN: 43 111 372 064 Physical address: Level 5, 123 Epping Road, Macquarie Park, NSW 2113 Postal address: 591 Blackburn Road, Notting Hill, VIC 3168
3.	Existing Agreement	s47G
4.	Effective Date	s47G

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Execution page

Executed as a deed

SIGNED, SEALED AND DELIVERED
for and on behalf of **Airservices**
Australia by a duly authorised
representative:

s47F



Name of witness (print)

Signature of witness

Date

SIGNED SEALED AND DELIVERED
by **Enviropacific Ltd ACN 111 372**
064 in accordance with section 127(1)
of the *Corporations Act 2001* (Cth) by

s47F



Name of Director / Company Secretary
(print)

Signature of Director / Company
Secretary

Date

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Attachment A

Existing Agreement, as varied

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Schedule 2 – Statement of Works

1. Works

- 1.1 The Statement of Requirements details the Contractors Works and Technical Design documents to which the works must be constructed and is comprised in the following document

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- 1.2 s47G



Certificate Of Completion
s47F

[Redacted content]

Record Tracking
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[Redacted content]

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- ii. send us an email to **S47F** @airservicesaustralia.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Airservices

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Dated _____ 2025

Parties

Name	Airservices Australia
ABN	59 698 720 886
Address	Alan Woods Building 25 Constitution Avenue Canberra ACT 2601
Short name	Airservices
Name	Enviropacific Services Limited
ACN	111 372 064
Address	Level 5, 123 Epping Road, Macquarie Park, NSW 2113
Short name	Contractor

Background

- A. The Site is (either in whole or in part):
 - A.1 located within the Airport; and
 - A.2 subject to the Lease.
- B. Airservices wishes to engage the Contractor to design, install and maintain the Works.
- C. The Contractor has represented to Airservices that it has the necessary skills and expertise to perform the Works in accordance with the Contract.
- D. Airservices is relying on the Contractor's specialist skills and expertise.

Signing Page

Executed by the parties as a deed

Executed for and on behalf of **Airservices**
Australia ABN 59 698 720 886:

)
)

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Executed as a deed by **Enviropacific**
Services Limited ACN 111 372 064 in
accordance with s 127(1) of the *Corporations*
Act 2001:

)
)

Signed by:

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Terms of Engagement

1. Definitions and Interpretation

1.1 Definitions

In the Contract unless expressed or implied to the contrary the following terms have the meaning specified below.

ABN has the same meaning as it has in section 41 of *A New Tax System (Australian Business Number) Act 1999* (Cth).

Airport means the airport specified in Item 3.

Airport Building Controller has the meaning given in the *Airports (Building Control) Regulations 1996* (Cth).

Airport Operator means the operator of any airport at which the Contractors Activities are being performed.

Airport Requirements the Airside Access and Works Requirements and any other requirements imposed by the owner, operator and/or any regulator of the Airport.

Airservices means Airservices Australia ABN 59 698 720 886.

Airservices Representative means the person identified in Item 7, or any other person nominated as an Airservices representative from time to time.

Airservices Data means all data and information relating to, or held by, Airservices, including data relating to its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of Airservices.

Airside Access and Works Requirements means the requirements specified in clause 6.

Airside Area means any part of the Site or any land and/or building which is:

- (a) an airside area as defined in the *Aviation Transport Security Act 2004* (Cth); or
- (b) otherwise designated by Airservices as being an airside area.

Airside Works & Services means any part of the Contractor's Activities or the Works that are:

- (a) located or performed within the Airside Area;
- (b) to be executed in such a way or in such a location that they may directly or indirectly affect (or have the potential to affect) the operations or safety of aircraft movements; or
- (c) otherwise notified by Airservices to the Contractor to be Airside Works & Services.

Applicable Policies means the policies and procedures provided to the Contractor by Airservices from time to time or specified in Item 8 and in any other part of the Contract.

Applicable Standard means each standard notified to the Contractor from time to time or specified in Item 9 and in any other part of the Contract.

Approval means any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Proper Authority having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Law which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities; or
- (b) service, occupy and use the completed Works or a completed Stage.

ASIC means an Aviation Security Identification Card.

Auditor-General means the office established under the *Auditor-General Act 1997* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Australian Information Commissioner means the office of that name established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

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Building Certificate means a certificate or other approval issued pursuant to Law which will allow the full occupation and use of the completed Works.

Business Day means to the extent that the Contractor's Activities are carried out in:

- (a) Victoria, a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a day that is wholly or partly observed as a public holiday throughout Victoria;
- (b) Queensland, a day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
 - (iii) any day occurring within any of the following periods:
 - (A) 22 to 24 December;
 - (B) 27 to 31 December; or
 - (C) 2 to 10 January;
- (c) South Australia, any day other than:
 - (i) a Saturday, Sunday or public holiday;
 - (ii) 27, 28, 29, 30 or 31 December; or

- (iii) any other day on which there is a State-wide shutdown of the operations of the building and construction industry;
- (d) Australian Capital Territory, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) 27, 28, 29, 30 or 31 December; or
 - (iii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT);
- (e) New South Wales, any day other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) 27, 28, 29, 30 or 31 December;
- (f) the Northern Territory, any day other than:
 - (i) a Saturday or a Sunday; or
 - (ii) a public holiday; or
 - (iii) a day in the period beginning on 25 December in a year and ending on 7 January in the following year;
- (g) Tasmania, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) a day specified in section 4, Part 1 of Schedule 1, or Part 1 or 2 of Schedule 2 of the *Statutory Holidays Act 2000* (Tas); or
 - (iii) 27, 28, 29, 30 or 31 December; or
- (h) Western Australia, any day other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

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Claim means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commissioning Work means all of the work, tasks, activities and services necessary to commission each relevant part of the Works to the satisfaction of the Airservices Representative, and otherwise in accordance with the Contract, including:

- (a) the work, tasks, activities and services referred to in Item 10 and in any other part of the Contract as being Commissioning Work;
- (b) the carrying out of commissioning tests and all other work, tasks, activities and services in respect of the relevant part of the Works, as contemplated by the Current Commissioning Plan,

but for the avoidance of doubt excludes the carrying out of the Proof of Performance Tests.

Commonwealth means the Commonwealth of Australia.

Commonwealth Regulatory Requirements means the requirements specified in Schedule 1 and any other requirement or policy of the Commonwealth applicable to the Works or the Contractor's Activities.

Compensable Cause means the causes of delay listed in Item 11.

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Certificate of Completion means a certificate issued by the Airservices Representative under clause 25.1.3 or clause 25.1.4.

Completion Payment Claim Reference Date means the date that is the later of:

- (a) the date on which the Last Certificate of Completion is issued; and
- (b) the date on which the Contractor has provided the items required under clause 22.7 and complied with clause 17.9.1.

Confidential Information means information that is by its nature confidential and is:

- (a) designated by a party as confidential;

- (b) described in the Contract as confidential; or
- (c) information of Airservices that the Contractor knows or ought to know is confidential,

but does not include information which is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation.

Contract means the documents listed in Item 4 as forming part of the Contract.

Contract Date mean the date of execution of the Formal Instrument, being:

- (a) if counterparts are not used, the date of execution of the Formal Instrument by the last party to execute; or
- (b) if counterparts are used, the date on which those executed counterparts are exchanged by the parties.

Contract Material means all material:

- (a) created by, for, or on behalf of, the Contractor (including by subcontractors) in connection with the Contract;
- (b) provided, or required to be provided, to Airservices in connection with the Contractor's Activities; or
- (c) at any time derived (in connection with the Contract) from, or based on, the material described in paragraphs (a) or (b).

Contract Price means the aggregate of the D&C Contract Price and the O&M Contract Price.

Contractor means the party specified in Item 2.

Contractor Default Event has the meaning given in clause 32.2.1.

Contractor's Activities includes:

- (a) the design and construction out of the Works;
- (b) the O&M Services; and
- (c) all other things or tasks which are necessary for the Contractor to do to comply with its obligations under the Contract.

Contractor's Representative means the person identified in Item 12.

Contractor Representatives Taxes and Charges means all group tax, fringe benefits tax, payroll tax, PAYG tax deductions, superannuation contributions, superannuation guarantee charges, workers' compensation insurance premiums, penalties and other charges imposed by any government or government authority arising out of or in relation to the supply of the Works and the Contractor's Activities through the Contractor's Representative or the Contractor's Personnel.

Control means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of an entity whether through voting shares, securities, control of the board of directors or otherwise.

Current Commissioning Plan means the latest Commissioning Plan submitted under clause 36.1 which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A.

Current Management Plan means:

- (a) each latest Management Plan submitted under clause 3A which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A; and
- (b) any other management plans which Item 13 or the Contract specifies that the Contractor must comply with (including management plans prepared by, or on behalf of, Airservices).

Current O&M Plan means each latest O&M Plan submitted under clause 37 which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A.

D&C Contract Price means:

- (a) where Item 51 specifies that Milestone Payment Claim Reference Dates apply, the sum of the Milestone Amounts; and
- (b) otherwise, the price specified in Item 5 adjusted from time to time by any additions or deductions permitted or required to be made under the Contract.

Date for Completion means the date for Completion specified in Item 14 in relation to the Works or a Stage (as applicable) as adjusted under the Contract.

Date of Completion means the date set out in a Certificate of Completion as the date of which Completion was achieved in respect of the Works or a Stage, or if another date is determined in a final and binding dispute resolution process as the date of which Completion was achieved in respect of the Works or a Stage, that other date.

Defect means:

- (a) any defect, shrinkage, fault or omission in the Contractor's Activities or the Works, including any part of the Contractor's Activities or the Works which is not in accordance with the requirements of the Contract; and
- (b) any inability or failure of the Works to satisfy and achieve the Performance Requirements.

Design Documents means those:

- (a) documents referred to in Item 16; and
- (b) further drawings or specifications supplied to the Contractor by the Airservices Representative during the course of the Contract (if any).

Designated Officer means, in respect of each party, the person specified in Item 17, as may be substituted by the relevant party by notice in writing to the other party (provided such substitute holds the same or higher position as the person being substituted).

Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, order, permission, rejection, request or requirement.

Dispute means any dispute or difference between Airservices and the Contractor arising out of, or in any way in connection with, the Contract, the Contractor's Activities or the Works.

Excepted Approvals means those Approvals that the Contractor is not required to obtain, as specified in Item 18.

Final D&C Certificate has the meaning given in clause 22.6.5.

Final D&C Dilapidation Report means:

- (a) the dilapidation survey provided by the Contractor in accordance with clause 4.12.3, and approved by the Airservices Representative; or
- (b) the dilapidation survey provided by Airservices as the Final D&C Dilapidation Report, including in accordance with clause 4.12.5.

Final D&C Payment Claim has the meaning given in clause 22.6.1.

Final D&C Payment Claim Reference Date means the date that is 12 months after the date of the Last Certificate of Completion.

Final O&M Certificate has the meaning given in clause 22.6A.5.

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Final O&M Payment Claim has the meaning given in clause 22.6A.1.

Final O&M Payment Claim Reference Date means the date that is the day after the expiry of the O&M Term.

Formal Instrument means the formal instrument to which these Terms of Engagement are

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GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Harmful Code means any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, virus, trojan horses, spyware or adware.

Hazardous Substance means any material suspected of containing or likely to contain a substance defined or listed in the National Occupation Health and Safety Commission's (NOHSC) Guidance Notes (NOHSC 1008-2004: "Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1999: "List of Designated Hazardous Substances").

Insolvency Event has the meaning given in clause 32.7.1.

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Item means an Item of Schedule 1.

Last Certificate of Completion means:

- (a) where there are no Stages, the Certificate of Completion; and
- (b) where there are Stages, the Certificate of Completion issued in respect of the last Stage to achieve Completion.

Latent Conditions means those physical conditions at the Site, but excluding weather conditions, which differ materially from those physical conditions which should have been anticipated by a competent and experienced contractor if it had:

- (a) examined the information made available by Airservices to the Contractor prior to the date of the Contract (if any);
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contract Price, including which information would have been obtained by the making of reasonable enquiries;
- (c) inspected the Site and its surroundings as required under the Contract;
- (d) informed itself of the nature of the Work and materials necessary for the proper execution of the Work under the Contract; and
- (e) informed itself of the means of access to, and facilities at, the Site, and, for the avoidance of doubt, excludes any service referred to in clause 11.1.3.

Law means any:

- (a) applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the

Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time; and

- (b) Approval (including any condition or requirement under them).

Loss means damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any amount agreed to be paid by way of settlement or compromise.

Management Plan means each management plan referred to in clause 3A, as amended from time to time in accordance with the Contract, including:

- (a) the Commissioning Plan;
- (b) the O&M Plan; and
- (c) without limiting paragraphs (a) and (b) above, each other management plan which the Statement of Requirements specifies the Contractor is required to prepare.

Milestone means:

- (a) Completion of the Works or a Stage; and
- (b) any other milestone (if any) specified in Item 51

Milestone Amount means (where Item 51 specifies that Milestone Payment Claim Reference Dates apply), in respect of each Milestone, the amount specified in Item 51, as adjusted in accordance with the Contract.

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Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

National Construction Code is comprised of the Building Code of Australia and the Plumbing Code of Australia and provides the minimum necessary requirements for safety, health, amenity and sustainability in the design and construction of new buildings (and new building work in existing buildings) throughout Australia.

Notice of Dispute has the meaning given to that term in clause 31.2.

O&M Contract Price means the price specified in Item 5 adjusted from time to time by any additions or deductions permitted or required to be made under the Contract.

O&M Plan means the operation and maintenance plan prepared by the Contractor in accordance with clause 37, as may be amended in accordance with clause 3A.

O&M Services means:

- (a) all work, services and activities referred to in, or required to comply with, clause 38; and
- (b) the operation and maintenance services in respect of the Works specified in, or required by, the Statement of Requirements and the other parts of the Contract, as well as such operation and maintenance services as are reasonably inferable as being required.

O&M Term means the period specified in Item 19, commencing on the Date of Completion of the Works or a Stage, as may be extended in accordance with clause 38.10.

Performance Requirements means each performance level or requirement, output level or requirement, or other requirement set out in the Statement of Requirements and in any other part of the Contract, as may be adjusted from time to time in accordance with the Contract.

Personal Information has the meaning given in section 6 of the Privacy Act.

Personnel means:

- (a) in respect of Airservices, its employees, agents, contractors, subcontractors, consultants and suppliers, excluding the Contractor; or
- (b) in respect of the Contractor, its Representatives, employees, agents, contractors, subcontractors, consultants and suppliers (and the employees and agents of those contractors, subcontractors, consultants and suppliers).

Prior Work has the meaning given in clause 9.1

Privacy Act means the *Privacy Act 1988* (Cth).

Progressive Payment Claim Reference Date means, (where Item 51 specifies that Progressive Payment Claim Reference Dates apply), in respect of each month, the date of that month specified in Item 51 until the earliest of:

- (a) termination of the Contract;
- (b) the date that Airservices exercises its rights under clause 32.3.2 to take the whole of the remaining Contractor's Activities out of the hands of the Contractor; and
- (c) the date on which the Last Certificate of Completion is issued; and
- (d) the expiry of the O&M Term.

Project means the project described in Item 3, of which the Contractor's Activities and the Works form part.

Proof of Performance Test means a proof of performance test or acceptance test referred to in the Statement of Requirements and in any other part of the Contract, or which is otherwise necessary to be carried out to demonstrate that the Works have satisfied or attained the Performance Requirements.

Proper Authority means each government and statutory authority having authority or jurisdiction in relation to the Site, the Contractor's Activities or the Works whether under Law or otherwise, and includes a person supplying communications, drainage, electricity, gas, sewerage, water or other services which may be affected by the performance of the Contractor's Activities or the Works.

Proportionate Liability Legislation means to the extent that the Contractor's Activities are to be carried out in:

- (a) Victoria, Part IVAA of the *Wrongs Act 1958* (Vic);
- (b) Queensland, Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (c) South Australia, Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (d) the Australian Capital Territory, Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (e) New South Wales, Part 4 of the *Civil Liability Act 2002* (NSW);
- (f) the Northern Territory, Part 2 of the *Proportionate Liability Act 2005* (NT);
- (g) Tasmania, Part 9A of the *Civil Liability Act 2002* (Tas); and
- (h) Western Australia, Part 1F of the *Civil Liability Act 2002* (WA),

or any equivalent legislation applying in another jurisdiction applicable to a Claim made against a party in relation to the Contract.

Provisional Sum Work means the work or goods referred to in Item 20 for which the sum of money referred to in Item 20 has been included in the D&C Contract Price.

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld).

Reference Date means:

- (a) where, and to the extent, Item 51 specifies that Milestone Payment Claim Reference Dates apply, each of:
 - (i) the Milestone Payment Claim Reference Dates;
 - (ii) the Final D&C Payment Claim Reference Date; and
 - (iii) the Final O&M Payment Claim Reference Date; or
- (b) where, and to the extent, Item 51 specifies that Progressive Payment Claim Reference Dates apply, each of:
 - (i) the Progressive Payment Claim Reference Dates;
 - (ii) the Completion Payment Claim Reference Date;
 - (iii) the Final D&C Payment Claim Reference Date; and
 - (iv) the Final O&M Payment Claim Reference Date.

Representative means in relation to a party, any natural person who is an employee, volunteer, officer, agent, contractor or professional adviser of that party or, in the case of the Contractor, of a subcontractor.

Resolution Institute means the dispute resolution association with that name and the ABN 69 008 651 232.

Schedule means a schedule to the Contract.

Secure Area has the meaning given to that term in the *Aviation Transport Security Regulations 2005* (Cth) and includes any other area where an ASIC is required for access.

Service Levels means the required levels of performance for the O&M Services as specified in Item 21.

Site means the site for the Contractor's Activities and the Works as described in Item 22.

Site Dilapidation Report means:

- (a) the dilapidation survey provided by the Contractor in accordance with clause 4.12.2, and approved by the Airservices Representative; or
- (b) the dilapidation survey provided by Airservices as the Site Dilapidation Report, including in accordance with clause 4.12.5.

SOP Act means to the extent that the Contractor's Activities are to be carried out in:

- (a) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (b) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (c) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (d) the *Building and Construction Industry Security of Payment Act 2009* (SA); and
- (e) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (f) the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (Tas); and
- (h) the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

Specified Acts means:

- (a) failing to acknowledge or attribute the Contractor's or any other person's authorship of any Contract Material or any part of the Works;
- (b) falsely attributing authorship of any Contract Material or any part of the Works;
- (c) making any modification, variation or amendment of any nature whatsoever to any Contract Material or any part of the Works, whether or not:
 - (i) it results in a material distortion of or destruction or mutilation of the Contract Material or any part of the Works; or
 - (ii) it is prejudicial to the honour or reputation of the Contractor or any other author of any Contract Material or any part of the Works;
- (d) using any Contract Material or any part of the Works other than for the purpose for which it was intended at the time the Contract Material or any part of the Works (as the case may be) was created;
- (e) altering any Contract Material or any part of the Works by adding to or removing elements from, or rearranging elements of, the Contract Material or any part of the

Works, including by combining elements of any of the Contract Material or any part of the Works with any other material;

- (f) changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Contract Material;
- (g) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; or
- (h) adding any additional content or information to Contract Material.

Specified Personnel means the Contractor's Representative(s) specified in Item 23.

Specified Subcontractors means those subcontractors identified in Item 24 to perform the Specified Subcontract Work.

Specified Subcontractor Work means the work specified in Item 24 that is to be performed by the Specified Subcontractors.

Stage means a stage of the Works as outlined in the Statement of Requirements (if any).

Statement of Requirements means the document or documents in Schedule 9.

Surveyed Land means the Site and any other areas or items the subject of the Site Dilapidation Report.

Table of Variation Rates and Prices means:

- (a) the Table of O&M Services Variation Rates and Prices; and
- (b) the Table of Works Variation Rates and Prices.

Table of O&M Services Variation Rates and Prices means the document in Schedule 10.

Table of Works Variation Rates and Prices means the document in Schedule 11.

Tax includes:

- (a) any tax, withholding tax, charge, rate, duty (including stamp duty and customs duty), impost, excise, tax by whatever name called and whether Australian, foreign, state, municipal, provincial, county or local (not including GST unless the context requires otherwise); and
- (b) any interest, charge, penalty, fee, fine or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Invoice has the meaning given to that term in the GST Law.

Terms of Engagement means these terms of engagement, being clause 1 to clause 38 (inclusive) of this document.

Variation means any change to the Works or the O&M Services within the general scope of the Contract, and includes:

- (a) increases, decreases or omissions of any part;

- (b) a change in character or quality of any requirements;
- (c) changes to the levels, lines, positions or any dimensions;
- (d) additional work;
- (e) the demolition or removal of material or work no longer required by Airservices; and
- (f) where Airservices notifies the Contractor that the Works or the O&M Services are Airside Works & Services after the Contract Date.

Waste includes the following:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, whether or not intended for sale, recycling, reprocessing, recovery or purification by separate operation from that which produced it; and
- (c) any other substance declared under Waste Management Legislation to be waste.

Waste Management Legislation means any Commonwealth, State or Territory legislation relating to the management, regulation or reduction of Waste.

Wastewater Treatment Plant or **WTP** means any part of the Works used by the Contractor to perform the O&M Services and which are to be removed at the expiration of the O&M Term.

WHS Accreditation Scheme means the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme established by section 43 of the *Federal Safety Commissioner Act 2022* (Cth) (formerly known as the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)).

WGE Act means the *Workplace Gender Equality Act 2012* (Cth).

WHS Act means the *Work Health and Safety Act 2011* (Cth).

WHS Law means the WHS Act and any corresponding WHS law as defined in section 4 of the WHS Act.

WHS Regulations means the regulations made under the WHS Act.

Work Health and Safety Plan means the work health and safety plan prepared by the Contractor pursuant to clause 12.5.7, which can be either Contract specific or Site specific, and must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with statutory requirements in relation to work health and safety; and
- (c) address the matters specified in clause 12.6.

Works Commencement Date means the date specified in Item 25.

Works means the physical works described in the Statement of Requirements which the Contractor must design (to the extent required by the Contract), complete (including the installation of any plant and equipment forming part of those Works) and hand over to Airservices.

Work has a corresponding meaning.

1.2 Interpretation

In the Contract, unless the contrary intention appear:

- 1.2.1 words in the singular include the plural and vice versa;
- 1.2.2 where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 1.2.3 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 1.2.4 the verb "include" (in all its parts, tenses and variants) or the use of examples are not intended to be, nor are they to be interpreted as, words of limitation;
- 1.2.5 a unit of measurement is taken to be expressed in Australian legal units of measurement;
- 1.2.6 if the date on or by which any act must be done under the Contract is not a Business Day, the act must be done on or by the next Business Day;
- 1.2.7 headings are inserted for convenience and do not affect the interpretation of the Contract;
- 1.2.8 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- 1.2.11 a reference to:
 - (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (b) an Act or Law includes legislation, regulations and other subordinate laws and any modifications or replacements of them;
 - (c) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (d) a right includes a benefit, remedy, discretion or power;

- (e) time is to local time in the place where the Site is located and, in all other cases, where the Airservices Representative is located;
- (f) "\$" or "dollars" is a reference to Australian currency; and
- (g) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

1.3 Trustee Contractor

If the Contractor acts as trustee of a trust, in relation to the Contract:

- 1.3.1 it is liable both personally, and in its capacity as trustee of that trust;
- 1.3.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under the Contract;
- 1.3.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- 1.3.4 it represents and warrants that;
 - (a) such trust has been duly established and currently exists;
 - (b) it is the duly appointed, current and only trustee of that trust;
 - (c) as such trustee it has the power to enter into and perform its obligations under the Contract;
 - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (e) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed, and
 - (f) no breach of the relevant trust deed exists or would arise.

1.4 Inconsistent terms

- 1.4.1 If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, the following order of precedence applies:
 - (a) the terms and conditions of the Contract;
 - (b) any Schedules or documents forming part of the Contract; and
 - (c) the Design Document.
- 1.4.2 If the Contractor or the Airservices Representative consider there is any ambiguity, discrepancy or inconsistency in any documents which form part of the Contract, it must give notice to the other. The Airservices Representative must direct the Contractor as to the course it must adopt within five Business Days of notice.

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3. Design

3.1 Design to be prepared by the Contractor

3.1.1 The Contractor must:

- (a) design the parts of the Works which the Design Documents expressly or impliedly require it to design;
- (b) progress the design in accordance with the approved program;
- (c) ensure that its design complies with the Contract; and
- (d) provide the design it prepares to the Airservices Representative for his or her permission to use the design.

3.1.2 For the purposes of clause 3.1.1(d), the Contractor must provide its design in:

- (a) hard copy; and
- (b) electronic copy,

in each case in accordance with any other part of the Contract.

3.2 Airservices Representative to give permission to use design

The Airservices Representative must reject or give his or her permission to use the design provided by the Contractor or any resubmitted design within 15 Business Days of submission by the Contractor. Where the design is rejected, the Contractor must submit an amended design to the Airservices Representative and must not commence construction of the part of the Works to which it applies until the Airservices Representative gives his or her permission to use the design.

3.3

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3.4 No duty to review

The Airservices Representative owes no duty to the Contractor to review the design submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the design by the Airservices Representative will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

3.5 Design certification

Without limiting the Contractor's obligations, where the Contract requires the Contractor to design any part of the Works, the Contractor must with each payment claim under clause 22.2 and as a condition precedent to Completion of the Works or a Stage, provide the Airservices Representative with:

3.5.1 a certificate in the form required by Airservices which certifies that (to the extent then applicable):

(a) the design carried out by it complies with:

(i) subject to clause 5.2.1(a), Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law); and

(ii) the other requirements of the Contract; and

(b) the Works or the Stage comply with the design which has been the subject of the Airservices Representative's permission under clause 3.2; and

3.5.2 a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form required by Airservices which certifies that (to the extent then applicable):

(a) all design carried out by that subcontractor complies with:

(i) subject to the subcontract, Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law); and

(ii) the requirements of the subcontract; and

(b) the Works or the relevant Stage comply with the design carried out by that subcontractor,

except to the extent set out in such certificate.

3.6 Samples

- 3.6.1 The Contractor must obtain each sample or range of samples specified in Item 27 and any other part of the Contract, and submit the sample or range of samples to the Airservices Representative in accordance with the construction program prepared in accordance with the Contract (as amended from time to time).
- 3.6.2 The Airservices Representative must reject or give his or her permission to use the sample or range of samples provided by the Contractor or any resubmitted sample or range of samples within 14 days of submission by the Contractor.
- 3.6.3 Where the sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Airservices Representative and must not commence construction of any part of the Works to which it applies until the Airservices Representative gives him or her permission to use the sample or range of samples.
- 3.6.4 The Airservices Representative owes no duty to the Contractor to review the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the sample or range of samples will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

3A. Management Plans

3A.1 Management Plans

- 3A.1.1 The Contractor must:
- (a) within the relevant times prescribed in the Contract, prepare and submit to the Airservices Representative the Management Plans in accordance with the Contract; and
 - (b) regularly update the Management Plans in accordance with the requirements of the Contract and resubmit those Management Plans to the Airservices Representative.
- 3A.1.2 For the purposes of clause 3A.1.1, the Contractor must provide the Management Plans in:
- (a) hard copy; and
 - (b) electronic copy,
- in each case in accordance with the requirements set out in the Contract.
- 3A.1.3 The Airservices Representative must reject or give his or her permission to use a Management Plan provided by the Contractor or any resubmitted Management Plan within 15 Business days of submission by the Contractor. Where the Management Plan is rejected, the Contractor must submit an amended Management Plan to the Airservices Representative and must not commence the Contractor's Activities to which it applies until the Airservices Representative gives his or her permission to use the Management Plan.

3A.1.4 The Airservices Representative owes no duty to the Contractor to review any Management Plan submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use a Management Plan by the Airservices Representative will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

3A.1.5 s47G

3A.1.6

3A.1.7 If the Contractor proposes to make any changes to a Current Management Plan, the Contractor must submit those proposed changes to the Airservices Representative in the form of a draft revised version of the applicable Current Management and this clause 3A will apply.

3A.1.8 The Contractor must not make any changes to a Current Management Plan except in accordance with this clause 3A.

4. The Site

4.1 s47G

4.2 Access to the Site

4.2.1 s47G

4.2.2 Failure by Airservices to give access to the Site as required by clause 4.2.1 will not be a breach of the Contract but will entitle the Contractor to claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 20.5.

- 4.2.3 Notwithstanding any other provision of the Contract, the Contractor will not be entitled to be paid any additional costs under clause 20.8 arising out of, or in any way in connection with, any delay in Airservices giving the Contractor access to the Site.
- 4.2.4 The grant of access to the Site confers a right to use such of the Site as is necessary for the Contractor to carry out the Contractor's Activities.

4.3 Airservices' right of entry

The Contractor must:

- 4.3.1 at all reasonable times give to the Airservices Representative and all persons authorised in writing by the Airservices Representative, access to the Site or any areas off-Site where any part of the Contractor's Activities are being performed; and
- 4.3.2 provide Airservices with every reasonable facility for the supervision, examination and testing of any Work or materials.

4.4 Site information

- 4.4.1 Airservices does not warrant, guarantee or make any representation about the accuracy or adequacy of any information or data made available to the Contractor as to the existing conditions at the Site. Such information or data does not form part of the Contract.

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4.4A

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4.5 Setting out

The Contractor must:

4.5.1 set out the Works; and

4.5.2 carry out any survey which may be necessary for this purpose,
in accordance with the requirements of the Contract.

4.6 Other contractors

4.6.1 The Contractor must:

- (a) co-operate with any other contractors engaged by Airservices or any other entity to perform other works on or in the vicinity of the Site or the Works;
- (b) co-ordinate the Contractor's Activities with the work of those other contractors; and
- (c) not interrupt the execution of the work of those other contractors.

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4.8

4.9 Cleaning up

- 4.9.1 The Contractor must keep the Site, the Works and the environment clean and tidy. The Contractor must clean up whenever so requested, and as a condition precedent to the Completion of the Works and each Stage, leave that part of the Site relevant to the Works or the Stage secure and clean. At the end of each day the Contractor must ensure that any materials, tools and equipment are securely stored so as not to create any hazard.
- 4.9.2 If the Contractor fails to clean the Site to the reasonable satisfaction of the Airservices Representative, and within 10 Business Days of a notice from the Airservices Representative requiring the Contractor to return and clean the Site, the Site has not been cleaned as required by the Airservices Representative, the Airservices Representative may arrange for the cleaning of the Site, the cost of which will be a debt due from the Contractor to Airservices which may be set off against any payment claim of the Contractor pursuant to the Contract.

4.10 Urgent protection

Airservices may take any action necessary to protect the Works, other property, the environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor is required to take but does not take. The reasonable costs incurred by

Airservices in taking such action shall be a debt due and payable by the Contractor to Airservices and maybe set off against any payment claim otherwise payable to the Contractor under clause 22.2.

4.11 Conduct at Airservices' premises

The Contractor must, if using or accessing Airservices' premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

4.12 Dilapidation Reports

4.12.1 This clause 4.12 applies only where provided in Item 30.

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4.12.3 As a condition precedent to Completion, the Contractor must:

- (a) unless provided by the Airservices Representative under clause 4.12.5, provide the Airservices Representative with an updated dilapidation survey in respect of the Surveyed Land prepared to the satisfaction of the Airservices Representative (in its absolute discretion), no earlier than 20 Business Days before the Date of Completion; and
- (b) without limiting any other obligation of the Contractor, repair, rectify and otherwise make good any degradation or damage in respect of any Surveyed Land (including any degradation or damage identified in the Final D&C Dilapidation Report), to the satisfaction of the Airservices Representative (in its absolute discretion) so that the condition of such Surveyed Land at the Date of Completion is identical to the condition of the corresponding Surveyed Land set out in the Site Dilapidation Report.

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4.12.5 The parties acknowledge and agree that the Airservices Representative may have any of the following reports prepared by a separate contractor:

- (a) Site Dilapidation Report;
- (b) Final D&C Dilapidation Report; and
- (c) Final O&M Dilapidation Report.

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5. Construction

5.1 Description of Works

5.1.1 The Contractor must construct the Works strictly in accordance with:

- (a) the Design Documents;

- (b) any design prepared by the Contractor that the Contractor has received permission to use in accordance with clause 3.2; and
- (c) any Direction of the Airservices Representative, including (without limitation) a Variation directed by the Airservices Representative by a written document titled "Variation Order".

5.1.2 The Contractor must perform all work and supply materials necessary for the carrying out of the Contractor's Activities.

5.2 Authority requirements

5.2.1 The Contractor must:

- (a) unless otherwise specified, perform the Contractor's Activities in accordance with, and complete the Works so that they comply with:
 - (i) all Approvals;
 - (ii) the National Construction Code; and
 - (iii) any other requirements imposed by Law,
- (b) apply for all Approvals (other than the Excepted Approvals), give all notices and pay all fees necessary to perform its obligations under the Contract;
- (c) obtain, and give to Airservices a Building Certificate (if a Building Certificate is obtainable) in respect of the completed Works; and
- (d) give Airservices copies of all other relevant documents issued by Proper Authorities in respect of the Contractor's Activities or the Works.

5.2.2 If the requirements with which the Contractor must comply under this clause 5.2 change after the Contract Date, the Contractor must give written notice to Airservices Representative seeking his or her Direction(s). Any Direction issued by the Airservices Representative that requires the Contractor to do more or less work than could reasonably have been anticipated at the Contract Date will:

- (a) if more work is required, subject to the Contractor complying with the requirements of this clause 5.2 and clause 24, entitle the Contractor to payment for the extra work as a Variation; or
- (b) if less work is required, entitle Airservices to:
 - (i) to the extent that the work is not respect of the O&M Services, reduce the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by the Airservices Representative; or
 - (ii) to the extent that the work is in respect of the O&M Services, reduce the O&M Contract Price by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by Airservices Representative.

5.3 Provisional Sum Work

- 5.3.1 Unless otherwise approved by the Airservices Representative, Provisional Sum Work must be performed under subcontracts entered into by the Contractor.
- 5.3.2 The Contractor must enter into these subcontracts as follows:
- (a) after the Airservices Representative provides the Design Documents for the Provisional Sum Work or gives permission under clause 3.2 to use the design prepared by the Contractor for the Provisional Sum Work, it must invite tenders from the number of persons directed by the Airservices Representative, each of whom must be approved by the Airservices Representative;
 - (b) it must give copies of each tender to the Airservices Representative; and
 - (c) it must enter into a subcontract with a tenderer on the basis of value for money as directed by the Airservices Representative.
- 5.3.3 After the Contractor is directed to enter into a subcontract for Provisional Sum Work:
- (a) the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in Item 20 for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
 - (b) any Variation to that work will be dealt with under clause 21.
- 5.3.4 Where the Provisional Sum Work is to be performed, the work will be, and will always be deemed to have been, part of the Work to be brought to Completion by the Date for Completion.

5.4 Specified Subcontract Work

The Contractor must subcontract any Specified Subcontract Work to the Specified Subcontractors.

6. Airside Works & Services

6.1 Application

Where the Contractor's Activities or the Works are Airside Works & Services, or a component of the Contractor's Activities or the Works is Airside Works & Services, then this clause 6 will apply.

6.2 Airside Works & Services

- 6.2.1 The Contractor must, at its cost, comply with any Laws applicable to the Site, including the *Airports Act 1996* (Cth), the *Airports (Transitional) Act 1996* (Cth), the *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) and all relevant rules and regulations imposed by Airservices and the Airport Operator from time to time.

- 6.2.2 The Contractor must ensure that a direction given by:
- (a) a representative of the Civil Aviation Safety Authority; or
 - (b) the Airport Operator,
- is complied with immediately.
- 6.2.3 If the Airport Operator declares an emergency in relation to the airport where the Site is located, the Contractor must vacate the Site and ensure that the Site is vacated and remains vacated until the Airport Operator gives notice that the Contractor can re-enter the Site.
- 6.2.4 The Contractor must at its cost and without limiting its obligations under this clause 6:
- (a) comply with and ensure that the Contractor's Personnel comply with all security and access arrangements and other requirements of Airservices and/or the Airport Operator in respect of the Contractor's Activities conducted at an airport. The Contractor is not entitled to seek or claim any extensions of time, costs or Variation in relation to such arrangements or requirements;
 - (b) provide Site security and parking facilities for Contractor Personnel to the satisfaction of the Airservices Representative and the Airport Operator; and
 - (c) submit details of its proposed Site access and circulate to the Airservices Representative for approval at least 10 Business Days prior to commencing any part of the Contractor's Activities.

6.3 Airport Building Controller requirements

- 6.3.1 The Contractor must provide all necessary certificates of compliance and other information to the Airport Building Controller for the purpose of obtaining an occupation certificate in relation to the Works.
- 6.3.2 The Contractor must comply with all requirements of the Airport Building Controller (if any) in relation to the Contractor's Activities and the Works.
- 6.3.3 If, at any time, the Airport Building Controller identifies that the Contractor has not complied with any of its requirements, the Contractor must, as soon as practicable, remedy the non-compliance to the satisfaction of the Airport Building Controller and the Airservices Representative.

7. Hazardous Substances on Site

7.1 Discovery of Hazardous Substances on Site

- 7.1.1 If at any time the Contractor discovers the presence on the Site of any Hazardous Substance (other than Hazardous Substances which the Contractor is required to treat in accordance with the Contract), it must:
- (a) not disturb the material under any circumstances;
 - (b) inform the Airservices Representative of the existence of the material on Site; and

- (c) ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- 7.1.2 The Airservices Representative must inspect the Site and must issue Directions to the Contractor in respect of further action to be taken.
- 7.1.3 All Hazardous Substances on the Site must, if so Directed by the Airservices Representative, be treated or removed in accordance with the requirements of the Worksafe Australia "Code of Practice" for the safe removal of such materials and any other Laws in the State or Territory in which the Works are situated relating to the removal of such materials.
- 7.1.4 Other than to the extent that the Contractor is entitled to make, and makes, a claim under clause 4.7 of the Contract, the Contractor will have no entitlement to make any other claim under the Contract (including for an adjustment to the Contract Price or an extension of time) arising out of or in connection with complying with any Directions from the Airservices Representative in respect of the Hazardous Substance(s) in accordance with this clause 7.1.

7.2 Use Of Hazardous Substances

- 7.2.1 Airservices aims to ensure that anyone who may use or be affected by the Works are not exposed to Hazardous Substances without appropriate control measures being in place.
- 7.2.2 Without limiting clause 7.1, the Contractor:
 - (a) must ensure that the Works do not contain any Hazardous Substances or substances which would breach the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth);
 - (b) must, on request of the Airservices Representative, be able to show compliance with clause 7.2.2(a); and
 - (c) is responsible for all materials used by its subcontractors under this clause.

8. Drawings

8.1 Drawings

Without limiting its other obligations under the Contract, all drawings which the Contractor is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- 8.1.1 the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Works);
- 8.1.2 all Laws;
- 8.1.3 the Directions of the Airservices Representative; and
- 8.1.4 to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

9. Prior Work

9.1 Prior Work

9.1.1 Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality or completeness of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:

- (a) inspect the Prior Work as soon as is practicable after Airservices gives the Contractor access to the Site;
- (b) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Airservices Representative in writing providing:
 - (i) full particulars of the defects or matters identified; and
 - (ii) the reasons for the opinion formed by it in respect to the defects or matters identified; and
- (c) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in clause 9.1.1(b).

9.1.2 On receipt of the Contractor's notice, the Airservices Representative will investigate the Prior Work the subject of the notice and:

- (a) if the Airservices Representative agrees with the Contractor - issue a Direction to the Contractor and, subject to the Contractor comply with this requirements of this clause 9 and clause 24.1, value any work carried out by the Contractor by reason of that Direction as a Variation under clause 21.2; or
- (b) if the Airservices Representative disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.

9.1.3 If the Contractor fails to:

- (a) inspect the Prior Work as required by this clause 9; or
- (b) notify the Airservices Representative of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

10. Joining up

Where joining up is required as part of the Contractor's Activities, and the method of joining up of old and new work is not specified in the Design Documents, the cutting away and joining up must be carried out by the Contractor in a manner approved by the Airservices Representative and made good in all trades to match existing adjacent work.

11. Existing services and structures

11.1 Existing services and structures

- 11.1.1 The Contractor may only modify or remove existing structures or services within the Site in accordance with the Design Documents.
- 11.1.2 The Contractor must obtain the prior written approval from the Airservices Representative in relation to the timing of any connection, disconnection or interference with existing structures and services.
- 11.1.3 Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown on the Design Documents or should have been shown on the Design Documents, is evident on the Site or has been notified in writing by the Airservices Representative to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
- 11.1.4 The Contractor must notify the Airservices Representative immediately upon the discovery of services or obstructions not shown in the Design Documents or identified by inspection.
- 11.1.5 The Contractor must immediately notify the Airservices Representative in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
- 11.1.6 The Contractor must:
 - (a) support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the performance of the Contractor's Activities; and
 - (b) comply with the requirements of Airservices, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during the performance of the Contractor's Activities.

12. Representatives and other requirements

12.1 Airservices Representative

- 12.1.1 The Airservices Representative will act as the agent of Airservices (not as an independent certifier, assessor or valuer) in issuing Directions and discharging each of the functions of the Airservices Representative under the Contract.
- 12.1.2 Any act which may be, or is required by the Contract to be, done by Airservices may be done by the Airservices Representative on Airservices' behalf.
- 12.1.3 If, pursuant to a provision of the Contract enabling the Airservices Representative to give Directions, the Airservices Representative gives a Direction, the Contractor must comply with such Directions in accordance with clause 18.

12.2 The Contractor's Representative

- 12.2.1 The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- 12.2.2 A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

12.3 Specified Personnel

- 12.3.1 The Contractor must employ the Specified Personnel in the role specified opposite their names in Item 23.
- 12.3.2 The Contractor must not replace any Specified Personnel without the Airservices Representative's written approval unless any of them die, become seriously ill or resign from the employment of the Contractor in which case the Specified Personnel must be replaced with persons of at least equivalent experience, ability and expertise approved by the Airservices Representative.

12.4 Removal of persons

The Airservices Representative may by notice in writing direct the Contractor to remove any person from the Site and / or the performance of the Contractor's Activities. The Contractor must, on receipt of the Airservices Representative's notice, and at its own cost, promptly arrange for removal and replacement of the person. The replacement must be acceptable and approved by the Airservices Representative.

12.5 Workplace health and safety requirements

The Contractor must:

- 12.5.1 ensure that in carrying out the Contractor's Activities:
 - (a) it complies with all Laws and other requirements of the Contract for work health and safety management;
 - (b) all subcontractors comply with the requirements referred to in this clause 12.5; and
 - (c) it complies with its duty under the WHS Law to consult, cooperate and coordinate activities with all other persons who have a work and health safety duty in relation to the same matter;

- 12.5.2 notify the Airservices Representative immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Contractor's Activities or the Works;
- 12.5.3 if the WHS Accreditation Scheme is applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- 12.5.4 carry out the Contractor's Activities and the Works safely and in a manner that does not put the health and safety of persons at risk;
- 12.5.5 carry out the Contractor's Activities and the Works in a manner that protects property;
- 12.5.6 comply with any Direction issued by the Airservices Representative to change its manner of working or to cease working if the Airservices Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works;
- 12.5.7 prepare and submit to the Airservices Representative a Work Health and Safety Plan in accordance with the WHS Law and continue to update and amend that plan and submit it (as necessary);
- 12.5.8 institute systems to obtain regular written assurances from other contractors, consultants and subcontractors performing work on or in the vicinity of the Site about their ongoing compliance with the WHS Law including the due diligence obligation contained in the WHS Law;
- 12.5.9 provide the written assurances obtained under clause 12.5.8, together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Law, to the Airservices Representative;
- 12.5.10 provide the Airservices Representative on a monthly basis with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause 12.5), or any other relevant matters as the Airservices Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Law;
- 12.5.11 exercise a duty of the utmost good faith to Airservices in carrying out the Contractor's Activities and the Works to enable Airservices to discharge Airservices' duties under the WHS Law;
- 12.5.12 ensure its subcontracts include provisions equivalent to the obligations of the Contractor in this clause 12.5;
- 12.5.13 ensure that, if any Laws, including in the State or Territory in which the Works are situated or the Contractor's Activities or the Works are carried out (as the case may be), requires:
- (a) that a person be authorised or licensed (in accordance with the WHS Law) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - (b) that a person has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Law), that person has the required qualifications or experience or is so supervised; or

- (c) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

12.5.14 not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Law or clause 12.5.13 are met; and

12.5.15 if requested by the Airservices Representative or required by the WHS Law, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Airservices Representative before the Contractor or any subcontractor commences such work.

12.6 Content of Work Health and Safety Plan

The Work Health and Safety Plan must include all information which is required to be included by the Statement of Requirements or any other part of the Contract.

12.7 Principal Contractor

- 12.7.1 Airservices engages the Contractor as principal contractor and authorises the Contractor to have management or control of the workplace and in carrying out the Contractor's Activities for the purpose of discharging the duties imposed on a principal contractor for the construction project, pursuant to the WHS Law. The Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the construction project, unless relieved of that engagement and authorisation by notice in writing given by Airservices or the Airservices Representative.
- 12.7.2 For the purposes of the Contract and the WHS Law, principal contractor means the role as appointed under this clause 12.7.
- 12.7.3 The Contractor must ensure that all relevant elements of its work health and safety management plan prepared in accordance with the WHS Law are aligned with its Work Health and Safety Plan prepared pursuant to clause 12.5.7.

13. Subcontracting

13.1 Subcontracting

13.1.1 The Contractor must:

- (a) not subcontract any aspect of the provision of the Contractor's Activities or the Works other than to those entities set out in Item 24 or referred to in clause 5.4, without the prior written approval of Airservices, which will not be unreasonably withheld;
- (b) not, in any event, enter into a subcontract with a subcontractor named by the Workplace Gender Equality Agency as not complying with the WGE Act; and
- (c) ensure that any subcontractor approved under the Contract complies with all applicable Laws, Applicable Policies and the Commonwealth Regulatory Requirements.

13.1.2 The Contractor is fully responsible for the performance of the Contractor's Activities even if the Contractor subcontracts any aspect of the provision of the Contractor's

Activities or Works. The Contractor is liable to Airservices for the acts and omissions of its Personnel as if they were acts and omissions of the Contractor.

13.1.3 Where any of the Contractor's Activities or Works are carried out by any subcontractor, or where Provisional Sum Work is to be performed under clause 5.3, the Contractor must ensure that:

- (a) all subcontractors (including suppliers) comply with the requirements of the Contract, and in particular clause 2.1.4; and
- (b) all subcontracts and agreements are available to Airservices on request (without prices if the Contractor requires).

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13.1.6 In relation to the provision of the Works and the Contractor's Activities, the Contractor:

- (a) must, on request by Airservices, provide Airservices with the names of any of the Contractor's subcontractors;
- (b) agrees that Airservices may disclose publicly the names of any of the Contractor's subcontractors; and
- (c) must ensure that any subcontractor agrees that Airservices may disclose the subcontractor's name publicly.

13.2 Novation of Specified Subcontractor

13.2.1 Where requested by Airservices, the Contractor must execute a 'Deed of Novation' in the form approved by Airservices to accept a novation of a contractor for the supply of Specified Subcontract Work. The Contractor will be responsible for the performance of the Specified Subcontractor of its obligations under the contract to ensure that the materials are supplied and installed into their required place and will coordinate the activities of that Specified Subcontractor as part of the Contractor's Activities.

13.2.2 The responsibility for the Specified Subcontractor, and any consequential delays to the Works or the Contractor's Activities remain solely with the Contractor.

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15. Unfixed goods and materials

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15.2 Title and Risk

15.2.1 Title to unfixed goods and materials will vest in Airservices upon payment by Airservices.

15.2.2 Unfixed goods and materials remain at the risk of the Contractor until those unfixed goods and materials have been incorporated into the Works notwithstanding that title may have already vested in Airservices.

16. Risk of Loss and Damage**16.1 Responsibility for care**

- 16.1.1 The Contractor is responsible for the care of any asset or structure constructed or installed as part of the Works and the Site from and including the date of commencement of the Contractor's Activities until 4:00 pm on the day of the expiry of the O&M Term.
- 16.1.2 The Contractor must promptly repair, replace, reinstate and otherwise make good any loss of or damage to any asset or structure constructed or installed as part of the Works and the Site which occurs while the Contractor is responsible for its care.
- 16.1.3 The Contractor must (without limiting the generality of the above) promptly:
- (a) take steps to:
 - (i) make secure the relevant asset or structure constructed or installed as part of the Works and the relevant part of the Site; and
 - (ii) clear any debris from the Site and begin initial work or repair, replacement, reinstatement and making good; and
 - (b) consult with the Airservices Representative on steps to be taken to ensure:
 - (i) the prompt repair, replacement, reinstatement or making good of the asset or structure constructed or installed as part of the Works and the Site to ensure that it complies with the requirements of the Contract; and
 - (ii) that the Contractor continues to comply with its obligations under the Contract.

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18. Compliance with Directions

18.1 General requirements

If, pursuant to a provision of the Contract enabling the Airservices Representative to give Directions, the Airservices Representative gives a Direction, the Contractor must comply with Directions issued by the Airservices Representative within the time prescribed by the Airservices Representative.

18.2 Notice by Contractor as to time and cost implications

18.2.1 If the Contractor believes that a Direction given by the Airservices Representative:

- (a) constitutes a Variation, the Contractor must comply with the requirements of clause 21.3; or
- (b) will involve or result in a Claim by the Contractor for additional payment or for an extension of time, the Contractor must, prior to complying with the Direction, and within two Business Days of the Direction, provide written notice to the Airservices Representative of the anticipated Claim.

18.2.2 On receipt by the Airservices Representative of advice from the Contractor pursuant to clause 18.2.1(b), the Airservices Representative may rescind, confirm or modify the Direction previously given by the Airservices Representative. If the Airservices Representative confirms the Direction, or modifies the Direction, the Contractor must comply with that Direction in accordance with the Contract. If the Airservices Representative does not confirm the Direction within five Business Days of receiving the advice from the Contractor, it will be deemed that the Airservices Representative rescinded the Direction.

18.2.3 If the Contractor does not comply with the requirements of clause 21 or provide a written notice to the Airservices Representative as required by clause 18.2.1(b), prior to commencing any additional work in complying with the Direction, the Contractor will not be entitled to make a Claim for additional payment or for an extension of time.

18.3 Action by Airservices

18.3.1 If the Contractor fails to comply with a Direction of the Airservices Representative, in addition to any other remedies, Airservices may, after the Airservices Representative has given reasonable notice in writing to the Contractor, have work carried out by other persons such that the Direction is complied with and the reasonable costs incurred by Airservices will be a debt due from the Contractor to Airservices and may be set off against a payment claim rendered by the Contractor pursuant to the Contract.

18.3.2 Any action taken by Airservices pursuant to this clause 18 will not affect any warranties given or provided by the Contractor in relation to that Work.

19. Quality

19.1 Quality assurance

- 19.1.1 The Contractor must implement the quality assurance system specified in the Statement of Requirements.
- 19.1.2 The Contractor will not be relieved from any of its obligations under the Contract arising from:
- (a) compliance with the quality assurance requirements of the Contract; or
 - (b) any Direction by the Airservices Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system.

19.2 Testing

- 19.2.1 The Contractor must carry out:
- (a) all tests directed by the Airservices Representative;
 - (b) the Proof of Performance Tests; and
 - (c) any tests which the Contract requires the Contractor to carry out.
- 19.2.2 If Airservices Representative directs the Contractor to carry out a test which is not:
- (a) otherwise required by the Contract; or
 - (b) in relation to work in respect of which the Airservices Representative gave a Direction under clause 19.3,

and the results of the test show the Work is in accordance with the Contract, the reasonable costs of carrying out the test will, subject to the Contractor complying with clause 24, be assessed by the Airservices Representative and to the extent that the test is not in respect of the O&M Services added to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates do apply, any relevant Milestone Amount (as applicable)), or to the extent that the test is in respect of the O&M Services added to the O&M Contract Price.

- 19.2.3 The inspection and examination of materials and Work by the Airservices Representative, and any consent to proceed resulting from such inspections, will not be taken as preventing the Airservices Representative from making further inspection and examination of the materials and Work, and subsequently rejecting the materials and Work if shown by such further inspection and examination to be in non-compliance with the Contract.
- 19.2.4 The Contractor remains responsible for the quality of the Work carried out under the Contract even though the Airservices Representative may have had Work tested or otherwise indicated that Work is in accordance with the Contract or otherwise acceptable.
- 19.2.5 If Directed by the Airservices Representative, the Contractor must not cover up or make inaccessible any part of the Works until all tests have been performed.

19.2A Proof of Performance Tests

As soon as reasonably practicable following completion of the Commissioning Work in accordance with the Contract, the Contractor must carry out the Proof of Performance Tests.

19.3 Non-complying activities or defective work before Completion

- 19.3.1 If, before the Date of Completion, in the opinion of the Airservices Representative any part of the Contractor's Activities is not in accordance with the Contract, or any Work done, including any material provided, is Defective, it may give the Contractor a Direction specifying the non-conformance and:
- (a) requiring the Contractor to correct it or carry out a Variation, and specifying the time within which either must occur; or
 - (b) advising the Contractor that Airservices will accept the Work despite the non-conformance.
- 19.3.2 If a Direction is given under clause 19.3.1(a), the Contractor must correct the non-conformance or carry out the Variation within the time specified in the Airservices Representative's Direction.
- 19.3.3 If the Airservices Representative issues a Direction under clause 19.3.1(b), that notice of acceptance shall be a deemed Variation.
- 19.3.4 If the Contractor fails to comply with such a Direction issued by the Airservices Representative and that failure has not been rectified by the Contractor within five Business Days after receipt of a further notice from the Airservices Representative to rectify such work in accordance with a Direction, Airservices may have the Defect rectified by others at the cost of the Contractor, which will be a debt due and payable by the Contractor to Airservices and which may be set off by Airservices against any payment claim made by the Contractor pursuant to the Contract.

19.4 Defects after the Date of Completion

- 19.4.1 After the Date of Completion Airservices Representative may:
- (a) in respect of any Defect in the Wastewater Treatment Plant which becomes apparent during the O&M Term, give the Contractor a written Direction specifying the Defect and:
 - (i) Directing the Contractor to correct it, and specifying the time within which it must occur; or
 - (ii) advising the Contractor that Airservices will accept the work despite the Defect; and

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19.4.2 If a Direction is given under clause 19.4.1(a)(i) or 19.4.1(b)(i), the Contractor must correct the Defect within the time specified in the Airservices Representative's Direction, but at times and in a manner which cause as little inconvenience to any occupants of the Site as is reasonably possible and the performance of the O&M Services.

19.4.3 If the Airservices Representative gives a Direction to the Contractor in accordance with clause 19.4.1(a)(i) or 19.4.1(b)(i) and in relation to a Defect for which the Contractor is required to rectify under this clause 19, and the Contractor does not rectify the Defect in accordance with the Direction, Airservices may engage an alternative supplier to remedy the Defect, in which case:

- (a) Airservices may demand and the Contractor must pay to Airservices as a debt due; or

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20. Time

20.1 Programming

20.1.1 The Contractor must give the Airservices Representative a construction program in the form of a Gantt chart within five Business Days after the Contract Date, or if the Contract is for both design and construction of the Works, within such other time period specified by Airservices, which must:

- (a) contain a time scaled bar for each item of Work activity (including all Stages (if applicable)) and show the respective planned start and finish date, the Date for Completion of the Works, the duration of each individual activity expressed in days and all of the logic dependencies existing between those activities;
- (b) detail a critical path clearly on the bar chart; and
- (c) address all aspects of the Works whatsoever which may affect the achievement of any Milestone or the Completion of the Works or a Stage by the Date for Completion.

- 20.1.2 Failure by the Contractor to furnish to the Airservices Representative a construction program as required by this clause 20 entitles Airservices to defer payment under the Contract until the Contractor's failure is rectified.
- 20.1.3 As a minimum an electronic version of the construction program must be provided in an Adobe PDF file format. Airservices will also accept construction programs in Microsoft Project format.

20.2 Progress

- 20.2.1 The Contractor must progress the Contractor's Activities and the Works:
- (a) in a manner and at a rate of progress satisfactory to the Airservices Representative; and
 - (b) in accordance with the construction program (and any amended construction program).
- 20.2.2 The Contractor must not suspend the progress of the whole or any part of the Contractor's Activities or the Works except where suspension is Directed or approved by the Airservices Representative.

20.3 Amended construction program and monthly reports

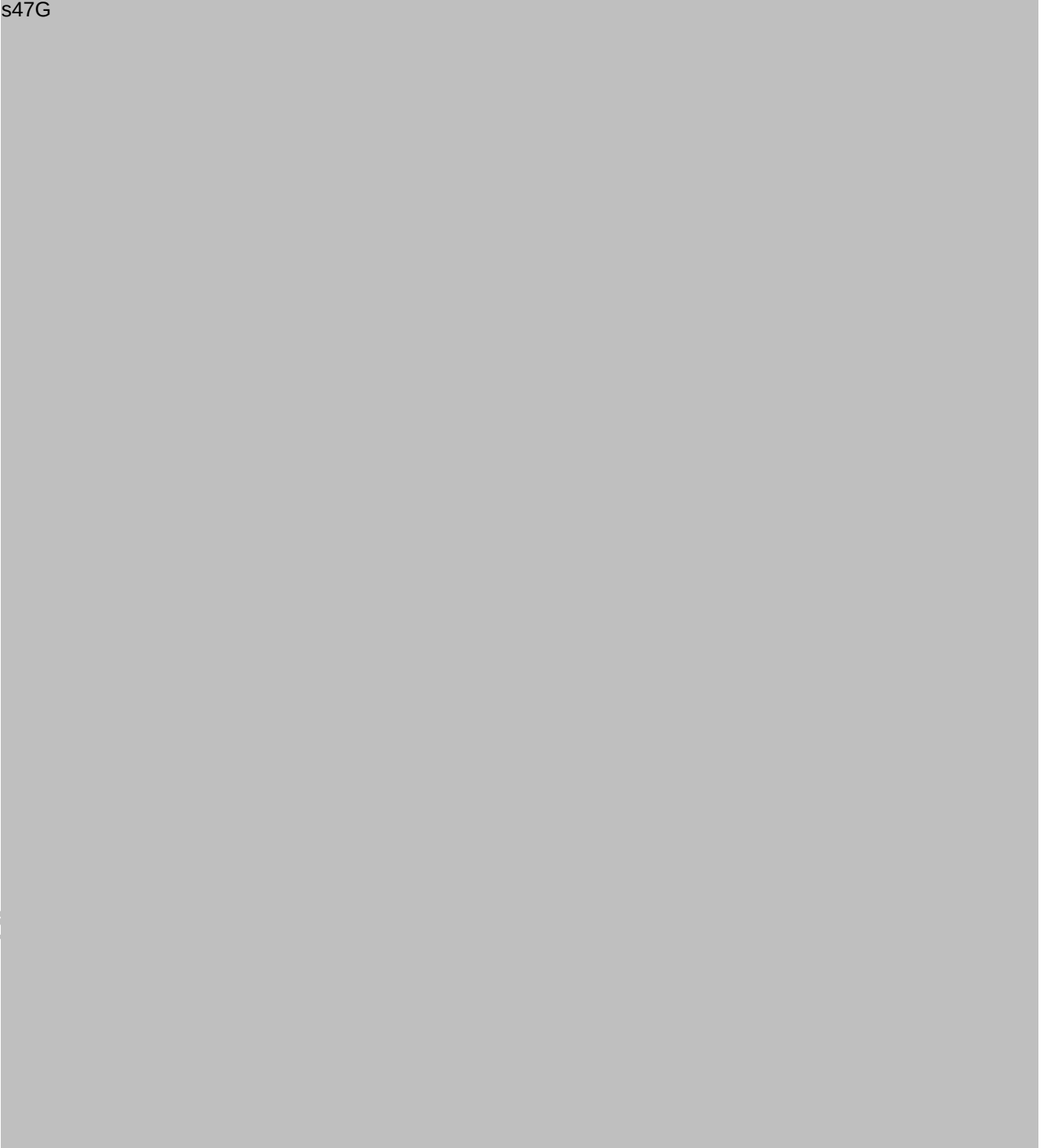
- 20.3.1 During the performance of the Contractor's Activities the Contractor must review the construction program monthly and provide the Airservices Representative with a report each month, at the same time as invoices are provided, on progress of the Works and the Contractor's Activities, identifying potential delays, recommended adjustments to the construction program including if necessary an amended construction program to ensure that Completion by the Date for Completion of the Works can be achieved.
- 20.3.2 The furnishing of a construction program or of an amended construction program will not relieve the Contractor of any obligations under the Contract including any obligation not to depart, without reasonable cause, from a component of an earlier construction program where that component of the earlier program is not varied by the amended construction program. At any time the Airservices Representative may direct the Contractor to give an updated construction program.
- 20.3.3 Any review of or comments on a construction program by the Airservices Representative will not:
- (a) relieve the Contractor from, or alter, its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Completion by the Date for Completion;
 - (b) evidence or constitute a Direction by the Airservices Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
 - (c) affect the time for performance of Airservices' or the Airservices Representative's obligations under the Contract, including (without limitation) to oblige Airservices or the Airservices Representative to do anything earlier than is necessary to enable the Contractor to achieve Completion by the Date for Completion.

20.4 Time for Completion

- 20.4.1 The Contractor must achieve Completion by the Date for Completion.

- 20.4.2 The Contractor may, if it chooses, accelerate progress and reach Completion before the Date for Completion.
- 20.4.3 If the Contractor chooses to accelerate progress neither Airservices, the Airservices Representative nor any other person will be obliged to do or not do anything to enable the Contractor to reach Completion before the Date for Completion and doing or failing to do anything is not an act or omission by Airservices, the Airservices Representative or a person for whom Airservices is responsible.
- 20.4.4 The time for performance of Airservices' or the Airservices Representative's obligations is not affected by the Contractor's decision to accelerate.

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20.9 Suspension

- 20.9.1 The Airservices Representative may Direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities or the Works.
- 20.9.2 Unless the suspension is the result of the Contractor's failure to perform its obligations under the Contract, a Direction to suspend under this clause 20.9 will entitle the Contractor to:
- (a) claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 20.5 if it is delayed in achieving Completion by the Date for Completion as a result of the suspension; and
 - (b) subject to clause 24, the Contractor's direct, reasonably and properly evidenced extra costs necessarily incurred by the Contractor in respect of the suspension, calculated in accordance with clause 20.8.
- 20.9.3 The Contractor's entitlement under clause 20.9.2(b) will be its only right to payment of money arising from a Direction to suspend and will be subject to the Contractor complying with clause 24 and taking all steps possible to mitigate its extra costs, as assessed by the Airservices Representative.

20.10 Acceleration

- 20.10.1 The Airservices Representative may notify the Contractor that the Contractor is required to accelerate progress to reach Completion before the Date for Completion.
- 20.10.2 Any notice given under clause 20.10.1 must:
- (a) specify the number of days by which the Date for Completion is to be brought forward; and
 - (b) the reasons for Airservices requiring the Date for Completion to be brought forward.

- 20.10.3 After receiving a notice under clause 20.10.1, the Contractor must assess the notice and notify the Airservices Representative within five Business Days of receipt of the notice pursuant to clause 20.10.1:
- (a) of the additional costs and expenses that the Contractor will claim as a result of the Date for Completion being brought forward; or
 - (b) that the Contractor is unable to reach Completion by the date specified in the notice given under clause 20.10.1, providing details of the reasons why.

20.10.4 If the Airservices Representative gives written notice to the Contractor that it objects to the costs and expenses notified by the Contractor under clause 20.10.3(a), then subject to clause 20.10.6:

- (a) if there is a Table of Variation Rates and Prices which can apply to calculate the additional costs of the Contractor under this clause 20.10 and the Contractor did not calculate its additional costs and expenses by reference to the Table of Variation Rates and Prices (to the extent relevant), Airservices will only be liable to pay an amount determined by using any rates or prices in the Table of Variation Rates and Prices (to the extent relevant); or
- (b) if there are no relevant rates or prices specified in the Table of Variation Rates and Prices that are applicable to calculate the additional costs under this clause 20.10, Airservices will only be liable to pay a reasonable amount as agreed between the parties or, in the absence of such agreement, as determined by the Airservices Representative acting reasonably.

In either case the value of the acceleration proposal shall include a reasonable amount for profit and overheads and any deductions to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) shall include a reasonable amount for profit but not overheads.

20.10.5 If the Airservices Representative gives written notice to the Contractor that it does not agree with the reasons notified by the Contractor under clause 20.10.3(b), then the Airservices Representative's written notice under this clause 20.10.5 will be a Notice of Dispute under clause 31.2 and those matters will be determined in accordance with clause 31.

20.10.6 If the Contractor gives a notice to the Airservices Representative pursuant to clause 20.10.3, notwithstanding any notice subsequently issued by the Airservices Representative pursuant to clause 20.10.4 or 20.10.5 the Airservices Representative may give a notice to the Contractor retracting the original notice given pursuant to clause 20.10.1.

20.10.7 If:

- (a) the Contractor has given a notice pursuant to clause 20.10.3(a); and
- (b) the Airservices Representative has not issued a notice pursuant to clause 20.10.6,

the Contractor must effect Completion in accordance with the notice given under clause 20.10.1 for the costs identified in the Contractor's notice pursuant to clause 20.10.3, or if the Airservices Representative has issued a notice pursuant to clause 20.10.4, the costs determined in accordance with the mechanism in clause 20.10.4.

21. Variations

21.1 Variation Order

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21.1.2 The Airservices Representative may seek from the Contractor a notice in regard to any proposed Variation from the Airservices Representative on whether or not a proposed Variation can be effected by the Contractor. The Contractor must provide a response within the timeframe specified by the Airservices Representative and in doing so must identify:

- (a) whether the proposed Variation will have an impact on the construction program and achieving Completion of the Works by the Date for Completion; and
- (b) the proposed cost of carrying out such a Variation

21.1.3 If, in relation to a proposed Variation, the Airservices Representative is satisfied with the notification from the Contractor as to the carrying out of the proposed Variation, the Airservices Representative may issue a Variation Order on the Contractor to carry out that Variation under clause 21.1.1. If the Airservices Representative does not issue a Variation Order, the Contractor must not carry out the proposed Variation.

21.1.4 The Contractor must not vary the Contractor's Activities or the Works except as directed in writing by the Airservices Representative under clause 21.1.1.

21.1.5 No Direction will constitute a Direction under clause 21.1.1 unless it is in writing and expressly states that it is a direction under clause 21.1.1.

21.2 Cost of Variation

21.2.1 Subject to the provisions of the Contract, as soon as practicable after receipt of the relevant Claim issued by the Contractor in accordance with clause 24 and at any other time determined by the Airservices Representative (in its absolute discretion), the Airservices Representative must value in accordance with clause 21.2.2 each Variation which has been Directed under clause 21.1.1 or any other event or circumstance which another provision of the Contract provides will be valued as a Variation or otherwise under this clause 21.2.

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21.2.3 The value determined under clause 21.2.2:

- (a) to the extent that the Variation is not in respect of the O&M Services, will be added to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)); or
- (b) to the extent that the Variation is in respect of the O&M Services, will be added to the O&M Contract Price.

21.2.4 To the extent that a Variation involves an omission from the Contractor's Activities or the Works, Airservices may thereafter carry out the omitted part of the Contractor's Activities or the Works either itself or by engaging third parties (including at the same time as the Contractor is carrying out the Contractor's Activities).

21.3 Notice of Variation

21.3.1 If the Contractor believes a Direction by the Airservices Representative, other than a Direction under clause 5.2 or a "Variation Order" under clause 21.1, constitutes or involves a Variation it must within five Business Days of, and before complying with, the Direction, give notice to the Airservices Representative that it considers that the Direction constitutes or involves a Variation.

21.3.2 On receipt of such notice the Airservices Representative may rescind, confirm or amend the Direction and advise whether it accepts that the Direction constitutes or involves a Variation.

21.3.3 If the Airservices Representative does not confirm or vary the Direction:

- (a) within five Business Days of receiving the Contractor's notice under clause 21.3.1, it will be deemed that the Airservices Representative has rescinded the Direction;
- (b) the Contract Price will not be adjusted as a result of that Direction; and
- (c) Airservices will not be liable upon any Claim by the Contractor arising out of or in connection with that Direction, whether under the Contract or (insofar as is permitted by Law) any other principle of Law.

21.3.4 If the Airservices Representative confirms or varies the Direction and indicates that it considers the Direction constitutes or involves a Variation, that notice will be taken to be a request under clause 21.1.2.

21.3.5 If the Airservices Representative confirms or varies the Direction and indicates that it does not consider the Direction constitutes or involves a Variation, the Contractor must continue to perform the Contractor's Activities and progress the Works to the full extent possible in accordance with the Contract and all Directions of the Airservices Representative.

22. Payment

22.1 Payment obligation

22.1.1 Subject to due and proper performance by the Contractor of its obligations under the Contract and any right to set-off which Airservices may have, Airservices must pay the Contractor the Contract Price and any other amounts to which it is entitled under the Contract at the times and in accordance with the methods prescribed in the Contract.

22.1.2 The Contractor acknowledges, subject to clauses 20 and 21 of the Contract, that the Contract Price:

- (a) includes all risks, hazards and additional costs, including all employment related payments and allowances under any industrial awards or other such agreements; and
- (b) will not be varied as a result of any rise or fall in the costs of material or labour,

relevant to or associated with carrying out and completing the Works and the Contractor's Activities.

22.2 Payment claims

22.2.1 The Contractor may claim payments on account of the Contract Price on:

- (a) each Reference Date;
- (b) the time referred to in clause 22.6; and
- (c) the time referred to in clause 22.6A.

22.2.2 Any payment claim must be submitted to the Airservices Representative and must include:

- (a) details of the Contractor's Activities which the claim applies to, and details of the percentage of the Works covered by the claim;
- (b) confirmation that the Works and the Contractor's Activities comply with all relevant Approvals;
- (c) details of any unfixed plant and materials of which the Contractor is claiming payment;
- (d) the items required by clause 22.7; and
- (e) any further information that the Airservices Representative reasonably requires in relation to the payment claim.

22.2.3 An early payment claim will be of no force or effect.

22.2.4 Notwithstanding any other term of the Contract, where Item 51 specifies that Milestone Payment Claim Reference Dates apply:

- (a) the Contractor will have no entitlement to payment of any part of the Milestone Amount or the D&C Contract Price in respect of a Milestone unless the relevant Milestone is completed or achieved, including the

Contractor having done everything which the Contract requires it to do prior to, as a requirement of, or as a condition precedent to, completion or achievement of the particular Milestone; and

- (b) the Contractor's entitlement to payment on account of the D&C Contract Price in respect of each Milestone is limited to the relevant Milestone Amount.

22.3 Payment certificate

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22.3.3 At any time and from time to time, the Airservices Representative may by a further certificate correct any error or omission which has been discovered in any previous payment certificate.

22.3.4 Whether or not the Contractor makes (or is entitled to make) a payment claim in accordance with this clause 22, the Airservices Representative may issue a payment certificate.

22.4 Tax invoice and payment

22.4.1 Upon receipt of a payment certificate under clause 22.3, a Final D&C Certificate under clause 22.6.5 or a Final O&M Certificate under clause 22.6A.5 (as applicable), the Contractor must (without affecting its rights under the Contract) give to Airservices (and a copy to the Airservices Representative), a tax invoice for the amount specified in the payment certificate under clause 22.3.1(e), the Final D&C Certificate under clause 22.6.5 or the Final O&M Certificate under clause 22.6A.5 (as applicable).

22.4.2 A payment certificate or payment is not:

- (a) evidence of the value of work but is only on account of the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) and the O&M Contract Price (as applicable);
- (b) an admission of liability;
- (c) acceptance by Airservices or the Airservices Representative of the Contractor's performance or compliance with the Contract; or
- (d) evidence that a Milestone has been achieved.

22.4.3 If the Airservices Representative, in a payment certificate (including the Final D&C Certificate and the Final O&M Certificate):

- (a) determines that moneys are due from Airservices to the Contractor, Airservices must (subject to clause 22.7.2 and 22.9) pay to the Contractor the amount set out in the payment certificate as due from Airservices to the Contractor within the time stated in Item 53 after receipt by the Airservices Representative of the payment claim (or, if the Airservices Representative issues the relevant payment certificate otherwise than in response to a payment claim, within 20 Business Days after the issue of the relevant payment certificate); or
- (b) determines that moneys are due from the Contractor to Airservices, the Contractor must pay to Airservices the amount set out in the payment certificate as due from the Contractor to Airservices within 10 Business Days after the issue of the relevant payment certificate.

22.5 Not used

22.6 Final D&C Payment Claim & Certificate

22.6.1 On the Final D&C Payment Claim Reference Date, the Contractor must give Airservices a final payment claim and endorse it 'Final D&C Payment Claim' (**Final D&C Payment Claim**).

22.6.2 The Final D&C Payment Claim must include all amounts which the Contractor claims from Airservices under the Contract or otherwise (other than amounts arising out of, or in connection with, the O&M Services).

22.6.3 After the date for submitting the Final D&C Payment Claim has passed, Airservices will not be liable for any Claim by the Contractor arising out of or in connection with any fact, matter or thing before the issue of the Last Certificate of Completion, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, unless:

- (a) the Contractor has given Airservices a Final D&C Payment Claim within the time required; and
- (b) the claim is included in the Final D&C Payment Claim.

22.6.4 The Final D&C Payment Claim is in addition to the other notices which the Contractor must give to the Airservices Representative under the Contract in order to preserve its entitlements under the Contract.

- 22.6.5 Within the time stated in Item 52 after receipt of the Final D&C Payment Claim, the Airservices Representative will issue to the Contractor a payment certificate confirming the moneys finally due and payable by Airservices to the Contractor pursuant to the terms of the Contract in respect of the Contractor's Activities (other than the O&M Services) (**Final D&C Certificate**).
- 22.6.6 The Final D&C Certificate issued by the Airservices Representative is conclusive evidence of the full and final satisfaction and discharge of Airservices' obligation pursuant to the requirements of the Contract except in relation to:
- (a) any claim included in the Final D&C Payment Claim (if any) which has been given to the Airservices Representative within the time required by, and in accordance with the terms of, this clause 22.6; and
 - (b) on account of payment of the O&M Contract Price.
- 22.6.7 Whether or not the Contractor makes (or is entitled to make) a Final D&C Payment Claim in accordance with clause 22.6.1, the Airservices Representative may issue a Final D&C Certificate under clause 22.6.5.

22.6A Final O&M Payment Claim & Certificate

- 22.6A.1 On the Final O&M Payment Claim Reference Date, the Contractor must give Airservices a final payment claim and endorse it 'Final O&M Payment Claim' (**Final O&M Payment Claim**).
- 22.6A.2 The Final O&M Payment Claim must include all amounts which the Contractor claims from Airservices under the Contract or otherwise.
- 22.6A.3 After the date that is 20 Business Days after the expiry of the O&M Term, Airservices will not be liable for any Claim by the Contractor arising out of or in connection with the Contractor's Activities or the Works, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, unless:
- (a) the Contractor has given Airservices a Final O&M Payment Claim prior to the date that is 20 Business Days after the expiry of the O&M Term; and
 - (b) the claim is included in the Final O&M Payment Claim.
- 22.6A.4 The Final O&M Payment Claim is in addition to the other notices which the Contractor must give to the Airservices Representative under the Contract in order to preserve its entitlements under the Contract.
- 22.6A.5 Within the time stated in Item 52 after receipt of the Final O&M Payment Claim, the Airservices Representative will issue to the Contractor a final payment certificate confirming the moneys finally due and payable by Airservices to the Contractor pursuant to the terms of the Contract (**Final O&M Certificate**).
- 22.6A.6 The Final O&M Certificate issued by the Airservices Representative is conclusive evidence of the full and final satisfaction and discharge of Airservices' obligations pursuant to the requirements of the Contract except in relation to any claim included in the Final O&M Payment Claim (if any) which has been given to the Airservices Representative within the time required by, and in accordance with the terms of, this clause 22.6A.
- 22.6A.7 Whether or not the Contractor makes (or is entitled to make) a Final O&M Payment Claim in accordance with clause 22.6A.1, the Airservices Representative may issue a Final O&M Certificate under clause 22.6A.5.

22.7 Payment of workers and subcontractors

22.7.1 The Contractor must with each payment claim under clause 22.2, 22.6 and 22.6A provide the Airservices Representative with:

- (a) a statutory declaration in the form at Schedule 3 by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the request been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities;
- (b) documentary evidence that at the date of the request all workers who have been employed by a subcontractor, supplier or consultant of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities up to the date of submission; and
- (c) where any part of the Contractor's Activities are being performed in New South Wales:
 - (i) a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
 - (A) under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation;
 - (B) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
 - (C) under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation; and
 - (ii) if the Contractor is a "head contractor" as defined in the Building and Construction Industry *Security of Payment Act 1999* (NSW), a duly completed supporting statement within the meaning given in section 13(9) of the Building and Construction Industry *Security of Payment Act 1999* (NSW); and
- (d) where section 75(7) of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) applies, a duly completed supporting statement referred to in that section.

22.7.2 Without limiting clause 22.9, Airservices is entitled to withhold from any payment which would otherwise be due to the Contractor under the Contract the amount disclosed as unpaid under this clause 22.7, and Airservices may pay unpaid moneys directly to a worker or a subcontractor:

- (a) where permitted by Law;
- (b) in accordance with a Court order given in favour of the worker or subcontractor; or
- (c) if requested in writing by the Contractor.

- 22.7.3 Any such payment made by Airservices to a worker or a subcontractor in accordance with this clause 22.7 will be deemed to be part satisfaction of Airservices' obligation to pay a Contractor's claim pursuant to the Contract.

22.8 Security of payment legislation

- 22.8.1 The Contractor agrees with Airservices that:

- (a) a payment claim submitted to the Airservices Representative under clause 22.2 which also purports to be (or is by Law) a payment claim under the relevant SOP Act is received by the Airservices Representative as agent for Airservices;
- (b) unless otherwise notified to the Contractor by Airservices in writing, the Airservices Representative will give payment certificates and carry out all other functions of Airservices under the relevant SOP Act as the agent of Airservices;
- (c) each Reference Date is (if applicable) a "reference date" for the purposes of the SOP Act; and
- (d) a reference to a "payment certificate" (including the Final D&C Certificate and the Final O&M Certificate) is also a reference to a "payment schedule" for the purposes of the relevant SOP Act.

- 22.8.2 Failure by the Airservices Representative to set out in a payment certificate issued under the relevant SOP Act or otherwise an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices will not prejudice:

- (a) the Airservices Representative's ability or power to set out in a subsequent payment certificate an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices; or
- (b) Airservices' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

- 22.8.3 The Contractor agrees that the amount set out in the payment certificate in accordance with clause 22.3.1 is, to the extent permitted by and for the purposes of the relevant SOP Act, the amount of the "progress payment" calculated in accordance with the terms of the Contract, which the Contractor is entitled to in respect of the Contract.

- 22.8.4 The Contractor irrevocably chooses the person set out in Item 54 (Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority) as, to the extent permitted by and for the purposes of the relevant SOP Act and to the extent that the Contractor's Activities are to be carried out in any other State or Territory in which the relevant SOP Act applies, the authorised nominating authority.

- 22.8.5 The Contractor must not at any time, without the written consent of Airservices, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by Airservices or any details thereof in respect of an adjudication application made under the relevant SOP Act (in this paragraph, the Information).

- 22.8.6 For the avoidance of doubt:

- (a) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of the Information;
- (b) notwithstanding the Contractor's obligation in respect of the Information, Airservices has sole and unfettered discretion to divulge or suffer or permit its servants, subcontractors or agents to divulge to any person the Information;
- (c) Airservices may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant SOP Act; and
- (d) any Information which Airservices provides or relies upon in respect of an adjudication application made under the relevant SOP Act is made without prejudice to Airservices' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

22.9 Set-off

22.9.1 To the extent permitted by law, Airservices may retain, deduct, withhold or set-off from moneys otherwise due to Contractor:

- (a) any:
 - (i) debt or other moneys due from the Contractor to Airservices; or
 - (ii) claim to money which Airservices may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,
- (b) any amount that Airservices is permitted or obliged to withhold from payment to the Contractor in accordance with:
 - (i) the Contract; and
 - (ii) any Law, including the SOP Act;

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- 22.9.2 Nothing in clause 22.9 limits or otherwise affects the right of Airservices to recover from the Contractor the whole of any debt or claim or any balance that remains owing.

23. GST

23.1 Interpretation

In this clause 23, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

23.2 GST warranty

The Contractor warrants that, unless otherwise advised to Airservices in writing, it is registered for GST and will immediately advise Airservices if it ceases to be registered for GST.

23.3 Prices GST exclusive

Unless stated otherwise, all prices in the Contract are exclusive of GST.

23.4 GST gross up

If a party (Supplier) makes a supply under or in connection with the Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier an additional amount equal to the GST payable on the supply (GST Amount).

23.5 Reimbursements

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 23.4.

23.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

23.7 GST and Expenses

The Contractor must not charge Airservices any amount for Expenses which is in excess of:

- 23.7.1 the net amount incurred by the Contractor in respect of the Expenses exclusive of any GST (the **GST Exclusive Expense**); plus
- 23.7.2 an amount equal to the Contractor's GST liability on the GST Exclusive Expenses if and to the extent that the reimbursement is consideration for a taxable supply by the Contractor to Airservices.

23.8 Adjustment event

If and to the extent an adjustment event arises in respect of a supply made by the Contractor to Airservices under the Contract, then:

- 23.8.1 if the Contractor's corrected GST amount is less than the previously attributed GST amount, the Contractor must refund the difference to Airservices; and

23.8.2 if the Contractor's corrected GST amount is greater than the previously attributed GST amount, Airservices will pay the difference to the Contractor,

and the Contractor must issue an adjustment note to Airservices.

23.9 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with the Contract until it receives a tax invoice for the supply to which the payment relates.

24A. Taxes

24A.1 Taxes

Unless expressly specified otherwise:

24A.1.1 all amounts payable, consideration provided or monetary limits in this Contract are inclusive of any Taxes; and

24A.1.2 the Contractor must not charge Airservices any additional amount in relation to any Tax.

24A.2 Withholding

Without limiting clause 22.9, if Airservices is required by Law to deduct or withhold from any payment made to the Contractor an amount on account of any Tax, then Airservices will:

24A.2.1 make the required deduction or withholding;

24A.2.2 pay the appropriate Authority the full amount of that deduction or withholding in accordance with the relevant Law;

24A.2.3 deliver to the Contractor a copy of the receipt for that payment; and

24A.2.4 pay the balance of the amount required to be paid to the Contractor under this Contract (if any) and in doing so Airservices has fulfilled its payment obligations to the Contractor.

24A.3 Contractor Representatives Taxes and Charges

Without limiting clause 22.9, if Airservices becomes or reasonably considers that it is likely to become liable to pay any amount in respect of the Contractor Representatives Taxes and Charges, then Airservices may withhold the amount of that liability from any amounts payable to the Contractor under this Contract.

24A.4 Tax changes

If any Tax is varied, repealed or introduced which materially affects the payments made under this Contract, the parties may negotiate in good faith in relation to the impact of that Tax change on this Contract. If they reach agreement, the parties may vary this Contract in accordance with clause 35.6 to equitably adjust any payments under this Contract. In doing so the parties will take into account industry standards in relation to the application of the Tax change to transactions of a similar nature and scale to this Contract.

24. Notification of Claims

24.1 Notices

If the Contractor wishes to make a Claim against Airservices, other than a Claim for an extension of time under clause 20.5 or a payment Claim under clause 22.2, in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give the Airservices Representative the following:

24.1.1 within 5 Business Days of the occurrence of the events on which the Claim is based, written notice:

- (a) that it proposes to make the Claim, and details of the nature of the Claim; and
- (b) of the events upon which the Claim will be based; and

24.1.2 within 20 Business Days of giving the notice under clause 24.1.1, a written Claim setting out:

- (a) detailed particulars of the events on which the Claim is based;
- (b) the legal basis for the Claim;
- (c) the facts relied upon in support of the Claim; and
- (d) details of the quantification of the amount Claimed.

24.2 Continuing events

If the events upon which the Claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 24.1.2 every 20 Business Days after the Claim under clause 24.1.2 was given until after the events or the consequences have ceased.

24.3 Bar

If the Contractor fails to comply with clauses 24.1 and 24.2:

24.3.1 neither the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) nor the O&M Contract Price will be adjusted as a result of; and

24.3.2 Airservices will not be liable for any Claim by the Contractor, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, arising out of or in connection with,

the relevant fact, matter or thing.

25. Completion

25.1 Certificate of Completion

25.1.1 The Contractor must notify the Airservices Representative at least 10 Business Days prior to the date upon which the Contractor anticipates that Completion will be achieved.

- 25.1.2 When the Contractor believes that Completion has been achieved, the Contractor will request, by written notice to the Airservices Representative, that:
- (a) the Airservices Representative inspect the Works or the Stage; and
 - (b) if satisfied that Completion has been achieved, that the Airservices Representative issues a Certificate of Completion stating the date Completion was achieved.
- 25.1.3 The Airservices Representative must within 10 Business Days of receipt of the notice from the Contractor pursuant to clause 25.1.2 inspect the Works or the Stage and if satisfied that the Works or the Stage have achieved Completion, issue a certificate stating the date Completion was achieved together with a Defects list identifying minor Defects as at the Date of Completion.
- 25.1.4 If the Airservices Representative is not satisfied that Completion has been achieved, the Airservices Representative must issue a notice to the Contractor setting out the reasons why the Airservices Representative does not believe Completion has been achieved. The Contractor must then proceed to bring the Works to Completion and the process in clauses 25.1.2 to 25.1.4 will reapply.
- 25.1.5 If the Airservices Representative is of the opinion that Completion of the Works or a Stage has been achieved, the Airservices Representative may issue a certificate starting the date on which Completion of the Works or the Stage was achieved whether or not the Contractor has made a request for its issue.

25.2 Possession upon Completion

On Completion, Airservices may take possession of any parts of the Works or the Stage which will not be used by the Contractor in connection with the O&M Services.

25.3 Part of the Works or Stage

- 25.3.1 Airservices may use a part of the Works or a Stage which will not be used by the Contractor in connection with the O&M Services, although the whole of the Works or the Stage has not reached Completion.
- 25.3.2 Such use will not affect the Contractor's obligations under the Contract but Airservices must endeavour to use that part so as to not interfere with the Contractor's performance.

25.4 Effect of Certificate of Completion

A Certificate of Completion is not acceptance by Airservices of the Contractor's performance or its obligations under the Contract.

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26. Security

26.1 Compliance with security obligations

The Contractor must, and must ensure that its Personnel:

26.1.1 have awareness of, and fully comply with:

- (a) Airservices' security requirements, policies and procedures that are notified by Airservices to the Contractor from time to time, including those specified in this clause 26; and
- (b) all reasonable security directions and any mandatory training issued by Airservices relating to the use of Airservices' premises, facilities or Airservices Material;

26.1.2 implement appropriate security measures to protect Airservices Material and ensure that Airservices Material, including official, classified, sensitive or commercial information or documents, is not accessible by any means by unauthorised persons;

26.1.3 participate, and provide full cooperation, in any reviews of the security procedures implemented by Airservices (or another authorised Australian Government authority); and

26.1.4 immediately report any security incidents of which it may become aware (confirmed promptly in writing to Airservices), including actual, suspected or apparent violations and breaches of this clause 26, and the steps taken by the Contractor to address these.

26.2 Authorisation of Personnel

The Contractor must ensure that any person (including any Specified Personnel or other Personnel) the Contractor proposes to carry out work or perform duties under the Contract and who will be required to:

- 26.2.1 enter any secure locations in Airservices' buildings or places;
- 26.2.2 have access to, or be responsible for the physical custody of, Confidential Information or Airservices Material; or
- 26.2.3 hold a particular kind of security clearance the details of which have been notified to the Contractor by Airservices,

does not carry out that work or perform those duties unless authorised to do so by Airservices.

26.3 Security checks

- 26.3.1 The Contractor must, and must ensure that any Representative of the Contractor providing the Works or performing the Contractor's Activities:
 - (a) obtains all security clearances or authorisations or undergoes any security checks (including a police history check) as required in relation to performing the Contract; and
 - (b) provides to Airservices, in the form required by Airservices, such information as Airservices from time to time reasonably requests for the purpose of allowing Airservices to undertake reasonable investigations for the purposes of this clause 26.
- 26.3.2 All costs associated with obtaining security clearances or authorisations, or undergoing security checks, reviews or audits, or security performance monitoring must be borne by the Contractor, unless otherwise agreed in writing by Airservices.

26.4 Airservices to act reasonably

Airservices must not unreasonably withhold authorisation of a person and must notify the Contractor in writing of:

- 26.4.1 the names of the Personnel it authorises to carry out work or perform duties under the Contract, the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances will be effective; and
- 26.4.2 the names of the Personnel it refuses to authorise to carry out such work or perform such duties,

and the Contractor must sign a copy of that notice and return it to Airservices as soon as possible as acknowledgment of the receipt of the document.

26.5 Change of circumstances

The Contractor must advise Airservices promptly in writing of any change in the circumstances of a Representative that is likely to affect Airservices' authorisation of that person.

26.6 Airservices may revoke authorisation

Airservices may, at any time, without any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular Representative in the same manner that is set out in clause 26.4 and the process set out in clause 26.4 will also apply to the replacement of that Representative.

26.7 Airport security

If the Works or the Contractor's Activities are to be provided at any Secure Area:

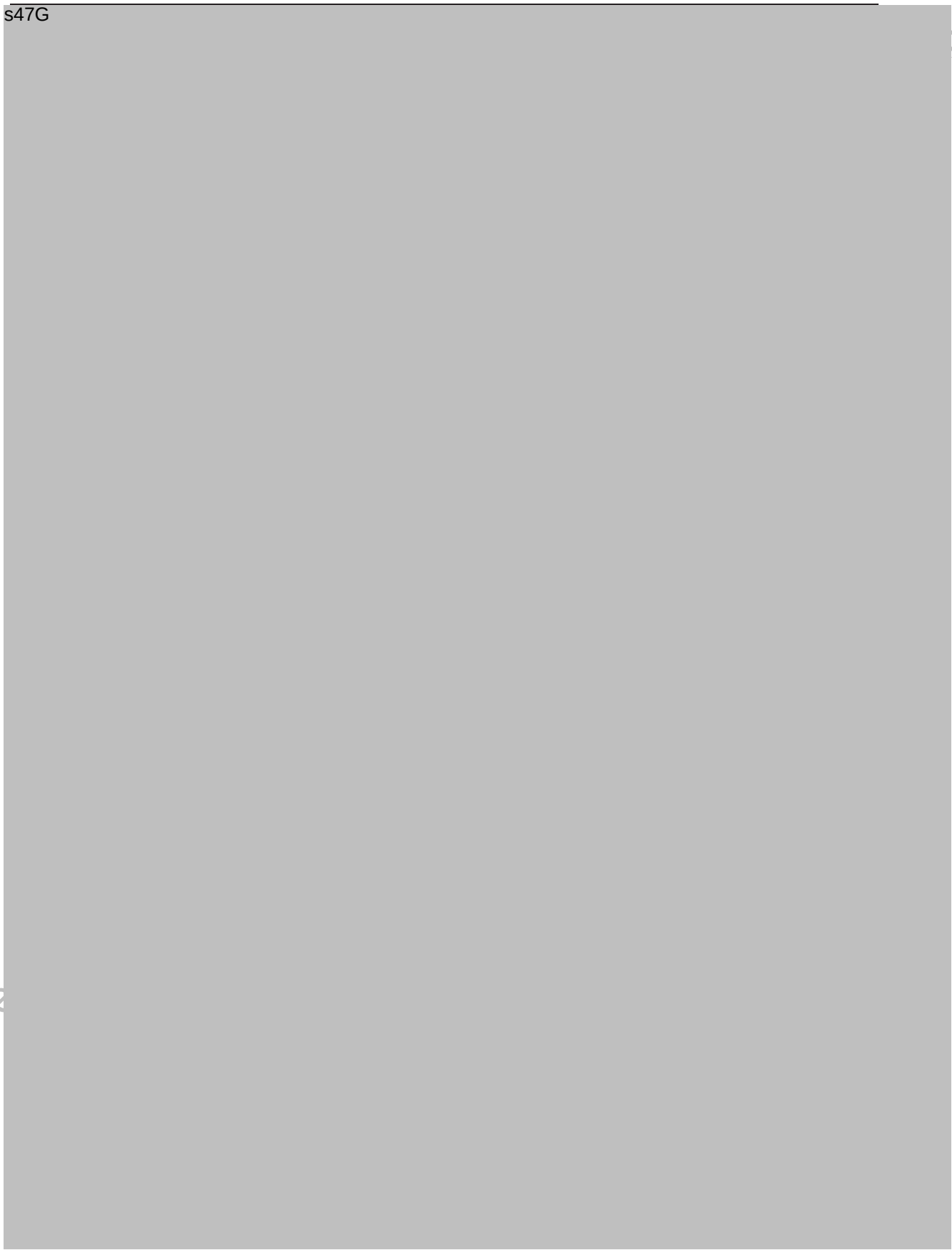
- 26.7.1 the Contractor must meet with Airservices, promptly after the Contract Date (or within such other period as notified by Airservices) and before commencing any work in a Secure Area, to discuss access and airport security, and must comply, at the sole cost of the Contractor, with any safety or security directions given by the Airport Operator and/or Airservices in respect of the Works or Contractor's Activities at an airport; and
- 26.7.2 before commencing any Works or Contractor's Activities in a Secure Area every Representative of the Contractor who will be working in or who will be required to have unaccompanied access to, a Secure Area must obtain an ASIC.

26.8 ASIC applications

- 26.8.1 The Contractor must ensure that all necessary applications are made in respect of those Personnel required to hold an ASIC and that those persons obtain ASICs. The Contractor will not be entitled to make any Claim arising out of any:
 - (a) delay in obtaining an ASIC;
 - (b) loss of an ASIC;
 - (c) refusal to issue an ASIC to any person; or
 - (d) withdrawal of an ASIC.
- 26.8.2 The Contractor acknowledges that:
 - (a) all persons applying for ASICs will be subject to those checks required under the relevant Laws;
 - (b) a fee is payable to the ASIC issuing entity at the time of application;
 - (c) the fees payable under the Contract include all such fees to issuing entities and the Contractor is responsible for payment of them; and
 - (d) no assurance is given by Airservices as to the minimum period for processing of applications, and the time required to do so should be taken into consideration by the Contractor in planning performance of the Contract.
- 26.8.3 If an application for an ASIC is unsuccessful in respect of any Representative, the Contractor must promptly inform Airservices and must not without written agreement of Airservices use that Representative in the performance of any work under the Contract nor allow that Representative access to any Secure Area.
- 26.8.4 The Contractor must ensure that any ASICs issued by Airservices that have expired, are cancelled or damaged, or are no longer required, are promptly returned to Airservices.

- 26.8.5 Any costs incurred by Airservices to replace lost, stolen or destroyed ASICs must be reimbursed by the Contractor.

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28. Use and protection of Airservices Material

28.1 Licence of Airservices Material

Subject to any conditions or limitations of third parties notified by Airservices to the Contractor, Airservices grants the Contractor a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any Airservices Material for the sole purpose of performing the Contractor's Activities and the Works pursuant to the Contract, and the Contractor indemnifies Airservices for any infringement of Airservices' Intellectual Property Rights.

28.2 Conditions of use

28.2.1 Airservices will provide to the Contractor Airservices Material and the Contractor must ensure that Airservices Material is used strictly in accordance with any conditions or restrictions specified in Item 56 and any direction by Airservices.

28.2.2 The Contractor must, at all times, ensure that the Airservices Material is:

- (a) used or transmitted in a manner that is consistent with the Contractor's obligations under the Contract and at Law and reasonably protected against loss, corruption, unauthorised access, use, modification, disclosure or other misuse;
- (b) kept safe and in its original state (fair wear and tear excepted); and
- (c) not transferred outside of Australia without Airservices' prior written consent.

28.2.3 Subject to the Contract, the Contractor is not permitted to otherwise use, disclose, distribute or deal with the Airservices Material without Airservices' prior written consent.

28.3 Protection against Harmful Code

28.3.1 The Contractor must take reasonable steps to detect and prevent any Harmful Code from being introduced by the Contractor into (or sent from) any deliverables, or Airservices' systems, including by:

- (a) use of the most appropriate and up-to-date virus detection software for preventing and detecting Harmful Code;
- (b) implementing practices and procedures that are consistent with industry best practice;

- (c) pro-actively monitoring known threats of Harmful Code; and
- (d) informing Airservices of any Harmful Code and the steps necessary to avoid the introduction of Harmful Code.

28.3.2 If the Contractor becomes aware that any Harmful Code has been introduced into any deliverables or Airservices' systems, the Contractor must:

- (a) promptly notify Airservices;
- (b) provide all information reasonably requested by Airservices in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have;
- (c) take all necessary remedial action to:
 - (i) eliminate the Harmful Code and prevent its re-occurrence; and
 - (ii) rectify any consequences of the Harmful Code (to the extent that they are capable of rectification);
- (d) if the Harmful Code causes a loss of data or loss of operational efficiency, assist Airservices to mitigate the losses and restore the efficiency and/or data;
- (e) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source; and
- (f) ensure that sufficient Contractor resources and technology are available to meet its obligations under this clause 28.3.2.

28.3.3 Subject to clause 28.3.5, the Contractor must perform its obligations under this clause 28.3 at no additional cost to Airservices.

28.3.4 To the extent that the Harmful Code was introduced by the Contractor or a Contractor Representative, the Contractor must pay the costs and expenses of the activities set out in clauses 28.3.2.

28.3.5 If Harmful Code was introduced by Airservices or a third party and the Contractor incurs costs and expenses in connection with the activities set out in clause 28.3.2, the parties will, in good faith, agree the remedial services that the Contractor will carry out and a reasonable amount of fees, costs and expenses that Airservices will pay to the Contractor for the performance of these activities.

28.4 Dealing with Airservices Material on termination or expiry of the Contract

28.4.1 Subject to clause 28.4.2 on expiry or termination of the Contract, or on written request from Airservices, the Contractor must:

- (a) immediately return to Airservices all Airservices Material;
- (b) if requested by Airservices, destroy all Airservices Material comprising of documentation (including all archival copies) in its custody or control; and / or
- (c) pay the cost of repair or replacement (at Airservices' option) of any Airservices Material comprising equipment which has been degraded or destroyed beyond fair wear and tear.

28.4.2 The obligation in clause 28.4.1 does not prevent the Contractor from retaining and using one copy of Airservices Material after the performance of the Contractor's Activities:

- (a) solely for the purposes of complying with its record keeping, reporting and regulatory obligations; or
- (b) that is stored in electronic back-up tapes or records maintained in the ordinary course of the Contractor's business that are not readily capable of search or destruction,

provided that the Airservices Material is always treated as confidential to Airservices.

29. Confidentiality

29.1 Prohibition on use and disclosure

Subject to clause 29.2, each party must protect the Confidential Information of the other party and must not make public, disclose or use any Confidential Information of the other party except in accordance with the Contract, unless the other party gives its prior written consent.

29.2 Exceptions to obligations

The obligations on each party under clause 29.1 will not be taken to have been breached to the extent that Confidential Information of the other party:

- 29.2.1 is disclosed to a party's Representative for the purposes of performing its obligations, or exercising its rights, under the Contract;
- 29.2.2 is disclosed by Airservices to the responsible Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- 29.2.3 is shared by Airservices within the Commonwealth, where this serves the Commonwealth's legitimate interests;
- 29.2.4 is disclosed by Airservices to the Auditor General, Ombudsman, or Australian Information Commissioner or their delegates; or
- 29.2.5 is required by Law, the rules of a stock exchange or the Contract to be disclosed.

29.3 Disclosure of Confidential Information

Where a party discloses Confidential Information of the other party to another person:

- 29.3.1 pursuant to clauses 29.2.1 or 29.2.3, the disclosing party must:
 - (a) notify the receiving person that the information is Confidential Information; and
 - (b) not provide the Confidential Information unless the receiving person agrees to keep such information confidential; or
- 29.3.2 pursuant to clauses 29.2.2 or 29.2.4, Airservices will notify the receiving party that the information is Confidential Information.

29.4 Notification of infringement

If the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 29, or the corresponding obligations of any of its Personnel, the Contractor must:

29.4.1 notify Airservices immediately; and

29.4.2 comply with any reasonable directions from Airservices with respect to remedying that infringement.

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29.6 Survival

This clause 29 survives the termination or expiry of the Contract.

30. Monitoring progress

30.1 Communications

The Airservices Representative and the Contractor's Representative (or their nominees) will represent the parties for the day to day purposes of the Contract.

30.2 Notification

If, in the performance of the Contractor's Activities, the Contractor becomes aware of something that may affect the safety of air navigation or Airservices' capacity to perform its statutory functions, the Contractor must notify Airservices as soon as possible.

30.3 Progress meetings

30.3.1 The parties will meet:

- (a) at the times and in the manner set out in the Statement of Requirements (or otherwise as agreed in writing between the parties); and
 - (b) as reasonably requested by Airservices from time to time,
- to discuss any issues in relation to the Contract or the provision of the Contractor's Activities and the Works.

30.3.2 The Contractor must ensure that the Contractor's Representative and Airservices must ensure the Airservices Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Contractor's Activities and the Works raised by either party.

30.4 Reports and information

The Contractor must provide Airservices with:

- 30.4.1 reports as required by the Contract or as reasonably required by the Airservices Representative; and
- 30.4.2 other information reasonably requested by the Airservices Representative, including for discussion at progress meetings.

31. Dispute resolution

31.1 Procedure for resolving Disputes

Unless otherwise expressly provided in the Contract, the parties agree that any Dispute must be resolved in accordance with this clause 31.

31.2 Notice of Dispute

If a Dispute arises between the parties, then either party may give a notice (**Notice of Dispute**) to the other party which must state that it is a notice under this clause 31.2 and include or be accompanied by particulars of the Dispute.

31.3 Negotiation between Designated Officers

31.3.1 Within 10 Business Days after the receipt of the Notice of Dispute under clause 31.2, the Designated Officers must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) if the Designated Officers cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

31.4 Expert determination

31.4.1 If a Dispute is not resolved within 20 Business Days after receipt of the Notice of Dispute under clause 31.2 (whether or not the Designated Officers met in accordance with clause 31.3.1), either party may by written notice to the other party submit the Dispute to expert determination.

31.4.2 In respect of the expert determination under clause 31.4.1:

- (a) subject to any provisions to the contrary in this clause 31, the expert determination will be conducted in accordance with the Resolution Institute's Expert Determination Rules (version dated 3 August 2016);
- (b) the expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) disclose to the parties any interest he or she has in the outcome of the expert determination;
 - (iii) not communicate with one party to the expert determination without the knowledge of the other parties;
 - (iv) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (v) invite and receive, if made, submissions from all of the parties;
 - (vi) on receipt of a written submission from one party, ensure that a copy of such submission is given promptly to the other parties;
 - (vii) not accept verbal submissions from one party unless all of the other parties are present;
 - (viii) take into consideration all documents, information and other material which the parties give the expert and which the expert, in its reasonable opinion, considers relevant; and
 - (ix) to the extent permissible by Law, not apply or have regard to the provisions of Proportionate Liability Legislation;
- (c) the determination of the expert must be in writing; and
- (d) each party must:
 - (i) bear its own costs in respect of the expert determination; and
 - (ii) unless determined otherwise by the expert, pay one-half of the expert's costs.

31.4.3 Within 30 Business Days (or within such longer period as may be agreed by the parties and the expert) after the acceptance by the expert of its appointment, the expert must give the parties its determination in writing, which must include reasons.

31.4.4 The determination of the expert given under clause 31.4.3:

- (a) will be final and binding unless:
 - (i) a party gives a notice of appeal to the other party within 15 Business Days after the determination is given; and
 - (ii) it is reversed, overturned or otherwise changed under the procedure in clause 31.5; and
- (b) must be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 31.5.

31.5 Litigation

31.5.1 If:

(a) a Dispute is submitted to expert determination under clause 31.4.1; and

(b) a party has given a notice in accordance with clause 31.4.4(a)(i),

then either party may commence court proceedings in relation to the Dispute.

31.5.2 Subject to clause 31.5.3, the parties must follow the dispute resolution procedures set out in this clause 31 before either party commences court proceedings or takes similar action in relation to any Dispute.

31.5.3 Nothing in this clause 31 will operate to limit or otherwise affect the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

31.6 No delay to the activities

Despite the existence of any Dispute, unless notified in writing by Airservices, the Contractor must continue to perform its obligations under the Contract.

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34. Notices**34.1 Delivery of notice**

34.1.1 A notice or other communication required or permitted to be (or otherwise contemplated as being) given to a party or the Airservices Representative under the Contract must be in writing and may be delivered:

- (a) in accordance with Item 57; or
- (b) where nothing is provided in Item 57, then:
 - (i) personally to the party or the Airservices Representative;
 - (ii) by leaving it at the address of the party or the Airservices Representative; or

- (iii) by posting it by prepaid post addressed to the party or the Airservices Representative at the address of the party or the Airservices Representative.

34.1.2 Without limiting clause 34.1.1, if the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

34.2 Particulars for delivery

34.2.1 The address (and, if applicable, email addresses) of:

- (a) each party is set out in Item 57; and
- (b) the Airservices Representative is set out in Item 57,

or as notified by a party to the other parties or the Airservices Representative to the parties in accordance with this clause 34.

34.2.2 Any party or the Airservices Representative may change its address by giving notice to the other parties and the Airservices Representative (as applicable).

34.3 Time of service

A notice or other communication is deemed delivered:

34.3.1 if delivered personally or left at the person's address, upon delivery;

34.3.2 if posted within Australia to an Australian address:

- (a) using regular prepaid post or registered post, 6 Business Days after posting;
- (b) using priority prepaid post or priority registered post, 4 Business Days after posting; and
- (c) using express post, 2 Business Days after posting;

34.3.3 if posted from a place to an address in a different country, 10 Business Days after posting;

34.3.4 if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth);

34.3.5 except in respect of any Payment Schedule, if received after 5.00pm in the place it is received, at 9.00am on the next Business Day; and

34.3.6 except in respect of any Payment Schedule, if received on a day which is not a Business Day in the place it is received, at 9.00am on the next Business Day.

34.4 Electronic Documents

If the Contractor is required to provide any document in electronic form under the Contract, the document must be provided in a format nominated by the Airservices Representative.

35. Miscellaneous**35.1 Applicable law**

The Contract is governed by the Law of the jurisdiction where the Site is located and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of that jurisdiction.

35.2 Hours of working

Unless otherwise agreed by the Airservices Representative, the hours of work applicable to the Contractor's Activities, methods of access, permissions and consents and other relevant matters to be carried out on-Site are those specified in Item 58.

35.3 Entire agreement

The Contract represents the entire agreement of the parties and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, by the parties, or their Personnel, relating to its subject matter.

35.4 Relationship

35.4.1 A party is not, and must not represent itself as, an employee, agent, partner or joint venturer of the other party. The relationship between Airservices and the Contractor is and will remain for the term of the Contract one of principal and independent contractor.

35.4.2 The Contractor's Personnel involved in the performance of the Contract are not, and the Contractor must ensure they do not represent themselves as, legal representatives, agents, officers, partners, servants or employees of Airservices.

35.5 Assignment of rights

The Contractor may not assign any of its rights under the Contract without Airservices' written consent, which will not be unreasonably withheld. A change in Control is deemed to be an assignment.

35.6 Variation

Subject to clause 21, the Contract may be varied only in writing signed by both parties.

35.7 Waiver

A provision of, or a right created under, the Contract may not be waived except in writing signed by the party or parties to be bound.

35.8 Rights cumulative

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

35.9 Prompt performance

If there is a time for performance of an obligation under the Contract, the performing party agrees to perform by the time specified.

35.10 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to the Contract and to perform its obligations under it, including to sign, execute or otherwise deal with any document.

35.11 Documentation to be in English

All documentation and correspondence provided under the Contract must be in English.

35.12 Costs

Each party must pay its own costs of negotiating, preparing and executing the Contract.

35.13 Counterparts

The Contract may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

35.14 Ownership of Contract

All copyright and other Intellectual Property Rights contained in the Contract remain the property of Airservices.

35.15 Approvals and consents

Except where the Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the Contract.

35.16 No merger

The rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

35.17 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Contract and any transaction contemplated by it.

35.18 Severability

A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.

35.19 Airservices may act

Airservices may, either itself or by a third party, perform an obligation under the Contract which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by Airservices in so performing such an obligation will be a debt due from the Contractor to Airservices.

35.20 Survival

The following clauses survive the termination and expiry of the Contract:

35.20.1 clause 13 (Subcontracting);

- 35.20.2 clause 16 (Risk of Loss and Damage);
- 35.20.3 clause 17 (Insurance);
- 35.20.4 clause 19.4 (Defects after the Date of Completion);
- 35.20.5 clause 23 (GST);
- 35.20.6 clause 26.1 (Compliance with security obligations);
- 35.20.7 clause 27 (Intellectual Property Rights and Moral Rights);
- 35.20.8 clause 29 (Confidentiality);
- 35.20.9 clause 31 (Dispute Resolution);
- 35.20.10 clause 32.9 (Termination for convenience);
- 35.20.11 clause 35 (Miscellaneous);
- 35.20.12 clauses 6, 7, 8, 9 and 10 of Schedule 1 (Commonwealth Regulatory Requirements); and
- 35.20.13 any other provisions that by implication from their nature are intended to survive termination or expiry of the Contract.

36. Commissioning

36.1 Commissioning Plan

- 36.1.1 The Contractor must prepare the Commissioning Plan and submit it to the Airservices Representative under clause 3A.
- 36.1.2 The Commissioning Plan prepared and submitted by the Contractor under this clause 36.1 must:
 - (a) be prepared in consultation with, and otherwise address and take proper account of the reasonable requirements of, Airservices;
 - (b) include the details and content required by the Statement of Requirements;
 - (c) include the proposed Commissioning Work for each relevant part of the Works;
 - (d) include the Proof of Performance Tests applicable in respect of the Works;
 - (e) include such other information which may be reasonably requested from time to time by Airservices;
 - (f) be prepared using the software nominated by Airservices (if any); and
 - (g) otherwise comply with, and satisfy, the Contract (including the Statement of Requirements).

36.2 Commissioning Work

- 36.2.1 The Contractor must, as soon as reasonably practicable, commence the carrying out of the Commissioning Work in respect of each relevant part of the Works.
- 36.2.2 The Contractor must:
- (a) carry out the Commissioning Work in accordance with the Current Commissioning Plan;
 - (b) not depart from the Current Commissioning Plan; and
 - (c) complete the Commissioning Work in respect of each part of the Works in accordance with the Contract prior to the commencement of any Proof of Performance Tests under clause 19.2A.
- 36.2.3 Nothing in this clause 36.2 will limit or otherwise affect the Contractor's obligations and liabilities under clause 20.4.
- 36.2.4 The Contractor must complete the Commissioning Work as a condition precedent to Completion of the Works or a Stage (as applicable).

37. O&M Plan

- 37.1.1 The Contractor must prepare the O&M Plan and submit it to the Airservices Representative under clause 3A.
- 37.1.2 The Contractor must submit the O&M Plan to Airservices as a condition precedent to Completion of the Works or a Stage (as applicable).
- 37.1.3 The O&M Plan prepared and submitted by the Contractor under this clause 37 must:
- (a) be prepared in consultation with, and otherwise address and take proper account of the reasonable requirements of, Airservices;
 - (b) include the details and content required by the Statement of Requirements;
 - (c) include such other information which may be reasonably requested from time to time by Airservices;
 - (d) be prepared using the software nominated by Airservices (if any); and
 - (e) otherwise comply with, and satisfy, the Contract (including the Statement of Requirements).

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Schedule 1 Contract Particulars

Item	Clause references	Description	Requirement / Particulars	
1.	1.1 (definition of Airservices)	Airservices	Name	Airservices Australia
			ABN	59 698 720 886
			Address	Alan Woods Building, 25 Constitution Avenue, Canberra ACT 2601
			Email	s47F [redacted] @AirservicesAustralia.com
			Contact	s47F [redacted]
2.	1.1 (definition of Contractor)	Contractor	Name	Enviro Pacific Services Limited
			ACN	111 372 064
			Address	Level 5, 123 Epping Road, Macquarie Park, NSW 2113
			Email	s47F [redacted] @enviropacific.com.au
			Contact	s47F [redacted]
3.	1.1 (Project)	Project	Airport	s47G [redacted]
			Project	[redacted]
4.	1.1 (definition of Contract Documents)	Contract Documents	The Contract will be comprised of the following documents: 1. the Formal Instrument; 2. the Terms of Engagement; and 3. Schedule 1 to Schedule 12 (inclusive).	
5.	1.1 (Contract Price)	Contract Price	s47G [redacted]	
6.	Not used			
7.	1.1 (definition of Airservices Representative)	Airservices Representative	s47F [redacted] Email: s47F [redacted] @AirservicesAustralia.com	

Item	Clause references	Description	Requirement / Particulars
8.	1.1 (definition of Applicable Policies)	Applicable Policies	s47G
9.	1.1 (definition of Applicable Standard)	Applicable Standards	
10.	1.1 (definition of Commissioning Work)	Commissioning Work	
11.	1.1 (definition of Compensable Cause)	Compensable Causes	
12.	1.1 (definition of Contractor's Representative)	Contractor's Representative	
13.	1.1 (definition of Current Management Plan)	Management Plans which the Contractor must comply with	
14.	1.1 (definition of Date for Completion)	Date for Completion	
15.	Not used		
16.	1.1 (definition of Design Documents)	Design Documents	
17.	1.1 (definition of Designated Officers)	Designated Officers	
18.	1.1 (definition of Excepted Approvals)	Approvals the Contractor is not required to obtain	
19.	1.1 (definition of O&M Term)	O&M Term	

Item	Clause references	Description	Requirement / Particulars	
20.	1.1 (definition of Provisional Sum Work)	Provisional Sum Work	Provisional Sum Work	Amount (excl. GT)
			s47G	
21.	1.1 (definition of Services Levels)	Service Levels required for the performance of the O&M Services	s47G	
22.	1.1 (definition of Site)	Site	s47G	
			The Site is more particularly described in the Statement of Requirements. An indicative plan of the Site is set out in Schedule 8.	
23.	1.1 (definition of Specified Personnel)	Specified Personnel	Name	Role
			s47F	
24.	1.1 (definition of Specified Subcontractors and Specified Subcontractor Work)	Specified Subcontractors and Specified Subcontractor Work	Specified Subcontractor	Specified Subcontractor Work
			s47G	

Item	Clause references	Description	Requirement / Particulars	
25.	1.1 (definition of Works Commencement Date)	Works Commencement Date	s47G	
26.	Not used			
27.	3.6.1	Samples the Contractor is required to obtain		
28.	4.2.1(c)	Preconditions to access to the Site		
29.	4.2.1	Date Airservices must ensure the Contractor has access to the Site		
30.	4.12.1	Application of clause 4.12 (Dilapidation Reports)		
31.	4.12.2	Contractor required to obtain dilapidation report		
32.	Not used			
33.	Not used			
34.	Not used			
35.	Not used			

Item	Clause references	Description	Requirement / Particulars	
36.	Not used			
37.	Not used			
38.	Not used			
39.	Not used			
40.	Not used			
41.	Not used			
42.	Not used			
43.	17.2.1(d)	Public liability insurance (minimum limit of liability)	s47G	
44.	17.3.1(b)	Environmental liability insurance	s47G	
45.	17.5.1(b)	Motor Vehicle Insurance	s47G	
46.	17.7.1(c)	Professional Indemnity Insurance	s47G	
47.	17.7.2	Professional indemnity insurance for consultants and subcontractors	Categories of Consultants and Subcontractors	Level of Coverage
			s47G	
48.	20.8	Maximum amount of daily delay damages	s47G	
49.	21.2.2(d)(ii)	Percentage increase for profit	s4	
50.	21.2.2(d)(i)	Percentage deduction for	s4	

Item	Clause references	Description	Requirement / Particulars	
		profit and overheads		
51.	22	Type of Reference Dates that Apply		
		(a) Type of Reference Dates that Apply	s47G	
		If Progressive Payment Claim Reference Dates Apply:		
		(b) Progressive Payment Claim Reference Date	s47G	
		If Milestone Payment Claim Reference Dates Apply:		
		(c) Payment Milestone	Milestone	Milestone Amount
			s47G	
		Milestone Dates		
		(d) Milestones	Milestone	Milestone Date
			s47G	
52.	22.3.1, 22.6.5 and 22.6A.5	Time period for issuing Payment Schedule	New South Wales Victoria Tasmania ACT Northern Territory	s47G
			Queensland South Australia Western Australia	s47G
53.	22.4.3(a)	Time period for payment	Northern Territory Victoria ACT Tasmania	s47G
			New South Wales Queensland South Australia	s47G

Item	Clause references	Description	Requirement / Particulars	
			Western Australia	s47G
54.	22.8.4	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority	Place	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority
			ACT	Australian Capital Territory Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			New South Wales	New South Wales Chapter of the Resolution Institute
			Northern Territory	Northern Territory Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			Queensland	Queensland Building and Construction Commission
			South Australia	South Australian Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			Tasmania	Tasmanian Chapter of the Resolution Institute
			Victoria	Any one of the following: - Victorian Chapter of the Resolution Institute; - Australian Solutions Centre Pty Limited; - RICS Dispute Resolution Service; - Adjudicate Today Pty Limited; - Australian Solutions Centre Pty Limited; or - Rialto Adjudications Pty Limited.
			Western Australia	Western Australian Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
55.	25.5.1	Liquidated Damages	Do liquidated damages apply?	s4
			Rate of liquidated damages:	s47

Item	Clause references	Description	Requirement / Particulars
56.	28.2.1	Additional conditions or restrictions for use of the Airservices Material	s47
57.	34.1.1, 34.1.2	Address for Service of Notices	Airservices Address: GPO Box 367, Canberra ACT 2601 Email: s47F @AirservicesAustralia.com Airservices Representative Address: GPO Box 367, Canberra ACT 2601 Email: s47F @AirservicesAustralia.com Contractor Address: 591 Blackburn Road, Notting Hill, VIC 3168 Email: s47F @enviropacific.com.au
58.	35.2	Hours of Working	All works must be carried out 7:00am and 7:00pm on each day except Saturdays, Sundays and Public Holidays.
59.	Not used		
60.	Not used		
61.	38.10.1(a)	Period Airservices may extend O&M Term	s47G
62.	38.10.2	Total period Airservices may extend O&M Term	s47G
63.	38.10.3	Amount O&M Contract Price will be increased	s47G
64.	16.3	Limitation of liability	s47G
65.	1.1 (definition of Baseline Information)	Baseline Information	s47G

Schedule 2 Commonwealth Regulatory Requirements

1. The WHS Accreditation Scheme

Where the Contract Price is \$4 million (GST inclusive) or more, the Contractor must:

- (a) where the Contractor is the builder in respect of the Works:
 - (i) maintain accreditation under the WHS Accreditation Scheme while building work is carried out; and
 - (ii) comply with:
 - (A) all conditions of its accreditation under the WHS Accreditation Scheme; and
 - (B) the National Construction Code performance requirements in relation to building materials; or
- (b) where the Contractor is engaging the builder in respect of the Works, ensure that the builder:
 - (i) is accredited under the WHS Accreditation Scheme at the time the contract for building work is signed;
 - (ii) is contractually required to maintain its accreditation under the WHS Accreditation Scheme while carrying out the building work; and
 - (iii) complies with:
 - (A) all conditions of its accreditation under the WHS Accreditation Scheme; and
 - (B) the National Construction Code performance requirements in relation to building materials.

2. Engagement of Illegal Workers prohibited

2.1 Definitions

In this clause 2 of this Schedule 1, the following additional definition applies:

Term	Definition
Illegal Worker	a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after the person's visa has expired; or (c) is working in breach of the person's visa conditions.

2.2 Obligations

- (a) The Contractor must ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Contractor must make compliance by any subcontractors with the provisions of this clause 2 of this Schedule 1 a condition of any subcontract.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Contractor's Activities.

- (d) For the avoidance of doubt, compliance with the Contractor's obligations under this clause 2 of this Schedule 1 will not constitute a Force Majeure Event or give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under the Contract.
- (e) When requested by Airservices in writing to do, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied, and is complying, with its obligations under this clause 2 of this Schedule 1.

3. Indigenous Procurement Policy

3.1 Definitions

In this clause 3 of this Schedule 1, the following additional definitions apply:

Term	Definition
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy available at: https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp , as updated from time to time.

3.2 Application

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- (b) The Contractor must use its best endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,
 in the performance of the Contractor's Activities.
- (c) On request by Airservices, the Contractor must provide a report to Airservices on how it has met its obligations in clause 3.2(b).

4. Workplace Gender Equality Act

- (a) This clause 4 of this Schedule 1 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the WGE Act.
- (b) The Contractor must:
 - (i) comply with its obligations, if any, under the WGE Act; and
 - (ii) not enter into a subcontract made in connection with any Contractor's Activities with a subcontractor or subconsultant named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the term of the Contract, the Contractor must promptly notify the Airservices Representative of that fact.
- (d) If the term of the Contract exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Contract Date and following this, annually, to the Airservices Representative.

- (e) Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under the Contract.

5. Protection of Personal Information

5.1 Application of this clause

This clause 5 of this Schedule 1 applies only where the Contractor deals with Personal Information when, and for the purposes of, performing the Contractor's Activities.

5.2 Obligations

The Contractor must:

- (a) only use that Personal Information for the purposes of performing its obligations under the Contract;
- (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by Airservices and must not do or omit to do anything that causes Airservices to be in breach of an Australian Privacy Principle;
- (c) comply with any directions, guidelines, determinations or recommendations of the Australian Information Commissioner, to the extent that they are not inconsistent with the requirements of the Contract;
- (d) ensure that any subcontract entered into for the purpose of fulfilling the Contractor's obligations under the Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 5 of this Schedule 1, including this requirement in relation to any further contracts entered into by the subcontractor; and
- (e) if the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 5 of this Schedule 1, or the corresponding obligations of any of its Personnel, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

5.3 Survival

This clause 5 of this Schedule 1 survives the termination or expiry of the Contract.

6. Accounts, books and records

6.1 Obligations

Without limiting any other obligation under the Contract, the Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by Airservices under the Contract to be determined.

6.2 Survival

This clause 6 of this Schedule 1 survives the termination or expiry of the Contract.

7. Freedom of information

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Freedom of Information Act 1982* (Cth) (the **FOI Act**); and
 - (ii) the Contract may be a 'Commonwealth contract' and the Contractor may be a 'contracted service provider', within the meaning of the FOI Act.
- (b) Where Airservices has received a request under the FOI Act for access to a document created by, or in the possession of, the Contractor or its subcontractors that relates to the Contract, the Contractor must provide the document to Airservices, on request.

- (c) The parties must promptly comply with their obligations under the FOI Act, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 7 of this Schedule 1 and the FOI Act.

8. Public interest disclosure

- (a) The Contractor acknowledges and agrees that:
 - (i) Airservices is an agency that is subject to the *Public Interest Disclosure Act 2013* (Cth) (the **PID Act**);
 - (ii) the Contract may be a 'Commonwealth contract', the Contractor and its subcontractors may be a 'contracted service provider' and any officers and employees of the Contractor or its subcontractors may be a 'public official' within the meaning of the PID Act; and
 - (iii) conduct engaged in by the Contractor or any subcontractor in relation to entering into, or giving effect to the Contract, may be 'disclosable conduct' under the PID Act.
- (b) The parties must promptly comply with their obligations under the PID Act and Airservices' public interest disclosure policies, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 8 of this Schedule 1 and the PID Act.

9. Audit and access

- (a) At any time during the execution of the Works and the period of 10 years following the issue of the Final O&M Certificate, the Contractor and its Personnel must grant Airservices, its nominees and the Auditor-General access at reasonable times and on reasonable notice (except where there is a suspected breach of the Contract in which case no notice is required) to:
 - (i) any premises or site of the Contractor and its Personnel used in relation to the Contract;
 - (ii) any Personnel of the Contractor engaged in relation to the performance of the Contract; and
 - (iii) any of Airservices Material, data, records, account and other material relevant to the performance of the Contract under the control or custody of the Contractor or its Personnel for inspection and copying.
- (b) In complying with this clause 9 of this Schedule 1, the Contractor must:
 - (i) provide all such facilities and assistance and answer all questions of the Airservices Representative or any nominated person;
 - (ii) in the case of documents or records stored on a medium other than in writing, the Contractor and its Personnel must make available on request at no additional cost to Airservices such reasonable facilities as may be necessary to enable a legible reproduction to be created; and
 - (iii) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 9 of this Schedule 1 as if the subcontractor were the Contractor.

10. Modern Slavery

- (a) In this clause 10 of this Schedule 1:

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth); and

Modern Slavery Laws means any law, statute or regulation which:

- (i) prohibits Modern Slavery (including exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct) and is applicable or otherwise in force in the jurisdiction in which Airservices or the Contractor is registered or conducts business or in Airservices' sites; and/or
 - (ii) requires the Contractor to issue disclosures to the public and/or any government agency, connected with Modern Slavery in its operations and supply chains.
- (b) The Contractor must ensure that in performing its obligations under the Contract, it and its Personnel:
 - (i) do not engage in any conduct or omission which may:
 - (A) contravene any Modern Slavery Laws; or
 - (B) fail to comply with any Airservices or Commonwealth policy relating to Modern Slavery; and
 - (ii) provide all reasonable assistance required by Airservices to fulfil its obligations, including reporting obligations, under the *Modern Slavery Act 2018* (Cth).

Schedule 3 Statutory Declaration

I _____

(authorised officer)

OF _____

do solemnly and sincerely declare that, in relation to the contract between

_____ ACN _____ and _____
 _____ ACN _____ (**Contractor**) for the _____ (**Contract**):

1. I hold the position of _____ of the Contractor
2. I am in a position to know the facts contained herein and I am duly authorised to bind the Contractor by the terms of this declaration.
3. All subcontractors, consultants and suppliers who have at any time been engaged by the Contractor in connection with the work under the Contract have been paid all amounts which as at the date of this declaration are due and payable to them in respect of the work under, or in connection with, the Contract.
4. All workers (including employees and contractors) who have at any time been engaged by the Contractor in connection with the work under the Contract:
 - (a) have been paid all remuneration and benefits which as at the date of this declaration are due and payable to them in respect of their employment or under, or in connection with, the Contract; and
 - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment or work in respect of, or in connection with, the Contract in accordance with to any award, enterprise agreement, Act or Regulation.
5. The Contractor has been paid all that is due and payable to it under the Contract as at the date of this declaration, except for any amounts claimed in any payment claim with which this declaration is provided.
6. The Contractor has paid all relevant fees and maintains all insurance policies the Contractor is required to maintain under the Contract.
7. The Contractor is solvent and able to meet its debts as and when they fall due.
8. The Contractor has been informed (by statutory declaration in equivalent terms to this declaration) by each of its subcontractors, consultants and suppliers engaged by the Contractor in connection with the work under the Contract that all their respective employees, secondary subcontractors, suppliers and consultants have been paid all remuneration and other amounts or benefits due and payable to them in connection with the work under the Contract.
9. I personally know the truth of the matters which are contained in this declaration.
10. I am not aware of anything which would contradict the statements made in the statutory declarations provided to the Contractor by its subcontractors, consultants and suppliers, as referred to in this declaration.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the [Inter Note: Select applicable legislation: *Evidence (Miscellaneous Provisions) Act 1958* (VIC) **OR** *Oaths Act 1967* (Qld) **OR** *Oaths Act 1936* (SA) **OR** *Oaths and Affirmations Act 1984* (ACT) **OR** *Oaths Act 1900* (NSW) **OR** *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) **OR** *Oaths, Affidavits and Statutory Declarations Act 2010* (NT) **OR** *Oaths Act 2001* (TAS)].

Declared at
 (place)

on
 (date)

.....
 (Signature)

Before me.....
 (Justice, Commissioner for Declarations or authorised person)

[User Note: NSW Only – Delete for other States and Territories]

Certificate under section 34(1)(C) Of *Oaths Act* 1900 (NSW)

*Please cross out any text that does not apply

I(name),

a(qualification to be authorised witness),

certify the following matters concerning the making of this statutory declaration by the person who made it:

1 *I saw the face of the person or

*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2 *I have known the person for at least 12 months or

*I have confirmed the person's identity using an identification document and the document I relied on was([describe identification document relied on]).

.....
(signature of authorised witness)

Date:

**The following persons may witness a Statutory Declaration in the State of New South Wales:

- (i) a Registrar-General or Deputy Registrar-General;
- (ii) a Justice of the Peace;
- (iii) a Notary Public;
- (iv) an Australian legal practitioner authorised by section 27(1) of the *Oaths Act* 1900;
- (v) a commissioner of the court for taking affidavits; and
- (vi) a person by law authorised to administer an oath under the *Oaths Act* 1900.

Schedule 4 Deed of Novation

Parties [] ABN [] of []
 ("Incoming Contractor")
 [] ABN [] of []
 ("Subcontractor")
 [] ABN [] of []
 ("Contractor")

Recitals

- A. The Contractor and the Subcontractor are parties to the Contract.
- B. The Incoming Contractor, the Subcontractor and the Contractor have agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and Interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"Contract" means, subject to clause 1.2(l) below, the agreement between the Contractor and the Subcontractor described in Annexure 1.

"Contract Guarantees" means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

"Effective Date" means [the date of this deed].

"GST" means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

"Liability" means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

"Related Entity" has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

"Services" means the services provided or to be provided under the Contract.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more

- persons binds or benefits them jointly and severally;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **"includes"** in any form is not a word of limitation;
 - (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
 - (l) unless the context otherwise requires, references to the Contract mean the Contract as amended by the terms of this deed; and
 - (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the deed or any part of it.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

3. Novation

3.1 Assumptions of rights and obligations

- (a) The Incoming Contractor:
 - (i) will be bound by and must comply with the terms of the Contract as amended by this deed, and will enjoy the rights and benefits conferred on the Contractor under the terms of the Contract; and
 - (ii) must assume the obligations and Liability of the Contractor under the terms of the Contract,

in all respects as if the Incoming Contractor had originally been named in the Contract as a party instead of the Contractor.
- (b) The Subcontractor must comply with the terms of the Contract as if the Incoming Contractor were originally named in the Contract in place of the Contractor.
- (c) Any reference in the Contract to the Contractor shall be read as a reference

to the Incoming Contractor.

3.2 Release by Subcontractor

- (a) The Subcontractor releases the Contractor from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Contractor under or in respect of the Contract.
- (b) This release does not affect any rights the Subcontractor may have against the Incoming Contractor as a result of the assumption by the Incoming Contractor under the terms of this deed of the obligations and Liability of the Contractor under the terms of the Contract.

3.3 Release by Contractor

The Contractor releases the Subcontractor from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any Claim it has, or but for this clause would have had, against the Subcontractor under or in respect of the Contract,

except that nothing in this clause affects the obligations or Liability of the Subcontractor to the Incoming Contractor under or in respect of the Contract.

3.4 Insurance

As from the Effective Date:

- (a) the Incoming Contractor must replace any insurances effected and maintained by the Contractor under the terms of the Contract; and
- (b) the Subcontractor must take the necessary steps to make certain that, for all insurances required to be effected by the Subcontractor under the terms of the Contract, the Incoming Contractor is named in place of the Contractor as required by the Contract.

3.5 Replacement of Guarantees

The Subcontractor and the Incoming Contractor must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Subcontractor, the Incoming Contractor; and
- (b) in the case of the Incoming Contractor, the Subcontractor.

3.6 Payments to the Subcontractor

The parties acknowledge and agree that as at the Effective Date:

- (a) the amount which has been paid to the Subcontractor by the Contractor under the Contract is specified in Annexure 1; and
- (b) the amount which remains to be paid to the Subcontractor by the Incoming Contractor under the Contract is specified in Annexure 1.

4. Overriding Effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment or novation of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Incoming Contractor.

5. Representations and Warranties

5.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

5.2 Authorisations

Each party represents to each other party and must make certain that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

5.3 Binding Obligations

Each party represents to each other party and must make certain that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

6. Duties, Costs and Expenses

6.1 Stamp Duty

The Contractor must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed.

6.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

6.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice;
- (c) if an adjustment event occurs in respect of any supply made by a party under or in connection with this deed, a corresponding adjustment to the consideration and GST amount must be made between the parties and the supplier must issue an adjustment note to the recipient; and
- (d) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

7. General

7.1 Governing Law

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in Annexure 1.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in Annexure 1, and the courts competent to

determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

7.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

7.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

7.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

7.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.7 Further Acts and Documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

7.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Annexure 1

Contract (clause 1.1)	[insert]
The amount which has been paid to the Subcontractor by the Contractor under the Contract (clause 3.6(a))	[insert]
The amount which remains to be paid to the Subcontractor by the Incoming Contractor (clause 3.6(b))	[insert]
State or Territory (clauses 7.1 and 7.2)	[insert]

Executed as a deed

Executed by **[Incoming Contractor's name]**)
[Incoming Contractor's ACN] in accordance)
with section 127(1) of the *Corporations Act*)
2001 (Cth) by being signed by authorised)
persons for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Executed by **[Subcontractor's name]**)
[Subcontractor's ACN] in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth) by being signed by authorised persons)
for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Executed by **[Contractor's name]**)
[Contractor's ACN] in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth) by being signed by authorised persons)
for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Schedule 9 Statement of Requirements

The Statement of Requirements consists of the document titled SS47G
[REDACTED]

The contents of the Statement of Requirements is as set out below.

Released by Airservices Australia under the Freedom of Information Act 1982

Airservices

s47G



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Dated _____ 2025

Parties

Name	Airservices Australia
ABN	59 698 720 886
Address	Alan Woods Building 25 Constitution Avenue Canberra ACT 2601
Short name	Airservices
Name	Enviropacific Services Limited
ACN	111 372 064
Address	Level 5, 123 Epping Road, Macquarie Park, NSW 2113
Short name	Contractor

Background

- A. The Site is (either in whole or in part):
 - A.1 located within the Airport; and
 - A.2 subject to the Lease.
- B. Airservices wishes to engage the Contractor to design, install and maintain the Works.
- C. The Contractor has represented to Airservices that it has the necessary skills and expertise to perform the Works in accordance with the Contract.
- D. Airservices is relying on the Contractor's specialist skills and expertise.

Signing Page

Executed by the parties as a deed

Executed for and on behalf of **Airservices
Australia ABN 59 698 720 886:**

)
)

s47F



Executed as a deed by **Enviropacific
Services Limited ACN 111 372 064** in
accordance with s 127(1) of the *Corporations
Act 2001*:

)
)

Signed by

s47F



Terms of Engagement

1. Definitions and Interpretation

1.1 Definitions

In the Contract unless expressed or implied to the contrary the following terms have the meaning specified below.

ABN has the same meaning as it has in section 41 of *A New Tax System (Australian Business Number) Act 1999* (Cth).

Airport means the airport specified in Item 3.

Airport Building Controller has the meaning given in the *Airports (Building Control) Regulations 1996* (Cth).

Airport Operator means the operator of any airport at which the Contractors Activities are being performed.

Airport Requirements the Airside Access and Works Requirements and any other requirements imposed by the owner, operator and/or any regulator of the Airport.

Airservices means Airservices Australia ABN 59 698 720 886.

Airservices Representative means the person identified in Item 7, or any other person nominated as an Airservices representative from time to time.

Airservices Data means all data and information relating to, or held by, Airservices, including data relating to its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of Airservices.

Airside Access and Works Requirements means the requirements specified in clause 6.

Airside Area means any part of the Site or any land and/or building which is:

- (a) an airside area as defined in the *Aviation Transport Security Act 2004* (Cth); or
- (b) otherwise designated by Airservices as being an airside area.

Airside Works & Services means any part of the Contractor's Activities or the Works that are:

- (a) located or performed within the Airside Area;
- (b) to be executed in such a way or in such a location that they may directly or indirectly affect (or have the potential to affect) the operations or safety of aircraft movements; or
- (c) otherwise notified by Airservices to the Contractor to be Airside Works & Services.

Applicable Policies means the policies and procedures provided to the Contractor by Airservices from time to time or specified in Item 8 and in any other part of the Contract.

Applicable Standard means each standard notified to the Contractor from time to time or specified in Item 9 and in any other part of the Contract.

Approval means any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Proper Authority having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Law which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities; or
- (b) service, occupy and use the completed Works or a completed Stage.

ASIC means an Aviation Security Identification Card.

Auditor-General means the office established under the *Auditor-General Act 1997* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Australian Information Commissioner means the office of that name established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

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Building Certificate means a certificate or other approval issued pursuant to Law which will allow the full occupation and use of the completed Works.

Business Day means to the extent that the Contractor's Activities are carried out in:

- (a) Victoria, a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a day that is wholly or partly observed as a public holiday throughout Victoria;
- (b) Queensland, a day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
 - (iii) any day occurring within any of the following periods:
 - (A) 22 to 24 December;
 - (B) 27 to 31 December; or
 - (C) 2 to 10 January;
- (c) South Australia, any day other than:
 - (i) a Saturday, Sunday or public holiday;
 - (ii) 27, 28, 29, 30 or 31 December; or

- (iii) any other day on which there is a State-wide shutdown of the operations of the building and construction industry;
- (d) Australian Capital Territory, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) 27, 28, 29, 30 or 31 December; or
 - (iii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT);
- (e) New South Wales, any day other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) 27, 28, 29, 30 or 31 December;
- (f) the Northern Territory, any day other than:
 - (i) a Saturday or a Sunday; or
 - (ii) a public holiday; or
 - (iii) a day in the period beginning on 25 December in a year and ending on 7 January in the following year;
- (g) Tasmania, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) a day specified in section 4, Part 1 of Schedule 1, or Part 1 or 2 of Schedule 2 of the *Statutory Holidays Act 2000* (Tas); or
 - (iii) 27, 28, 29, 30 or 31 December; or
- (h) Western Australia, any day other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

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Claim means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commissioning Work means all of the work, tasks, activities and services necessary to commission each relevant part of the Works to the satisfaction of the Airservices Representative, and otherwise in accordance with the Contract, including:

- (a) the work, tasks, activities and services referred to in Item 10 and in any other part of the Contract as being Commissioning Work;
- (b) the carrying out of commissioning tests and all other work, tasks, activities and services in respect of the relevant part of the Works, as contemplated by the Current Commissioning Plan,

but for the avoidance of doubt excludes the carrying out of the Proof of Performance Tests.

Commonwealth means the Commonwealth of Australia.

Commonwealth Regulatory Requirements means the requirements specified in Schedule 1 and any other requirement or policy of the Commonwealth applicable to the Works or the Contractor's Activities.

Compensable Cause means the causes of delay listed in Item 11.

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Certificate of Completion means a certificate issued by the Airservices Representative under clause 25.1.3 or clause 25.1.4.

Completion Payment Claim Reference Date means the date that is the later of:

- (a) the date on which the Last Certificate of Completion is issued; and
- (b) the date on which the Contractor has provided the items required under clause 22.7 and complied with clause 17.9.1.

Confidential Information means information that is by its nature confidential and is:

- (a) designated by a party as confidential;

- (b) described in the Contract as confidential; or
- (c) information of Airservices that the Contractor knows or ought to know is confidential,

but does not include information which is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation.

Contract means the documents listed in Item 4 as forming part of the Contract.

Contract Date mean the date of execution of the Formal Instrument, being:

- (a) if counterparts are not used, the date of execution of the Formal Instrument by the last party to execute; or
- (b) if counterparts are used, the date on which those executed counterparts are exchanged by the parties.

Contract Material means all material:

- (a) created by, for, or on behalf of, the Contractor (including by subcontractors) in connection with the Contract;
- (b) provided, or required to be provided, to Airservices in connection with the Contractor's Activities; or
- (c) at any time derived (in connection with the Contract) from, or based on, the material described in paragraphs (a) or (b).

Contract Price means the aggregate of the D&C Contract Price and the O&M Contract Price.

Contractor means the party specified in Item 2.

Contractor Default Event has the meaning given in clause 32.2.1.

Contractor's Activities includes:

- (a) the design and construction out of the Works;
- (b) the O&M Services; and
- (c) all other things or tasks which are necessary for the Contractor to do to comply with its obligations under the Contract.

Contractor's Representative means the person identified in Item 12.

Contractor Representatives Taxes and Charges means all group tax, fringe benefits tax, payroll tax, PAYG tax deductions, superannuation contributions, superannuation guarantee charges, workers' compensation insurance premiums, penalties and other charges imposed by any government or government authority arising out of or in relation to the supply of the Works and the Contractor's Activities through the Contractor's Representative or the Contractor's Personnel.

Control means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of an entity whether through voting shares, securities, control of the board of directors or otherwise.

Current Commissioning Plan means the latest Commissioning Plan submitted under clause 36.1 which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A.

Current Management Plan means:

- (a) each latest Management Plan submitted under clause 3A which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A; and
- (b) any other management plans which Item 13 or the Contract specifies that the Contractor must comply with (including management plans prepared by, or on behalf of, Airservices).

Current O&M Plan means each latest O&M Plan submitted under clause 37 which has not been commented on or rejected by the Airservices Representative within the time referred to in clause 3A.

D&C Contract Price means:

- (a) where Item 51 specifies that Milestone Payment Claim Reference Dates apply, the sum of the Milestone Amounts; and
- (b) otherwise, the price specified in Item 5 adjusted from time to time by any additions or deductions permitted or required to be made under the Contract.

Date for Completion means the date for Completion specified in Item 14 in relation to the Works or a Stage (as applicable) as adjusted under the Contract.

Date of Completion means the date set out in a Certificate of Completion as the date of which Completion was achieved in respect of the Works or a Stage, or if another date is determined in a final and binding dispute resolution process as the date of which Completion was achieved in respect of the Works or a Stage, that other date.

Defect means:

- (a) any defect, shrinkage, fault or omission in the Contractor's Activities or the Works, including any part of the Contractor's Activities or the Works which is not in accordance with the requirements of the Contract; and
- (b) any inability or failure of the Works to satisfy and achieve the Performance Requirements.

Design Documents means those:

- (a) documents referred to in Item 16; and
- (b) further drawings or specifications supplied to the Contractor by the Airservices Representative during the course of the Contract (if any).

Designated Officer means, in respect of each party, the person specified in Item 17, as may be substituted by the relevant party by notice in writing to the other party (provided such substitute holds the same or higher position as the person being substituted).

Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, order, permission, rejection, request or requirement.

Dispute means any dispute or difference between Airservices and the Contractor arising out of, or in any way in connection with, the Contract, the Contractor's Activities or the Works.

Excepted Approvals means those Approvals that the Contractor is not required to obtain, as specified in Item 18.

Final D&C Certificate has the meaning given in clause 22.6.5.

Final D&C Dilapidation Report means:

- (a) the dilapidation survey provided by the Contractor in accordance with clause 4.12.3, and approved by the Airservices Representative; or
- (b) the dilapidation survey provided by Airservices as the Final D&C Dilapidation Report, including in accordance with clause 4.12.5.

Final D&C Payment Claim has the meaning given in clause 22.6.1.

Final D&C Payment Claim Reference Date means the date that is 12 months after the date of the Last Certificate of Completion.

Final O&M Certificate has the meaning given in clause 22.6A.5.

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Final O&M Payment Claim has the meaning given in clause 22.6A.1.

Final O&M Payment Claim Reference Date means the date that is the day after the expiry of the O&M Term.

Formal Instrument means the formal instrument to which these Terms of Engagement are attached.

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GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Harmful Code means any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, virus, trojan horses, spyware or adware.

Hazardous Substance means any material suspected of containing or likely to contain a substance defined or listed in the National Occupation Health and Safety Commission's (NOHSC) Guidance Notes (NOHSC 1008-2004: "Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1999: "List of Designated Hazardous Substances").

Insolvency Event has the meaning given in clause 32.7.1.

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Item means an Item of Schedule 1.

Last Certificate of Completion means:

- (a) where there are no Stages, the Certificate of Completion; and
- (b) where there are Stages, the Certificate of Completion issued in respect of the last Stage to achieve Completion.

Latent Conditions means those physical conditions at the Site, but excluding weather conditions, which differ materially from those physical conditions which should have been anticipated by a competent and experienced contractor if it had:

- (a) examined the information made available by Airservices to the Contractor prior to the date of the Contract (if any);
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contract Price, including which information would have been obtained by the making of reasonable enquiries;
- (c) inspected the Site and its surroundings as required under the Contract;
- (d) informed itself of the nature of the Work and materials necessary for the proper execution of the Work under the Contract; and
- (e) informed itself of the means of access to, and facilities at, the Site, and, for the avoidance of doubt, excludes any service referred to in clause 11.1.3.

Law means any:

- (a) applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the

Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time; and

- (b) Approval (including any condition or requirement under them).

Loss means damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any amount agreed to be paid by way of settlement or compromise.

Management Plan means each management plan referred to in clause 3A, as amended from time to time in accordance with the Contract, including:

- (a) the Commissioning Plan;
- (b) the O&M Plan; and
- (c) without limiting paragraphs (a) and (b) above, each other management plan which the Statement of Requirements specifies the Contractor is required to prepare.

Milestone means:

- (a) Completion of the Works or a Stage; and
- (b) any other milestone (if any) specified in Item 51

Milestone Amount means (where Item 51 specifies that Milestone Payment Claim Reference Dates apply), in respect of each Milestone, the amount specified in Item 51, as adjusted in accordance with the Contract.

Milestone Payment Claim Reference Date means, where Item 51 specifies that Milestone Payment Claim Reference Dates apply in respect of each Milestone, the date that is the later of:

- (a) the date on which the relevant Milestone is achieved; and

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Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

National Construction Code is comprised of the Building Code of Australia and the Plumbing Code of Australia and provides the minimum necessary requirements for safety, health, amenity and sustainability in the design and construction of new buildings (and new building work in existing buildings) throughout Australia.

Notice of Dispute has the meaning given to that term in clause 31.2.

O&M Contract Price means the price specified in Item 5 adjusted from time to time by any additions or deductions permitted or required to be made under the Contract.

O&M Plan means the operation and maintenance plan prepared by the Contractor in accordance with clause 37, as may be amended in accordance with clause 3A.

O&M Services means:

- (a) all work, services and activities referred to in, or required to comply with, clause 38; and
- (b) the operation and maintenance services in respect of the Works specified in, or required by, the Statement of Requirements and the other parts of the Contract, as well as such operation and maintenance services as are reasonably inferable as being required.

O&M Term means the period specified in Item 19, commencing on the Date of Completion of the Works or a Stage, as may be extended in accordance with clause 38.10.

Performance Requirements means each performance level or requirement, output level or requirement, or other requirement set out in the Statement of Requirements and in any other part of the Contract, as may be adjusted from time to time in accordance with the Contract.

Personal Information has the meaning given in section 6 of the Privacy Act.

Personnel means:

- (a) in respect of Airservices, its employees, agents, contractors, subcontractors, consultants and suppliers, excluding the Contractor; or
- (b) in respect of the Contractor, its Representatives, employees, agents, contractors, subcontractors, consultants and suppliers (and the employees and agents of those contractors, subcontractors, consultants and suppliers).

Prior Work has the meaning given in clause 9.1.

Privacy Act means the *Privacy Act 1988* (Cth).

Progressive Payment Claim Reference Date means, (where Item 51 specifies that Progressive Payment Claim Reference Dates apply), in respect of each month, the date of that month specified in Item 51 until the earliest of:

- (a) termination of the Contract;
- (b) the date that Airservices exercises its rights under clause 32.3.2 to take the whole of the remaining Contractor's Activities out of the hands of the Contractor; and
- (c) the date on which the Last Certificate of Completion is issued; and
- (d) the expiry of the O&M Term.

Project means the project described in Item 3, of which the Contractor's Activities and the Works form part.

Proof of Performance Test means a proof of performance test or acceptance test referred to in the Statement of Requirements and in any other part of the Contract, or which is otherwise necessary to be carried out to demonstrate that the Works have satisfied or attained the Performance Requirements.

Proper Authority means each government and statutory authority having authority or jurisdiction in relation to the Site, the Contractor's Activities or the Works whether under Law or otherwise, and includes a person supplying communications, drainage, electricity, gas, sewerage, water or other services which may be affected by the performance of the Contractor's Activities or the Works.

Proportionate Liability Legislation means to the extent that the Contractor's Activities are to be carried out in:

- (a) Victoria, Part IVAA of the *Wrongs Act 1958* (Vic);
- (b) Queensland, Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (c) South Australia, Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (d) the Australian Capital Territory, Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (e) New South Wales, Part 4 of the *Civil Liability Act 2002* (NSW);
- (f) the Northern Territory, Part 2 of the *Proportionate Liability Act 2005* (NT);
- (g) Tasmania, Part 9A of the *Civil Liability Act 2002* (Tas); and
- (h) Western Australia, Part 1F of the *Civil Liability Act 2002* (WA),

or any equivalent legislation applying in another jurisdiction applicable to a Claim made against a party in relation to the Contract.

Provisional Sum Work means the work or goods referred to in Item 20 for which the sum of money referred to in Item 20 has been included in the D&C Contract Price.

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld).

Reference Date means:

- (a) where, and to the extent, Item 51 specifies that Milestone Payment Claim Reference Dates apply, each of:
 - (i) the Milestone Payment Claim Reference Dates;
 - (ii) the Final D&C Payment Claim Reference Date; and
 - (iii) the Final O&M Payment Claim Reference Date; or
- (b) where, and to the extent, Item 51 specifies that Progressive Payment Claim Reference Dates apply, each of:
 - (i) the Progressive Payment Claim Reference Dates;
 - (ii) the Completion Payment Claim Reference Date;
 - (iii) the Final D&C Payment Claim Reference Date; and
 - (iv) the Final O&M Payment Claim Reference Date.

Representative means in relation to a party, any natural person who is an employee, volunteer, officer, agent, contractor or professional adviser of that party or, in the case of the Contractor, of a subcontractor.

Resolution Institute means the dispute resolution association with that name and the ABN 69 008 651 232.

Schedule means a schedule to the Contract.

Secure Area has the meaning given to that term in the *Aviation Transport Security Regulations 2005* (Cth) and includes any other area where an ASIC is required for access.

Service Levels means the required levels of performance for the O&M Services as specified in Item 21.

Site means the site for the Contractor's Activities and the Works as described in Item 22.

Site Dilapidation Report means:

- (a) the dilapidation survey provided by the Contractor in accordance with clause 4.12.2, and approved by the Airservices Representative; or
- (b) the dilapidation survey provided by Airservices as the Site Dilapidation Report, including in accordance with clause 4.12.5.

SOP Act means to the extent that the Contractor's Activities are to be carried out in:

- (a) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (b) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (c) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (d) the *Building and Construction Industry Security of Payment Act 2009* (SA); and
- (e) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (f) the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (Tas); and
- (h) the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

Specified Acts means:

- (a) failing to acknowledge or attribute the Contractor's or any other person's authorship of any Contract Material or any part of the Works;
- (b) falsely attributing authorship of any Contract Material or any part of the Works;
- (c) making any modification, variation or amendment of any nature whatsoever to any Contract Material or any part of the Works, whether or not:
 - (i) it results in a material distortion of or destruction or mutilation of the Contract Material or any part of the Works; or
 - (ii) it is prejudicial to the honour or reputation of the Contractor or any other author of any Contract Material or any part of the Works;
- (d) using any Contract Material or any part of the Works other than for the purpose for which it was intended at the time the Contract Material or any part of the Works (as the case may be) was created;
- (e) altering any Contract Material or any part of the Works by adding to or removing elements from, or rearranging elements of, the Contract Material or any part of the

Works, including by combining elements of any of the Contract Material or any part of the Works with any other material;

- (f) changing, relocating, demolishing or destroying any building or any artistic work affixed to or forming part of a building (including any part of the Works), whether or not it incorporates, is based on, or is constructed in accordance with, any Contract Material;
- (g) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; or
- (h) adding any additional content or information to Contract Material.

Specified Personnel means the Contractor's Representative(s) specified in Item 23.

Specified Subcontractors means those subcontractors identified in Item 24 to perform the Specified Subcontract Work.

Specified Subcontractor Work means the work specified in Item 24 that is to be performed by the Specified Subcontractors.

Stage means a stage of the Works as outlined in the Statement of Requirements (if any).

Statement of Requirements means the document or documents in Schedule 9.

Surveyed Land means the Site and any other areas or items the subject of the Site Dilapidation Report.

Table of Variation Rates and Prices means:

- (a) the Table of O&M Services Variation Rates and Prices; and
- (b) the Table of Works Variation Rates and Prices.

Table of O&M Services Variation Rates and Prices means the document in Schedule 10.

Table of Works Variation Rates and Prices means the document in Schedule 11.

Tax includes:

- (a) any tax, withholding tax, charge, rate, duty (including stamp duty and customs duty), impost, excise, tax by whatever name called and whether Australian, foreign, state, municipal, provincial, county or local (not including GST unless the context requires otherwise); and
- (b) any interest, charge, penalty, fee, fine or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Invoice has the meaning given to that term in the GST Law.

Terms of Engagement means these terms of engagement, being clause 1 to clause 38 (inclusive) of this document.

Variation means any change to the Works or the O&M Services within the general scope of the Contract, and includes:

- (a) increases, decreases or omissions of any part;

- (b) a change in character or quality of any requirements;
- (c) changes to the levels, lines, positions or any dimensions;
- (d) additional work;
- (e) the demolition or removal of material or work no longer required by Airservices; and
- (f) where Airservices notifies the Contractor that the Works or the O&M Services are Airside Works & Services after the Contract Date.

Waste includes the following:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, whether or not intended for sale, recycling, reprocessing, recovery or purification by separate operation from that which produced it; and
- (c) any other substance declared under Waste Management Legislation to be waste.

Waste Management Legislation means any Commonwealth, State or Territory legislation relating to the management, regulation or reduction of Waste.

Wastewater Treatment Plant or **WTP** means any part of the Works used by the Contractor to perform the O&M Services and which are to be removed at the expiration of the O&M Term.

WHS Accreditation Scheme means the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme established by section 43 of the *Federal Safety Commissioner Act 2022* (Cth) (formerly known as the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)).

WGE Act means the *Workplace Gender Equality Act 2012* (Cth).

WHS Act means the *Work Health and Safety Act 2011* (Cth).

WHS Law means the WHS Act and any corresponding WHS law as defined in section 4 of the WHS Act.

WHS Regulations means the regulations made under the WHS Act.

Work Health and Safety Plan means the work health and safety plan prepared by the Contractor pursuant to clause 12.5.7, which can be either Contract specific or Site specific, and must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with statutory requirements in relation to work health and safety; and
- (c) address the matters specified in clause 12.6.

Works Commencement Date means the date specified in Item 25.

Works means the physical works described in the Statement of Requirements which the Contractor must design (to the extent required by the Contract), complete (including the installation of any plant and equipment forming part of those Works) and hand over to Airservices.

Work has a corresponding meaning.

1.2 Interpretation

In the Contract, unless the contrary intention appear:

- 1.2.1 words in the singular include the plural and vice versa;
- 1.2.2 where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 1.2.3 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 1.2.4 the verb "include" (in all its parts, tenses and variants) or the use of examples are not intended to be, nor are they to be interpreted as, words of limitation;
- 1.2.5 a unit of measurement is taken to be expressed in Australian legal units of measurement;
- 1.2.6 if the date on or by which any act must be done under the Contract is not a Business Day, the act must be done on or by the next Business Day;
- 1.2.7 headings are inserted for convenience and do not affect the interpretation of the Contract;
- 1.2.8 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- 1.2.11 a reference to:
 - (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (b) an Act or Law includes legislation, regulations and other subordinate laws and any modifications or replacements of them;
 - (c) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (d) a right includes a benefit, remedy, discretion or power;

- (e) time is to local time in the place where the Site is located and, in all other cases, where the Airservices Representative is located;
- (f) "\$" or "dollars" is a reference to Australian currency; and
- (g) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

1.3 Trustee Contractor

If the Contractor acts as trustee of a trust, in relation to the Contract:

- 1.3.1 it is liable both personally, and in its capacity as trustee of that trust;
- 1.3.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under the Contract;
- 1.3.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- 1.3.4 it represents and warrants that;
 - (a) such trust has been duly established and currently exists;
 - (b) it is the duly appointed, current and only trustee of that trust;
 - (c) as such trustee it has the power to enter into and perform its obligations under the Contract;
 - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (e) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
 - (f) no breach of the relevant trust deed exists or would arise.

1.4 Inconsistent terms

- 1.4.1 If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, the following order of precedence applies:
 - (a) the terms and conditions of the Contract;
 - (b) any Schedules or documents forming part of the Contract; and
 - (c) the Design Document.
- 1.4.2 If the Contractor or the Airservices Representative consider there is any ambiguity, discrepancy or inconsistency in any documents which form part of the Contract, it must give notice to the other. The Airservices Representative must direct the Contractor as to the course it must adopt within five Business Days of notice.

3. Design

3.1 Design to be prepared by the Contractor

3.1.1 The Contractor must:

- (a) design the parts of the Works which the Design Documents expressly or impliedly require it to design;
- (b) progress the design in accordance with the approved program;
- (c) ensure that its design complies with the Contract; and
- (d) provide the design it prepares to the Airservices Representative for his or her permission to use the design.

3.1.2 For the purposes of clause 3.1.1(d), the Contractor must provide its design in:

- (a) hard copy; and
- (b) electronic copy,

in each case in accordance with any other part of the Contract.

3.2 Airservices Representative to give permission to use design

The Airservices Representative must reject or give his or her permission to use the design provided by the Contractor or any resubmitted design within 15 Business Days of submission by the Contractor. Where the design is rejected, the Contractor must submit an amended design to the Airservices Representative and must not commence construction of the part of the Works to which it applies until the Airservices Representative gives his or her permission to use the design.

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3.4 No duty to review

The Airservices Representative owes no duty to the Contractor to review the design submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the design by the Airservices Representative will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

3.5 Design certification

Without limiting the Contractor's obligations, where the Contract requires the Contractor to design any part of the Works, the Contractor must with each payment claim under clause 22.2 and as a condition precedent to Completion of the Works or a Stage, provide the Airservices Representative with:

3.5.1 a certificate in the form required by Airservices which certifies that (to the extent then applicable):

(a) the design carried out by it complies with:

(i) subject to clause 5.2.1(a), Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law); and

(ii) the other requirements of the Contract; and

(b) the Works or the Stage comply with the design which has been the subject of the Airservices Representative's permission under clause 3.2; and

3.5.2 a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form required by Airservices which certifies that (to the extent then applicable):

(a) all design carried out by that subcontractor complies with:

(i) subject to the subcontract, Law, the National Construction Code and any other requirements imposed by Law (including the WHS Law); and

(ii) the requirements of the subcontract; and

(b) the Works or the relevant Stage comply with the design carried out by that subcontractor,

except to the extent set out in such certificate.

3.6 Samples

- 3.6.1 The Contractor must obtain each sample or range of samples specified in Item 27 and any other part of the Contract, and submit the sample or range of samples to the Airservices Representative in accordance with the construction program prepared in accordance with the Contract (as amended from time to time).
- 3.6.2 The Airservices Representative must reject or give his or her permission to use the sample or range of samples provided by the Contractor or any resubmitted sample or range of samples within 14 days of submission by the Contractor.
- 3.6.3 Where the sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Airservices Representative and must not commence construction of any part of the Works to which it applies until the Airservices Representative gives him or her permission to use the sample or range of samples.
- 3.6.4 The Airservices Representative owes no duty to the Contractor to review the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the sample or range of samples will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

3A. Management Plans

3A.1 Management Plans

- 3A.1.1 The Contractor must:
- (a) within the relevant times prescribed in the Contract, prepare and submit to the Airservices Representative the Management Plans in accordance with the Contract; and
 - (b) regularly update the Management Plans in accordance with the requirements of the Contract and resubmit those Management Plans to the Airservices Representative.
- 3A.1.2 For the purposes of clause 3A.1.1, the Contractor must provide the Management Plans in:
- (a) hard copy; and
 - (b) electronic copy,
- in each case in accordance with the requirements set out in the Contract.
- 3A.1.3 The Airservices Representative must reject or give his or her permission to use a Management Plan provided by the Contractor or any resubmitted Management Plan within 15 Business days of submission by the Contractor. Where the Management Plan is rejected, the Contractor must submit an amended Management Plan to the Airservices Representative and must not commence the Contractor's Activities to which it applies until the Airservices Representative gives his or her permission to use the Management Plan.

3A.1.4 The Airservices Representative owes no duty to the Contractor to review any Management Plan submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use a Management Plan by the Airservices Representative will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

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3A.1.6 The Contractor:

- (a) must comply with, and otherwise carry out the Contractor's Activities and the Works in accordance with, each Current Management Plan; and

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3A.1.7 If the Contractor proposes to make any changes to a Current Management Plan, the Contractor must submit those proposed changes to the Airservices Representative in the form of a draft revised version of the applicable Current Management and this clause 3A will apply.

3A.1.8 The Contractor must not make any changes to a Current Management Plan except in accordance with this clause 3A.

4. The Site

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4.2 Access to the Site

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4.2.2 Failure by Airservices to give access to the Site as required by clause 4.2.1 will not be a breach of the Contract but will entitle the Contractor to claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 20.5.

- 4.2.3 Notwithstanding any other provision of the Contract, the Contractor will not be entitled to be paid any additional costs under clause 20.8 arising out of, or in any way in connection with, any delay in Airservices giving the Contractor access to the Site.
- 4.2.4 The grant of access to the Site confers a right to use such of the Site as is necessary for the Contractor to carry out the Contractor's Activities.

4.3 Airservices' right of entry

The Contractor must:

- 4.3.1 at all reasonable times give to the Airservices Representative and all persons authorised in writing by the Airservices Representative, access to the Site or any areas off-Site where any part of the Contractor's Activities are being performed; and
- 4.3.2 provide Airservices with every reasonable facility for the supervision, examination and testing of any Work or materials.

4.4 Site information

- 4.4.1 Airservices does not warrant, guarantee or make any representation about the accuracy or adequacy of any information or data made available to the Contractor as to the existing conditions at the Site. Such information or data does not form part of the Contract.

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4.5 Setting out

The Contractor must:

4.5.1 set out the Works; and

4.5.2 carry out any survey which may be necessary for this purpose,
in accordance with the requirements of the Contract.

4.6 Other contractors

4.6.1 The Contractor must:

- (a) co-operate with any other contractors engaged by Airservices or any other entity to perform other works on or in the vicinity of the Site or the Works;
- (b) co-ordinate the Contractor's Activities with the work of those other contractors; and
- (c) not interrupt the execution of the work of those other contractors.

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4.9 Cleaning up

- 4.9.1 The Contractor must keep the Site, the Works and the environment clean and tidy. The Contractor must clean up whenever so requested, and as a condition precedent to the Completion of the Works and each Stage, leave that part of the Site relevant to the Works or the Stage secure and clean. At the end of each day the Contractor must ensure that any materials, tools and equipment are securely stored so as not to create any hazard.
- 4.9.2 If the Contractor fails to clean the Site to the reasonable satisfaction of the Airservices Representative, and within 10 Business Days of a notice from the Airservices Representative requiring the Contractor to return and clean the Site, the Site has not been cleaned as required by the Airservices Representative, the Airservices Representative may arrange for the cleaning of the Site, the cost of which will be a debt due from the Contractor to Airservices which may be set off against any payment claim of the Contractor pursuant to the Contract.

4.10 Urgent protection

Airservices may take any action necessary to protect the Works, other property, the environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor is required to take but does not take. The reasonable costs incurred by

Airservices in taking such action shall be a debt due and payable by the Contractor to Airservices and maybe set off against any payment claim otherwise payable to the Contractor under clause 22.2.

4.11 Conduct at Airservices' premises

The Contractor must, if using or accessing Airservices' premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

4.12 Dilapidation Reports

4.12.1 This clause 4.12 applies only where provided in Item 30.

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4.12.3 As a condition precedent to Completion, the Contractor must:

- (a) unless provided by the Airservices Representative under clause 4.12.5, provide the Airservices Representative with an updated dilapidation survey in respect of the Surveyed Land prepared to the satisfaction of the Airservices Representative (in its absolute discretion), no earlier than 20 Business Days before the Date of Completion; and
- (b) without limiting any other obligation of the Contractor, repair, rectify and otherwise make good any degradation or damage in respect of any Surveyed Land (including any degradation or damage identified in the Final D&C Dilapidation Report), to the satisfaction of the Airservices Representative (in its absolute discretion) so that the condition of such Surveyed Land at the Date of Completion is identical to the condition of the corresponding Surveyed Land set out in the Site Dilapidation Report.

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4.12.5 The parties acknowledge and agree that the Airservices Representative may have any of the following reports prepared by a separate contractor:

- (a) Site Dilapidation Report;
- (b) Final D&C Dilapidation Report; and
- (c) Final O&M Dilapidation Report.

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5. Construction

5.1 Description of Works

5.1.1 The Contractor must construct the Works strictly in accordance with:

- (a) the Design Documents;

- (b) any design prepared by the Contractor that the Contractor has received permission to use in accordance with clause 3.2; and
- (c) any Direction of the Airservices Representative, including (without limitation) a Variation directed by the Airservices Representative by a written document titled "Variation Order".

5.1.2 The Contractor must perform all work and supply materials necessary for the carrying out of the Contractor's Activities.

5.2 Authority requirements

5.2.1 The Contractor must:

- (a) unless otherwise specified, perform the Contractor's Activities in accordance with, and complete the Works so that they comply with:
 - (i) all Approvals;
 - (ii) the National Construction Code; and
 - (iii) any other requirements imposed by Law,
- (b) apply for all Approvals (other than the Excepted Approvals), give all notices and pay all fees necessary to perform its obligations under the Contract;
- (c) obtain, and give to Airservices a Building Certificate (if a Building Certificate is obtainable) in respect of the completed Works; and
- (d) give Airservices copies of all other relevant documents issued by Proper Authorities in respect of the Contractor's Activities or the Works.

5.2.2 If the requirements with which the Contractor must comply under this clause 5.2 change after the Contract Date, the Contractor must give written notice to Airservices Representative seeking his or her Direction(s). Any Direction issued by the Airservices Representative that requires the Contractor to do more or less work than could reasonably have been anticipated at the Contract Date will:

- (a) if more work is required, subject to the Contractor complying with the requirements of this clause 5.2 and clause 24, entitle the Contractor to payment for the extra work as a Variation; or
- (b) if less work is required, entitle Airservices to:
 - (i) to the extent that the work is not respect of the O&M Services, reduce the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by the Airservices Representative; or
 - (ii) to the extent that the work is in respect of the O&M Services, reduce the O&M Contract Price by a sum that reflects the lower level of work, including an adjustment for profits, but not overheads, as determined by Airservices Representative.

5.3 Provisional Sum Work

- 5.3.1 Unless otherwise approved by the Airservices Representative, Provisional Sum Work must be performed under subcontracts entered into by the Contractor.
- 5.3.2 The Contractor must enter into these subcontracts as follows:
- (a) after the Airservices Representative provides the Design Documents for the Provisional Sum Work or gives permission under clause 3.2 to use the design prepared by the Contractor for the Provisional Sum Work, it must invite tenders from the number of persons directed by the Airservices Representative, each of whom must be approved by the Airservices Representative;
 - (b) it must give copies of each tender to the Airservices Representative; and
 - (c) it must enter into a subcontract with a tenderer on the basis of value for money as directed by the Airservices Representative.
- 5.3.3 After the Contractor is directed to enter into a subcontract for Provisional Sum Work:
- (a) the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in Item 20 for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
 - (b) any Variation to that work will be dealt with under clause 21.
- 5.3.4 Where the Provisional Sum Work is to be performed, the work will be, and will always be deemed to have been, part of the Work to be brought to Completion by the Date for Completion.

5.4 Specified Subcontract Work

The Contractor must subcontract any Specified Subcontract Work to the Specified Subcontractors.

6. Airside Works & Services

6.1 Application

Where the Contractor's Activities or the Works are Airside Works & Services, or a component of the Contractor's Activities or the Works is Airside Works & Services, then this clause 6 will apply.

6.2 Airside Works & Services

- 6.2.1 The Contractor must, at its cost, comply with any Laws applicable to the Site, including the *Airports Act 1996* (Cth), the *Airports (Transitional) Act 1996* (Cth), the *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) and all relevant rules and regulations imposed by Airservices and the Airport Operator from time to time.

- 6.2.2 The Contractor must ensure that a direction given by:
- (a) a representative of the Civil Aviation Safety Authority; or
 - (b) the Airport Operator,
- is complied with immediately.
- 6.2.3 If the Airport Operator declares an emergency in relation to the airport where the Site is located, the Contractor must vacate the Site and ensure that the Site is vacated and remains vacated until the Airport Operator gives notice that the Contractor can re-enter the Site.
- 6.2.4 The Contractor must at its cost and without limiting its obligations under this clause 6:
- (a) comply with and ensure that the Contractor's Personnel comply with all security and access arrangements and other requirements of Airservices and/or the Airport Operator in respect of the Contractor's Activities conducted at an airport. The Contractor is not entitled to seek or claim any extensions of time, costs or Variation in relation to such arrangements or requirements;
 - (b) provide Site security and parking facilities for Contractor Personnel to the satisfaction of the Airservices Representative and the Airport Operator; and
 - (c) submit details of its proposed Site access and circulate to the Airservices Representative for approval at least 10 Business Days prior to commencing any part of the Contractor's Activities.

6.3 Airport Building Controller requirements

- 6.3.1 The Contractor must provide all necessary certificates of compliance and other information to the Airport Building Controller for the purpose of obtaining an occupation certificate in relation to the Works.
- 6.3.2 The Contractor must comply with all requirements of the Airport Building Controller (if any) in relation to the Contractor's Activities and the Works.
- 6.3.3 If, at any time, the Airport Building Controller identifies that the Contractor has not complied with any of its requirements, the Contractor must, as soon as practicable, remedy the non-compliance to the satisfaction of the Airport Building Controller and the Airservices Representative.

7. Hazardous Substances on Site

7.1 Discovery of Hazardous Substances on Site

- 7.1.1 If at any time the Contractor discovers the presence on the Site of any Hazardous Substance (other than Hazardous Substances which the Contractor is required to treat in accordance with the Contract), it must:
- (a) not disturb the material under any circumstances;
 - (b) inform the Airservices Representative of the existence of the material on Site; and

- (c) ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
- 7.1.2 The Airservices Representative must inspect the Site and must issue Directions to the Contractor in respect of further action to be taken.
- 7.1.3 All Hazardous Substances on the Site must, if so Directed by the Airservices Representative, be treated or removed in accordance with the requirements of the Worksafe Australia "Code of Practice" for the safe removal of such materials and any other Laws in the State or Territory in which the Works are situated relating to the removal of such materials.
- 7.1.4 Other than to the extent that the Contractor is entitled to make, and makes, a claim under clause 4.7 of the Contract, the Contractor will have no entitlement to make any other claim under the Contract (including for an adjustment to the Contract Price or an extension of time) arising out of or in connection with complying with any Directions from the Airservices Representative in respect of the Hazardous Substance(s) in accordance with this clause 7.1.

7.2 Use Of Hazardous Substances

- 7.2.1 Airservices aims to ensure that anyone who may use or be affected by the Works are not exposed to Hazardous Substances without appropriate control measures being in place.
- 7.2.2 Without limiting clause 7.1, the Contractor:
 - (a) must ensure that the Works do not contain any Hazardous Substances or substances which would breach the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth);
 - (b) must, on request of the Airservices Representative, be able to show compliance with clause 7.2.2(a); and
 - (c) is responsible for all materials used by its subcontractors under this clause.

8. Drawings

8.1 Drawings

Without limiting its other obligations under the Contract, all drawings which the Contractor is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- 8.1.1 the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Works);
- 8.1.2 all Laws;
- 8.1.3 the Directions of the Airservices Representative; and
- 8.1.4 to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards Australia.

9. Prior Work

9.1 Prior Work

9.1.1 Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality or completeness of any work to be carried out or that has been carried out by any other person (**Prior Work**) the Contractor must:

- (a) inspect the Prior Work as soon as is practicable after Airservices gives the Contractor access to the Site;
- (b) if it discovers any defects or matters in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Airservices Representative in writing providing:
 - (i) full particulars of the defects or matters identified; and
 - (ii) the reasons for the opinion formed by it in respect to the defects or matters identified; and
- (c) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in clause 9.1.1(b).

9.1.2 On receipt of the Contractor's notice, the Airservices Representative will investigate the Prior Work the subject of the notice and:

- (a) if the Airservices Representative agrees with the Contractor - issue a Direction to the Contractor and, subject to the Contractor comply with this requirements of this clause 9 and clause 24.1, value any work carried out by the Contractor by reason of that Direction as a Variation under clause 21.2; or
- (b) if the Airservices Representative disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.

9.1.3 If the Contractor fails to:

- (a) inspect the Prior Work as required by this clause 9; or
- (b) notify the Airservices Representative of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

10. Joining up

Where joining up is required as part of the Contractor's Activities, and the method of joining up of old and new work is not specified in the Design Documents, the cutting away and joining up must be carried out by the Contractor in a manner approved by the Airservices Representative and made good in all trades to match existing adjacent work.

11. Existing services and structures

11.1 Existing services and structures

- 11.1.1 The Contractor may only modify or remove existing structures or services within the Site in accordance with the Design Documents.
- 11.1.2 The Contractor must obtain the prior written approval from the Airservices Representative in relation to the timing of any connection, disconnection or interference with existing structures and services.
- 11.1.3 Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown on the Design Documents or should have been shown on the Design Documents, is evident on the Site or has been notified in writing by the Airservices Representative to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
- 11.1.4 The Contractor must notify the Airservices Representative immediately upon the discovery of services or obstructions not shown in the Design Documents or identified by inspection.
- 11.1.5 The Contractor must immediately notify the Airservices Representative in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
- 11.1.6 The Contractor must:
 - (a) support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the performance of the Contractor's Activities; and
 - (b) comply with the requirements of Airservices, of relevant authorities and others controlling those structures, fences, services, landscaping and property for their protection from damage during the performance of the Contractor's Activities.

12. Representatives and other requirements

12.1 Airservices Representative

- 12.1.1 The Airservices Representative will act as the agent of Airservices (not as an independent certifier, assessor or valuer) in issuing Directions and discharging each of the functions of the Airservices Representative under the Contract.
- 12.1.2 Any act which may be, or is required by the Contract to be, done by Airservices may be done by the Airservices Representative on Airservices' behalf.
- 12.1.3 If, pursuant to a provision of the Contract enabling the Airservices Representative to give Directions, the Airservices Representative gives a Direction, the Contractor must comply with such Directions in accordance with clause 18.

12.2 The Contractor's Representative

- 12.2.1 The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- 12.2.2 A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

12.3 Specified Personnel

- 12.3.1 The Contractor must employ the Specified Personnel in the role specified opposite their names in Item 23.
- 12.3.2 The Contractor must not replace any Specified Personnel without the Airservices Representative's written approval unless any of them die, become seriously ill or resign from the employment of the Contractor in which case the Specified Personnel must be replaced with persons of at least equivalent experience, ability and expertise approved by the Airservices Representative.

12.4 Removal of persons

The Airservices Representative may by notice in writing direct the Contractor to remove any person from the Site and / or the performance of the Contractor's Activities. The Contractor must, on receipt of the Airservices Representative's notice, and at its own cost, promptly arrange for removal and replacement of the person. The replacement must be acceptable and approved by the Airservices Representative.

12.5 Workplace health and safety requirements

The Contractor must:

- 12.5.1 ensure that in carrying out the Contractor's Activities:
 - (a) it complies with all Laws and other requirements of the Contract for work health and safety management;
 - (b) all subcontractors comply with the requirements referred to in this clause 12.5; and
 - (c) it complies with its duty under the WHS Law to consult, cooperate and coordinate activities with all other persons who have a work and health safety duty in relation to the same matter;

- 12.5.2 notify the Airservices Representative immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Contractor's Activities or the Works;
- 12.5.3 if the WHS Accreditation Scheme is applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme;
- 12.5.4 carry out the Contractor's Activities and the Works safely and in a manner that does not put the health and safety of persons at risk;
- 12.5.5 carry out the Contractor's Activities and the Works in a manner that protects property;
- 12.5.6 comply with any Direction issued by the Airservices Representative to change its manner of working or to cease working if the Airservices Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities or the Works;
- 12.5.7 prepare and submit to the Airservices Representative a Work Health and Safety Plan in accordance with the WHS Law and continue to update and amend that plan and submit it (as necessary);
- 12.5.8 institute systems to obtain regular written assurances from other contractors, consultants and subcontractors performing work on or in the vicinity of the Site about their ongoing compliance with the WHS Law including the due diligence obligation contained in the WHS Law;
- 12.5.9 provide the written assurances obtained under clause 12.5.8, together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Law, to the Airservices Representative;
- 12.5.10 provide the Airservices Representative on a monthly basis with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this clause 12.5), or any other relevant matters as the Airservices Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Law;
- 12.5.11 exercise a duty of the utmost good faith to Airservices in carrying out the Contractor's Activities and the Works to enable Airservices to discharge Airservices' duties under the WHS Law;
- 12.5.12 ensure its subcontracts include provisions equivalent to the obligations of the Contractor in this clause 12.5;
- 12.5.13 ensure that, if any Laws, including in the State or Territory in which the Works are situated or the Contractor's Activities or the Works are carried out (as the case may be), requires:
- (a) that a person be authorised or licensed (in accordance with the WHS Law) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - (b) that a person has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Law), that person has the required qualifications or experience or is so supervised; or

- (c) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

12.5.14 not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Law or clause 12.5.13 are met; and

12.5.15 if requested by the Airservices Representative or required by the WHS Law, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Airservices Representative before the Contractor or any subcontractor commences such work.

12.6 Content of Work Health and Safety Plan

The Work Health and Safety Plan must include all information which is required to be included by the Statement of Requirements or any other part of the Contract.

12.7 Principal Contractor

- 12.7.1 Airservices engages the Contractor as principal contractor and authorises the Contractor to have management or control of the workplace and in carrying out the Contractor's Activities for the purpose of discharging the duties imposed on a principal contractor for the construction project, pursuant to the WHS Law. The Contractor accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the construction project, unless relieved of that engagement and authorisation by notice in writing given by Airservices or the Airservices Representative.
- 12.7.2 For the purposes of the Contract and the WHS Law, principal contractor means the role as appointed under this clause 12.7.
- 12.7.3 The Contractor must ensure that all relevant elements of its work health and safety management plan prepared in accordance with the WHS Law are aligned with its Work Health and Safety Plan prepared pursuant to clause 12.5.7.

13. Subcontracting

13.1 Subcontracting

13.1.1 The Contractor must:

- (a) not subcontract any aspect of the provision of the Contractor's Activities or the Works other than to those entities set out in Item 24 or referred to in clause 5.4, without the prior written approval of Airservices, which will not be unreasonably withheld;
- (b) not, in any event, enter into a subcontract with a subcontractor named by the Workplace Gender Equality Agency as not complying with the WGE Act; and
- (c) ensure that any subcontractor approved under the Contract complies with all applicable Laws, Applicable Policies and the Commonwealth Regulatory Requirements.

13.1.2 The Contractor is fully responsible for the performance of the Contractor's Activities even if the Contractor subcontracts any aspect of the provision of the Contractor's

Activities or Works. The Contractor is liable to Airservices for the acts and omissions of its Personnel as if they were acts and omissions of the Contractor.

13.1.3 Where any of the Contractor's Activities or Works are carried out by any subcontractor, or where Provisional Sum Work is to be performed under clause 5.3, the Contractor must ensure that:

- (a) all subcontractors (including suppliers) comply with the requirements of the Contract, and in particular clause 2.1.4; and
- (b) all subcontracts and agreements are available to Airservices on request (without prices if the Contractor requires).

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13.1.6 In relation to the provision of the Works and the Contractor's Activities, the Contractor:

- (a) must, on request by Airservices, provide Airservices with the names of any of the Contractor's subcontractors;
- (b) agrees that Airservices may disclose publicly the names of any of the Contractor's subcontractors; and
- (c) must ensure that any subcontractor agrees that Airservices may disclose the subcontractor's name publicly.

13.2 Novation of Specified Subcontractor

13.2.1 Where requested by Airservices, the Contractor must execute a 'Deed of Novation' in the form approved by Airservices to accept a novation of a contractor for the supply of Specified Subcontract Work. The Contractor will be responsible for the performance of the Specified Subcontractor of its obligations under the contract to ensure that the materials are supplied and installed into their required place and will coordinate the activities of that Specified Subcontractor as part of the Contractor's Activities.

13.2.2 The responsibility for the Specified Subcontractor, and any consequential delays to the Works or the Contractor's Activities remain solely with the Contractor.

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15. Unfixed goods and materials

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15.2 Title and Risk

15.2.1 Title to unfixed goods and materials will vest in Airservices upon payment by Airservices.

15.2.2 Unfixed goods and materials remain at the risk of the Contractor until those unfixed goods and materials have been incorporated into the Works notwithstanding that title may have already vested in Airservices.

16. Risk of Loss and Damage**16.1 Responsibility for care**

- 16.1.1 The Contractor is responsible for the care of any asset or structure constructed or installed as part of the Works and the Site from and including the date of commencement of the Contractor's Activities until 4:00 pm on the day of the expiry of the O&M Term.
- 16.1.2 The Contractor must promptly repair, replace, reinstate and otherwise make good any loss of or damage to any asset or structure constructed or installed as part of the Works and the Site which occurs while the Contractor is responsible for its care.
- 16.1.3 The Contractor must (without limiting the generality of the above) promptly:
- (a) take steps to:
 - (i) make secure the relevant asset or structure constructed or installed as part of the Works and the relevant part of the Site; and
 - (ii) clear any debris from the Site and begin initial work or repair, replacement, reinstatement and making good; and
 - (b) consult with the Airservices Representative on steps to be taken to ensure:
 - (i) the prompt repair, replacement, reinstatement or making good of the asset or structure constructed or installed as part of the Works and the Site to ensure that it complies with the requirements of the Contract; and
 - (ii) that the Contractor continues to comply with its obligations under the Contract.

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18. Compliance with Directions

18.1 General requirements

If, pursuant to a provision of the Contract enabling the Airservices Representative to give Directions, the Airservices Representative gives a Direction, the Contractor must comply with Directions issued by the Airservices Representative within the time prescribed by the Airservices Representative.

18.2 Notice by Contractor as to time and cost implications

18.2.1 If the Contractor believes that a Direction given by the Airservices Representative:

- (a) constitutes a Variation, the Contractor must comply with the requirements of clause 21.3; or
- (b) will involve or result in a Claim by the Contractor for additional payment or for an extension of time, the Contractor must, prior to complying with the Direction, and within two Business Days of the Direction, provide written notice to the Airservices Representative of the anticipated Claim.

18.2.2 On receipt by the Airservices Representative of advice from the Contractor pursuant to clause 18.2.1(b), the Airservices Representative may rescind, confirm or modify the Direction previously given by the Airservices Representative. If the Airservices Representative confirms the Direction, or modifies the Direction, the Contractor must comply with that Direction in accordance with the Contract. If the Airservices Representative does not confirm the Direction within five Business Days of receiving the advice from the Contractor, it will be deemed that the Airservices Representative rescinded the Direction.

18.2.3 If the Contractor does not comply with the requirements of clause 21 or provide a written notice to the Airservices Representative as required by clause 18.2.1(b), prior to commencing any additional work in complying with the Direction, the Contractor will not be entitled to make a Claim for additional payment or for an extension of time.

18.3 Action by Airservices

18.3.1 If the Contractor fails to comply with a Direction of the Airservices Representative, in addition to any other remedies, Airservices may, after the Airservices Representative has given reasonable notice in writing to the Contractor, have work carried out by other persons such that the Direction is complied with and the reasonable costs incurred by Airservices will be a debt due from the Contractor to Airservices and may be set off against a payment claim rendered by the Contractor pursuant to the Contract.

18.3.2 Any action taken by Airservices pursuant to this clause 18 will not affect any warranties given or provided by the Contractor in relation to that Work.

19. Quality**19.1 Quality assurance**

- 19.1.1 The Contractor must implement the quality assurance system specified in the Statement of Requirements.
- 19.1.2 The Contractor will not be relieved from any of its obligations under the Contract arising from:
- (a) compliance with the quality assurance requirements of the Contract; or
 - (b) any Direction by the Airservices Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system.

19.2 Testing

- 19.2.1 The Contractor must carry out:
- (a) all tests directed by the Airservices Representative;
 - (b) the Proof of Performance Tests; and
 - (c) any tests which the Contract requires the Contractor to carry out.
- 19.2.2 If Airservices Representative directs the Contractor to carry out a test which is not:
- (a) otherwise required by the Contract; or
 - (b) in relation to work in respect of which the Airservices Representative gave a Direction under clause 19.3,

and the results of the test show the Work is in accordance with the Contract, the reasonable costs of carrying out the test will, subject to the Contractor complying with clause 24, be assessed by the Airservices Representative and to the extent that the test is not in respect of the O&M Services added to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates do apply, any relevant Milestone Amount (as applicable)), or to the extent that the test is in respect of the O&M Services added to the O&M Contract Price.

- 19.2.3 The inspection and examination of materials and Work by the Airservices Representative, and any consent to proceed resulting from such inspections, will not be taken as preventing the Airservices Representative from making further inspection and examination of the materials and Work, and subsequently rejecting the materials and Work if shown by such further inspection and examination to be in non-compliance with the Contract.
- 19.2.4 The Contractor remains responsible for the quality of the Work carried out under the Contract even though the Airservices Representative may have had Work tested or otherwise indicated that Work is in accordance with the Contract or otherwise acceptable.
- 19.2.5 If Directed by the Airservices Representative, the Contractor must not cover up or make inaccessible any part of the Works until all tests have been performed.

19.2A Proof of Performance Tests

As soon as reasonably practicable following completion of the Commissioning Work in accordance with the Contract, the Contractor must carry out the Proof of Performance Tests.

19.3 Non-complying activities or defective work before Completion

19.3.1 If, before the Date of Completion, in the opinion of the Airservices Representative any part of the Contractor's Activities is not in accordance with the Contract, or any Work done, including any material provided, is Defective, it may give the Contractor a Direction specifying the non-conformance and:

- (a) requiring the Contractor to correct it or carry out a Variation, and specifying the time within which either must occur; or
- (b) advising the Contractor that Airservices will accept the Work despite the non-conformance.

19.3.2 If a Direction is given under clause 19.3.1(a), the Contractor must correct the non-conformance or carry out the Variation within the time specified in the Airservices Representative's Direction.

19.3.3 If the Airservices Representative issues a Direction under clause 19.3.1(b), that notice of acceptance shall be a deemed Variation.

19.3.4 If the Contractor fails to comply with such a Direction issued by the Airservices Representative and that failure has not been rectified by the Contractor within five Business Days after receipt of a further notice from the Airservices Representative to rectify such work in accordance with a Direction, Airservices may have the Defect rectified by others at the cost of the Contractor, which will be a debt due and payable by the Contractor to Airservices and which may be set off by Airservices against any payment claim made by the Contractor pursuant to the Contract.

19.4 Defects after the Date of Completion

19.4.1 After the Date of Completion Airservices Representative may:

- (a) in respect of any Defect in the Wastewater Treatment Plant which becomes apparent during the O&M Term, give the Contractor a written Direction specifying the Defect and:
 - (i) Directing the Contractor to correct it, and specifying the time within which it must occur; or
 - (ii) advising the Contractor that Airservices will accept the work despite the Defect; and

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- 19.4.2 If a Direction is given under clause 19.4.1(a)(i) or 19.4.1(b)(i), the Contractor must correct the Defect within the time specified in the Airservices Representative's Direction, but at times and in a manner which cause as little inconvenience to any occupants of the Site as is reasonably possible and the performance of the O&M Services.

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20. Time

20.1 Programming

20.1.1 The Contractor must give the Airservices Representative a construction program in the form of a Gantt chart within five Business Days after the Contract Date, or if the Contract is for both design and construction of the Works, within such other time period specified by Airservices, which must:

- (a) contain a time scaled bar for each item of Work activity (including all Stages (if applicable)) and show the respective planned start and finish date, the Date for Completion of the Works, the duration of each individual activity expressed in days and all of the logic dependencies existing between those activities;
- (b) detail a critical path clearly on the bar chart; and
- (c) address all aspects of the Works whatsoever which may affect the achievement of any Milestone or the Completion of the Works or a Stage by the Date for Completion.

20.1.2 Failure by the Contractor to furnish to the Airservices Representative a construction program as required by this clause 20 entitles Airservices to defer payment under the Contract until the Contractor's failure is rectified.

20.1.3 As a minimum an electronic version of the construction program must be provided in an Adobe PDF file format. Airservices will also accept construction programs in Microsoft Project format.

20.2 Progress

20.2.1 The Contractor must progress the Contractor's Activities and the Works:

- (a) in a manner and at a rate of progress satisfactory to the Airservices Representative; and
- (b) in accordance with the construction program (and any amended construction program).

20.2.2 The Contractor must not suspend the progress of the whole or any part of the Contractor's Activities or the Works except where suspension is Directed or approved by the Airservices Representative.

20.3 Amended construction program and monthly reports

20.3.1 During the performance of the Contractor's Activities the Contractor must review the construction program monthly and provide the Airservices Representative with a report each month, at the same time as invoices are provided, on progress of the Works and the Contractor's Activities, identifying potential delays, recommended adjustments to the construction program including if necessary an amended construction program to ensure that Completion by the Date for Completion of the Works can be achieved.

20.3.2 The furnishing of a construction program or of an amended construction program will not relieve the Contractor of any obligations under the Contract including any obligation not to depart, without reasonable cause, from a component of an earlier construction program where that component of the earlier program is not varied by the amended construction program. At any time the Airservices Representative may direct the Contractor to give an updated construction program.

20.3.3 Any review of or comments on a construction program by the Airservices Representative will not:

- (a) relieve the Contractor from, or alter, its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Completion by the Date for Completion;
- (b) evidence or constitute a Direction by the Airservices Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for performance of Airservices' or the Airservices Representative's obligations under the Contract, including (without limitation) to oblige Airservices or the Airservices Representative to do anything earlier than is necessary to enable the Contractor to achieve Completion by the Date for Completion.

20.4 Time for Completion

20.4.1 The Contractor must achieve Completion by the Date for Completion.

- 20.4.2 The Contractor may, if it chooses, accelerate progress and reach Completion before the Date for Completion.
- 20.4.3 If the Contractor chooses to accelerate progress neither Airservices, the Airservices Representative nor any other person will be obliged to do or not do anything to enable the Contractor to reach Completion before the Date for Completion and doing or failing to do anything is not an act or omission by Airservices, the Airservices Representative or a person for whom Airservices is responsible.
- 20.4.4 The time for performance of Airservices' or the Airservices Representative's obligations is not affected by the Contractor's decision to accelerate.

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not required to exercise this unilateral right for the benefit of the Contractor and that it does not confer any rights upon the Contractor.

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20.9 Suspension

- 20.9.1 The Airservices Representative may Direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities or the Works.
- 20.9.2 Unless the suspension is the result of the Contractor's failure to perform its obligations under the Contract, a Direction to suspend under this clause 20.9 will entitle the Contractor to:
- (a) claim an extension of time to the Date for Completion where it is otherwise so entitled under clause 20.5 if it is delayed in achieving Completion by the Date for Completion as a result of the suspension; and
 - (b) subject to clause 24, the Contractor's direct, reasonably and properly evidenced extra costs necessarily incurred by the Contractor in respect of the suspension, calculated in accordance with clause 20.8.
- 20.9.3 The Contractor's entitlement under clause 20.9.2(b) will be its only right to payment of money arising from a Direction to suspend and will be subject to the Contractor complying with clause 24 and taking all steps possible to mitigate its extra costs, as assessed by the Airservices Representative.

20.10 Acceleration

- 20.10.1 The Airservices Representative may notify the Contractor that the Contractor is required to accelerate progress to reach Completion before the Date for Completion.
- 20.10.2 Any notice given under clause 20.10.1 must:
- (a) specify the number of days by which the Date for Completion is to be brought forward; and
 - (b) the reasons for Airservices requiring the Date for Completion to be brought forward.

- 20.10.3 After receiving a notice under clause 20.10.1, the Contractor must assess the notice and notify the Airservices Representative within five Business Days of receipt of the notice pursuant to clause 20.10.1:
- (a) of the additional costs and expenses that the Contractor will claim as a result of the Date for Completion being brought forward; or
 - (b) that the Contractor is unable to reach Completion by the date specified in the notice given under clause 20.10.1, providing details of the reasons why.

- 20.10.4 If the Airservices Representative gives written notice to the Contractor that it objects to the costs and expenses notified by the Contractor under clause 20.10.3(a), then subject to clause 20.10.6:
- (a) if there is a Table of Variation Rates and Prices which can apply to calculate the additional costs of the Contractor under this clause 20.10 and the Contractor did not calculate its additional costs and expenses by reference to the Table of Variation Rates and Prices (to the extent relevant), Airservices will only be liable to pay an amount determined by using any rates or prices in the Table of Variation Rates and Prices (to the extent relevant); or
 - (b) if there are no relevant rates or prices specified in the Table of Variation Rates and Prices that are applicable to calculate the additional costs under this clause 20.10, Airservices will only be liable to pay a reasonable amount as agreed between the parties or, in the absence of such agreement, as determined by the Airservices Representative acting reasonably.

In either case the value of the acceleration proposal shall include a reasonable amount for profit and overheads and any deductions to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) shall include a reasonable amount for profit but not overheads.

- 20.10.5 If the Airservices Representative gives written notice to the Contractor that it does not agree with the reasons notified by the Contractor under clause 20.10.3(b), then the Airservices Representative's written notice under this clause 20.10.5 will be a Notice of Dispute under clause 31.2 and those matters will be determined in accordance with clause 31.

- 20.10.6 If the Contractor gives a notice to the Airservices Representative pursuant to clause 20.10.3, notwithstanding any notice subsequently issued by the Airservices Representative pursuant to clause 20.10.4 or 20.10.5 the Airservices Representative may give a notice to the Contractor retracting the original notice given pursuant to clause 20.10.1.

- 20.10.7 If:

- (a) the Contractor has given a notice pursuant to clause 20.10.3(a); and
- (b) the Airservices Representative has not issued a notice pursuant to clause 20.10.6,

the Contractor must effect Completion in accordance with the notice given under clause 20.10.1 for the costs identified in the Contractor's notice pursuant to clause 20.10.3, or if the Airservices Representative has issued a notice pursuant to clause 20.10.4, the costs determined in accordance with the mechanism in clause 20.10.4.

21. Variations

21.1 Variation Order

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21.1.2 The Airservices Representative may seek from the Contractor a notice in regard to any proposed Variation from the Airservices Representative on whether or not a proposed Variation can be effected by the Contractor. The Contractor must provide a response within the timeframe specified by the Airservices Representative and in doing so must identify:

- (a) whether the proposed Variation will have an impact on the construction program and achieving Completion of the Works by the Date for Completion; and
- (b) the proposed cost of carrying out such a Variation

21.1.3 If, in relation to a proposed Variation, the Airservices Representative is satisfied with the notification from the Contractor as to the carrying out of the proposed Variation, the Airservices Representative may issue a Variation Order on the Contractor to carry out that Variation under clause 21.1.1. If the Airservices Representative does not issue a Variation Order, the Contractor must not carry out the proposed Variation.

21.1.4 The Contractor must not vary the Contractor's Activities or the Works except as directed in writing by the Airservices Representative under clause 21.1.1.

21.1.5 No Direction will constitute a Direction under clause 21.1.1 unless it is in writing and expressly states that it is a direction under clause 21.1.1.

21.2 Cost of Variation

21.2.1 Subject to the provisions of the Contract, as soon as practicable after receipt of the relevant Claim issued by the Contractor in accordance with clause 24 and at any other time determined by the Airservices Representative (in its absolute discretion), the Airservices Representative must value in accordance with clause 21.2.2 each Variation which has been Directed under clause 21.1.1 or any other event or circumstance which another provision of the Contract provides will be valued as a Variation or otherwise under this clause 21.2.

21.2.2 Each Variation or other event or circumstance referred to in clause 21.2.1 must be valued in accordance with the following decreasing order of precedence:

- (a) prior agreement between the parties (if any);
- (b) not used;
- (c) rates and prices set out in the Table of Variation Rates and Prices (to the extent that the Airservices Representative acting reasonably considers them to be applicable); and
- (d) rates or prices as determined by the Airservices Representative acting reasonably, which valuation will be increased:

- (i) in the case of deductions, by the percentage for profit specified in Item 50 but not overheads; and
- (ii) in all other cases, by the percentage for profit and overheads specified in Item 49.

21.2.3 The value determined under clause 21.2.2:

- (a) to the extent that the Variation is not in respect of the O&M Services, will be added to the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)); or
- (b) to the extent that the Variation is in respect of the O&M Services, will be added to the O&M Contract Price.

21.2.4 To the extent that a Variation involves an omission from the Contractor's Activities or the Works, Airservices may thereafter carry out the omitted part of the Contractor's Activities or the Works either itself or by engaging third parties (including at the same time as the Contractor is carrying out the Contractor's Activities).

21.3 Notice of Variation

21.3.1 If the Contractor believes a Direction by the Airservices Representative, other than a Direction under clause 5.2 or a "Variation Order" under clause 21.1, constitutes or involves a Variation it must within five Business Days of, and before complying with, the Direction, give notice to the Airservices Representative that it considers that the Direction constitutes or involves a Variation.

21.3.2 On receipt of such notice the Airservices Representative may rescind, confirm or amend the Direction and advise whether it accepts that the Direction constitutes or involves a Variation.

21.3.3 If the Airservices Representative does not confirm or vary the Direction:

- (a) within five Business Days of receiving the Contractor's notice under clause 21.3.1, it will be deemed that the Airservices Representative has rescinded the Direction;
- (b) the Contract Price will not be adjusted as a result of that Direction; and
- (c) Airservices will not be liable upon any Claim by the Contractor arising out of or in connection with that Direction, whether under the Contract or (insofar as is permitted by Law) any other principle of Law.

21.3.4 If the Airservices Representative confirms or varies the Direction and indicates that it considers the Direction constitutes or involves a Variation, that notice will be taken to be a request under clause 21.1.2.

21.3.5 If the Airservices Representative confirms or varies the Direction and indicates that it does not consider the Direction constitutes or involves a Variation, the Contractor must continue to perform the Contractor's Activities and progress the Works to the full extent possible in accordance with the Contract and all Directions of the Airservices Representative.

22. Payment

22.1 Payment obligation

22.1.1 Subject to due and proper performance by the Contractor of its obligations under the Contract and any right to set-off which Airservices may have, Airservices must pay the Contractor the Contract Price and any other amounts to which it is entitled under the Contract at the times and in accordance with the methods prescribed in the Contract.

22.1.2 The Contractor acknowledges, subject to clauses 20 and 21 of the Contract, that the Contract Price:

- (a) includes all risks, hazards and additional costs, including all employment related payments and allowances under any industrial awards or other such agreements; and
- (b) will not be varied as a result of any rise or fall in the costs of material or labour,

relevant to or associated with carrying out and completing the Works and the Contractor's Activities.

22.2 Payment claims

22.2.1 The Contractor may claim payments on account of the Contract Price on:

- (a) each Reference Date;
- (b) the time referred to in clause 22.6; and
- (c) the time referred to in clause 22.6A.

22.2.2 Any payment claim must be submitted to the Airservices Representative and must include:

- (a) details of the Contractor's Activities which the claim applies to, and details of the percentage of the Works covered by the claim;
- (b) confirmation that the Works and the Contractor's Activities comply with all relevant Approvals;
- (c) details of any unfixed plant and materials of which the Contractor is claiming payment;
- (d) the items required by clause 22.7; and
- (e) any further information that the Airservices Representative reasonably requires in relation to the payment claim.

22.2.3 An early payment claim will be of no force or effect.

22.2.4 Notwithstanding any other term of the Contract, where Item 51 specifies that Milestone Payment Claim Reference Dates apply:

- (a) the Contractor will have no entitlement to payment of any part of the Milestone Amount or the D&C Contract Price in respect of a Milestone unless the relevant Milestone is completed or achieved, including the

Contractor having done everything which the Contract requires it to do prior to, as a requirement of, or as a condition precedent to, completion or achievement of the particular Milestone; and

- (b) the Contractor's entitlement to payment on account of the D&C Contract Price in respect of each Milestone is limited to the relevant Milestone Amount.

22.3 Payment certificate

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22.3.3 At any time and from time to time, the Airservices Representative may by a further certificate correct any error or omission which has been discovered in any previous payment certificate.

22.3.4 Whether or not the Contractor makes (or is entitled to make) a payment claim in accordance with this clause 22, the Airservices Representative may issue a payment certificate.

22.4 Tax invoice and payment

22.4.1 Upon receipt of a payment certificate under clause 22.3, a Final D&C Certificate under clause 22.6.5 or a Final O&M Certificate under clause 22.6A.5 (as applicable), the Contractor must (without affecting its rights under the Contract) give to Airservices (and a copy to the Airservices Representative), a tax invoice for the amount specified in the payment certificate under clause 22.3.1(e), the Final D&C Certificate under clause 22.6.5 or the Final O&M Certificate under clause 22.6A.5 (as applicable).

22.4.2 A payment certificate or payment is not:

- (a) evidence of the value of work but is only on account of the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) and the O&M Contract Price (as applicable);
- (b) an admission of liability;
- (c) acceptance by Airservices or the Airservices Representative of the Contractor's performance or compliance with the Contract; or
- (d) evidence that a Milestone has been achieved.

22.4.3 If the Airservices Representative, in a payment certificate (including the Final D&C Certificate and the Final O&M Certificate):

- (a) determines that moneys are due from Airservices to the Contractor, Airservices must (subject to clause 22.7.2 and 22.9) pay to the Contractor the amount set out in the payment certificate as due from Airservices to the Contractor within the time stated in Item 53 after receipt by the Airservices Representative of the payment claim (or, if the Airservices Representative issues the relevant payment certificate otherwise than in response to a payment claim, within 20 Business Days after the issue of the relevant payment certificate); or
- (b) determines that moneys are due from the Contractor to Airservices, the Contractor must pay to Airservices the amount set out in the payment certificate as due from the Contractor to Airservices within 10 Business Days after the issue of the relevant payment certificate.

22.5 Not used

22.6 Final D&C Payment Claim & Certificate

22.6.1 On the Final D&C Payment Claim Reference Date, the Contractor must give Airservices a final payment claim and endorse it 'Final D&C Payment Claim' (**Final D&C Payment Claim**).

22.6.2 The Final D&C Payment Claim must include all amounts which the Contractor claims from Airservices under the Contract or otherwise (other than amounts arising out of, or in connection with, the O&M Services).

22.6.3 After the date for submitting the Final D&C Payment Claim has passed, Airservices will not be liable for any Claim by the Contractor arising out of or in connection with any fact, matter or thing before the issue of the Last Certificate of Completion, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, unless:

- (a) the Contractor has given Airservices a Final D&C Payment Claim within the time required; and
- (b) the claim is included in the Final D&C Payment Claim.

22.6.4 The Final D&C Payment Claim is in addition to the other notices which the Contractor must give to the Airservices Representative under the Contract in order to preserve its entitlements under the Contract.

- 22.6.5 Within the time stated in Item 52 after receipt of the Final D&C Payment Claim, the Airservices Representative will issue to the Contractor a payment certificate confirming the moneys finally due and payable by Airservices to the Contractor pursuant to the terms of the Contract in respect of the Contractor's Activities (other than the O&M Services) (**Final D&C Certificate**).
- 22.6.6 The Final D&C Certificate issued by the Airservices Representative is conclusive evidence of the full and final satisfaction and discharge of Airservices' obligation pursuant to the requirements of the Contract except in relation to:
- (a) any claim included in the Final D&C Payment Claim (if any) which has been given to the Airservices Representative within the time required by, and in accordance with the terms of, this clause 22.6; and
 - (b) on account of payment of the O&M Contract Price.
- 22.6.7 Whether or not the Contractor makes (or is entitled to make) a Final D&C Payment Claim in accordance with clause 22.6.1, the Airservices Representative may issue a Final D&C Certificate under clause 22.6.5.

22.6A Final O&M Payment Claim & Certificate

- 22.6A.1 On the Final O&M Payment Claim Reference Date, the Contractor must give Airservices a final payment claim and endorse it 'Final O&M Payment Claim' (**Final O&M Payment Claim**).
- 22.6A.2 The Final O&M Payment Claim must include all amounts which the Contractor claims from Airservices under the Contract or otherwise.
- 22.6A.3 After the date that is 20 Business Days after the expiry of the O&M Term, Airservices will not be liable for any Claim by the Contractor arising out of or in connection with the Contractor's Activities or the Works, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, unless:
- (a) the Contractor has given Airservices a Final O&M Payment Claim prior to the date that is 20 Business Days after the expiry of the O&M Term; and
 - (b) the claim is included in the Final O&M Payment Claim.
- 22.6A.4 The Final O&M Payment Claim is in addition to the other notices which the Contractor must give to the Airservices Representative under the Contract in order to preserve its entitlements under the Contract.
- 22.6A.5 Within the time stated in Item 52 after receipt of the Final O&M Payment Claim, the Airservices Representative will issue to the Contractor a final payment certificate confirming the moneys finally due and payable by Airservices to the Contractor pursuant to the terms of the Contract (**Final O&M Certificate**).
- 22.6A.6 The Final O&M Certificate issued by the Airservices Representative is conclusive evidence of the full and final satisfaction and discharge of Airservices' obligations pursuant to the requirements of the Contract except in relation to any claim included in the Final O&M Payment Claim (if any) which has been given to the Airservices Representative within the time required by, and in accordance with the terms of, this clause 22.6A.
- 22.6A.7 Whether or not the Contractor makes (or is entitled to make) a Final O&M Payment Claim in accordance with clause 22.6A.1, the Airservices Representative may issue a Final O&M Certificate under clause 22.6A.5.

22.7 Payment of workers and subcontractors

- 22.7.1 The Contractor must with each payment claim under clause 22.2, 22.6 and 22.6A provide the Airservices Representative with:
- (a) a statutory declaration in the form at Schedule 3 by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the request been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities;
 - (b) documentary evidence that at the date of the request all workers who have been employed by a subcontractor, supplier or consultant of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities up to the date of submission; and
 - (c) where any part of the Contractor's Activities are being performed in New South Wales:
 - (i) a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
 - (A) under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation;
 - (B) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
 - (C) under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation; and
 - (ii) if the Contractor is a "head contractor" as defined in the Building and Construction Industry *Security of Payment Act 1999* (NSW), a duly completed supporting statement within the meaning given in section 13(9) of the Building and Construction Industry *Security of Payment Act 1999* (NSW); and
 - (d) where section 75(7) of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) applies, a duly completed supporting statement referred to in that section.
- 22.7.2 Without limiting clause 22.9, Airservices is entitled to withhold from any payment which would otherwise be due to the Contractor under the Contract the amount disclosed as unpaid under this clause 22.7, and Airservices may pay unpaid moneys directly to a worker or a subcontractor:
- (a) where permitted by Law;
 - (b) in accordance with a Court order given in favour of the worker or subcontractor; or
 - (c) if requested in writing by the Contractor.

- 22.7.3 Any such payment made by Airservices to a worker or a subcontractor in accordance with this clause 22.7 will be deemed to be part satisfaction of Airservices' obligation to pay a Contractor's claim pursuant to the Contract.

22.8 Security of payment legislation

- 22.8.1 The Contractor agrees with Airservices that:

- (a) a payment claim submitted to the Airservices Representative under clause 22.2 which also purports to be (or is by Law) a payment claim under the relevant SOP Act is received by the Airservices Representative as agent for Airservices;
- (b) unless otherwise notified to the Contractor by Airservices in writing, the Airservices Representative will give payment certificates and carry out all other functions of Airservices under the relevant SOP Act as the agent of Airservices;
- (c) each Reference Date is (if applicable) a "reference date" for the purposes of the SOP Act; and
- (d) a reference to a "payment certificate" (including the Final D&C Certificate and the Final O&M Certificate) is also a reference to a "payment schedule" for the purposes of the relevant SOP Act.

- 22.8.2 Failure by the Airservices Representative to set out in a payment certificate issued under the relevant SOP Act or otherwise an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices will not prejudice:

- (a) the Airservices Representative's ability or power to set out in a subsequent payment certificate an amount which Airservices is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by Airservices; or
- (b) Airservices' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

- 22.8.3 The Contractor agrees that the amount set out in the payment certificate in accordance with clause 22.3.1 is, to the extent permitted by and for the purposes of the relevant SOP Act, the amount of the "progress payment" calculated in accordance with the terms of the Contract, which the Contractor is entitled to in respect of the Contract.

- 22.8.4 The Contractor irrevocably chooses the person set out in Item 54 (Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority) as, to the extent permitted by and for the purposes of the relevant SOP Act and to the extent that the Contractor's Activities are to be carried out in any other State or Territory in which the relevant SOP Act applies, the authorised nominating authority.

- 22.8.5 The Contractor must not at any time, without the written consent of Airservices, divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by Airservices or any details thereof in respect of an adjudication application made under the relevant SOP Act (in this paragraph, the Information).

- 22.8.6 For the avoidance of doubt:

- (a) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of the Information;
- (b) notwithstanding the Contractor's obligation in respect of the Information, Airservices has sole and unfettered discretion to divulge or suffer or permit its servants, subcontractors or agents to divulge to any person the Information;
- (c) Airservices may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant SOP Act; and
- (d) any Information which Airservices provides or relies upon in respect of an adjudication application made under the relevant SOP Act is made without prejudice to Airservices' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

22.9 Set-off

22.9.1 To the extent permitted by law, Airservices may retain, deduct, withhold or set-off from moneys otherwise due to Contractor:

- (a) any:
 - (i) debt or other moneys due from the Contractor to Airservices; or
 - (ii) claim to money which Airservices may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,
- (b) any amount that Airservices is permitted or obliged to withhold from payment to the Contractor in accordance with:
 - (i) the Contract; and
 - (ii) any Law, including the SOP Act;

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- 22.9.2 Nothing in clause 22.9 limits or otherwise affects the right of Airservices to recover from the Contractor the whole of any debt or claim or any balance that remains owing.

23. GST

23.1 Interpretation

In this clause 23, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

23.2 GST warranty

The Contractor warrants that, unless otherwise advised to Airservices in writing, it is registered for GST and will immediately advise Airservices if it ceases to be registered for GST.

23.3 Prices GST exclusive

Unless stated otherwise, all prices in the Contract are exclusive of GST.

23.4 GST gross up

If a party (Supplier) makes a supply under or in connection with the Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier an additional amount equal to the GST payable on the supply (GST Amount).

23.5 Reimbursements

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 23.4.

23.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

23.7 GST and Expenses

The Contractor must not charge Airservices any amount for Expenses which is in excess of:

- 23.7.1 the net amount incurred by the Contractor in respect of the Expenses exclusive of any GST (the **GST Exclusive Expense**); plus
- 23.7.2 an amount equal to the Contractor's GST liability on the GST Exclusive Expenses if and to the extent that the reimbursement is consideration for a taxable supply by the Contractor to Airservices.

23.8 Adjustment event

If and to the extent an adjustment event arises in respect of a supply made by the Contractor to Airservices under the Contract, then:

- 23.8.1 if the Contractor's corrected GST amount is less than the previously attributed GST amount, the Contractor must refund the difference to Airservices; and

23.8.2 if the Contractor's corrected GST amount is greater than the previously attributed GST amount, Airservices will pay the difference to the Contractor,

and the Contractor must issue an adjustment note to Airservices.

23.9 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with the Contract until it receives a tax invoice for the supply to which the payment relates.

24A. Taxes

24A.1 Taxes

Unless expressly specified otherwise:

24A.1.1 all amounts payable, consideration provided or monetary limits in this Contract are inclusive of any Taxes; and

24A.1.2 the Contractor must not charge Airservices any additional amount in relation to any Tax.

24A.2 Withholding

Without limiting clause 22.9, if Airservices is required by Law to deduct or withhold from any payment made to the Contractor an amount on account of any Tax, then Airservices will:

24A.2.1 make the required deduction or withholding;

24A.2.2 pay the appropriate Authority the full amount of that deduction or withholding in accordance with the relevant Law;

24A.2.3 deliver to the Contractor a copy of the receipt for that payment; and

24A.2.4 pay the balance of the amount required to be paid to the Contractor under this Contract (if any) and in doing so Airservices has fulfilled its payment obligations to the Contractor.

24A.3 Contractor Representatives Taxes and Charges

Without limiting clause 22.9, if Airservices becomes or reasonably considers that it is likely to become liable to pay any amount in respect of the Contractor Representatives Taxes and Charges, then Airservices may withhold the amount of that liability from any amounts payable to the Contractor under this Contract.

24A.4 Tax changes

If any Tax is varied, repealed or introduced which materially affects the payments made under this Contract, the parties may negotiate in good faith in relation to the impact of that Tax change on this Contract. If they reach agreement, the parties may vary this Contract in accordance with clause 35.6 to equitably adjust any payments under this Contract. In doing so the parties will take into account industry standards in relation to the application of the Tax change to transactions of a similar nature and scale to this Contract.

24. Notification of Claims

24.1 Notices

If the Contractor wishes to make a Claim against Airservices, other than a Claim for an extension of time under clause 20.5 or a payment Claim under clause 22.2, in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give the Airservices Representative the following:

24.1.1 within 5 Business Days of the occurrence of the events on which the Claim is based, written notice:

- (a) that it proposes to make the Claim, and details of the nature of the Claim; and
- (b) of the events upon which the Claim will be based; and

24.1.2 within 20 Business Days of giving the notice under clause 24.1.1, a written Claim setting out:

- (a) detailed particulars of the events on which the Claim is based;
- (b) the legal basis for the Claim;
- (c) the facts relied upon in support of the Claim; and
- (d) details of the quantification of the amount Claimed.

24.2 Continuing events

If the events upon which the Claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 24.1.2 every 20 Business Days after the Claim under clause 24.1.2 was given until after the events or the consequences have ceased.

24.3 Bar

If the Contractor fails to comply with clauses 24.1 and 24.2:

24.3.1 neither the D&C Contract Price (or, where Item 51 specifies that Milestone Payment Claim Reference Dates apply, any relevant Milestone Amount (as applicable)) nor the O&M Contract Price will be adjusted as a result of; and

24.3.2 Airservices will not be liable for any Claim by the Contractor, whether under the Contract or (insofar as is permitted by Law) any other principle of Law, arising out of or in connection with,

the relevant fact, matter or thing.

25. Completion

25.1 Certificate of Completion

25.1.1 The Contractor must notify the Airservices Representative at least 10 Business Days prior to the date upon which the Contractor anticipates that Completion will be achieved.

- 25.1.2 When the Contractor believes that Completion has been achieved, the Contractor will request, by written notice to the Airservices Representative, that:
- (a) the Airservices Representative inspect the Works or the Stage; and
 - (b) if satisfied that Completion has been achieved, that the Airservices Representative issues a Certificate of Completion stating the date Completion was achieved.
- 25.1.3 The Airservices Representative must within 10 Business Days of receipt of the notice from the Contractor pursuant to clause 25.1.2 inspect the Works or the Stage and if satisfied that the Works or the Stage have achieved Completion, issue a certificate stating the date Completion was achieved together with a Defects list identifying minor Defects as at the Date of Completion.
- 25.1.4 If the Airservices Representative is not satisfied that Completion has been achieved, the Airservices Representative must issue a notice to the Contractor setting out the reasons why the Airservices Representative does not believe Completion has been achieved. The Contractor must then proceed to bring the Works to Completion and the process in clauses 25.1.2 to 25.1.4 will reapply.
- 25.1.5 If the Airservices Representative is of the opinion that Completion of the Works or a Stage has been achieved, the Airservices Representative may issue a certificate starting the date on which Completion of the Works or the Stage was achieved whether or not the Contractor has made a request for its issue.

25.2 Possession upon Completion

On Completion, Airservices may take possession of any parts of the Works or the Stage which will not be used by the Contractor in connection with the O&M Services.

25.3 Part of the Works or Stage

- 25.3.1 Airservices may use a part of the Works or a Stage which will not be used by the Contractor in connection with the O&M Services, although the whole of the Works or the Stage has not reached Completion.
- 25.3.2 Such use will not affect the Contractor's obligations under the Contract but Airservices must endeavour to use that part so as to not interfere with the Contractor's performance.

25.4 Effect of Certificate of Completion

A Certificate of Completion is not acceptance by Airservices of the Contractor's performance or its obligations under the Contract.

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26. Security

26.1 Compliance with security obligations

The Contractor must, and must ensure that its Personnel:

26.1.1 have awareness of, and fully comply with:

- (a) Airservices' security requirements, policies and procedures that are notified by Airservices to the Contractor from time to time, including those specified in this clause 26; and
- (b) all reasonable security directions and any mandatory training issued by Airservices relating to the use of Airservices' premises, facilities or Airservices Material;

26.1.2 implement appropriate security measures to protect Airservices Material and ensure that Airservices Material, including official, classified, sensitive or commercial information or documents, is not accessible by any means by unauthorised persons;

26.1.3 participate, and provide full cooperation, in any reviews of the security procedures implemented by Airservices (or another authorised Australian Government authority); and

26.1.4 immediately report any security incidents of which it may become aware (confirmed promptly in writing to Airservices), including actual, suspected or apparent violations and breaches of this clause 26, and the steps taken by the Contractor to address these.

26.2 Authorisation of Personnel

The Contractor must ensure that any person (including any Specified Personnel or other Personnel) the Contractor proposes to carry out work or perform duties under the Contract and who will be required to:

- 26.2.1 enter any secure locations in Airservices' buildings or places;
- 26.2.2 have access to, or be responsible for the physical custody of, Confidential Information or Airservices Material; or
- 26.2.3 hold a particular kind of security clearance the details of which have been notified to the Contractor by Airservices,

does not carry out that work or perform those duties unless authorised to do so by Airservices.

26.3 Security checks

- 26.3.1 The Contractor must, and must ensure that any Representative of the Contractor providing the Works or performing the Contractor's Activities:
 - (a) obtains all security clearances or authorisations or undergoes any security checks (including a police history check) as required in relation to performing the Contract; and
 - (b) provides to Airservices, in the form required by Airservices, such information as Airservices from time to time reasonably requests for the purpose of allowing Airservices to undertake reasonable investigations for the purposes of this clause 26.
- 26.3.2 All costs associated with obtaining security clearances or authorisations, or undergoing security checks, reviews or audits, or security performance monitoring must be borne by the Contractor, unless otherwise agreed in writing by Airservices.

26.4 Airservices to act reasonably

Airservices must not unreasonably withhold authorisation of a person and must notify the Contractor in writing of:

- 26.4.1 the names of the Personnel it authorises to carry out work or perform duties under the Contract, the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances will be effective; and
- 26.4.2 the names of the Personnel it refuses to authorise to carry out such work or perform such duties,

and the Contractor must sign a copy of that notice and return it to Airservices as soon as possible as acknowledgment of the receipt of the document.

26.5 Change of circumstances

The Contractor must advise Airservices promptly in writing of any change in the circumstances of a Representative that is likely to affect Airservices' authorisation of that person.

26.6 Airservices may revoke authorisation

Airservices may, at any time, without any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular Representative in the same manner that is set out in clause 26.4 and the process set out in clause 26.4 will also apply to the replacement of that Representative.

26.7 Airport security

If the Works or the Contractor's Activities are to be provided at any Secure Area:

26.7.1 the Contractor must meet with Airservices, promptly after the Contract Date (or within such other period as notified by Airservices) and before commencing any work in a Secure Area, to discuss access and airport security, and must comply, at the sole cost of the Contractor, with any safety or security directions given by the Airport Operator and/or Airservices in respect of the Works or Contractor's Activities at an airport; and

26.7.2 before commencing any Works or Contractor's Activities in a Secure Area every Representative of the Contractor who will be working in or who will be required to have unaccompanied access to, a Secure Area must obtain an ASIC.

26.8 ASIC applications

26.8.1 The Contractor must ensure that all necessary applications are made in respect of those Personnel required to hold an ASIC and that those persons obtain ASICs. The Contractor will not be entitled to make any Claim arising out of any:

- (a) delay in obtaining an ASIC;
- (b) loss of an ASIC;
- (c) refusal to issue an ASIC to any person; or
- (d) withdrawal of an ASIC.

26.8.2 The Contractor acknowledges that:

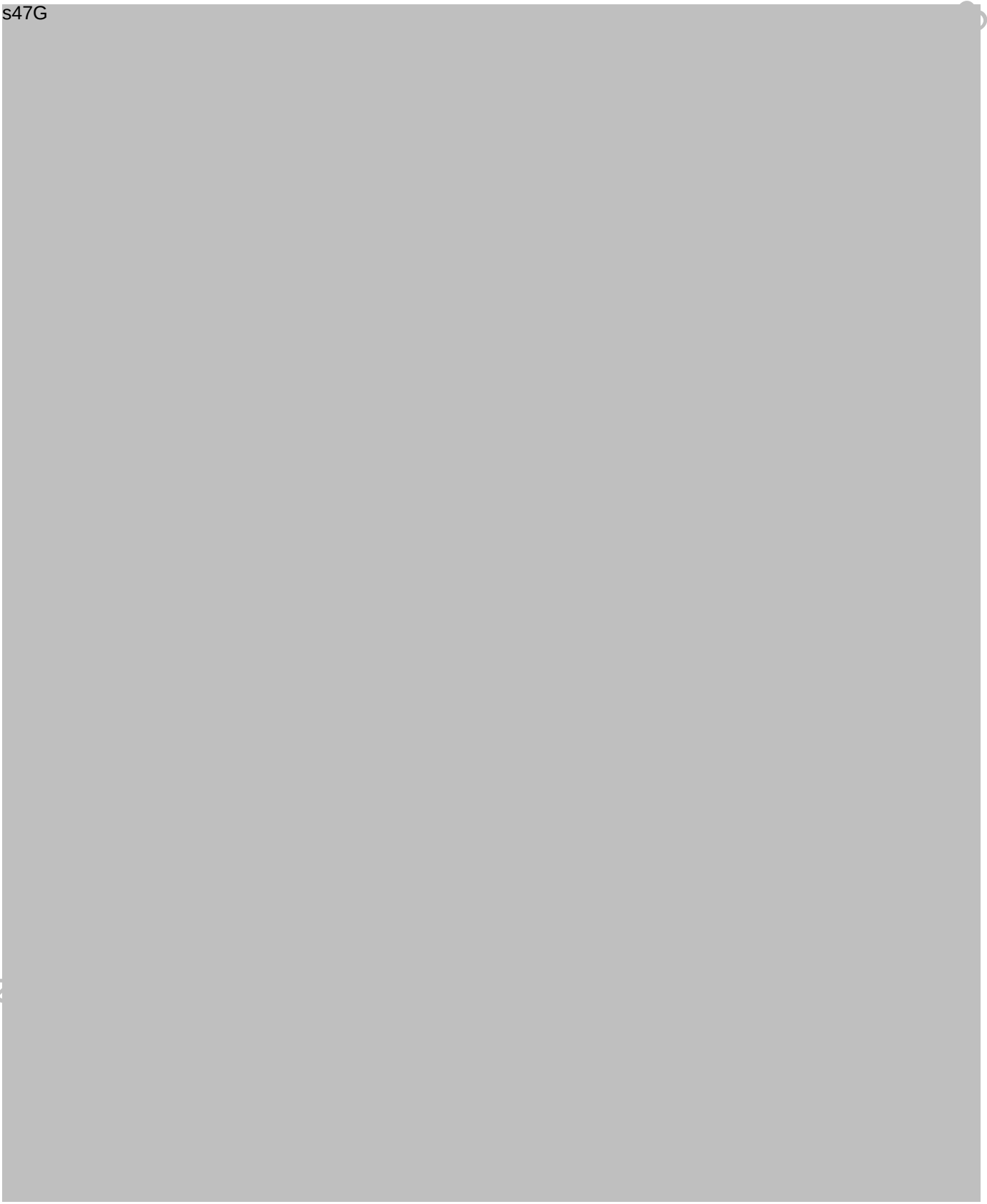
- (a) all persons applying for ASICs will be subject to those checks required under the relevant Laws;
- (b) a fee is payable to the ASIC issuing entity at the time of application;
- (c) the fees payable under the Contract include all such fees to issuing entities and the Contractor is responsible for payment of them; and
- (d) no assurance is given by Airservices as to the minimum period for processing of applications, and the time required to do so should be taken into consideration by the Contractor in planning performance of the Contract.

26.8.3 If an application for an ASIC is unsuccessful in respect of any Representative, the Contractor must promptly inform Airservices and must not without written agreement of Airservices use that Representative in the performance of any work under the Contract nor allow that Representative access to any Secure Area.

26.8.4 The Contractor must ensure that any ASICs issued by Airservices that have expired, are cancelled or damaged, or are no longer required, are promptly returned to Airservices.

- 26.8.5 Any costs incurred by Airservices to replace lost, stolen or destroyed ASICs must be reimbursed by the Contractor.

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28. Use and protection of Airservices Material

28.1 Licence of Airservices Material

Subject to any conditions or limitations of third parties notified by Airservices to the Contractor, Airservices grants the Contractor a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any Airservices Material for the sole purpose of performing the Contractor's Activities and the Works pursuant to the Contract, and the Contractor indemnifies Airservices for any infringement of Airservices' Intellectual Property Rights.

28.2 Conditions of use

28.2.1 Airservices will provide to the Contractor Airservices Material and the Contractor must ensure that Airservices Material is used strictly in accordance with any conditions or restrictions specified in Item 56 and any direction by Airservices.

28.2.2 The Contractor must, at all times, ensure that the Airservices Material is:

- (a) used or transmitted in a manner that is consistent with the Contractor's obligations under the Contract and at Law and reasonably protected against loss, corruption, unauthorised access, use, modification, disclosure or other misuse;
- (b) kept safe and in its original state (fair wear and tear excepted); and
- (c) not transferred outside of Australia without Airservices' prior written consent.

28.2.3 Subject to the Contract, the Contractor is not permitted to otherwise use, disclose, distribute or deal with the Airservices Material without Airservices' prior written consent.

28.3 Protection against Harmful Code

28.3.1 The Contractor must take reasonable steps to detect and prevent any Harmful Code from being introduced by the Contractor into (or sent from) any deliverables, or Airservices' systems, including by:

- (a) use of the most appropriate and up-to-date virus detection software for preventing and detecting Harmful Code;
- (b) implementing practices and procedures that are consistent with industry best practice;

- (c) pro-actively monitoring known threats of Harmful Code; and
- (d) informing Airservices of any Harmful Code and the steps necessary to avoid the introduction of Harmful Code.

28.3.2 If the Contractor becomes aware that any Harmful Code has been introduced into any deliverables or Airservices' systems, the Contractor must:

- (a) promptly notify Airservices;
- (b) provide all information reasonably requested by Airservices in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have;
- (c) take all necessary remedial action to:
 - (i) eliminate the Harmful Code and prevent its re-occurrence; and
 - (ii) rectify any consequences of the Harmful Code (to the extent that they are capable of rectification);
- (d) if the Harmful Code causes a loss of data or loss of operational efficiency, assist Airservices to mitigate the losses and restore the efficiency and/or data;
- (e) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source; and
- (f) ensure that sufficient Contractor resources and technology are available to meet its obligations under this clause 28.3.2.

28.3.3 Subject to clause 28.3.5, the Contractor must perform its obligations under this clause 28.3 at no additional cost to Airservices.

28.3.4 To the extent that the Harmful Code was introduced by the Contractor or a Contractor Representative, the Contractor must pay the costs and expenses of the activities set out in clauses 28.3.2.

28.3.5 If Harmful Code was introduced by Airservices or a third party and the Contractor incurs costs and expenses in connection with the activities set out in clause 28.3.2, the parties will, in good faith, agree the remedial services that the Contractor will carry out and a reasonable amount of fees, costs and expenses that Airservices will pay to the Contractor for the performance of these activities.

28.4 Dealing with Airservices Material on termination or expiry of the Contract

28.4.1 Subject to clause 28.4.2 on expiry or termination of the Contract, or on written request from Airservices, the Contractor must:

- (a) immediately return to Airservices all Airservices Material;
- (b) if requested by Airservices, destroy all Airservices Material comprising of documentation (including all archival copies) in its custody or control; and / or
- (c) pay the cost of repair or replacement (at Airservices' option) of any Airservices Material comprising equipment which has been degraded or destroyed beyond fair wear and tear.

28.4.2 The obligation in clause 28.4.1 does not prevent the Contractor from retaining and using one copy of Airservices Material after the performance of the Contractor's Activities:

- (a) solely for the purposes of complying with its record keeping, reporting and regulatory obligations; or
- (b) that is stored in electronic back-up tapes or records maintained in the ordinary course of the Contractor's business that are not readily capable of search or destruction,

provided that the Airservices Material is always treated as confidential to Airservices.

29. Confidentiality

29.1 Prohibition on use and disclosure

Subject to clause 29.2, each party must protect the Confidential Information of the other party and must not make public, disclose or use any Confidential Information of the other party except in accordance with the Contract, unless the other party gives its prior written consent.

29.2 Exceptions to obligations

The obligations on each party under clause 29.1 will not be taken to have been breached to the extent that Confidential Information of the other party:

- 29.2.1 is disclosed to a party's Representative for the purposes of performing its obligations, or exercising its rights, under the Contract;
- 29.2.2 is disclosed by Airservices to the responsible Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- 29.2.3 is shared by Airservices within the Commonwealth, where this serves the Commonwealth's legitimate interests;
- 29.2.4 is disclosed by Airservices to the Auditor General, Ombudsman, or Australian Information Commissioner or their delegates; or
- 29.2.5 is required by Law, the rules of a stock exchange or the Contract to be disclosed.

29.3 Disclosure of Confidential Information

Where a party discloses Confidential Information of the other party to another person:

- 29.3.1 pursuant to clauses 29.2.1 or 29.2.3, the disclosing party must:
 - (a) notify the receiving person that the information is Confidential Information; and
 - (b) not provide the Confidential Information unless the receiving person agrees to keep such information confidential; or
- 29.3.2 pursuant to clauses 29.2.2 or 29.2.4, Airservices will notify the receiving party that the information is Confidential Information.

29.4 Notification of infringement

If the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 29, or the corresponding obligations of any of its Personnel, the Contractor must:

29.4.1 notify Airservices immediately; and

29.4.2 comply with any reasonable directions from Airservices with respect to remedying that infringement.

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29.6 Survival

This clause 29 survives the termination or expiry of the Contract.

30. Monitoring progress

30.1 Communications

The Airservices Representative and the Contractor's Representative (or their nominees) will represent the parties for the day to day purposes of the Contract.

30.2 Notification

If, in the performance of the Contractor's Activities, the Contractor becomes aware of something that may affect the safety of air navigation or Airservices' capacity to perform its statutory functions, the Contractor must notify Airservices as soon as possible.

30.3 Progress meetings

30.3.1 The parties will meet:

- (a) at the times and in the manner set out in the Statement of Requirements (or otherwise as agreed in writing between the parties); and
 - (b) as reasonably requested by Airservices from time to time,
- to discuss any issues in relation to the Contract or the provision of the Contractor's Activities and the Works.

30.3.2 The Contractor must ensure that the Contractor's Representative and Airservices must ensure the Airservices Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Contractor's Activities and the Works raised by either party.

30.4 Reports and information

The Contractor must provide Airservices with:

- 30.4.1 reports as required by the Contract or as reasonably required by the Airservices Representative; and
- 30.4.2 other information reasonably requested by the Airservices Representative, including for discussion at progress meetings.

31. Dispute resolution

31.1 Procedure for resolving Disputes

Unless otherwise expressly provided in the Contract, the parties agree that any Dispute must be resolved in accordance with this clause 31.

31.2 Notice of Dispute

If a Dispute arises between the parties, then either party may give a notice (**Notice of Dispute**) to the other party which must state that it is a notice under this clause 31.2 and include or be accompanied by particulars of the Dispute.

31.3 Negotiation between Designated Officers

31.3.1 Within 10 Business Days after the receipt of the Notice of Dispute under clause 31.2, the Designated Officers must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) if the Designated Officers cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

31.4 Expert determination

31.4.1 If a Dispute is not resolved within 20 Business Days after receipt of the Notice of Dispute under clause 31.2 (whether or not the Designated Officers met in accordance with clause 31.3.1), either party may by written notice to the other party submit the Dispute to expert determination.

31.4.2 In respect of the expert determination under clause 31.4.1:

- (a) subject to any provisions to the contrary in this clause 31, the expert determination will be conducted in accordance with the Resolution Institute's Expert Determination Rules (version dated 3 August 2016);
- (b) the expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) disclose to the parties any interest he or she has in the outcome of the expert determination;
 - (iii) not communicate with one party to the expert determination without the knowledge of the other parties;
 - (iv) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (v) invite and receive, if made, submissions from all of the parties;
 - (vi) on receipt of a written submission from one party, ensure that a copy of such submission is given promptly to the other parties;
 - (vii) not accept verbal submissions from one party unless all of the other parties are present;
 - (viii) take into consideration all documents, information and other material which the parties give the expert and which the expert, in its reasonable opinion, considers relevant; and
 - (ix) to the extent permissible by Law, not apply or have regard to the provisions of Proportionate Liability Legislation;
- (c) the determination of the expert must be in writing; and
- (d) each party must:
 - (i) bear its own costs in respect of the expert determination; and
 - (ii) unless determined otherwise by the expert, pay one-half of the expert's costs.

31.4.3 Within 30 Business Days (or within such longer period as may be agreed by the parties and the expert) after the acceptance by the expert of its appointment, the expert must give the parties its determination in writing, which must include reasons.

31.4.4 The determination of the expert given under clause 31.4.3:

- (a) will be final and binding unless:
 - (i) a party gives a notice of appeal to the other party within 15 Business Days after the determination is given; and
 - (ii) it is reversed, overturned or otherwise changed under the procedure in clause 31.5; and
- (b) must be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 31.5.

31.5 Litigation

31.5.1 If:

- (a) a Dispute is submitted to expert determination under clause 31.4.1; and
- (b) a party has given a notice in accordance with clause 31.4.4(a)(i),

then either party may commence court proceedings in relation to the Dispute.

31.5.2 Subject to clause 31.5.3, the parties must follow the dispute resolution procedures set out in this clause 31 before either party commences court proceedings or takes similar action in relation to any Dispute.

31.5.3 Nothing in this clause 31 will operate to limit or otherwise affect the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

31.6 No delay to the activities

Despite the existence of any Dispute, unless notified in writing by Airservices, the Contractor must continue to perform its obligations under the Contract.

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32.1**32.2**

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34. Notices**34.1 Delivery of notice**

34.1.1 A notice or other communication required or permitted to be (or otherwise contemplated as being) given to a party or the Airservices Representative under the Contract must be in writing and may be delivered:

- (a) in accordance with Item 57; or
- (b) where nothing is provided in Item 57, then:
 - (i) personally to the party or the Airservices Representative;
 - (ii) by leaving it at the address of the party or the Airservices Representative; or

- (iii) by posting it by prepaid post addressed to the party or the Airservices Representative at the address of the party or the Airservices Representative.

34.1.2 Without limiting clause 34.1.1, if the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

34.2 Particulars for delivery

34.2.1 The address (and, if applicable, email addresses) of:

- (a) each party is set out in Item 57; and
- (b) the Airservices Representative is set out in Item 57,

or as notified by a party to the other parties or the Airservices Representative to the parties in accordance with this clause 34.

34.2.2 Any party or the Airservices Representative may change its address by giving notice to the other parties and the Airservices Representative (as applicable).

34.3 Time of service

A notice or other communication is deemed delivered:

34.3.1 if delivered personally or left at the person's address, upon delivery;

34.3.2 if posted within Australia to an Australian address:

- (a) using regular prepaid post or registered post, 6 Business Days after posting;
- (b) using priority prepaid post or priority registered post, 4 Business Days after posting; and
- (c) using express post, 2 Business Days after posting;

34.3.3 if posted from a place to an address in a different country, 10 Business Days after posting;

34.3.4 if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth);

34.3.5 except in respect of any Payment Schedule, if received after 5.00pm in the place it is received, at 9.00am on the next Business Day; and

34.3.6 except in respect of any Payment Schedule, if received on a day which is not a Business Day in the place it is received, at 9.00am on the next Business Day.

34.4 Electronic Documents

If the Contractor is required to provide any document in electronic form under the Contract, the document must be provided in a format nominated by the Airservices Representative.

35. Miscellaneous**35.1 Applicable law**

The Contract is governed by the Law of the jurisdiction where the Site is located and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of that jurisdiction.

35.2 Hours of working

Unless otherwise agreed by the Airservices Representative, the hours of work applicable to the Contractor's Activities, methods of access, permissions and consents and other relevant matters to be carried out on-Site are those specified in Item 58.

35.3 Entire agreement

The Contract represents the entire agreement of the parties and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, by the parties, or their Personnel, relating to its subject matter.

35.4 Relationship

35.4.1 A party is not, and must not represent itself as, an employee, agent, partner or joint venturer of the other party. The relationship between Airservices and the Contractor is and will remain for the term of the Contract one of principal and independent contractor.

35.4.2 The Contractor's Personnel involved in the performance of the Contract are not, and the Contractor must ensure they do not represent themselves as, legal representatives, agents, officers, partners, servants or employees of Airservices.

35.5 Assignment of rights

The Contractor may not assign any of its rights under the Contract without Airservices' written consent, which will not be unreasonably withheld. A change in Control is deemed to be an assignment.

35.6 Variation

Subject to clause 21, the Contract may be varied only in writing signed by both parties.

35.7 Waiver

A provision of, or a right created under, the Contract may not be waived except in writing signed by the party or parties to be bound.

35.8 Rights cumulative

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

35.9 Prompt performance

If there is a time for performance of an obligation under the Contract, the performing party agrees to perform by the time specified.

35.10 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to the Contract and to perform its obligations under it, including to sign, execute or otherwise deal with any document.

35.11 Documentation to be in English

All documentation and correspondence provided under the Contract must be in English.

35.12 Costs

Each party must pay its own costs of negotiating, preparing and executing the Contract.

35.13 Counterparts

The Contract may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

35.14 Ownership of Contract

All copyright and other Intellectual Property Rights contained in the Contract remain the property of Airservices.

35.15 Approvals and consents

Except where the Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the Contract.

35.16 No merger

The rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

35.17 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Contract and any transaction contemplated by it.

35.18 Severability

A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.

35.19 Airservices may act

Airservices may, either itself or by a third party, perform an obligation under the Contract which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by Airservices in so performing such an obligation will be a debt due from the Contractor to Airservices.

35.20 Survival

The following clauses survive the termination and expiry of the Contract:

35.20.1 clause 13 (Subcontracting);

- 35.20.2 clause 16 (Risk of Loss and Damage);
- 35.20.3 clause 17 (Insurance);
- 35.20.4 clause 19.4 (Defects after the Date of Completion);
- 35.20.5 clause 23 (GST);
- 35.20.6 clause 26.1 (Compliance with security obligations);
- 35.20.7 clause 27 (Intellectual Property Rights and Moral Rights);
- 35.20.8 clause 29 (Confidentiality);
- 35.20.9 clause 31 (Dispute Resolution);
- 35.20.10 clause 32.9 (Termination for convenience);
- 35.20.11 clause 35 (Miscellaneous);
- 35.20.12 clauses 6, 7, 8, 9 and 10 of Schedule 1 (Commonwealth Regulatory Requirements); and
- 35.20.13 any other provisions that by implication from their nature are intended to survive termination or expiry of the Contract.

36. Commissioning

36.1 Commissioning Plan

- 36.1.1 The Contractor must prepare the Commissioning Plan and submit it to the Airservices Representative under clause 3A.
- 36.1.2 The Commissioning Plan prepared and submitted by the Contractor under this clause 36.1 must:
 - (a) be prepared in consultation with, and otherwise address and take proper account of the reasonable requirements of, Airservices;
 - (b) include the details and content required by the Statement of Requirements;
 - (c) include the proposed Commissioning Work for each relevant part of the Works;
 - (d) include the Proof of Performance Tests applicable in respect of the Works;
 - (e) include such other information which may be reasonably requested from time to time by Airservices;
 - (f) be prepared using the software nominated by Airservices (if any); and
 - (g) otherwise comply with, and satisfy, the Contract (including the Statement of Requirements).

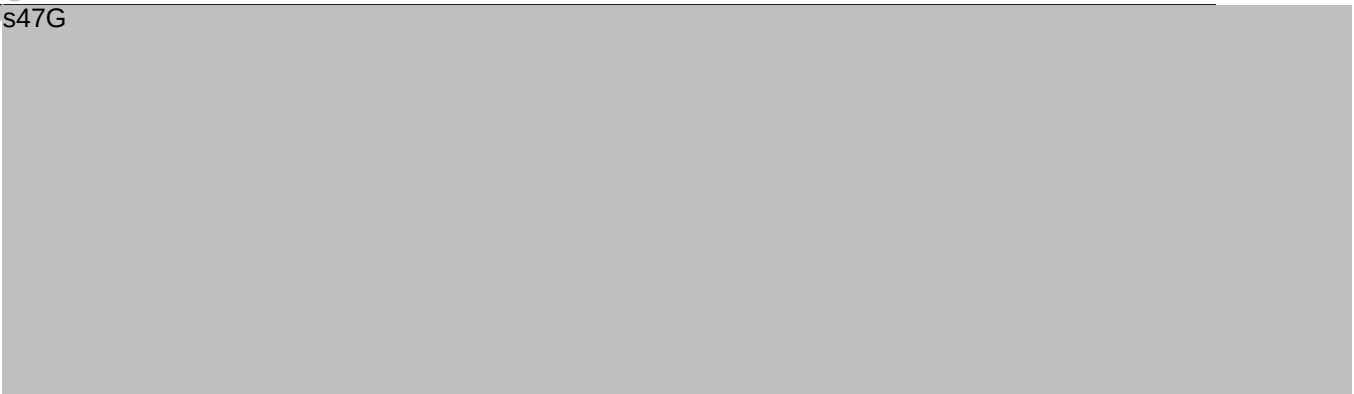
36.2 Commissioning Work

- 36.2.1 The Contractor must, as soon as reasonably practicable, commence the carrying out of the Commissioning Work in respect of each relevant part of the Works.
- 36.2.2 The Contractor must:
- (a) carry out the Commissioning Work in accordance with the Current Commissioning Plan;
 - (b) not depart from the Current Commissioning Plan; and
 - (c) complete the Commissioning Work in respect of each part of the Works in accordance with the Contract prior to the commencement of any Proof of Performance Tests under clause 19.2A.
- 36.2.3 Nothing in this clause 36.2 will limit or otherwise affect the Contractor's obligations and liabilities under clause 20.4.
- 36.2.4 The Contractor must complete the Commissioning Work as a condition precedent to Completion of the Works or a Stage (as applicable).

37. O&M Plan

- 37.1.1 The Contractor must prepare the O&M Plan and submit it to the Airservices Representative under clause 3A.
- 37.1.2 The Contractor must submit the O&M Plan to Airservices as a condition precedent to Completion of the Works or a Stage (as applicable).
- 37.1.3 The O&M Plan prepared and submitted by the Contractor under this clause 37 must:
- (a) be prepared in consultation with, and otherwise address and take proper account of the reasonable requirements of, Airservices;
 - (b) include the details and content required by the Statement of Requirements;
 - (c) include such other information which may be reasonably requested from time to time by Airservices;
 - (d) be prepared using the software nominated by Airservices (if any); and
 - (e) otherwise comply with, and satisfy, the Contract (including the Statement of Requirements).

s47G



Schedule 1 Contract Particulars

Item	Clause references	Description	Requirement / Particulars	
1.	1.1 (definition of Airservices)	Airservices	Name	Airservices Australia
			ABN	59 698 720 886
			Address	Alan Woods Building, 25 Constitution Avenue, Canberra ACT 2601
			Email	s47F [redacted]@AirservicesAustralia.com
			Contact	s47F [redacted]
2.	1.1 (definition of Contractor)	Contractor	Name	Enviro Pacific Services Limited
			ACN	111 372 064
			Address	Level 5, 123 Epping Road, Macquarie Park, NSW 2113
			Email	s47F [redacted]@enviropacific.com.au
			Contact	s47F [redacted]
3.	1.1 (Project)	Project	Airport	s47G [redacted]
			Project	s47G [redacted]
4.	1.1 (definition of Contract Documents)	Contract Documents	The Contract will be comprised of the following documents: - the Formal Instrument; - the Terms of Engagement; and - Schedule 1 to Schedule 12 (inclusive).	
5.	1.1 (Contract Price)	Contract Price	s47G [redacted]	
6.	Not used			
7.	1.1 (definition of Airservices Representative)	Airservices Representative	s47F [redacted] Email: s47F [redacted]@AirservicesAustralia.com	

Item	Clause references	Description	Requirement / Particulars
8.	1.1 (definition of Applicable Policies)	Applicable Policies	s47G
9.	1.1 (definition of Applicable Standard)	Applicable Standards	
10.	1.1 (definition of Commissioning Work)	Commissioning Work	
11.	1.1 (definition of Compensable Cause)	Compensable Causes	
12.	1.1 (definition of Contractor's Representative)	Contractor's Representative	
13.	1.1 (definition of Current Management Plan)	Management Plans which the Contractor must comply with	
14.	1.1 (definition of Date for Completion)	Date for Completion	
15.	Not used		
16.	1.1 (definition of Design Documents)	Design Documents	
17.	1.1 (definition of Designated Officers)	Designated Officers	
18.	1.1 (definition of Excepted Approvals)	Approvals the Contractor is not required to obtain	
19.	1.1 (definition of O&M Term)	O&M Term	

Item	Clause references	Description	Requirement / Particulars
20.	1.1 (definition of Provisional Sum Work)	Provisional Sum Work	s47G
21.	1.1 (definition of Services Levels)	Service Levels required for the performance of the O&M Services	
22.	1.1 (definition of Site)	Site	
23.	1.1 (definition of Specified Personnel)	Specified Personnel	
24.	1.1 (definition of Specified Subcontractors and Specified Subcontractor Work)	Specified Subcontractors and Specified Subcontractor Work	

Item	Clause references	Description	Requirement / Particulars	
25.	1.1 (definition of Works Commencement Date)	Works Commencement Date	s47G	
26.	Not used			
27.	3.6.1	Samples the Contractor is required to obtain		
28.	4.2.1(c)	Preconditions to access to the Site		
29.	4.2.1	Date Airservices must ensure the Contractor has access to the Site		
30.	4.12.1	Application of clause 4.12 (Dilapidation Reports)		
31.	4.12.2	Contractor required to obtain dilapidation report		
32.	Not used			
33.	Not used			
34.	Not used			
35.	Not used			

Item	Clause references	Description	Requirement / Particulars	
36.	Not used			
37.	Not used			
38.	Not used			
39.	Not used			
40.	Not used			
41.	Not used			
42.	Not used			
43.	17.2.1(d)	Public liability insurance (minimum limit of liability)	s47G	
44.	17.3.1(b)	Environmental liability insurance		
45.	17.5.1(b)	Motor Vehicle Insurance		
46.	17.7.1(c)	Professional Indemnity Insurance		
47.	17.7.2	Professional indemnity insurance for consultants and subcontractors	Categories of Consultants and Subcontractors	Level of Coverage
48.	20.8	Maximum amount of daily delay damages	s47G	
49.	21.2.2(d)(ii)	Percentage increase for profit		
50.	21.2.2(d)(i)	Percentage deduction for		

Item	Clause references	Description	Requirement / Particulars		
		profit and overheads			
51.	22	Type of Reference Dates that Apply			
		(a) Type of Reference Dates that Apply	s47G		
		If Progressive Payment Claim Reference Dates Apply:			
		(b) Progressive Payment Claim Reference Date	s47G		
		If Milestone Payment Claim Reference Dates Apply:			
		(c) Payment Milestone	Milestone	Milestone Amount	
			s47G		
			Milestone Dates		
			(d) Milestones	Milestone	Milestone Date
				s47G	
52.	22.3.1, 22.6.5 and 22.6A.5	Time period for issuing Payment Schedule	New South Wales Victoria Tasmania ACT Northern Territory	s47G	
			Queensland South Australia Western Australia	s47G	
			Time period for payment	Northern Territory Victoria ACT Tasmania	s47G
				New South Wales Queensland South Australia	s47G

Item	Clause references	Description	Requirement / Particulars	
			Western Australia	s47G
54.	22.8.4	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority	Place	Appointed Adjudicator / Prescribed Appointer / Authorised Nominating Authority
			ACT	Australian Capital Territory Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			New South Wales	New South Wales Chapter of the Resolution Institute
			Northern Territory	Northern Territory Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			Queensland	Queensland Building and Construction Commission
			South Australia	South Australian Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
			Tasmania	Tasmanian Chapter of the Resolution Institute
			Victoria	Any one of the following: - Victorian Chapter of the Resolution Institute; - Australian Solutions Centre Pty Limited; - RICS Dispute Resolution Service; - Adjudicate Today Pty Limited; - Australian Solutions Centre Pty Limited; or - Rialto Adjudications Pty Limited.
			Western Australia	Western Australian Chapter of the Institute of Arbitrators & Mediators Australia (IAMA)
55.	25.5.1	Liquidated Damages	Do liquidated damages apply?	s4
			Rate of liquidated damages:	s47

Item	Clause references	Description	Requirement / Particulars
56.	28.2.1	Additional conditions or restrictions for use of the Airservices Material	s47G
57.	34.1.1, 34.1.2	Address for Service of Notices	Airservices Address: GPO Box 367, Canberra ACT 2601 Email: s47F @AirservicesAustralia.com Airservices Representative Address: GPO Box 367, Canberra ACT 2601 Email: s47F @AirservicesAustralia.com Contractor Address: 591 Blackburn Road, Notting Hill, VIC 3168 Email: s47F @criviropacific.com.au
58.	35.2	Hours of Working	All works must be carried out 7:00am and 7:00pm on each day except Saturdays, Sundays and Public Holidays.
59.	Not used		
60.	Not used		
61.	38.10.1(a)	Period Airservices may extend O&M Term	s47G
62.	38.10.2	Total period Airservices may extend O&M Term	s47G
63.	38.10.3	Amount O&M Contract Price will be increased	
64.	16.3	Limitation of liability	
65.	1.1 (definition of Baseline Information)	Baseline Information	

Schedule 2 Commonwealth Regulatory Requirements

1. The WHS Accreditation Scheme

Where the Contract Price is \$4 million (GST inclusive) or more, the Contractor must:

- (a) where the Contractor is the builder in respect of the Works:
 - (i) maintain accreditation under the WHS Accreditation Scheme while building work is carried out; and
 - (ii) comply with:
 - (A) all conditions of its accreditation under the WHS Accreditation Scheme; and
 - (B) the National Construction Code performance requirements in relation to building materials; or
- (b) where the Contractor is engaging the builder in respect of the Works, ensure that the builder:
 - (i) is accredited under the WHS Accreditation Scheme at the time the contract for building work is signed;
 - (ii) is contractually required to maintain its accreditation under the WHS Accreditation Scheme while carrying out the building work; and
 - (iii) complies with:
 - (A) all conditions of its accreditation under the WHS Accreditation Scheme; and
 - (B) the National Construction Code performance requirements in relation to building materials.

2. Engagement of Illegal Workers prohibited

2.1 Definitions

In this clause 2 of this Schedule 1, the following additional definition applies:

Term	Definition
Illegal Worker	a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after the person's visa has expired; or (c) is working in breach of the person's visa conditions.

2.2 Obligations

- (a) The Contractor must ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Contractor must make compliance by any subcontractors with the provisions of this clause 2 of this Schedule 1 a condition of any subcontract.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Contractor's Activities.

- (d) For the avoidance of doubt, compliance with the Contractor's obligations under this clause 2 of this Schedule 1 will not constitute a Force Majeure Event or give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under the Contract.
- (e) When requested by Airservices in writing to do, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied, and is complying, with its obligations under this clause 2 of this Schedule 1.

3. Indigenous Procurement Policy

3.1 Definitions

In this clause 3 of this Schedule 1, the following additional definitions apply:

Term	Definition
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy available at: https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp , as updated from time to time.

3.2 Application

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- (b) The Contractor must use its best endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,
 in the performance of the Contractor's Activities.
- (c) On request by Airservices, the Contractor must provide a report to Airservices on how it has met its obligations in clause 3.2(b).

4. Workplace Gender Equality Act

- (a) This clause 4 of this Schedule 1 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the WGE Act.
- (b) The Contractor must:
 - (i) comply with its obligations, if any, under the WGE Act; and
 - (ii) not enter into a subcontract made in connection with any Contractor's Activities with a subcontractor or subconsultant named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the term of the Contract, the Contractor must promptly notify the Airservices Representative of that fact.
- (d) If the term of the Contract exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Contract Date and following this, annually, to the Airservices Representative.

- (e) Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under the Contract.

5. Protection of Personal Information

5.1 Application of this clause

This clause 5 of this Schedule 1 applies only where the Contractor deals with Personal Information when, and for the purposes of, performing the Contractor's Activities.

5.2 Obligations

The Contractor must:

- (a) only use that Personal Information for the purposes of performing its obligations under the Contract;
- (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by Airservices and must not do or omit to do anything that causes Airservices to be in breach of an Australian Privacy Principle;
- (c) comply with any directions, guidelines, determinations or recommendations of the Australian Information Commissioner, to the extent that they are not inconsistent with the requirements of the Contract;
- (d) ensure that any subcontract entered into for the purpose of fulfilling the Contractor's obligations under the Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 5 of this Schedule 1, including this requirement in relation to any further contracts entered into by the subcontractor; and
- (e) if the Contractor becomes aware of any infringement or possible or alleged infringement of its obligations under this clause 5 of this Schedule 1, or the corresponding obligations of any of its Personnel, the Contractor must notify Airservices immediately and comply with any reasonable directions from Airservices with respect to remedying that infringement.

5.3 Survival

This clause 5 of this Schedule 1 survives the termination or expiry of the Contract.

6. Accounts, books and records

6.1 Obligations

Without limiting any other obligation under the Contract, the Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by Airservices under the Contract to be determined.

6.2 Survival

This clause 6 of this Schedule 1 survives the termination or expiry of the Contract.

7. Freedom of information

- (a) The Contractor acknowledges that:
 - (i) Airservices is an agency that is subject to the *Freedom of Information Act 1982* (Cth) (the **FOI Act**); and
 - (ii) the Contract may be a 'Commonwealth contract' and the Contractor may be a 'contracted service provider', within the meaning of the FOI Act.
- (b) Where Airservices has received a request under the FOI Act for access to a document created by, or in the possession of, the Contractor or its subcontractors that relates to the Contract, the Contractor must provide the document to Airservices, on request.

- (c) The parties must promptly comply with their obligations under the FOI Act, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 7 of this Schedule 1 and the FOI Act.

8. Public interest disclosure

- (a) The Contractor acknowledges and agrees that:
 - (i) Airservices is an agency that is subject to the *Public Interest Disclosure Act 2013* (Cth) (the **PID Act**);
 - (ii) the Contract may be a 'Commonwealth contract', the Contractor and its subcontractors may be a 'contracted service provider' and any officers and employees of the Contractor or its subcontractors may be a 'public official' within the meaning of the PID Act; and
 - (iii) conduct engaged in by the Contractor or any subcontractor in relation to entering into, or giving effect to the Contract, may be 'disclosable conduct' under the PID Act.
- (b) The parties must promptly comply with their obligations under the PID Act and Airservices' public interest disclosure policies, at no additional cost to one another, and the Contractor must ensure that all of its subcontractors also comply with this clause 8 of this Schedule 1 and the PID Act.

9. Audit and access

- (a) At any time during the execution of the Works and the period of 10 years following the issue of the Final O&M Certificate, the Contractor and its Personnel must grant Airservices, its nominees and the Auditor-General access at reasonable times and on reasonable notice (except where there is a suspected breach of the Contract in which case no notice is required) to:
 - (i) any premises or site of the Contractor and its Personnel used in relation to the Contract;
 - (ii) any Personnel of the Contractor engaged in relation to the performance of the Contract; and
 - (iii) any of Airservices Material, data, records, account and other material relevant to the performance of the Contract under the control or custody of the Contractor or its Personnel for inspection and copying.
- (b) In complying with this clause 9 of this Schedule 1, the Contractor must:
 - (i) provide all such facilities and assistance and answer all questions of the Airservices Representative or any nominated person;
 - (ii) in the case of documents or records stored on a medium other than in writing, the Contractor and its Personnel must make available on request at no additional cost to Airservices such reasonable facilities as may be necessary to enable a legible reproduction to be created; and
 - (iii) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under this clause 9 of this Schedule 1 as if the subcontractor were the Contractor.

10. Modern Slavery

- (a) In this clause 10 of this Schedule 1:

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth); and

Modern Slavery Laws means any law, statute or regulation which:

- (i) prohibits Modern Slavery (including exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct) and is applicable or otherwise in force in the jurisdiction in which Airservices or the Contractor is registered or conducts business or in Airservices' sites; and/or
 - (ii) requires the Contractor to issue disclosures to the public and/or any government agency, connected with Modern Slavery in its operations and supply chains.
- (b) The Contractor must ensure that in performing its obligations under the Contract, it and its Personnel:
 - (i) do not engage in any conduct or omission which may:
 - (A) contravene any Modern Slavery Laws; or
 - (B) fail to comply with any Airservices or Commonwealth policy relating to Modern Slavery; and
 - (ii) provide all reasonable assistance required by Airservices to fulfil its obligations, including reporting obligations, under the *Modern Slavery Act 2018* (Cth).

Schedule 3 Statutory Declaration

I _____

(authorised officer)

OF _____

do solemnly and sincerely declare that, in relation to the contract between

_____ ACN _____ and _____
 _____ ACN _____ (**Contractor**) for the _____ (**Contract**):

1. I hold the position of _____ of the Contractor
2. I am in a position to know the facts contained herein and I am duly authorised to bind the Contractor by the terms of this declaration.
3. All subcontractors, consultants and suppliers who have at any time been engaged by the Contractor in connection with the work under the Contract have been paid all amounts which as at the date of this declaration are due and payable to them in respect of the work under, or in connection with, the Contract.
4. All workers (including employees and contractors) who have at any time been engaged by the Contractor in connection with the work under the Contract:
 - (a) have been paid all remuneration and benefits which as at the date of this declaration are due and payable to them in respect of their employment or under, or in connection with, the Contract; and
 - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment or work in respect of, or in connection with, the Contract in accordance with to any award, enterprise agreement, Act or Regulation.
5. The Contractor has been paid all that is due and payable to it under the Contract as at the date of this declaration, except for any amounts claimed in any payment claim with which this declaration is provided.
6. The Contractor has paid all relevant fees and maintains all insurance policies the Contractor is required to maintain under the Contract.
7. The Contractor is solvent and able to meet its debts as and when they fall due.
8. The Contractor has been informed (by statutory declaration in equivalent terms to this declaration) by each of its subcontractors, consultants and suppliers engaged by the Contractor in connection with the work under the Contract that all their respective employees, secondary subcontractors, suppliers and consultants have been paid all remuneration and other amounts or benefits due and payable to them in connection with the work under the Contract.
9. I personally know the truth of the matters which are contained in this declaration.
10. I am not aware of anything which would contradict the statements made in the statutory declarations provided to the Contractor by its subcontractors, consultants and suppliers, as referred to in this declaration.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the [Inter Note: Select applicable legislation: *Evidence (Miscellaneous Provisions) Act 1958* (VIC) **OR** *Oaths Act 1967* (Qld) **OR** *Oaths Act 1936* (SA) **OR** *Oaths and Affirmations Act 1984* (ACT) **OR** *Oaths Act 1900* (NSW) **OR** *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) **OR** *Oaths, Affidavits and Statutory Declarations Act 2010* (NT) **OR** *Oaths Act 2001* (TAS)].

Declared at
 (place)

on
 (date)

.....
 (Signature)

Before me.....
 (Justice, Commissioner for Declarations or authorised person)

[User Note: NSW Only – Delete for other States and Territories]

Certificate under section 34(1)(C) Of *Oaths Act* 1900 (NSW)

*Please cross out any text that does not apply

I(name),

a(qualification to be authorised witness),

certify the following matters concerning the making of this statutory declaration by the person who made it:

1 *I saw the face of the person or

*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2 *I have known the person for at least 12 months or

*I have confirmed the person's identity using an identification document and the document I relied on was([describe identification document relied on]).

.....
(signature of authorised witness)

Date:

**The following persons may witness a Statutory Declaration in the State of New South Wales:

- (i) a Registrar-General or Deputy Registrar-General;
- (ii) a Justice of the Peace;
- (iii) a Notary Public;
- (iv) an Australian legal practitioner authorised by section 27(1) of the *Oaths Act* 1900;
- (v) a commissioner of the court for taking affidavits; and
- (vi) a person by law authorised to administer an oath under the *Oaths Act* 1900.

Schedule 4 Deed of Novation

Parties [] ABN [] of []
 ("Incoming Contractor")
 [] ABN [] of []
 ("Subcontractor")
 [] ABN [] of []
 ("Contractor")

Recitals

- A. The Contractor and the Subcontractor are parties to the Contract.
- B. The Incoming Contractor, the Subcontractor and the Contractor have agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and Interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"Contract" means, subject to clause 1.2(l) below, the agreement between the Contractor and the Subcontractor described in Annexure 1.

"Contract Guarantees" means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

"Effective Date" means [the date of this deed].

"GST" means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

"Liability" means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

"Related Entity" has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

"Services" means the services provided or to be provided under the Contract.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more

- persons binds or benefits them jointly and severally;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **"includes"** in any form is not a word of limitation;
 - (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
 - (l) unless the context otherwise requires, references to the Contract mean the Contract as amended by the terms of this deed; and
 - (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the deed or any part of it.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

3. Novation

3.1 Assumptions of rights and obligations

- (a) The Incoming Contractor:
 - (i) will be bound by and must comply with the terms of the Contract as amended by this deed, and will enjoy the rights and benefits conferred on the Contractor under the terms of the Contract; and
 - (ii) must assume the obligations and Liability of the Contractor under the terms of the Contract,

in all respects as if the Incoming Contractor had originally been named in the Contract as a party instead of the Contractor.
- (b) The Subcontractor must comply with the terms of the Contract as if the Incoming Contractor were originally named in the Contract in place of the Contractor.
- (c) Any reference in the Contract to the Contractor shall be read as a reference

to the Incoming Contractor.

3.2 Release by Subcontractor

- (a) The Subcontractor releases the Contractor from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Contractor under or in respect of the Contract.
- (b) This release does not affect any rights the Subcontractor may have against the Incoming Contractor as a result of the assumption by the Incoming Contractor under the terms of this deed of the obligations and Liability of the Contractor under the terms of the Contract.

3.3 Release by Contractor

The Contractor releases the Subcontractor from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any Claim it has, or but for this clause would have had, against the Subcontractor under or in respect of the Contract,

except that nothing in this clause affects the obligations or Liability of the Subcontractor to the Incoming Contractor under or in respect of the Contract.

3.4 Insurance

As from the Effective Date:

- (a) the Incoming Contractor must replace any insurances effected and maintained by the Contractor under the terms of the Contract; and
- (b) the Subcontractor must take the necessary steps to make certain that, for all insurances required to be effected by the Subcontractor under the terms of the Contract, the Incoming Contractor is named in place of the Contractor as required by the Contract.

3.5 Replacement of Guarantees

The Subcontractor and the Incoming Contractor must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Subcontractor, the Incoming Contractor; and
- (b) in the case of the Incoming Contractor, the Subcontractor.

3.6 Payments to the Subcontractor

The parties acknowledge and agree that as at the Effective Date:

- (a) the amount which has been paid to the Subcontractor by the Contractor under the Contract is specified in Annexure 1; and
- (b) the amount which remains to be paid to the Subcontractor by the Incoming Contractor under the Contract is specified in Annexure 1.

4. Overriding Effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment or novation of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Incoming Contractor.

5. Representations and Warranties

5.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

5.2 Authorisations

Each party represents to each other party and must make certain that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

5.3 Binding Obligations

Each party represents to each other party and must make certain that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

6. Duties, Costs and Expenses**6.1 Stamp Duty**

The Contractor must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed.

6.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

6.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice;
- (c) if an adjustment event occurs in respect of any supply made by a party under or in connection with this deed, a corresponding adjustment to the consideration and GST amount must be made between the parties and the supplier must issue an adjustment note to the recipient; and
- (d) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

7. General**7.1 Governing Law**

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in Annexure 1.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in Annexure 1, and the courts competent to

determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

7.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

7.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

7.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

7.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.7 Further Acts and Documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

7.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Annexure 1

Contract (clause 1.1)	[insert]
The amount which has been paid to the Subcontractor by the Contractor under the Contract (clause 3.6(a))	[insert]
The amount which remains to be paid to the Subcontractor by the Incoming Contractor (clause 3.6(b))	[insert]
State or Territory (clauses 7.1 and 7.2)	[insert]

Executed as a deed

Executed by **[Incoming Contractor's name]**)
[Incoming Contractor's ACN] in accordance)
with section 127(1) of the *Corporations Act*)
2001 (Cth) by being signed by authorised)
persons for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Executed by **[Subcontractor's name]**)
[Subcontractor's ACN] in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth) by being signed by authorised persons)
for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Executed by **[Contractor's name]**)
[Contractor's ACN] in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth) by being signed by authorised persons)
for the company:

.....
Director.....
Director (or Company Secretary).....
Full name.....
Full name.....
Usual address.....
Usual address

Schedule 8 Site Plan

s47G



Released by Airservices Australia under

st 1982

Schedule 9 Statement of Requirements

The Statement of Requirements consists of the document titled s47G
s47G and the attachments to that document.

The contents of the Statement of Requirements is as set out below.

Released by Airservices Australia under the Freedom of Information Act 1982