

Australian Standard™

**Amended from
General conditions of contract for
design and construct
AS 4300—1995**

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(Incorporating Amendment No. 1)

Australian Standard™

General conditions of contract for design and construct AS 4300—1995

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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee on General Conditions of Contract and issued as an Australian Standard.

This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure, or part thereof affected.

This Standard covers the following types of project procurement methods—

- (a) Design and Construct Contract.
- (b) Design Development and Construct Contract.
- (c) Design, Novate and Construct Contract.

If the project procurement method chosen by the Principal is:

- (i) *Design and construct*—the Principal would provide the Principal's Project Requirements, would not normally provide a detailed Preliminary Design and would not require Novation of any subcontractors (including consultants);
- (ii) *Design development and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design and accordingly would complete Annexure Items 10 and 11;
- (iii) *Design, novate and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design, would complete Annexure Items 10 and 11 and would complete Annexure Item 24 stating which subcontractors (including consultants) or Selected Subcontractors are to be novated to the Contractor.

This Standard is part of the suite of contracts based on AS 2124—1992 *General conditions of contract*.

AS 4301—1995 *General condition of tendering and tender form for design and construct contract* and AS 4302—1995 *Form of formal instrument of agreement for design and construct contract* should be used with this Contract.

WARNINGS:

- 1 Users of this Australian Standard are warned that Clause 17 (Damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.**

This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the work under the Subcontract) and 19 (Public Liability Insurance).

Parties wishing to limit their liability should seek legal and insurance advice before entering a subcontract under this Standard.

- 2 Where the Principal effects insurance policies under Clause 18 or 18A, copies of such policies should be made available to tenderers at the time of tender.**
- 3 For the purposes of Clause 30.2, the inclusion of Quality Assurance requirements in a contract will require detailed clauses in the Contract which have regard to the Quality Standard selected for the work.**

- 4 Principals should ensure that their specific requirements are fully and completely incorporated in the 'Principal's Project Requirements' obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender the parties should give consideration to whether that design should form part of the Preliminary Design.
- 5 Clauses which are prefixed by a dagger symbol (†) require the parties to indicate in the Annexure whether the particular Clause is applicable or not applicable. If words in an Annexure item are prefixed with a dagger symbol (†), the parties are required to delete the words which do not apply, as appropriate. Note Clause 1 which provides that if no deletion is made, the particular Clause applies.
- 6 Items in the Annexure which are marked with a hash symbol (#) indicate that these items are to be deleted where the Contract provides for Separable Portions. If so, the items marked with a hash symbol (#) are to be deleted in the Annexure and that part of the Annexure entitled Separable Portion is to be completed for each Separable Portion.
- 7 Clauses which are prefixed by an asterisk symbol (*) may be omitted without making consequential amendments to these General Conditions of Contract.

Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard**General conditions of contract for design and construct****1 CONSTRUCTION OF CONTRACT**

The law governing the Contract, its interpretation and any agreement to arbitrate is the law of the State or Territory stated in the Annexure item applicable to Clause 1, or if the State or Territory is not stated, the law of the State or Territory where the Site is located.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in the Annexure.

Communications between the Principal, the Superintendent and the Contractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the National Measurement Act 1960, as amended from time to time.

Where provisions in these General Conditions of Contract are expressed to be alternatives and the Contract fails to state which alternative applies, the first alternative shall apply.

If in the Annexure item relevant to a Clause prefixed with a dagger symbol (†), neither of the expressions † Applicable, † Not Applicable are deleted, the Clause shall apply.

If pursuant to the Annexure Part B to these General Conditions of Contract, Clauses or parts of Clauses in these General Conditions are deleted from the Contract, this Contract shall be read and construed as though the Clause or part of the Clause has been deleted whether or not that particular Clause or part of the Clause has been struck from these General Conditions.

2 INTERPRETATION

In the Contract, except where the context otherwise requires—

‘Act’ means the *Work Health and Safety Act 2011* (Qld);

‘Affected Party’ has the meaning given in Clause 22A;

‘Annexure’ means Schedule 1 to the Formal Instrument of Agreement;

‘APRA’ means the Australian Prudential Regulation Authority;

‘As Constructed Drawings’ means drawings showing the levels, lines, positions and dimensions of the Works as built;

‘BIF Act’ means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any regulations;

‘Business Day’ means any day that is not:

- (a) a Saturday, Sunday, bank or public holiday or a special holiday in Redland City;
- and

- (b) for the purposes of Clause 42, occurring in the period between 22 December and 10 January (inclusive);

‘Certificate of Practical Completion’ means the certificate referred to in Clause 42.3;

‘Compensable Cause’ means any act, default or omission of the Superintendent, the Principal or the Principal’s Personnel (except to the extent that the act, default or omission is caused or contributed to by matters within the reasonable control of the Contractor) other than any act, default or omission that is either contemplated or permitted by this Contract or by law or the exercise of any right of the Superintendent or Principal under the Contract;

‘Construction Documents’ means all documents forming part of the Contract and all documents relevant to the carrying out of the work under the Contract or completion of the Works provided or made available to the Contractor at any time prior to Practical Completion;

‘Constructional Plant’ means appliances and things used in the execution of the work under the Contract but not forming part of the Works;

‘Consultant’ means any person engaged by the Contractor to perform consultancy services in connection with the work under the Contract and includes any consultant of the Principal whose prior contract is novated to the Contractor under Clause 10;

‘Contract’ has the meaning given in the Formal Instrument of Agreement;

‘Contract Documents’ has the meaning given in the Formal Instrument of Agreement;

‘Contract Sum’ means—

- (a) where the Principal accepted a lump sum, the lump sum;
- (b) where the Principal accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Schedule of Rates; or
- (c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including provisional sums but excluding any additions or deductions which may be required to be made under the Contract;

‘Contractor’ means the person bound to execute the work under the Contract;

‘Corporations Act’ means the *Corporations Act 2001* (Cth) and any of its regulations;

‘Criminal Code’ means the *Criminal Code Act 1995* (Cth) and any of its regulations;

‘Contractor’s Design Obligations’ means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents and, if the documents stated in the Annexure as describing the Principal’s Project Requirements include a Preliminary Design, developing the Preliminary Design;

‘Contractor’s Program’ is referred to in Clause 33.2;

‘Date for Practical Completion’ means—

- (a) where the Annexure provides a date for Practical Completion, the date; or
- (b) where the Annexure provides a period of time for Practical Completion, the last day of the period,

but if any extension of time for Practical Completion is granted by the Superintendent or allowed in any litigation, it means the date resulting therefrom;

‘Date of Acceptance of Tender’ means the date which appears on the notice in writing of acceptance of the tender or if there has been no written notice of acceptance of tender, then the date the Contract is entered into by the parties;

‘Date of Practical Completion’ means—

- (a) the date certified by the Superintendent in a Certificate of Practical Completion issued pursuant to Clause 42.5, to be the date upon which Practical Completion was reached; or
- (b) where another date is determined in any litigation as the date upon which Practical Completion was reached, that other date;

‘day’ means calendar day;

‘Daywork’ means work referred to in Clause 41;

‘Deed of Novation’ means the Deed of Novation other than the Preliminary Design Deed included in the Contract, or otherwise provided by the Principal to the Contractor;

‘Defects Liability Period’ has the meaning given in Clause 37;

‘Design Documents’ means the drawings, specifications and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works;

‘direction’ includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

‘Environmental Management Standard’ means AS/NZS ISO 14001:2004 Environmental management systems, and any subsequent standard which expands upon or replaces that standard;

‘Excepted Risk’ means any of the risks referred to in Clause 16.3;

‘Final Certificate’ has the meaning given to it in Clause 42.6 and is also a payment schedule;

‘Final Payment Claim’ has the meaning given to it in Clause 42.5 and is also a payment claim;

‘Force Majeure Event’ means:

- (a) any of the following events occurring after the Date of Acceptance of Tender:
 - (i) an act of God, a flood, cyclone, tornado, earthquake, tidal wave, fire or explosion;
 - (ii) a nation or state-wide labour disturbance, strike, lock-out or industrial dispute by persons other than the Supplier or its Personnel;
 - (iii) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, terrorism act, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government Authority; or

- (iv) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) an epidemic, pandemic or quarantine (including any measures, shutdown or restrictions imposed by a Government Authority as a result of the occurrence of an epidemic, pandemic or quarantine) which occurs either before or after the Date of Acceptance of Tender and to the extent that the effects of which event directly impact the performance of a party's obligations under the Contract,

provided the event or circumstance occurs within Australia, is not caused by an act or omission of the party affected by a Force Majeure Event and is beyond the reasonable control of the party affected by a Force Majeure Event.

For the avoidance of doubt, storms, rainfall (both seasonal and unseasonal) and any other forms of adverse or inclement weather and the effects of that weather (including road closures and interruption to freight and personnel transportation as a result) will not be considered a Force Majeure Event;

'Formal Instrument of Agreement' means the document of that name forming part of the Contract;

'Government Authority' means any government (including any national, state, provincial, district, territorial, regional or local government) or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, board, agency or entity;

'Insolvency Event' means when a party is a corporation:

- (a) is insolvent within the meaning of section 95A of the Corporations Act;
- (b) is presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (c) a controller, administrator or provisional liquidator or analogous person is appointed to it, or takes or appoints an agent to take possession of, all or a substantial part of the property of it; or
- (d) except for the purpose of a reconstruction, amalgamation, merger or consolidation while solvent, has an application or order made, a resolution passed, an application to a court made or other steps taken against or in respect of it for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them, or a moratorium involving any of them;

'Latent Condition' means any of the conditions referred to in Clause 12.1;

'law' means any law, binding case law or principle of equity, legislation, statute, regulation, order, rule, subordinate legislation, by-law, local law, ordinance, order, award, proclamation decree, decree law, treaty, notice or resolution of any Government Authority, code, standard or any other document enforceable thereunder, in each case which affects or is applicable to the Contract, its performance or its subject matter or relates to a party's rights and obligations under the Contract;

'Legislative Requirements' includes—

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out;

- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Contract; and
- (c) fees and charges payable in connection with the foregoing;

‘Liquidation Event’ means when:

- (a) a party is a corporation and:
 - (i) except for the purpose of a reconstruction, amalgamation, merger or consolidation while solvent, has an application or order made, a resolution passed, an application to a court made or other steps taken against or in respect of it for its winding up or dissolution or is wound up in insolvency; or
 - (ii) a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; or
- (b) the party is an individual and commits an act of bankruptcy, has a bankruptcy petition presented against him or her, becomes bankrupt whether by way of a creditor's petition or by presenting a debtor's petition, or enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth);

‘Modern Slavery’ means conduct which would constitute:

- (a) an offence under division 270 or 271 of the Criminal Code; or
- (b) conduct which would amount to an offence under division 270 or 271 of the Criminal Code if the conduct took place in Australia; or
- (c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); or
- (d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition of Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38);

‘Modern Slavery Act’ means the *Modern Slavery Act 2018* (Cth);

‘Modern Slavery Statement’ means a statement prepared in accordance with the requirements of sections 13 and 16 of the Modern Slavery Act;

‘month’ means calendar month;

‘payment claim’ has the meaning given to it in the BIF Act and includes a Final Payment Claim;

‘payment schedule’ has the meaning given to it in the BIF Act and includes a Final Certificate;

‘person’ includes a firm or body corporate or unincorporate or an individual;

‘Personal Information’ has the meaning given to it in the Privacy Act;

‘Personnel’ means:

- (a) in relation to the Contractor, any of its workers (including subcontractors, subcontractors’ personnel, suppliers, suppliers’ personnel, agents and representatives involved either directly or indirectly in the performance of the Contract); and

- (b) in relation to the Principal, any of its past or present contractors (other than the Contractor), officers, workers, agents or representatives;

‘Practical Completion’ is that stage in the execution of the work under the Contract when—

- (a) the Works are complete except for minor omissions and minor defects—
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the Works;
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion, have been carried out and passed;
- (c) documents and other information required under the Contract which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works, have been supplied;
- (d) all services to the Site are connected and perform both under normal operating conditions and under simulated emergency operating conditions;
- (e) all rubbish, surplus material, temporary buildings and works, plant and equipment are removed from the Site so as to leave it in a tidy condition;
- (f) all building services have been commissioned and tested as required by the Contract Documents and have operated without failure for a period of seven (7) days;
- (g) the Works and the Site have been professionally cleaned and are clean to a standard acceptable to the Superintendent;
- (h) the Contractor has provided to the Superintendent any approvals, consents or certificates relating to and necessary for the completion, use or occupation of the Works (other than those expressly required to be obtained by the Principal under the Contract);
- (i) the Contractor has provided the Principal with:
 - (i) keys for every lock installed within the Site, with each key labelled in a manner approved by the Principal so as to identify the lock to which it relates;
 - (ii) certificates from all of the Contractor’s design Consultants stating that the Works have been completed in accordance with this Contract and are fit for the intended purpose;
 - (iii) all As Constructed Drawings which must show (where relevant) marked-up alterations in the Works as constructed to what is depicted in the Design Documents;
 - (iv) all warranties, certificates, permits, documents and information which, are in the Superintendent’s opinion are reasonably required from the Contractor for the use, operation and maintenance of the Works;

- (v) all operating manuals, instruction manuals and manufacturer's warranties relating to the Works and any warranties required to be given by the Contractor under the Contract;
- (vi) all training reasonably required from the Contractor for the use, operation and maintenance of the Works;
- (j) the Contractor has provided to the Superintendent each of the documents required to be provided under the Contract as a precondition to Practical Completion;
- (k) the Contractor has successfully completed to the satisfaction of the Superintendent, all commissioning required by the Contract; and
- (l) any other conditions which the Contract requires to be satisfied as a precondition to Practical Completion, have been satisfied;

'Preliminary Design' means any preliminary design of the Works included in the documents stated in the Annexure as describing the Principal's Project Requirements;

'Preliminary Design Deed' means a deed of novation for the Preliminary Design or Selected Subcontractor Work in the form included in the Contract or otherwise provided by the Principal to the Contractor;

'Principal' means the Principal stated in the Annexure;

'Principal's Project Requirements' means the written summary or outline of the Principal's requirements for the Works described in the documents stated in the Annexure and—

- (a) shall include the stated purpose for which the Works are intended;
- (b) may include the Principal's design, timing and cost objectives for the Works; and
- (c) where stated in the Annexure, shall include a Preliminary Design;

'Principal-Supplied Information' means any information (whether documented or otherwise) supplied or made available to the Contractor by or on behalf of the Principal before or after the Date of Acceptance of Tender, but does not include the documents or information comprising the Contract;

'Privacy Act' means the *Privacy Act 1988* (Cth);

'provisional sum' includes monetary sum, contingency sum and prime cost item;

'QBCC Act' means the *Queensland Building and Construction Commission Act 1991* (Qld) and any of its regulations;

'Regulations' means the *Work Health and Safety Regulation 2011* (Qld);

'Schedule of Rates' means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

'Selected Subcontract Work' means that work or the supply of those items subcontracted to a Selected Subcontractor pursuant to Clause 9.4;

'Selected Subcontractor' means a subcontractor carrying out Selected Subcontract Work;

'Separable Portion' means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Superintendent has determined pursuant to Clause 35.4 shall be a Separable Portion;

‘Site’ means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract;

‘subcontractor’ in Clauses 9, 10 and 11(d) includes Consultant;

‘Superintendent’ means the person stated in the Annexure as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent’s Representative, includes a Superintendent’s Representative;

‘Superintendent’s Representative’ means a person appointed by the Superintendent pursuant to Clause 24;

‘survey mark’ in Clause 28, means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract;

‘Temporary Works’ means works used in the execution of the work under the Contract but not forming part of the Works;

‘test’ in Clause 31, includes examine and measure;

‘Utility Service’ means any utility or underground service, including water, treated water, electricity, gas, LPG, telephone, drainage, waste, sewerage and electronic communications (including fibre optic feeds or cables);

‘WHS Law’ means the Act and the Regulations;

‘work under the Contract’ means the work which the Contractor is or may be required to execute under the Contract and includes the Contractor’s Design Obligations, variations, remedial work, Constructional Plant and Temporary Works;

‘Works’ means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

The clause headings and sub-clause headings in these General Conditions of Contract shall not form part of these General Conditions of Contract and shall not be used in the interpretation of the Contract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender.

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, issuing the certificate, making the payment or doing the other act shall be deemed to be on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday.

3 NATURE OF CONTRACT

3.1 Performance and Payment

The Contractor shall execute and complete the work under the Contract in accordance with the requirements of the Contract.

The Principal shall pay the Contractor the Contract Sum in accordance with the terms of the Contract.

3.2 Not Used

3.3 Not Used

4 WARRANTIES

4.1 Contractor's Warranties

Without limiting the generality of Clause 3.1, the Contractor warrants to the Principal that the Contractor—

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
- (b) subject to Clause 9, shall engage and retain the Consultants identified in the Contractor's tender and who are suitably qualified and experienced;
- (c) has obtained all necessary information as to risks, contingencies and other circumstances which could have an effect on the performance and cost of executing the work under the Contract and the restrictions with which the Contractor must comply on Site;
- (d) has examined and carefully checked any Preliminary Design included in the Principal's Project Requirements and that such Preliminary Design is suitable, appropriate and adequate for the purpose stated in the Principal's Project Requirements;
- (e) shall execute and complete the Contractor's Design Obligations and produce the Design Documents to accord with the Principal's Project Requirements and, if Clause 10 applies, accept the novation and retain the Consultants for any work the subject of a prior contract with the Principal;
- (f) has developed, or will develop, any Preliminary Design to a stage where it is sufficiently complete to obtain all approvals from any Government Authority necessary for carrying out the work under the Contract;
- (g) has considered the Preliminary Design (if any), and confirms that it can be built in accordance with the Principal's Project Requirements;
- (h) has informed itself completely of:
 - (i) the nature of the work under the Contract;
 - (ii) the materials necessary for the execution of the work under the Contract;
 - (iii) the means of access to, and facilities at, the Site;
 - (iv) the transport facilities for deliveries to or from the Site; and
 - (v) the suitability of any work methods it proposes to use for the execution of the work under the Contract;

- (i) has informed itself of all requirements of Government Authorities in relation to the Works generally, including any measures which are necessary to protect the environment from any adverse effect or damage arising from execution of the work under the Contract;
- (j) has obtained all appropriate professional and technical advice on all matters and circumstances in respect of the matters referred to in this Clause prior to executing this Contract; and
- (k) shall execute and complete the work under the Contract in accordance with the Design Documents so that the Works, when completed, shall—
 - (i) be fit for their stated purpose; and
 - (ii) comply with all the requirements of the Contract and all Legislative Requirements.

4.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 4.1, the Contractor's Design Obligations and the Contractor's other guarantees, warranties, obligations and liabilities under the Contract remain unaffected notwithstanding—

- (a) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a Consultant of the Principal under Clause 10 and thereafter has retained that Consultant in connection with the work under the Contract;
- (c) any receipt or review of, or comment or direction on, the Design Documents by the Superintendent; and
- (d) any variation under Clause 40.

The Contractor acknowledges and agrees that the Contractor will bear and continue to bear all liability and responsibility in accordance with the Contract for the execution and completion of the work under the Contract, notwithstanding any one or more of the following:

- (e) any receipt or review of, or comment or direction on, or rejection or approval of, or expression of satisfaction or dissatisfaction, or permission to use or deemed permission to use in relation to any other document provided by the Contractor;
- (f) the making available to or the provision to the Contractor by or on behalf of the Principal or the Superintendent of any information;
- (g) any variation under Clause 40 or any refusal by the Superintendent to direct a variation under that Clause.

The Principal does not warrant or represent that Works can be built in accordance with the Contract Documents, including the Principal's Project Requirements.

4.3 No Duty of Care or Liability Imposed

No review, comment, approval, consent, rejection, refusal, permission to use, deemed permission to use, permission to proceed, expression of satisfaction or dissatisfaction, supervision or superintendence by or on behalf of the Principal or the Superintendent concerning any document (including the Design Documents) provided by the Contractor

or any aspect of the work under the Contract, nor any failure by the Principal or the Superintendent to do any of those things, shall:

- (a) limit or exclude any obligation or liability of the Contractor;
- (b) prejudice any of the Principal's rights against the Contractor;
- (c) impose on the Principal or the Superintendent any duty of care to the Contractor (whether in contract or in tort);
- (d) result in the Principal or the Superintendent assuming any responsibility or liability for:
 - (i) the adequacy, quality, compliance or fitness of the Works or of any document provided by the Contractor, including the Design Documents; or
 - (ii) any errors in or omissions from any document or the Works; or
- (e) constitute an admission that the Principal, the Superintendent or any of their agents or employees have checked any document or work for errors, omissions or compliance with the requirements of the Contract.

4.4 Obligations to benefit Site Owner

- (a) In this Contract, "Site Owner" means each of the entities set out in the Annexure being an entity owning or having an interest in the Site or part of the Site. If no entities are named in the Annexure, this Clause does not apply.
- (b) The Contractor agrees:
 - (i) to indemnify the Site Owner in the terms of all indemnities given by the Contractor to the Principal under the Contract;
 - (ii) to ensure that all policies of insurance required to be effected by the Contractor under the Contract, are also effected in the name of each entity comprising the Site Owner as a separate insured party (with the exception of insurance for the Contractor's employees and workers and the Contractor's motor vehicles); and
 - (iii) to ensure that all warranties to be provided by the Contractor to the Principal in writing also name the Site Owner as an additional party benefiting from the warranties.

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract and for the purposes of providing security of payment to subcontractors of the Contractor (under the BIF Act).

5.2 Provision of Security

If it is provided in the Annexure that a party shall provide security then the party shall provide security in the amount stated in the Annexure and in accordance this Clause 5.

5.2A Further Security

If as a result of one or more variations the Contract Sum increases by more than 10% of the original Contract Sum, the Contractor must provide to the Principal such additional or replacement security (in the same form as is required by Clause 5.2) so as to ensure that the total security provided by the Contractor under the Contract to the Principal equals, at all times, in aggregate, 10% of the total Contract Sum (as may be revised or adjusted in accordance with the Contract).

This Clause 5.2A shall apply to any further increases to the Contract Sum of 10% or greater as a result of any further variation(s).

5.3 Form of Security

The security shall be:

- (a) in the form of an unconditional undertaking; and
- (b) given by a financial institution or insurance company, as approved by the Principal, in its absolute and sole discretion.

The Contractor shall pay all costs (including all stamp duty or other taxes) of and incidental to providing the security.

5.4 Time for Provision of Security

The Contractor shall provide security within 10 Business Days of the Date of Acceptance of Tender or prior to the Contractor taking possession of the Site or taking possession of sufficient of the Site to enable the Contractor to commence work under the Contract, whichever is the earliest.

5.5 Retention Moneys

Any retention shall be in accordance with Clause 42.1 and the Annexure.

5.6 Conversion of Security and Recourse to Retention Moneys

The Principal may at any time and in its absolute discretion convert into money, security that does not consist of money. The Principal will not be liable in any way for any loss occasioned by such conversion.

The Principal may, in its absolute discretion, have recourse to the whole or any part of retention moneys, cash security or moneys obtained by conversion of security where the Principal:

- (a) claims it has become entitled to exercise a right under the Contract in respect of the retention moneys or security;
- (b) claims that moneys are owing to it by the Contractor whether under this Contract, as damages for a breach of this Contract by the Contractor or otherwise at law;
- (c) is otherwise entitled at law to have recourse to such moneys or security; or
- (d) must comply with obligations under Chapter 4 of the BIF Act,

and the Principal will not be liable in any way for any loss occasioned by such action.

Without limiting the unconditional nature of retention moneys or the security, the Contractor:

- (e) acknowledges that the Principal may have recourse to retention moneys and/or any security and may convert into money any security held under the Contract at any time;
- (f) warrants that it will not seek to prevent the Principal having recourse to such retention moneys and/or security (including by seeking an injunction against the Principal or the issuer of the security preventing a demand on payment under such security).

5.7 Substitution of Security for Retention Moneys

The Contractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted in Clause 5.3. To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release retention moneys.

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5.8 Reduction of Security and Retention Moneys

Upon the issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, to 50 per cent thereof.

Upon the issue of the Certificate of Practical Completion, the Contractor's entitlement to security shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, to 50 per cent thereof.

If at any time after Practical Completion the Superintendent is of the opinion that it is reasonable to further reduce the Principal's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal shall release security and retention moneys in excess of the entitlement within 14 days of the entitlement being so reduced.

The Contractor shall release security in excess of the entitlement within 14 days of the entitlement being so reduced.

If the value of Security or retention money (separately or cumulatively) held by the Principal after Practical Completion is in excess of 2.5% of the Contract Sum, the Contractor acknowledges and agrees that for the purposes of section 67N of the QBCC Act, the amount in excess of 2.5% of the Contract Sum after practical completion of the building work is reached is not held to correct Defects during the Defects Liability Period but is to ensure due and proper performance of the Contract and to compensate the Principal for any damage it may suffer as a result of a breach of this Contract by the Contractor.

5.9 Release of Security and Retention Moneys

If the Contractor has provided security, retention moneys or both, then the Principal shall release them when required by Clause 42.6. If the Contractor has provided additional security for any item of unfixed plant and materials pursuant to Clause 42.2, the Principal shall release that additional security within 14 days of the incorporation into the Works of the unfixed plant or materials.

If the Principal has provided security, then, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise) the Contractor shall release the security provided by the Principal.

5.10 Holding of and Interest on Cash Security and Retention Moneys

The Principal:

- (a) shall own any interest earned on any moneys resulting from the conversion into money of any security provided by the Contractor or on the retention moneys held pursuant to the Contract; and
- (b) shall not hold or retain any such moneys, retention moneys or interest upon trust for the Contractor or upon any other trust and the Contractor shall not have any beneficial interest in such moneys, retention moneys or interest; and
- (c) shall not be obliged to invest any such moneys, retention moneys or interest or to account for any advantage derived through holding or retaining such moneys, retention moneys or interest or to hold any such moneys, retention moneys or interest in a separate or any particular account.

5.11 Deed of Guarantee, Undertaking and Substitution

Where—

- (a) a party is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Act as amended from time to time; and
- (b) the Principal has included in the tender documents a form of Deed of Guarantee, Undertaking and Substitution,

that party shall, if requested by the other party in writing within 7 days of the Date of Acceptance of Tender, provide the other party within 14 days of that request having been made, a Deed of Guarantee, Undertaking and Substitution in the form included in the tender documents duly executed by the first party and that other corporation for the performance of the obligations and the discharge of the liabilities of the first party under the Contract.

For the purpose of this Clause 5.11, the terms 'corporation' and 'subsidiary' have the meanings defined in the Corporations Act.

5.12 Retention of Security

Despite any other provision of the Contract:

- (a) the Principal may continue to hold security where the Contract otherwise requires it to be released or after termination of the Contract for any reason to the extent of any bona fide amount claimed by the Principal under or in connection with the Contract (whether liquidated or otherwise);
- (b) where the Contract is terminated by reason of the Contractor repudiating the Contract or being in substantial breach of the Contract, the Principal may have immediate recourse to the security after termination for any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise;
- (c) where the Contract is terminated in circumstances other than those referred to in sub-clause (b), the Principal may have recourse to the security after termination

where the Contractor fails to pay any amount which becomes due to the Principal without first giving notice to the Contractor; and

- (d) where the Contract is terminated for any reason the Principal may retain and have recourse to the security where any of the Contractor's Personnel has lodged a subcontractor's charge under the BIF Act.

5.13 No Payment Until Security Lodged

The Principal may refuse to make any payment otherwise due to the Contractor until the Contractor has fully complied with its obligations to lodge security under Clause 5.2 and 5.2A.

6 EVIDENCE OF CONTRACT

6.1 Contract in Absence of Formal Instrument of Agreement

Unless a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Contract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Contract.

6.2 Formal Instrument of Agreement

Within 14 days after being so requested in writing by the Principal, the Contractor shall execute the Formal Instrument of Agreement and return it to the Principal.

Within 14 days of receipt from the Contractor of the Formal Instrument of Agreement duly executed by the Contractor, the Principal shall execute and forward one copy to the Contractor.

The Superintendent may extend the periods under this Clause 6.2 by notice in writing to the parties.

Notwithstanding any other provision of this Contract, the Principal shall not be obliged to make any payment to the Contractor until the Contractor executes and returns to the Principal the Formal Instrument of Agreement submitted to it pursuant to this Clause 6.2.

7 SERVICE OF NOTICES

Notice will be taken to be given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, three Business Days after the date of posting;
- (c) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error; and
- (d) in the case of delivery by email, when the sender receives an email receipt or other confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (in that place)

it will be taken to have been given or made at the commencement of business on the next Business Day in that place.

Any party may change the address, facsimile number or email address to which notices can be sent to that party by informing the other parties of such change in accordance with this Clause.

Any notice given to the Contractor's key contact as listed in the Annexure shall be deemed to have been given to the Contractor.

8 CONTRACT DOCUMENTS

8.1 Discrepancies

The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Contract, that party shall notify the Superintendent in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.

The Contractor agrees:

- (a) it has fully audited the Principal's Project Requirements and satisfied itself that the Principal's Project Requirements are suitable and achievable by the Contractor in executing the work under the Contract;
- (b) it has fully audited all documents forming part of the Contract and all Construction Documents provided or made available to the Contractor prior to the Date of Acceptance of Tender; and
- (c) it will immediately upon receipt by it of Construction Documents after the Date of Acceptance of Tender carry out a full audit of the Construction Documents, for the purposes of satisfying itself that the Construction Documents are:
 - (i) adequate and sufficient for the Contractor to carry out the work under the Contract and complete the Works in accordance with the Contract; and
 - (ii) not inconsistent with each other and that none of the documents contain inconsistencies or ambiguities within them.

The Contractor shall not be entitled to any claim for an extension of time or adjustment to the Contract Sum or any other claim arising from any inconsistency, ambiguity, discrepancy or inadequacy in the Principal's Project Requirements or the Construction Documents, or any direction given by the Superintendent under this Clause in relation to the Principal's Project Requirements or the Construction Documents, unless:

- (iii) the relevant Construction Document was given after the Date of Acceptance of Tender; and
- (iv) the Contractor has not notified the Superintendent of the inconsistency, ambiguity, discrepancy or inadequacy within 7 days after receipt by the Contractor of the Construction Document and before the Contractor relies on the Construction Document in connection with the carrying out of the work under the Contract.

Any claim for extension of time is to be assessed pursuant to Clause 35.5 and any claim for an adjustment to the Contract Sum is to be assessed pursuant to Clause 40.5.

8.2 Dimensions

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

8.3 Supply of Documents by Principal

The Principal shall supply to the Contractor the number of copies stated in the Annexure or, if no number is stated, then 5 copies of the documents describing the Principal's Project Requirements and other documents required by the Contract to be supplied by the Principal to the Contractor.

Documents supplied by the Principal to the Contractor shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

Without limiting its other obligations under this Clause, the Contractor must not:

- (a) disclose to any person; or
- (b) use for any purpose other than the carrying out of the work under the Contract, any of the contents of the Contract or any other information obtained by the Contractor in the course of or in connection with it carrying out work under the Contract unless:
 - (i) the Principal has given its prior consent in writing; or
 - (ii) such disclosure or use is required by law.

The Contractor's obligations under this Clause continue to apply after the issue of a Final Certificate or termination of the Contract for any reason.

8.3B Principal Supplied Information

The Contractor agrees:

- (a) unless the Principal expressly agrees otherwise in writing, any Principal-Supplied Information:
 - (i) has been or will be provided only for the Contractor's convenience; and
 - (ii) has not been and will not be relied upon by the Contractor for any purpose (including entering into the Contract or performing its obligations under the Contract);
- (b) the Principal does not:
 - (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to, the Principal-Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract);
- (c) the Principal shall not be liable to the Contractor in contract, tort, equity, under statute or otherwise arising from or in connection with the Principal-Supplied

Information, the provision of the Principal-Supplied Information or the non-provision of any other information by the Principal; and

- (d) except as expressly provided by the Contract, the Contractor shall not be entitled to any extension of time, adjustment to the Contract Sum or other claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Principal-Supplied Information.

8.4 Supply of Documents by Contractor

In relation to those documents stated in the Annexure the Contractor shall supply the number of copies stated in the Annexure or, if no number is stated, 5 copies.

The Contractor shall supply to the Superintendent the documents and information required by the Superintendent and as required by the Contract, in a form satisfactory to the Superintendent and at those times or within those design stages applicable to the documents stated in the Annexure or, if no times or stages are stated, not less than 14 days before the work contained in those documents is commenced.

A direction by the Superintendent to vary anything in the Design Documents shall be a variation to the work under the Contract only to the extent that the Design Documents, before such variation, complied, or would have complied, with the Principal's Project Requirements.

Neither the Principal nor the Superintendent shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract.

If the Contract provides that the Contractor must obtain the Superintendent's direction whether documents are suitable or are not suitable then, within the time stated in the Annexure or, if no time is stated, within 14 days after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable. If the Superintendent notifies the Contractor that the documents are not suitable, the Superintendent shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Superintendent's direction pursuant to this Clause 8.4.

8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of the Principal's Project Requirements, the Design Documents and other written information supplied by the Principal, the Superintendent and the Contractor, the Contractor's Consultants and subcontractors, shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference

by the Principal, the Superintendent and any persons nominated in writing by either of them.

8.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.6 or the earlier termination of the Contract.

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8.7 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Contractor shall refer to the Principal any enquiries concerning the project from any media.

8.8 As Constructed Drawings

As a pre-requisite to achieving Practical Completion, the Contractor shall supply to the Superintendent one (1) complete set of As Constructed Drawings. The 'As Constructed' drawings shall be provided both as 1 (one) hard copy set and 1 (one) electronic set in the format detailed in the Specification or as directed by the Superintendent.

8.8A As Built Drawings for Asphalt Works

This Clause 8.8A applies instead of Clause 8.8, only if the Works involve the laying of tarmac or asphalt.

As a pre-requisite to achieving Practical Completion, the Contractor shall supply to the Superintendent one (1) complete set of surveyed As Constructed Drawings showing the levels/heights, limits/positions, any associated services (raised manholes, additional sewers, drains, kerb, channel, signage), pavement failures, linemarking and general dimensions of the Works as built. The As Constructed Drawings shall be provided both as 1 (one) hard copy set and 1 (one) electronic set in the format detailed in the Specifications issued or as directed by the Superintendent.

8B PRIVACY

- (a) In addition to its obligations under the Privacy Act or any other law, the Contractor agrees to:
- (i) only process or use the Principal's Personal Information for the purposes of the Contract if the Contractor has the prior written consent of the Principal or it is otherwise required by law;
 - (ii) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful processing of or access, loss, destruction, misuse, modification, disclosure or damage to the Principal's Personal Information or any of the Personal Information in connection with the Contract;

- (iii) take all necessary steps to ensure that its processing of the Principal's Personal Information will be fair and lawful and, for this purpose, the Contractor may reasonably enquire of the Principal as to the manner in which the Principal obtained the Principal's Personal Information;
- (iv) ensure that Personal Information is treated as confidential information; and
- (v) at the expiration or earlier termination of the Contract, or when the Personal Information is no longer needed for a purpose connected to the Contract, ensure:
 - (A) Personal Information is transferred to the Principal; or
 - (B) all reasonable steps are taken to destroy or permanently de-identify the Personal Information within 30 days,
 at the Principal's election.
- (b) If an individual complains to the Principal that the Contractor (or any of its Personnel) has handled his or her Personal Information inappropriately, the Principal must promptly give the Contractor sufficient details about the complaint to minimise any further misuse.
- (c) If an individual complains to the Contractor that the Contractor (or any of its Personnel) has handled his or her Personal Information inappropriately, the Contractor must:
 - (i) promptly inform the Principal of the complaint; and
 - (ii) if the individual has consented, provide the Principal with the Personal Information that is the subject of the complaint.

9 ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

Neither party shall, without the prior written approval of the other and except on such reasonable terms and conditions as are determined in writing by the other, assign the Contract or any payment or any other right, benefit or interest thereunder.

9.2 Subcontracting (Including Work Performed by Consultants)

The Contractor shall not without the written approval of the Superintendent—

- (a) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder; or
- (b) subcontract or allow a subcontractor to subcontract any work described in the Annexure.

With a request for approval, the Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.

The Contractor shall provide to the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of a request by the Contractor for approval, the Superintendent shall notify the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including—

- (i) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (iii) provision that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of the Deed of Novation.

For the purposes of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and

- (iv) where the subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 21.

For the avoidance of doubt, the Superintendent shall not be required to give the Contractor written notice of approval or of the reasons why approval is not given, unless the Contractor has complied with its obligations under this Clause.

The Contractor agrees to assign or novate its rights and obligations in the subcontract to the Principal or a nominee of the Principal and sign any documents required by the Principal to give effect to such assignment or novation if both:

- (a) the work is taken out of the hands of the Contractor or the Principal terminates the Contract for any reason; and
- (b) the Principal directs the Contractor to do so.

9.3 Contractor's Responsibility

Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

Any matter within the reasonable control of any subcontractor shall be taken to be within the reasonable control of the Contractor.

9.4 Selected Subcontract Work

If the Contract includes Selected Subcontract Work, the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. A Selected Subcontractor is the subcontractor identified in the Contractor's tender from a list of not less than two subcontractors provided by the Principal in the tender documents for Selected Subcontract Work.

If the tender documents specify the terms and conditions upon which the subcontract is to be entered into, the subcontract shall include those terms and conditions.

9.5 Provisions Applying Generally to Selected Subcontract Work

If the Contractor is required by Clause 9 or 10 to enter into a subcontract, or to execute a deed of novation or to accept an assignment, the Contractor shall proceed promptly to do so and shall notify the Superintendent in writing as soon as the subcontract or novation has been effected or the assignment has been accepted.

With the Contractor's consent, the Superintendent may direct the Contractor to perform Selected Subcontract Work.

Except as herein provided—

- (a) the Principal shall have no liability to a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor; and
- (b) the Principal shall not be liable to the Contractor for any act, default or omission or breach of contract by a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor.

9.6 Termination of Selected Subcontract

The Contractor shall not unreasonably terminate a subcontract for Selected Subcontract Work and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. If a Selected Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent of that fact. The Superintendent shall promptly issue a direction as to the manner of completing the Selected Subcontract Work. With the Contractor's consent, the Superintendent may direct the Contractor to perform Selected Subcontract Work, otherwise the Superintendent shall direct the Contractor—

- (a) to choose another subcontractor from the list of subcontractors provided by the Principal in the tender documents for Selected Subcontract Work; or
- (b) to enter into a subcontract with a subcontractor chosen by the Superintendent and agreed to by the Contractor.

The Contractor shall not be obliged to enter into a subcontract with a subcontractor referred to in Clause 9.6(a) against whom the Contractor raises reasonable objection.

The Contractor shall, as soon as practicable, enter into a subcontract with the subcontractor so chosen and notify the Superintendent accordingly.

If compliance with such a direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5 except where a provisional sum for the Selected Subcontract Work has been included in the Contract, in which case the provisions of Clause 11(d) shall apply.

10 NOVATION

This Clause 10 applies only where the Principal's Project Requirements include a Preliminary Design or the Contract includes Selected Subcontract Work.

When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a Preliminary Design Deed, between the Principal, the Contractor and the subcontractor or the Selected Subcontractor stated in the Annexure (as the case may be) for the particular part of the Preliminary Design or Selected Subcontract Work (as the case may be).

11 PROVISIONAL SUMS

The Contractor shall:

- (a) provide the Superintendent with the Contractor's estimate of the likely cost of the carrying out or supply by the Contractor of the work or item to which a provisional sum relates when requested to do so by the Superintendent; and
- (b) comply with the reasonable directions of the Superintendent in respect of the subcontracting or procurement of the work or item to which a provisional sum relates.

A provisional sum included in the Contract shall not itself be payable by the Principal but where at the direction of the Superintendent the work or item to which the provisional sum relates is performed or supplied by—

- (c) the Contractor, the work or item shall be valued under Clause 40.5; and
- (d) a subcontractor to the Contractor, the Principal shall pay the Contractor the amount payable by the Contractor to the subcontractor for the work or item, disregarding any damages payable by the Contractor to the subcontractor or vice versa, plus an amount for profit and attendance calculated by using the percentage thereon stated in the Annexure or, where not so stated, as stated elsewhere in the Contract.

The amount payable to a subcontractor for materials or goods is to be taken to be the nett cost to the Contractor (disregarding any deduction of cash discount for prompt payment).

12 LATENT CONDITIONS

12.1 Definition

'Latent Conditions' means:

- (a) all physical conditions of the Site and its near surroundings, including below ground conditions, all natural and artificial things, facilities and Utility Services but excluding weather conditions, which could not have been detected by a skilled, experienced and competent contractor exercising good industry practice and experienced in carrying out work similar to the WUC at sites similar to the Site after:
 - (i) inspecting the Site;
 - (ii) examining any information relevant to the latent conditions which is supplied or made available to the Contract by or on behalf of the Principal whether or not the information comprises part of the Contract and whether the information was provided to the Contractor before or after entry into the Contract; and
 - (iii) making all reasonable enquiries and investigation; and
- (b) any other conditions which the Contract specifies to be latent conditions but excluding Excepted Latent Conditions.

'Excepted Latent Conditions' are:

- (c) those conditions identified in the Annexure as Excepted Latent Conditions; and
- (d) other conditions or risks for which a provisional sum has been allowed in the Contract.

12.2 Notification

The Contractor shall, upon becoming aware of a Latent Condition or an Excepted Latent Condition give the Superintendent a written statement of:

- (a) the nature of the Latent Condition or Excepted Latent Condition encountered and in the case of a latent condition, the respects in which it differs materially;
- (b) in the case of a Latent Condition, the Contractor's estimate of the additional work necessary to deal with the Latent Condition (including additional time and cost); and
- (c) other details reasonably required by the Superintendent,

within 7 days after the Contractor becomes aware of the Latent Condition or Excepted Latent Condition and (except in an emergency) before the Contractor takes any action to deal with the Latent Condition or Excepted Latent Condition in connection with the carrying out of the work under the Contract (**Latent Conditions Notice**).

If, in the case of a Latent Condition, the Contractor does not comply with the requirements of this Clause within the required times, Clause 12.3 shall not apply and the Contractor shall not be entitled to any extension of time, adjustment of the Contract Sum or any other claim in connection with the Latent Condition (including any additional work required by the Latent Condition) or any direction of the Superintendent arising from the Latent Condition.

The Contractor shall promptly provide to the Superintendent in writing any other details regarding a Latent Condition or Excepted Latent Condition requested by the Superintendent.

12.3 Extension of Time and Cost

On receipt of the Latent Conditions Notice, the Superintendent shall promptly investigate the Latent Conditions and determine whether any variation is necessary and if so, shall take action in accordance with Clause 40.

The giving of the Latent Conditions Notice in accordance with the requirements of Clause 12.2 (including within the specified time) is a condition precedent to any entitlement by the Contractor to Claim in relation to encountering Latent Conditions.

12.4 Acceptance of Excepted Latent Condition Risk

The Contractor:

- (a) accepts the risk of all Excepted Latent Conditions; and
- (b) shall have no entitlement to any extension of time, valuation under Clause 40.5, other adjustment to the Contract Sum or other claim whatsoever arising from the existence of any Excepted Latent Condition (whether or not it should have been anticipated at the time of the Contractor's tender).

12.5 No Warranty or representation by Principal

Without limiting Clause 8.8, the Principal does not warrant, guarantee or make any representation with respect to, and the Contractor warrants that it has not placed any reliance upon, the completeness, accuracy, adequacy or content of any information or data made available or provided to the Contractor as to the Site or sub-surface conditions.

12.6 Site Information not part of Contract

No information in respect of the Site or sub-surface conditions which is provided to the Contractor by the Principal, the Superintendent, or their respective employees, consultants or agents shall form part of the Contract.

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

13.1 Warranties and Indemnities

Unless otherwise provided in the Contract, the Principal shall indemnify the Contractor against the Principal's Project Requirements, the design, materials, documents and methods of working required by the Principal in the Contract or provided or directed by the Principal or the Superintendent infringing any patent, copyright, registered design, trademark or name, or other protected right.

The Contractor warrants that unless otherwise provided in the Contract, the Contractor owns the copyright in those of the Design Documents provided by the Contractor. The Contractor also shall indemnify the Principal against any design, materials, documents and methods of working provided by the Contractor infringing any patent, copyright, registered design, trademark or name, or other protected right.

The Contractor:

- (a) grants to the Principal;
- (b) shall ensure that the person legally entitled to do so grants to the Principal; and
- (c) shall do all reasonable things necessary to give effect to the grant to the Principal, an irrevocable, royalty free and fully assignable licence to use any designs, materials, documents and methods of working provided by the Contractor for the purposes of construction of, using, maintaining, upgrading, altering or otherwise dealing with the Works.

13.2 Intellectual Property Rights granted to Principal

Alternative 1

The Contractor grants to the Principal an irrevocable licence to use the Design Documents for the work under the Contract. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works.

Alternative 2

Copyright and property in the Design Documents (and, as between the Principal and the Contractor, any part of the Preliminary Design produced under a prior contract between the Principal and a Consultant of the Principal novated under Clause 10) hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the Design Documents for the work under the Contract.

The Contractor shall do everything necessary to perfect such vesting.

The Contractor shall ensure that the Design Documents are used, copied and supplied only for the purpose of the work under the Contract.

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

The Contractor shall satisfy all Legislative Requirements except those which—

- (a) are specified in the Annexure; or
- (b) the Superintendent directs are to be satisfied by or on behalf of the Principal.

The Contractor shall provide to the Superintendent evidence of its compliance with the requirements of any relevant Legislative Requirements when requested by the Superintendent.

If a Legislative Requirement is at variance with a provision of the Contract or the Principal's Project Requirements, as soon as the Contractor discovers the variance, the Contractor shall notify the Superintendent in writing specifying the difference.

Without limiting the generality of any other obligations of the Contractor under the Contract, the Contractor:

- (c) will procure such consents and applications, certificates, approvals, licences and permits as are necessary for the execution of the Works;
- (d) will obtain such registrations as may be necessary with respect to the Works; and
- (e) will be responsible for compliance with all approvals issued by any Government Authority in respect of the Works;
- (f) acknowledges the Contract Sum will not be varied as a consequence of compliance with approvals or conditions of approvals issued by a Government Authority.

The Contractor agrees that the cost of all work necessary or desirable to procure all consents, certificates, approvals, licenses and permits and to obtain all registrations as are necessary of the execution of the Works has been included in the Contract Sum.

14.2 Changes in Legislative Requirements

If a Legislative Requirement—

- (a) necessitates—
 - (i) a change to the Works;
 - (ii) a change to so much of the Temporary Works, Constructional Plant or method of working as may be specified in the Principal's Project Requirements;
 - (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works or Temporary Works; or
 - (iv) an increase or decrease in a fee or charge or payment of a new fee or charge;
- (b) has effect after the date of closing of tenders; and
- (c) could not reasonably have been anticipated at that date,

then to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 40.5.

A reduction in cost assessed by the Superintendent may be deducted from the Contract Sum even though the Legislative Requirement could reasonably have been anticipated by an experienced and competent contractor unless the Contractor has expressly stated

in its tender for the Works that the tendered Contract Sum has been based upon the anticipated change in legislative requirement occurring.

14.3 Contractor to obtain approvals

The Contractor shall procure and pay for all certificates, licences, consents, permits and other approvals:

- (a) necessary for the lawful carrying out of the work under the Contract; or
 - (b) relating to the completion, occupation or use of the Works,
- other than the certificates, licences, consents, permits and other approvals expressly referred to in the Annexure as being the responsibility of the Principal.

14.4 Taxes, Duties and Charges

Subject to the other provisions of the Contract, the Contractor shall:

- (a) pay and indemnify the Principal against all sales tax, customs duties, stamp duties, goods and services tax and other duties, charges, taxes or imposts payable in connection with the carrying out of the work under the Contract (including the provision of all work under the Contract); and
- (b) provide all security required under any legislative requirement as security for the payment of any duties, charges, taxes or imposts.

14.5 ABN Withholding

- (a) Where the Principal may become obliged under any law or legislative requirement to withhold any amount on account of tax or other imposts from any amount payable to the Contractor under or in connection with the Contract unless certain conditions (including without limitation the provision by the Contractor of an Australian Business Number (“**ABN**”) are met, the Principal may withhold the amount required to be withheld under the law or legislative requirement until the Principal is satisfied in its reasonable opinion that all the relevant conditions have been satisfied.
- (b) If the Principal for any reason becomes liable to pay an amount referred to in paragraph (a):
 - (i) the amount paid by the Principal to any Commonwealth, State or Local Government department, body, instrumentality or other government, authority or statutory body shall be taken to have been paid by the Principal to the Contractor on account of and in satisfaction of amounts payable under the Contract; and
 - (ii) if the amount paid by the Principal exceeds any amounts payable by the Principal to the Contractor under the Contract, the amount of the excess shall be a debt due from the Contractor to the Principal.

14.6 Environmental Protection and sustainability

The Contractor shall:

- (a) develop, implement and maintain an environmental management plan relevant to the performance of the Contractor’s obligations under this Contract in accordance with the Environmental Management Standard;

- (b) take all action necessary to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the work under the Contract;
- (c) comply with all:
 - (i) Legislative Requirements relating to the protection or preservation of the environment; and
 - (ii) environmental management plans provided by or on behalf of the Principal to the Contractor or provided by the Contractor and approved by the Principal;
- (d) obtain all approvals or licences required and pay and indemnify the Principal against all fees, fines or other amounts payable under all environmental protection or preservation Legislative Requirements (including in connection with any applicable approvals or licences); and
- (e) to the maximum extent permitted by law, indemnify and keep indemnified the Principal and its employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss or other liability (including without limitation in tort, under any law, in respect of making good environmental damage or in defending claims) arising from or contributed to by:
 - (i) acts or omissions of the Contractor, its employees, its subcontractors or their employees (whether wilful, negligent or otherwise);
 - (ii) breach by the Contractor of its obligations under this Clause; or
 - (iii) the carrying out of the work under the Contract.

14.7 Fire Ants

For the purposes of this Clause, "Fire Ants" has the meaning given by the *Biosecurity Regulation 2016*.

Without limiting the generality of Clause 14.1, the Contractor shall:

- (a) in executing the work under the Contract, comply with any direction given by an inspector under the *Biosecurity Act 2014* or the *Biosecurity Regulation 2016*;
- (b) in executing the work under the Contract, obtain and comply with any approvals required under the *Biosecurity Act 2014* or the *Biosecurity Regulation 2016*;
- (c) in executing the work under the Contract, comply with the Principal's Environmental Management System obligations, activities and permit requirements;
- (d) if Fire Ants are discovered, or their presence is suspected:
 - (i) immediately cease all work in the area affected or suspected to be affected by Fire Ants;
 - (ii) not recommence work in the area affected until the Contractor is directed to do so by the Superintendent;
 - (iii) report the presence or suspicion of Fire Ants to the Department of Agriculture and Fisheries:
 - (A) within 24 hours of discovery of the presence of Fire Ants or within 24 hours of becoming suspicious of the presence of Fire Ants; and

- (B) subsequently in writing within 7 days of discovery of the presence of Fire Ants or within 7 days of suspecting the presence of Fire Ants;
- (iv) report the presence or suspicion of Fire Ants to the Principal:
 - (A) immediately upon discovery or upon becoming suspicious of the presence of Fire Ants; and
 - (B) subsequently in writing within 7 days of discovery of the presence of Fire Ants or within 7 days of suspecting the presence of Fire Ants.

14A WORK HEALTH AND SAFETY

14A.1 General

- (a) For the purposes of this Clause 14A, the words "dangerous event", "principal contractor", "serious bodily injury", "work caused illness" and "work injury" have the meanings given to them by the WHS Law.
- (b) The person specified in the Annexure is appointed as the principal contractor for the purposes of the Contract.

14A.2 Appointment as principal contractor

- (a) If the Contractor **is appointed** as the principal contractor for this Contract and pursuant to WHS Law, from the Date of Acceptance of Tender, the Contractor shall accept full responsibility for the role and must fulfil all relevant obligations under WHS Law while performing the role of principal contractor, and:
 - (i) the Principal is deemed to have appointed the Contractor to be the principal contractor pursuant to Section 13 of the Act;
 - (ii) the Contractor is deemed to have accepted the appointment; and
 - (iii) the Contractor, in respect of the work to be executed under the Contract, becomes responsible for the performance of the principal contractor's functions under the WHS Law and compliance standards in force under WHS Law.
- (b) The Contractor's appointment as principal contractor shall continue until the Contractor completes all of the work under the Contract unless sooner revoked by the Principal taking over or terminating the Contract pursuant to any provision of the Contract or according to law.
- (c) The Contractor indemnifies the Principal against all liabilities which may be imposed under or which may arise out of enforcement of any section of the WHS Law.
- (d) The Contractor must notify the Superintendent of every work-caused illness or work injury and of every dangerous event and serious bodily injury which occurs on the Site as soon as possible but not later than 12 hours after such occurrence.
- (e) If the Contractor **is not appointed** as principal contractor for this Contract and pursuant to WHS Law, the Contractor:
 - (i) must do all things reasonably necessary to ensure that whichever party is appointed as principal contractor meets its obligations as principal contractor under WHS Law and must not do anything which would result in the relevant party being in breach of its obligations as principal contractor under the WHS Law; and

- (ii) agrees to strictly comply, and to ensure that its Personnel comply, with all lawful directions relating to health and safety given by the appointed principal contractor and if it believes that it is unable to do so, agree to notify and provide details to the Principal immediately.

14B BUILDING INDUSTRY FAIRESS (SECURITY OF PAYMENT) ACT

14B.1 Service of Notices under the BIF Act

The Contractor shall:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the BIF Act (including, without limitation, a payment claim), is provided to the Superintendent at the same time; and
- (b) promptly and without delay give the Superintendent a copy of any written communication of whatever nature in relation to the BIF Act (including, without limitation, a payment claim) which the Contractor receives from a Subcontractor.

14B.2 Principal's Agent

In responding to the Contractor under the BIF Act, the Superintendent also acts as the agent of the Principal.

14B.3 Suspension of Works under the BIF Act

If the Contractor suspends the whole or part of the work under the Contract pursuant to the BIF Act:

- (a) the suspension shall not affect the Date for Practical Completion but may be a ground for an extension of time under Clause 35.5;
- (b) the Principal may, in its absolute discretion, take the whole or any part of the work under the Contract out of the hands of the Contractor to ensure that the work under the Contract continues during the suspension; and
- (c) subject to any payment owed under the BIF Act, the Principal shall not be liable for and the Contractor agrees it will not suffer any costs, expenses, damages, losses or other liability whatsoever as a result of the suspension or as a result of the Principal exercising its right under Clause 14B.3(b).

14B.4 Subcontractor Suspension

If the Principal becomes aware that a Subcontractor is entitled to suspend work (which forms part of the Works) pursuant to the BIF Act, the Principal may (in its absolute discretion) pay the Subcontractor such money that is or may be owing to the Subcontractor in respect of that work, and any amount paid by the Principal shall be a debt due from the Contractor to the Principal.

14B.5 Indemnity

The Contractor shall indemnify the Principal, its officers, employees and agents against all damage, expense (including lawyers fees and expenses on an indemnity basis), loss or liability of any nature suffered or incurred by the Principal arising out of:

- (a) a suspension by a Subcontractor of work which forms part of Works pursuant to the BIF Act; and
- (b) a failure by the Contractor to comply with its obligations under this Clause 14B.

14B.6 Subcontractors' charges

The Principal may, at any time, pay any amount of the Contract Sum or security (including, but not limited to, retention moneys) directly to a worker or a subcontractor of the Contractor, or into court, if the Principal is required or permitted to do so under the BIF Act.

Any amount paid by the Principal pursuant to this Clause is deducted from the Contract Sum or the security, and the Contractor will have no recourse against the Principal for any loss suffered due to the Principal acting in accordance with this Clause.

14C PERSONAL PROPERTIES SECURITY ACT 2009

The words 'Accession', 'Comingled', 'Financial Statement', 'Grantor', 'Personal Property', 'Proceeds', 'Security Interest' and 'Verification Statement' have the meaning given to them in the PPSA.

The parties acknowledge that this Contract may constitute a Security Interest in favour of the Principal.

If the Principal determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Principal to apply for any registration, complete any Financial Statement or give any notification, in connection with the Security Interest; or
- (c) enabling the Principal to exercise rights in connection with the Security Interest.

The Principal is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:

- (d) if any Personal Property which does not form part of the Principal's Personal Property becomes an Accession to the Principal's Personal Property and is subject to a Security Interest in favour of a third party, that has attached at the time it becomes an Accession;
- (e) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal Property; or
- (f) if the Contractor parts with possession of the Principal's Personal Property.

The Contractor must not:

- (g) create any Security Interest or lien over any Personal Property that the Principal has an interest in (other than security interests granted in favour of the Principal);

- (h) sell, lease or dispose of its personal property that the Principal has a Security Interest in;
- (i) give possession to the Contractor's Personal Property that the Principal has a Security Interest in or the Principal's Personal Property to any other person except where the Principal expressly authorises it to do so;
- (j) permit any of the Principal's Personal Property to become an Accession to or Comingled with any asset that is not part of the Works or the Site; or
- (k) change its name without first giving the Principal 15 Business Days' notice of a new name or relocate its Principal place of business outside Australia or change its place of registration or incorporation.

Everything the Contractor is required to do under this Clause 14C is at the Contractor's expense.

Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This Clause 14C does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7)(b), (d) and (e) of the PPSA.

15 PROTECTION OF PEOPLE AND PROPERTY

Insofar as compliance with the requirements of the Contract permits, the Contractor shall—

- (a) provide all things and take all measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

Without limiting any of the Contractor's other obligations, the Contractor shall also avoid and minimise disruption or interference in any way with the operations carried on from existing improvements on or about the Site (including without limitation, the operation of tenants or other occupants of existing improvements (if any)).

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under this Clause 14C, in addition to any other remedies of the Principal, the Superintendent may after giving reasonable notice in writing to the Contractor, have the subject work carried out by other persons and the reasonable cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

The Contractor shall indemnify the Principal against any costs, damages, loss, claim or liability arising from the Contractor's breach of this Clause.

15A SPECIAL PROTECTION OBLIGATIONS

15A.1 Dial Before You Dig

Without limiting the obligations imposed by Clause 15, should it be necessary for the Contractor to carry out any excavation work in the course of carrying out the work under the Contract, the Contractor shall:

- (a) before commencing any excavation work, contact the relevant authorities to determine what Utility Services (if any) will be affected by the excavation;
- (b) ensure that the excavation work is carried out so as not to damage or interfere with any Utility Services in or near the vicinity of the area in which the excavation work is carried out;
- (c) promptly make good any damage to any Utility Services as a result of the Contractor's excavation; and
- (d) indemnify the Principal in respect of all demands, claims, costs, expenses, damages and other liabilities arising from the breach of the Contractor of the provisions of this Clause (including without limitation any claim by a provider or user of any Utility Services damaged as a result of the Contractor's excavation).

15A.2 Asbestos

Should the Contractor, in the execution of the work under the Contract, discover or suspect the presence of asbestos or other dangerous materials or items, the Contractor shall:

- (a) immediately stop work in the area in which asbestos or other dangerous materials or items are discovered or suspected to exist;
- (b) secure the area in which asbestos or other dangerous materials or items are discovered or suspected to exist;
- (c) report the incident to the Principal; and
- (d) only recommence the work in the affected area when directed to do so by the Principal and in accordance with any requirements of the Principal.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Contract

Except as provided in Clause 16.3, the Contractor shall be responsible for—

- (a) the care of the whole of the work under the Contract from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion, at which time, the responsibility for the care of the Works (except to the extent provided in Clause 16.1(b)) shall pass to the Principal; and
- (b) the care of outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations under Clauses 30, 31 and 37.

Without limiting the generality of the Contractor's obligations in Clause 16.1(a), the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment schedule under Clause 42.1, things entrusted to the Contractor by

the Principal for the purpose of carrying out the work under the Contract, and things brought onto the Site by subcontractors for that purpose. The Contractor shall provide the storage and protection necessary to preserve those items and things.

16.2 Reinstatement

If loss or damage occurs to the work under the Contract during the period for which the Contractor is responsible for the care thereof (other than loss or damage caused by any of the Excepted Risks referred to in Clause 16.3), the Contractor shall, at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall, if and to the extent directed by the Superintendent, rectify the loss or damage, which shall be deemed to be a variation under Clause 40. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.

16.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Principal is liable, are—

- (a) any negligent act or omission of the Principal, the Superintendent or the employees, Consultants or agents of the Principal;
- (b) any risk specifically excepted in the Contract;
- (c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Consultants or subcontractors or the employees or agents of any of these;
- (e) use or occupation by the Principal or the employees or agents of the Principal, the Principal's consultants or other contractors of the Principal (not being employed by the Contractor), of any part of the work under the Contract; and
- (f) defects in such part of the design of the work under the Contract, including the Preliminary Design provided by the Principal, as is not included in the Contractor's warranties under Clause 4.

17 DAMAGE TO PERSONS AND PROPERTY

17.1 Indemnity by Contractor

Insofar as this Clause 17.1 applies to property, it applies to property other than the work under the Contract.

The Contractor shall indemnify the Principal against—

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and

- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal, the Superintendent or the employees or agents of the Principal contributed to the loss, damage, death or injury.

This Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (ii) exclude any other right of the Principal to be indemnified by the Contractor; and
- (iii) claims in respect of the right of the Principal to have the work under the Contract carried out.

18 INSURANCE OF THE WORK UNDER THE CONTRACT

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall effect an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 16.2 and things in storage off Site and in transit to the Site.

The insurance cover under this Clause 18 may exclude—

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from the Excepted Risks referred to in Clause 16.3(b) and (c).

The insurance cover shall be for an amount not less than the sum of—

- (i) the Contract Sum;
- (ii) the amount stated in the Annexure to provide for costs of demolition and removal of debris;
- (iii) the amount stated in the Annexure to cover fees of the Consultants;

- (iv) the value stated in the Annexure of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (v) the additional amount or percentage stated in the Annexure of the total of the items referred to in Clause 18(i) to (iv).

The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all Consultants, and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

Upon payment of moneys pursuant to the insurance effected under this Clause:

- (a) the Contractor shall immediately proceed to reinstate the Works and to continue the execution and completion of the work under the Contract;
- (b) the Contractor's entitlement to payment for work performed in reinstating the Works shall not exceed the amount paid by the insurer in respect of the insurance effected under this Clause, but excluding any amounts paid in respect of the insurance effected for the sums referred to in subparagraphs (iii) to (v) of this Clause.

Alternative 2

On or before the Date of Acceptance of Tender, the Principal shall effect a policy of insurance in relation to the work under the Contract in the terms of the policy or proposed policy included in the documents on which the Contractor tendered. The policy or proposed policy shall include the name of the insurer. The Principal shall maintain the policy while the Contractor has an interest therein and the Principal shall pay all premiums.

18A INSURANCE OF MOTOR VEHICLES

Before the Contractor commences the work under the Contract, the Contractor shall effect motor vehicle third party bodily injury and property damage liability insurance in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the work under the Contract. Unless otherwise notified by the Principal in writing, the combined limit of this insurance shall be as set out in the Annexure.

The insurance shall be maintained at all times that the vehicles are to be used by the Contractor in connection with the work under the Contract or are on the Site.

The Contractor shall ensure that every subcontractor's vehicles are similarly insured.

The provisions of Clause 21 shall also apply to the insurance to be effected under this Clause.

18B MARINE INSURANCE

Where the Annexure provides that marine insurance is required for the Contract, the Contractor must effect and maintain marine insurance in accordance with this Clause.

Before the Contractor commences the work under the Contract, the Contractor shall have in effect marine insurance with an APRA approved insurer in respect of their dredging and spoil transport and deposit operations.

At the least, the cover must provide indemnification for the salvage of the Contractor's dredging vessel and equipment and must include marine contractors' liability or marine protection & indemnity for injury to persons and/or damage to the property of other parties.

The extent of cover must be approved by the Principal before the Contractor commences performing any work under the Contract. The Principal may withhold payment under the Contract until the Contractor's marine insurance has been approved.

Unless otherwise notified by the Principal in writing, the combined limit of this insurance shall be as set out in the Annexure.

The insurance shall be maintained at all times for the duration of the performance of the work under the Contract.

The provisions of Clause 21 shall also apply to the insurance to be effected under this Clause.

19 PUBLIC LIABILITY INSURANCE

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall effect a public liability policy of insurance in the joint names of the Principal and the Contractor which covers the Principal, the Contractor, the Superintendent, all Consultants and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance).

The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6.

Alternative 2

On or before the Date of Acceptance of Tender, the Principal shall effect in relation to the work under the Contract a public liability policy of insurance in the terms of the policy or proposed policy included in the documents on which the Contractor tendered. The policy or proposed policy shall include the name of the insurer. The Principal shall maintain the policy while the Contractor has an interest therein and the Principal shall pay all premiums.

20 INSURANCE OF EMPLOYEES

Before commencing work under the Contract the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed.

Where permitted by law the insurance policy or policies shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.

The Contractor shall ensure that all Consultants and all subcontractors have similarly insured their employees.

21 PROFESSIONAL INDEMNITY INSURANCE

Before the Contractor commences work under the Contract, the Contractor shall effect a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in the Annexure or, if no amount is stated, the amount of \$1,000,000.

The policy and such level of cover shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in the Annexure.

The Contractor shall ensure that every Consultant, if within a category stated in the Annexure, is insured for professional indemnity with a cover not less than the sum stated in the Annexure.

Each Consultant's policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in the Annexure.

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

Before the Contractor commences work under the Contract and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the satisfaction and approval of the other party of the insurance effected and maintained.

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.

22.1A Miscellaneous Insurance Provisions

The Contractor shall:

- (a) pay all excesses and deductibles under a policy of insurance effected by the Principal or the Contractor under the Contract, unless the claim includes only loss, damage or claims:
 - (i) for which the Contractor is not responsible under the Contract; or
 - (ii) caused by an Excepted Risk as defined in Clause 16.3 not caused or contributed to by the Contractor;
- (b) ensure that it:
 - (i) satisfies itself as to; and
 - (ii) complies strictly with,

the terms of any policy of insurance effected under the Contract;

- (c) at its own cost and expense effect any additional insurance it considers necessary in connection with the work under the Contract or the Works;
- (d) to the extent directed by the Superintendent, allow the Principal to make, negotiate and settle any insurance claim in which the Principal is interested;
- (e) ensure that any proceeds received from any insurance claim in which the Principal is interested are paid (in priority to any other payments) to compensate the Principal

as fully as possible for any loss, damage, claim or other liability of the Principal covered by the policy; and

- (f) despite any other provision of the Contract, accept as full payment for any reinstatement or replacement of the work under the Contract which is the subject of an insurance claim and does not arise from an Excepted Risk defined in Clause 16.3 not caused or contributed to by the Contractor, the amount of insurance proceeds recovered by the Principal or the Contractor in respect of that reinstatement or replacement.

22.2 Failure to Produce Proof of Insurance

If after being requested in writing by the other party to do so, a party fails to produce evidence of compliance with insurance obligations under Clause 18, 18A, 18B, 19 or 20 (to the extent such policies are required under the Contract) to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 18A, 18B, 19 and 21 (to the extent such policies are required under the Contract) is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by this Clause 22.2 are in addition to any other right.

22.3 Notices from or to the Insurer

The party effecting insurance under Clause 18 or 18A shall ensure that each policy of insurance contains provisions acceptable to the other party that will—

- (a) require the insurer, whenever the insurer gives the Principal, the Contractor or a subcontractor a notice of cancellation or other notice concerning the policy at the same time to inform the other party in writing that the notice has been given;
- (b) provide that a notice of claim given to the insurer by the Principal, the Superintendent, the Contractor, a Consultant or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Contractor, the Consultant and the subcontractor; and
- (c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal and the Contractor prior to the insurer giving any notice of cancellation.

22.4 Notices of Potential Claims

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 18 or 18A and shall keep the Principal informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the Principal.

Where a policy of insurance required by the Contract has been effected by the Principal, the Principal shall similarly inform the Contractor.

22.5 Settlement of Claims

Upon settlement of a claim under the insurance required by Clause 18—

- (a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on Site whether or not incorporated into the Works).

22.6 Cross Liability

Any insurance required to be effected in accordance with the Contract by the Contractor in joint names or by the Principal, shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

22A FORCE MAJEURE

22A.1 General

- (a) A party affected by a Force Majeure Event (**Affected Party**) will not be liable for any delay or failure to perform any of its obligations under the Contract to the extent that it is prevented from carrying out obligations by the Force Majeure Event. An Affected Party must give notice to the other party as soon as possible after the occurrence of a Force Majeure Event. A notice given under this Clause must:
 - (i) specify the obligations the Affected Party cannot perform;
 - (ii) fully describe the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and
 - (iv) specify the measures proposed to be adopted to mitigate or remedy the Force Majeure Event.
- (b) The Affected Party must, if reasonably requested by the other party, provide updates to the other party in relation to a Force Majeure Event.
- (c) The Affected Party must:
 - (i) remedy or abate the Force Majeure Event and minimise any loss caused as a result of a Force Majeure Event to the extent reasonably possible; and
 - (ii) resume performance of its affected obligations as soon as reasonably possible.

22A.2 Termination for Force Majeure

If:

- (a) an Affected Party cannot, because of a Force Majeure Event perform its affected obligations under the Contract for a period of 180 days despite its reasonable endeavours to do so; and
- (b) the parties have consulted with each other during the period, but are unable to agree as to what reasonable steps should be taken,

then at the expiration of the 180 day period, either party may terminate the Contract on giving written notice to the other party.

23 SUPERINTENDENT

The Principal shall ensure that at all times there is a Superintendent for the purposes of the Contract.

The Principal shall endeavour to ensure that the Superintendent performs reasonably and in good faith its functions under Clause 35.5 (assessment of extensions of time, except where otherwise noted in that Clause), Clause 40.5 (valuation of variations), Clause 42.1 (issue of payment schedules), Clause 42.3 (issue of the Certificate of Practical Completion), Clause 42.6 (issue of the Final Certificate) and in making costs assessments.

The Superintendent may carry out its functions under the Contract (other than those referred to in the paragraph above):

- (a) as agent and representative of the Principal; and
- (b) in accordance with instructions given to it by the Principal (acting in its absolute discretion unless the Contract expressly requires otherwise).

If pursuant to a provision of the Contract enabling the Superintendent to give directions, the Superintendent gives a direction, the Contractor shall comply with the direction.

Except where the Contract otherwise provides, a direction may be given orally but the Superintendent shall as soon as practicable confirm it in writing.

If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent confirms it in writing.

The Superintendent shall have—

- (i) access to the Site and the work under the Contract; and
- (ii) after reasonable notice to the Contractor, access to any place other than the Site where work under the Contract is being carried out or materials are being prepared or stored,

for the purposes of discharging the functions of the Superintendent under the Contract.

24 SUPERINTENDENT'S REPRESENTATIVE

The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent's Representative shall be delegated the same function at the same time. The appointment of a Superintendent's Representative shall not prevent the Superintendent from exercising any function.

The Superintendent shall forthwith notify the Contractor in writing of—

- (a) the appointment and the name of any Superintendent's Representative and the functions delegated to the Superintendent's Representative; and
- (b) the termination of the appointment of a Superintendent's Representative.

If the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent shall terminate the appointment.

25 CONTRACTOR'S REPRESENTATIVE

The Contractor shall personally superintend the execution of the work under the Contract or, at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Superintendent, at other places at which activities relating to the execution of the work under the Contract are taking place.

The Contractor shall forthwith notify the Superintendent in writing of the name of the representative and of any subsequent changes. A Superintendent's direction—

- (a) if it relates to the execution of work on the Site and is given to the representative on the Site; or
- (b) if it relates to the execution of work at any other place and is given to the representative at the other place,

shall be deemed to have been given to the Contractor.

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor shall terminate the appointment and appoint another representative.

Where the Annexure provides that there are key personnel for the Contract, the Contractor:

- (c) must ensure the key personnel are engaged in the provision of the work under the Contract in the respective capacities as stated in the Annexure;
- (d) must only replace the key personnel:
 - (i) in circumstances of death, serious illness, change of employment or request by the Superintendent or the Principal; and
 - (ii) with others (having equivalent skill and experience) approved by the Superintendent or the Principal.

26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Superintendent may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Superintendent directs, any person employed in connection with the work under the Contract who, in the reasonable opinion of the Superintendent, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Superintendent.

27 SITE

27.1 Access to and Possession of the Site

By the time stated in the Annexure, the Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations in accordance with the Contract. The Principal shall notify the Contractor in writing of the date when access will be available.

The Principal shall, on or before the expiration of the time stated in the Annexure, give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence further work under the Contract. If the Principal has not given the Contractor possession of the whole Site, the Principal shall from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract. The Principal shall notify the Contractor in writing of the date upon which the Site or any part thereof will be available.

Notwithstanding the provisions of this Clause 27.1, if the Contractor is in breach of Clause 22.1, the Principal may refuse to give the Contractor possession of the Site or any part of the Site until the Contractor has complied with the requirements of Clause 22.1.

Access to or possession of the Site shall confer on the Contractor a right only to such use and control as is necessary to enable the Contractor to execute the work under the Contract.

Notwithstanding any other provision of this Clause 27.1, the Principal will not have any obligation to give possession of the Site or give possession of sufficient of the Site to enable the Contractor to commence work under the Contract until the Contractor has provided:

- (a) evidence to the satisfaction and approval of the Principal of the insurance the Contractor is liable to effect or maintain under the Contract;
- (b) the security to be provided by the Contractor pursuant to Clause 5.2; and
- (c) the Contractor's Program pursuant to Clause 33.2.

27.1A Access only

Despite any other provision of the Contract, the Contractor is to have only access to the Site and:

- (a) references in the Contract to "possession of" the Site shall be read as "access to" the Site; and
- (b) the Contractor shall have no right of exclusive occupation of any part of the Site and shall access the Site only in accordance with the directions of the Superintendent.

27.1B Access to Site

The Contractor shall ensure that the Contractor and its Personnel:

- (a) do not enter upon any place notified by the Principal to the Contractor in writing as a place to which the Contractor is not to have access, without the prior written consent of the Principal;

- (b) have completed such safety or other training or induction as the Superintendent from time to time directs before accessing the Site;
- (c) at all times:
 - (i) keep themselves informed as to the requirements of, comply with and not do anything which may place the Principal in breach of laws or Legislative Requirements applying to the Site;
 - (ii) comply with all procedures, policies or rules adopted from time to time by the Principal in connection with the Site; and
 - (iii) comply with the directions (if any) given to the Contractor by the Principal or the Superintendent at any time in connection with the Site (including access to and use of the Site);
- (d) only access the Site during the hours and on the days provided for in the Annexure; and
- (e) ensure the Site is kept safe and secure.

27.1C Access to adjoining properties

The Contractor shall:

- (a) at its own cost, obtain all necessary approvals, permissions and consents for any access to or over or use of any adjoining site or property which may be required for execution of the work under the Contract;
- (b) comply with all conditions attaching to such approvals, permissions and consents; and
- (c) indemnify the Principal against:
 - (i) any claim in respect of personal injury or death or loss of, or damage to the Principal's or any other property in respect of the Contractor's access to, or over, or use of any adjoining site or property; and
 - (ii) any claim, action, cost, expense, damages, loss or liability arising from breach of any condition attaching to any approval, permission or consent referred to in paragraph (a).

27.2 Access for the Principal and Others

The Principal and the Principal's employees and agents may at any time after reasonable notice to the Contractor have access to any part of the Site for any purpose.

The Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall cooperate with them and coordinate the Contractor's work with their work.

If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.

The Contractor shall at all reasonable times after reasonable notice give the Principal and other persons authorized in writing by the Principal or by the Superintendent access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

The Principal shall ensure that the Contractor is not impeded in the execution of the Contractor's work by the Superintendent whilst exercising the right of access given by Clause 22A or by any persons exercising the right of access given to those persons by this Clause 27.2.

27.2A Separate Contractors

The Principal shall be entitled to arrange for separate contractors to carry out works (other than the work under the Contract) on the Site on behalf of the Principal ("Separate Contractors") concurrently with the execution by the Contractor of the work under the Contract.

In respect of Separate Contractors:

- (a) the Superintendent shall notify in writing the Contractor of the identity of Separate Contractors;
- (b) the Contractor shall ensure that the work of Separate Contractors is co-ordinated with the work under the Contract as a whole and shall facilitate the execution of the work by Separate Contractors. The Contractor acknowledges that it shall not be entitled to any claim for an extension of time, adjustment to the Contract Sum or delay costs under Clause 36 or otherwise in respect of any delay arising as a result of any failure to co-ordinate the work under the Contract with the work performed by Separate Contractors;
- (c) the Contractor shall be responsible for any damage to the Works caused by an act or default of Separate Contractors to the extent the Contractor has failed to comply with paragraph (b); and
- (d) the Contractor shall make available for use by Separate Contractors all facilities and services which are otherwise provided by the Contractor in connection with the work under the Contract and the Contractor shall co-operate with the Superintendent and Separate Contractors in the use of such facilities.

27.2B Access for the Principal and Others Relating to existing Site or Building

Without limiting the generality of Clause 27.2, the Contractor acknowledges and agrees that it will, as and when directed by the Superintendent allow the Principal (and its agents, consultants and contractors) any access required by the Principal at any time of the day or night through the Site for the purposes of deliveries to and from the Site necessary for the conduct of its business and that the Contractor shall make no claim against the Principal in relation to that access (including but without limitation, for any disruption or delay thereby caused to the Contractor).

The Contractor shall ensure that in providing such access it takes all steps necessary and prudent to ensure the health and safety of any person, whether employed by the Contractor or not.

The Contractor shall undertake the Works carefully so as not to damage or interfere with the existing Site operations and the Contractor shall immediately notify the Superintendent in writing in the event of such damage or interference.

The Contractor shall indemnify the Principal against any loss or damage to or any loss or damage associated with interference with the Site. The Contractor shall be liable for the cost of rectification or replacement of any damage to or interference with the existing Site. Without limiting any other power or right under the Contract, the Superintendent

may deduct from any payment payable to the Contractor any amount for the cost of rectification or replacement of any damage to or interference with the existing Site as an amount due from the Contractor to the Principal.

27.3 Delivery of Materials to and Work on the Site Before Possession

Until possession of the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor shall not deliver materials to or perform work (except as permitted by Clause 27.1 for executing and completing the Contractor's Design Obligations) on the Site or part of the Site, as the case may be, unless approval in writing is given by the Superintendent.

27.4 Use of the Site by the Contractor

Unless the Contract otherwise provides or the Superintendent gives prior written approval, the Contractor shall not use the Site or allow it to be used for—

- (a) camping;
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Contract.

27.5 Finding of Minerals, Fossils and Relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and other articles of value found on the Site shall, as between the parties, be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall take precautions to prevent their loss, removal or damage and shall notify the Superintendent of the discovery.

If compliance with obligations under this Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

27.5A Cultural Heritage

If any articles considered to be artefacts or of cultural significance are identified during the performance of the work under the Contract the Contractor shall notify the Superintendent immediately. If the Superintendent directs cessation of activities within the vicinity of the article:

- (a) the Contractor shall make every reasonable effort to continue the Works outside the vicinity;
- (b) the Contractor shall cease work within the vicinity and only resume activities in the vicinity once directed to do so by the Superintendent; and
- (c) the Contractor shall (upon request by the Superintendent) reschedule the Works and submit a revised Construction Program to the Superintendent demonstrating how the Contractor will achieve Practical Completion by the Date for Practical Completion notwithstanding the cessation of activities.

27B SITE MEETINGS

27B.1 Attendance at site meetings

The Contractor shall ensure that it is represented at any project or site meetings required by the Superintendent or Principal ('**Site Meetings**') to openly discuss all matters relevant to the Works and progress of the work under the Contract which may be convened by the Principal or Superintendent with reasonable prior notice to the Contractor.

27B.2 Minutes of meeting

Minutes of each Site Meeting may be kept by the Superintendent and issued to the Contractor as soon as possible thereafter. If the Contractor does not agree with the accuracy of the minutes, it shall notify the Principal of the inaccuracy within 48 hours of receipt of the minutes. Failure to so notify, will be deemed acceptance by the Contractor of the minutes as a true and accurate record of the Site Meeting.

27B.3 No direction

Notwithstanding the recording of the minutes of any Site Meeting, no resolution or communication at any Site Meeting (nor minutes recording any resolution or communication) shall constitute a direction as defined in Clause 23 unless and until a separate direction is given to the Contractor by the Superintendent in writing.

28 SETTING OUT THE WORKS

28.1 Setting Out

The Superintendent shall supply to the Contractor the information, data and survey marks necessary to enable the Contractor to set out the Works and the survey marks specified in the Contract. Upon receipt of any necessary information, data and survey marks, the Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose.

28.2 Care of Survey Marks

The Contractor shall keep in their true positions all survey marks supplied by the Superintendent.

If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall reinstate the survey mark.

If the disturbance or obliteration is caused by the Superintendent or a person referred to in Clause 27.2 other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be valued under Clause 40.5.

28.3 Errors in Setting Out

If the Contractor discovers an error in the position, level, dimensions or alignment of any work under the Contract, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall rectify the error.

If the error has been caused by incorrect information, survey marks or data supplied by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be valued under Clause 40.5.

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

The Contractor must ensure all materials, machinery or equipment used on the Site complies with all relevant laws.

The Contractor shall upon request by the Superintendent, notify the Superintendent in writing of the name and address of the owner of any construction plant used in connection with the work under the Contract and held by the Contractor under an agreement with the owner of the construction plant. The Principal may, in order to avoid seizure by the owner of such construction plant, pay to the owner the amount of any overdue instalment or other sums payable under such agreement. In the event of the Principal doing so, the Principal may recover such amount as a debt due from the Contractor. Removal of Materials and Constructional Plant

From time to time the Superintendent may, by written notice to the Contractor, direct the Contractor not to remove from the Site, materials or Constructional Plant. Thereafter, the Contractor shall not remove the materials or the Constructional Plant without the prior written approval of the Superintendent, which approval shall not be unreasonably withheld.

29.2 Manufacture and Supply of Materials

The Superintendent may direct the Contractor to supply particulars of—

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under or used in connection with the Contract.

29A WARRANTY REQUIREMENTS

29A.1 Special Warranty Requirements

The Contractor shall deliver to the Principal before Practical Completion deeds of warranties in a form acceptable to the Superintendent:

- (a) from the suppliers or subcontractors;
- (b) in respect of the items or work; and
- (c) for the periods,

set out in the Annexure ("**Special Warranties**").

The Special Warranties must be in the name of each of the Principal, the Site Owner and the Contractor as beneficiaries.

29A.2 Warranties

Without limiting the requirements of Clause 29A.1, the Contractor shall ensure that all warranty entitlements arising from the work under the Contract and the goods and materials incorporated in the Works include the Principal and the Contractor as named beneficiaries. Such warranties shall be in a form approved by the Superintendent and shall be submitted to the Superintendent prior to the issue of the Final Certificate.

29B TRAINING AND INDUCTION

If the Contractor is required to provide any training or induction to the Superintendent, the Principal or the Principal's Personnel in connection with the Works, the Contractor shall:

- (a) ensure that all training or induction is:
 - (i) carried out by suitably qualified and skilled persons who are familiar with the operation, use and maintenance of the plant or equipment; and
 - (ii) designed to meet the requirements of the trainee; and
- (b) provide the training or induction prior to (and as a pre-condition to the achievement of) Practical Completion.

30 MATERIALS AND WORK

30.1 Quality of Material and Work

The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials and proper and tradesmanlike workmanship.

Where the Contract, the Annexure, or any direction by the Principal or Superintendent:

- (a) nominates or describes (by a proprietary or brand name, model number or other specific means) any material or component to be used in connection with the work under the Contract; or
- (b) nominates or describes the design, manufacturer or place of manufacture for any material, component or sub-assembly to be used in connection with the work under the Contract,

then:

- (i) such nomination or description shall in no way relieve, limit or exclude any of the Contractor's obligations or liabilities under or in connection with the Contract; and
- (ii) the Contractor shall obtain the prior consent of the Superintendent to any change to or deviation from such nomination or description.

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30.2 Quality Assurance

The Contractor shall—

- (a) plan, establish, implement and maintain a quality system which conforms to the requirements of the Contract, any applicable standards and any requirements notified by the Superintendent to the Contractor; and
- (b) provide the Superintendent with access to the quality system of each of the Contractor and subcontractors to enable monitoring and quality auditing.

The Contractor's quality system must include all activities and functions which the Contractor is required to perform in the execution of work under the Contract, including management of subcontractors.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

30.3 Defective Material or Work

If the Superintendent discovers material or work provided by the Contractor which is not in accordance with the Contract, the Superintendent may direct the Contractor—

- (a) to remove the material from the Site;
- (b) to demolish the work;
- (c) to redesign, reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

The Superintendent may direct the times within which the Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement or correction.

If the Contractor fails to comply with a direction issued by the Superintendent pursuant to this Clause 30.3 within the time specified by the Superintendent in the direction and provided the Superintendent has given the Contractor notice in writing that after the expiry of 8 days from the date on which the Contractor receives the notice the Principal intends to have the work of removal, demolition, redesign, reconstruction, replacement or correction carried out by other persons, the Principal may have that work carried out by other persons and that cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Material or Work

Instead of a direction pursuant to Clause 30.3, the Superintendent may direct a variation under Clause 40. The variation shall be valued under Clause 40.5 and—

- (a) if the variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a direction pursuant to Clause 30.3, regard shall also be had to the difference.

30.5 Acceptance of Defective Material or Work

Instead of a direction pursuant to Clause 30.3 or 30.4, the Superintendent may direct the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in

the value to the Principal of the Works and any other loss suffered by the Principal shall be valued under Clause 40.5.

In that event the Contract Sum shall be decreased by the greater of the following as assessed by the Superintendent:

- (a) the cost of remedying the material or work valued under Clause 40.5; or
- (b) the resulting decrease in the value of the Works and any other loss which the Principal is likely to suffer, including the likely increase in operational and maintenance costs which shall be incurred by the Principal if it accepts the material or work.

30.6 Generally

If the Superintendent gives a direction pursuant to Clause 30.3, 30.4 or 30.5, the direction shall be given as soon as practicable after the Superintendent becomes aware that material or work is not in accordance with the Contract. The Superintendent may give such a direction at any time before the issue of the Final Certificate under Clause 42.6.

Except to the extent that to do so would be inconsistent with a direction pursuant to Clause 30.4 or 30.5 and notwithstanding that the Superintendent has not given a direction pursuant to Clause 30.3, the Contractor shall promptly remove, demolish, redesign, reconstruct, replace or correct material or work that is not in accordance with the Contract.

A progress payment, or a test or a failure by the Superintendent or anyone else to disapprove any material or work, shall not prejudice the power of the Superintendent to subsequently give a direction pursuant to Clause 30.3, 30.4 or 30.5.

Nothing in Clause 30 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.

The Superintendent shall not be obliged to give a direction pursuant to Clause 30.4 or 30.5 to assist the Contractor.

30A NON-CONFORMING BUILDING PRODUCTS

Terms defined in the QBCC Act and used in this Clause 30A have the same meaning given to them in the QBCC Act.

The Contractor must, in performing the work under the Contract and completing the Works:

- (a) comply with, and cause all its Personnel to comply with, the obligations set out in Part 6AA of the QBCC Act in relation to non-conforming building products; and
- (b) immediately notify the Principal if it becomes aware, or reasonably suspects, that a product being used, or planned to be used, is a non-conforming building product.

The Contractor must indemnify and hold harmless the Principal from and against any claim or loss in connection with or arising out of (either directly or indirectly) the failure of the Contractor or its Personnel to comply with the obligations pursuant to this Clause 30A, or the obligations under Part 6AA of the QBCC Act.

31 EXAMINATION AND TESTING

31.1 Superintendent May Order Tests

At any time prior to the issue of the Final Certificate, the Superintendent may direct that any material or work under the Contract be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Superintendent. On completion of the tests, the Contractor shall promptly make good the work tested so that it fully complies with the Contract.

31.2 Covering Up of Work

The Superintendent may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Superintendent's prior approval.

31.3 Who Conducts Tests

Tests shall be conducted as provided in the Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent.

31.4 Notice of Tests

Before conducting a test under the Contract, the party conducting the test, being the Superintendent or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

31.5 Procedure if Tests Delayed

Without prejudice to any other right, if the Superintendent or the Contractor delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

31.6 Results of Tests

Results of tests shall be promptly made available by each party to the other and to the Superintendent.

31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5.

Such costs shall be borne by the Principal or paid by the Principal to the Contractor unless—

- (a) the Contract provides that the Contractor shall bear the costs, or the test is one which the Contractor was required to conduct other than a test directed pursuant to Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

31.8 Access for Testing

If before the issue of the Final Certificate—

- (a) the Principal or the Superintendent asserts that material or work is not in accordance with the Contract; and
- (b) the Contractor requests permission to test the material or work,

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

31.9 Access to Superintendent for Testing

The Contractor shall ensure the Superintendent and its agents and employees are allowed access to any place where any part of the Works is situated or any the work under the Contract is being carried out (including at a location other than the Site or the Contractor's premises), for the purpose of inspection and testing.

31.10 Results of Tests

A satisfactory inspection or test of any part of the Works or the work under the Contract by the Superintendent or the Principal shall not constitute evidence of the Contractor having satisfactorily complied with the Contract, and shall not prejudice or relieve the Contractor from any of its obligations or liabilities under or in connection with the Contract.

31A COMMISSIONING

31A.1 Commissioning program

The Contractor shall:

- (a) prepare and submit to the Superintendent a detailed commissioning program (including commissioning procedures necessary to establish that performance of the Works (or a part thereof) meets the requirements of the Contract) for those parts of the Works described in the Annexure (in a form satisfactory to the Superintendent); and
- (b) obtain the Superintendent's approval in writing to the commissioning program in sufficient time prior to the Date for Practical Completion to enable the commissioning program to be satisfactorily completed prior to the Date for Practical Completion.

31A.2 Commissioning by Contractor prior to Practical Completion

The Contractor agrees:

- (a) the successful commissioning of the Works to establish that the performance of the Works (or a part thereof) meets the requirements of the Contract shall comprise tests to be carried out and passed before the Works reach Practical Completion;
- (b) all commissioning shall be carried out in accordance with good engineering practice and shall conform to the requirements of the relevant Australian Standards;
- (c) the Contractor shall ensure that results of all commissioning are recorded and submitted to the Superintendent as and when requested by the Superintendent;

- (d) the Contractor shall give the Superintendent reasonable prior notice of the carrying out of any part of the commissioning required by the commissioning program; and
- (e) the Contractor shall immediately notify the Superintendent if any portion of the Works fails to pass a commissioning requirement and, at the Contractor's cost, make good that portion and after completion of the remedial work promptly carry out further commissioning of that portion.

32 WORKING HOURS

The working hours and working days for work on the Site shall be as stated in the Contract and the Annexure and if not so stated, as notified by the Contractor to the Superintendent prior to commencement of work on Site and shall not be varied without the prior approval of the Superintendent except when, in the interests of safety of the work under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Contract. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Principal of work during times approved pursuant to the previous paragraph shall be borne by the Principal.

32A SUPERINTENDENT MAY DIRECT WORKING HOURS

Despite Clause 32, the Superintendent may at any time direct the Contractor as to different hours and days during which the Contractor may execute the work under the Contract and the Contractor shall not execute the work under the Contract outside those hours or days except in an emergency (in which case the Contractor shall notify the Superintendent in writing of the circumstances as early as possible).

The Superintendent's direction under this Clause shall be taken to be a direction given under Clause 33.1.

33 PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

The Contractor shall proceed with the work under the Contract with due expedition and without delay.

The Contractor shall not suspend the progress of the whole or any part of the work under the Contract except where the suspension is pursuant to Clause 44.9 or is directed or approved by the Superintendent pursuant to Clause 34.

The Superintendent shall furnish to the Contractor the information, materials, documents and instructions stated in the Annexure by the times or within the periods stated in the Annexure.

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor requires any other information, materials, documents or instructions from the Superintendent or the Principal.

The Principal and the Superintendent shall not be obliged to furnish any other information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender.

The Superintendent may direct in what order and at what time the various stages or parts of the work under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall notify the Superintendent in writing, giving reasons.

If compliance with the direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5.

No direction by the Superintendent shall constitute a direction under this Clause unless the direction is in writing and expressly states that it is a direction under this Clause or is deemed to be such a direction pursuant to Clause 32A.

33.2 Contractor's Program

For the purposes of Clause 32A, a 'Contractor's Program' is a statement in writing showing the major activities in the work under the Contract, the dates by which or the times within which key decisions are to be made and information is to be provided and the various stages or parts of the work under the Contract are to be executed or completed.

Any Contractor's Program shall also include a trade breakdown, a cash flow forecast, a resource statement, a start and completion date for all activities and a critical path for the Works.

A Contractor's Program shall not affect rights or obligations in Clause 33.1.

The Superintendent may from time to time, direct the Contractor to furnish to the Superintendent a Contractor's Program or a further Contractor's Program within the time and in the form directed by the Superintendent. The Contractor must provide the Contractor's Program and any further Contractor's Program at the Contractor's cost.

The Contractor shall not depart, without reasonable cause, from—

- (a) a Contractor's Program included in the Contract; or
- (b) a Contractor's Program furnished to the Superintendent.

The Contractor's Program shall commence on the Date of Acceptance of Tender and shall:

- (c) incorporate the following criteria:
 - (i) the work under the Contract shall be broken down into activities of sufficient specificity to enable accurate assessment of progress and the effects of delays to be made;
 - (ii) clearly defined critical paths shall be shown;
 - (iii) relationships between activities shall be sufficient in number to clearly indicate the intended sequence of work and shall show all dependencies dictated by constructability and the availability of labour or equipment resources;
 - (iv) off-site procurement activities shall be shown, including but not limited to:
 - (A) preparation, submission and approval of all relevant drawings; and
 - (B) order, manufacture and delivery periods for materials, plant and equipment;

- (v) deadlines for selections or approvals by the Superintendent or the Principal shall be shown;
- (vi) the lead times for the supply of all drawings and information relating to significant activities;
- (vii) approval dates required from Government Authorities;
- (viii) turnaround times required for submission and examination of all relevant drawings;
- (ix) supply times for any essential materials and major items of plant;
- (x) all on and off Site activities;
- (xi) testing requirements;
- (xii) commissioning program;
- (xiii) inspection of the Works, preparation of a defects list and rectification of defects prior to practical completion;
- (xiv) quality assurance inspections and approvals prior to practical completion; and
- (xv) dates for placing orders for standard components;
- (d) be revised by the Contractor at the Contractor's own cost and expense and submitted to the Superintendent at monthly intervals or whenever the Contractor falls 7 days behind the Contractor's Program;
- (e) be in an electronic form approved by the Superintendent and issued in hard copy to the Superintendent;
- (f) be in such detail so as to advise the Superintendent of the details specified in this Clause 33;
- (g) as a minimum indicate early start and finish dates and the duration of the Contractor's float;
- (h) incorporate a separate program for each separable portion of the Works;
- (i) be in sufficient detail to enable the Superintendent to integrate the work of others;
- (j) clearly demonstrate the Contractor's ability to meet the Date for Practical Completion; and
- (k) indicate all resources, including human resources to be employed on the Contract throughout its duration.

The Contractor shall make available any documentation reasonably requested by the Superintendent relating to the Contractor's Program or the Contractor's progress of the work under the Contract.

Despite any other provision of this Clause:

- (l) any program prepared or provided by the Contractor shall not be used as a Contractor's Program for the purposes of this Clause until it has been approved by the Superintendent;
- (m) the Contractor shall not be entitled to any addition to the Contract Sum arising from a direction of the Superintendent under this Clause unless the Contractor has notified the Superintendent that the direction will result in the Contractor incurring

more cost (together with an estimate of that cost) within 7 days after receipt by the Contractor of the direction and before the Contractor gives effect to the direction;

- (n) the power of the Superintendent to require the Contractor to provide a Contractor's Program includes a power to require the provision of an updated Contractor's Program whenever the Superintendent requires after a change in the Date for Practical Completion or any circumstances affecting the progress of the work under the Contract;
- (o) the Contractor shall provide a Contractor's Program and any updated Contractor's Program at its own cost and expense; and
- (p) the Contractor's Program must show the dates by which, or the times within which the milestones set out in the Contract are to be carried out or completed.

The receipt, acceptance, review, approval or comment by the Superintendent of a Contractor's Program furnished by the Contractor does not:

- (q) relieve the Contractor from its liabilities or obligations, including without limitation the obligation to achieve Practical Completion by the Date for Practical Completion;
- (r) evidence or constitute a direction by the Superintendent to accelerate, disrupt, prolong or vary any, or all, of the Works; or
- (s) affect the time for performance of the Principal's or the Superintendent's obligations.

33.3 Acceleration

Where the Contractor is entitled to an extension of time for Practical Completion under Clause 35.5, the Superintendent may, instead of granting a reasonable extension of time under that Clause, direct the Contractor in writing to accelerate the performance of the work under the Contract so as to overcome the whole or part of the delay which gave rise to the entitlement to an extension of time and the Contractor shall comply with that direction.

If the Superintendent directs the Contractor under this Clause 33.3 to accelerate the performance of the work under the Contract so as to overcome:

- (a) the whole of the delay in question, then the Contractor shall no longer be entitled to any extension of time for that delay; or
- (b) part only of the delay in question, the Contractor shall no longer be entitled to any extension of time for that part of the delay the subject of the Superintendent's direction, but the Superintendent shall grant a reasonable extension of time under Clause 35.5 for the balance of the delay.

No direction by the Superintendent shall constitute a direction under this Clause 33.3 unless it is in writing and expressly states that it is a direction under Clause 33.3.

If compliance with a direction to accelerate given under this Clause 33.3 causes the Contractor to incur more or less cost than otherwise would have been incurred had the direction not been given, the difference shall be valued under Clause 40.5.

34 SUSPENSION OF THE WORKS

34.1 Suspension by the Superintendent

If the Superintendent considers that the suspension of the whole or part of the work under the Contract is necessary—

- (a) because of an act or omission of—
 - (i) the Principal, the Superintendent or an employee, consultant, other contractor or agent of the Principal; or
 - (ii) the Contractor, a Consultant, a subcontractor or an employee or agent of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with an order of a court,

the Superintendent shall direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Superintendent thinks fit.

The Superintendent must also direct the Contractor to suspend the carrying out of the whole or part of the work under the Contract under this Clause:

- (d) if required by the Principal for its convenience, for such time as the Superintendent thinks fit; or
- (e) if the Principal is affected by a Force Majeure Event, for the duration of time requested by the Principal.

34.2 Suspension by the Contractor

If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 44.9, the Contractor shall obtain the prior written approval of the Superintendent. The Superintendent may approve of the suspension and may impose conditions of approval.

The Contractor shall not be entitled to any extension of time in connection with a suspension approved by the Superintendent under this Clause.

34.3 Recommencement of Work

As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence work as soon as reasonably practicable on the whole or on the relevant part of the work under the Contract.

If work is suspended pursuant to Clause 34.2 or 44.9, the Contractor may recommence work at any time after reasonable advance notice to the Superintendent.

34.4 Cost of Suspension

Any cost, expense, loss or damage (including delay and disruption costs) incurred by the Contractor by reason of any suspension under this Clause shall be borne by the Contractor but if:

- (a) the suspension is directed by the Superintendent or the Principal; and
- (b) the suspension has been directed by the Superintendent or Principal solely:

- (i) for the convenience of the Principal under Clause 34.1(d); or
 - (ii) because of an act or omission of the Principal, the Superintendent or the Principal's Personnel (except to the extent that the act or omission was caused or contributed to by any act or omission of the Contractor or its Personnel); and
- (c) the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension,

the difference in cost shall be assessed by the Superintendent and added to or deducted from the Contract Sum.

For the avoidance of doubt, the Contractor will bear its own costs and have no claim against the Principal arising out of or in relation to any suspension directed by the Superintendent due to the Principal being affected by a Force Majeure Event pursuant to Clause 34.1(e).

Clause 36 shall not apply to delay or disruption costs or damages resulting from a suspension under this Clause 34.

34.5 Effect of Suspension

Suspension shall not affect the Date for Practical Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

35.1 Commencement

The Contractor shall promptly commence the work under the Contract.

Within 7 days of it becoming evident to the Contractor that anything, including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall notify the Superintendent in writing with details of the possible delay and the cause.

The Superintendent may reduce the period of notice required.

The Contractor shall commence work on the Site within 14 days after the Principal has given the Contractor possession of sufficient of the Site to enable the Contractor to commence work.

The Superintendent may extend the time for commencement of work on the Site.

35.2 Time for Practical Completion

The Contractor shall execute the work under the Contract to Practical Completion by the Date for Practical Completion.

Upon the Date of Practical Completion the Contractor shall give possession of the Site and the Works to the Principal.

35.3 Separable Portions

The interpretations of—

- (a) Date for Practical Completion;
- (b) Date of Practical Completion; and

(c) Practical Completion,

and Clauses 5.2, 5.5, 5.8 (if applicable), 5.9, 16, 35, 37, 38 and 42.3 shall apply separately to each Separable Portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion.

If the Contract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Contract as the value of the Separable Portion bears to the value of the whole of the work under the Contract.

35.4 Use of Partly Completed Works

If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of Separable Portions, the Superintendent may determine that the respective parts shall be Separable Portions.

In using a Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the work under the Contract.

35.5 Extension of Time for Practical Completion

Notwithstanding any other provision in this subclause 35.5 of this Contract, a precondition to the Contractor becoming entitled to an extension of time for Practical Completion for any delay to the work under the Contract is that the Contractor must have complied with its obligations under this Clause 35.5. If the Contractor has not complied with its obligations under this Clause 35.5 in respect of any delay to the Contractor reaching Practical Completion or anything which may delay the work under the Contract, it shall not be entitled to any extension of time in respect of the delay to the Contractor which has occurred or any delay which does occur (as the case may be).

When it becomes evident to the Contractor that anything, including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall promptly notify the Superintendent in writing within two Business Days of the date upon which it becomes evident to the Contractor that anything may delay the work or of the date upon which it would have become evident to a reasonable and competent Contractor which is performing the work under the Contract (whichever is earliest).

When it becomes evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall promptly give notice to the Superintendent who shall promptly notify the Contractor in writing of the extent of the likely delay.

If the Contractor is or will be delayed in reaching Practical Completion by a cause described in the next paragraph, and within 2 Business Days after the commencement of the delay occurs, the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the following matters, the Contractor will be entitled to an extension of time:

- the cause,
- the facts on which the claim is based,

- how the work under the Contract on the critical path to achieve Practical Completion has been delayed, and
if the delay has ceased, the length of the delay to the date of the notice, or if the delay is continuing, the delay which has occurred and an estimate of the likely future delay, the Contractor shall be entitled to an extension of time for Practical Completion.

The causes are any of the following causes occurring before the Date for Practical Completion—

- (a) delay or disruption caused by—
 - the Principal;
 - the Superintendent;
 - the Principal's Personnel or the Superintendent's Personnel;
- (b) a Latent Condition;
- (c) a variation;
- (d) a change in Legislative Requirements;
- (e) a direction by a municipal, public or statutory authority but not where the direction arose from the failure of the Contractor to comply with a Legislative Requirement;
- (f) delay by a municipal, public or statutory authority not caused by the Contractor;
- (g) a claim referred to in Clause 17.1(b)(iii);
- (h) a breach of the Contract by the Principal;
- (i) a Force Majeure Event if the Contractor has taken all action reasonably practical to mitigate any delay to the Date for Practical Completion as a result of its inability to carry out its obligations under the Contract;
- (j) any other cause which is expressly stated in the Contract or Annexure to be a cause for an extension of time for Practical Completion,
- (k) but excludes any events caused or contributed to by the Contractor or its Personnel.

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause of delay listed in this Clause 35.5, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to—

- whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time; or
- whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

Without affecting any other obligation under this subclause 35.5, with any claim for an extension of time for Practical Completion, or as soon as practicable thereafter, the Contractor shall give the Superintendent written notice of the period of extension claimed.

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 28 days of receipt of the notice of the number of days

extension claimed, grant a reasonable extension of time. If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent shall before the expiration of the 28 days give the Contractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, the Superintendent shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, the Superintendent may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason.

A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 28 days, shall not cause the Date for Practical Completion to be set at large nor render Clause 35.5A unenforceable. The discretion given by this Clause to the Superintendent is wholly for the benefit of the Principal, and the Superintendent is not required to exercise the discretion for the benefit of the Contractor.

The Contractor shall not be entitled to an extension of time for any delay in respect of which the Contractor has failed to comply strictly with the notification provisions of Clause 35.5.

A precondition to the Contractor's entitlement to an extension of time is that the delay must have caused a delay to the work under the Contract on the critical path to achieve Practical Completion.

The Contractor must take proper and reasonable steps both to preclude the occurrence of the cause of delay and to avoid or minimise the consequences thereof. If required by the Superintendent, the Contractor must set out in writing, the steps if any which the Contractor has taken to comply with this paragraph and also all steps which the Contractor considered taking (including those steps which the Contractor considered but did not take). Without limiting the generality of the foregoing, proper and reasonable steps include the re-organisation, re-scheduling and re-sequencing of the activities comprising the Works and the available resources of the Contractor in order to minimise or preclude any delay and the consequences thereof.

35.5A Reduction of Time

Notwithstanding that the definition of Date for Practical Completion does not expressly contemplate a reduction in the time for achieving Practical Completion, where any direction given by the Superintendent (including any variation) has the effect of reducing the amount of time required by the Contractor to achieve Practical Completion, the Superintendent may give to the Contractor and the Principal a written direction bringing forward the Date for Practical Completion by a reasonable period.

35.6 Liquidated Damages for Delay in Reaching Practical Completion

- (a) Without limiting any other rights the Principal may have under the Contract or at law, if the Contractor fails to achieve Practical Completion of the Works, or any Separable Portion of the Works, by the relevant Date for Practical Completion then the Contractor must pay to the Principal the relevant sum specified in the Annexure for each and every day or part thereof from the Date for Practical Completion up to

the date on which Practical Completion is achieved (up to the relevant maximum specified in the Annexure).

- (b) The parties agree that the amount for liquidated damages specified in the Annexure is less than or equal to a genuine and reasonable pre-estimate of the Principal's likely loss due to the delayed achievement of Practical Completion of the Works.
- (c) If any liquidated damages for delay under this Clause 35.5A are found to be invalid or unenforceable for any reason whatsoever (including where any part of this Clause is unenforceable), or for any other reason, the Principal shall be entitled (in addition to any liquidated damages that have been recovered or are recoverable under the Contract (if any)) to claim general damages at common law in respect of any failure by the Contractor to achieve Practical Completion by the Date for Practical Completion.
- (d) Any entitlement to recover common law general damages in exchange for liquidated damages is not limited by any cap on liquidated damages specified in the Contract.
- (e) Without limiting the Principal's ability to set-off amounts due to the Contractor, the Principal is entitled to deduct liquidated damages from any amount otherwise payable to the Contractor immediately upon the Contractor becoming liable for liquidated damages.

35.6A Termination due to maximum limit of Liquidated Damages being reached

- (a) If the Contractor becomes liable for liquidated damages in any of the maximum amounts specified in the Annexure, then the Principal may immediately terminate this Contract at any time by giving written notice. The consequences to the Contractor of the Principal terminating the Contract under this Clause 35.6A will be the same as if the Principal had terminated the Contract for the Contractor's breach.
- (b) The Principal's right to recover liquidated damages under this Clause does not limit the Principal's right to terminate the Contract for an unremedied delay by the Contractor in performing the Works or for another reason.

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35.7 Bonus for Early Practical Completion

If the Date of Practical Completion is earlier than the Date for Practical Completion the Principal shall pay the Contractor the bonus stated in the Annexure for every day after the Date of Practical Completion to and including the Date for Practical Completion.

The total of the bonus shall not exceed the limit stated in the Annexure.

36 DELAY OR DISRUPTION COSTS

Notwithstanding any other provision of this Contract, where the Contractor has been granted an extension of time under Clause 35.5 for delay or disruption and that event is a Compensable Cause, the Contractor shall be entitled to claim its direct costs actually incurred by reason of the delay.

The Contractor will not be entitled to claim or be paid any amounts in relation to:

- (a) any overhead costs, administrative costs, attendance or profit for any delay or disruption caused by any of the events referred to in Clause 35.5; or
- (b) any delay damages or costs which, in the opinion of the Superintendent, could reasonably have been avoided by the Contractor.

Notwithstanding any other provision of the Contract, the Principal's liability to the Contractor for any delay or disruption of the Works is limited to the maximum amount specified in the Annexure.

For the avoidance of doubt, except to the extent expressly set out in this Clause 36, the Contractor shall not be entitled to claim any costs, expenses, damages or other amounts resulting from any delay or disruption arising from any cause (including without limitation any breach by the Principal).

37 DEFECTS LIABILITY

The Defects Liability Period stated in the Annexure shall commence at 4:00 pm on the Date of Practical Completion.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the work under the Contract existing at the Date of Practical Completion.

At any time during the Defects Liability Period, the Superintendent may direct the Contractor to promptly rectify any omission or defect in the work under the Contract for which the Contractor is responsible. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the rectification work and may state a date by which the rectification work shall commence. The direction may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in the Annexure. The separate Defects Liability Period shall commence on the date the rectification work is completed. This Clause 37 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

At any time after the Contractor has rectified any omission or defect in the work under the Contract and in the event the Superintendent has not already done so, the Superintendent may give the Contractor written notice that in respect of any rectification work carried out there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in the Annexure. The separate Defects Liability Period shall commence on the date the rectification work was completed. This Clause 37 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

If the rectification work is not commenced or completed by the stated dates, the Superintendent may have the rectification work carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the reasonable cost of the rectification work incurred by the Principal shall be a debt due from the Contractor to the Principal.

If it is necessary for the Contractor to carry out rectification work the Contractor shall do so at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.

38 CLEANING UP

The Contractor shall keep the Site and the work clean and tidy. The Contractor shall regularly remove rubbish and surplus material.

Within 14 days after the Date of Practical Completion, the Contractor shall remove Temporary Works and Constructional Plant.

The Superintendent may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.

Notwithstanding the provisions of Clause 44, if the Contractor fails to comply with any obligation imposed on the Contractor by this Clause 38, the Superintendent may, after the Superintendent has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to any other right.

39 URGENT PROTECTION

If urgent action is necessary to protect the work under the Contract, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Superintendent may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the reasonable cost incurred by the Principal in the circumstances shall be a debt due from the Contractor to the Principal.

If time permits, the Superintendent shall give the Contractor prior written notice of the intention to take action pursuant to this Clause 39.

40 VARIATIONS

40.1 Variations to the Work under the Contract

The Superintendent may direct the Contractor to do any one or more of the following—

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work or of anything described in the Principal's Project Requirements or the Design Documents;
- (c) change the levels, lines, positions or dimensions of anything described in the Principal's Project Requirements, the Design Documents or any part of the work under the Contract;
- (d) execute additional work;
- (e) demolish or remove material or work no longer required by the Principal.

The Contractor shall not vary the work under the Contract except as directed by the Superintendent or approved in writing by the Superintendent pursuant to Clause 40.

The Contractor shall not be entitled to any amount (including delay or disruption costs, if any) for a variation to the work under the Contract except in the following circumstances:

- (f) if the Superintendent directs the Contractor to vary the work in writing prior to the Contractor executing any of the work relating to the variation of any work under the Contract; or

- (g) if the Superintendent notifies the Contractor in writing, prior to the Contractor executing any work relating to the variation of any work under the Contract, that a direction in writing is not required.

The Contractor is bound only to execute a variation which is within the general scope of the Contract.

Where any part of the work under the Contract is omitted, the Principal may carry out the omitted work itself or engage others to perform the omitted work.

Except where otherwise provided in the Contract, the Superintendent shall not direct a variation after the Date for Practical Completion.

40.2 Proposed Variations

Upon receipt of a notice in writing from the Superintendent notifying the Contractor of a proposed variation under Clause 40, the Contractor shall notify the Superintendent whether the proposed variation can be effected. If the variation can be effected, the Contractor shall—

- (a) notify the Superintendent of the effect which the Contractor anticipates that the variation will have on the Contractor's Program and time for Practical Completion; and
- (b) provide an estimate of the cost (including delay or disruption costs, if any, and the cost or effect on any applicable warranty) of the proposed variation.

40.3 Pricing the Variation

Unless the Superintendent and the Contractor agree upon the price for a variation, the variation directed or approved by the Superintendent pursuant to Clause 40.1 shall be valued under Clause 40.5.

The Superintendent may direct the Contractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost.

40.4 Variations for the Convenience of the Contractor

If the Contractor requests the Superintendent to approve a variation for the convenience of the Contractor, the Superintendent may do so in writing. The approval may be conditional.

Unless the Superintendent otherwise directs in the notice approving the variation, the Contractor shall not be entitled to—

- (a) an extension of time for Practical Completion; or
- (b) extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

The Superintendent shall not be obliged to approve a variation for the convenience of the Contractor.

40.5 Valuation

Where the Contract provides that a valuation shall be made under this Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the

Principal, as the case may require, an amount ascertained by the Superintendent as follows—

- (a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in a Schedule of Rates shall be used to the extent that it is reasonable to use them;
- (c) to the extent that neither Clause 40.5(a) nor (b) applies, reasonable rates or prices shall be used;
- (d) to the extent that neither Clause 40.5(a), (b) nor (c) applies, as Daywork valued in accordance with Clause 41; and
- (e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.2, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit.

For the purposes of a valuation to be made in accordance with Clause 40.5(a), (b), (c) or (d)—

- (i) in determining the deduction to be made for work which is taken out of the Contract, the deduction shall include a reasonable amount for profit and overheads;
- (ii) the Contractor shall not be entitled to any amount for extra costs incurred or loss suffered by the Contractor for delay or disruption; and
- (iii) if Clause 11(d) applies, the percentage referred to in Clause 11(d) shall be used for valuing the Contractor's profit and attendance.

When pursuant to Clause 40.3 the Superintendent directs the Contractor to support a variation with measurements and other evidence of cost, the Superintendent shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

40.6 Notice of Variations

If the Contractor considers that a direction by the Superintendent (including a direction to remedy or re-execute work or material which the Contractor considers complies with the Contract) is a variation even though it was not expressly identified as a variation to the work under the Contract by the Superintendent, then the Contractor must within 14 days of the receipt of the direction, notify the Superintendent of that view identifying the relevant direction and the reasons why the Contractor considers that the direction is a variation.

Within 14 days of receiving such a notice, the Superintendent shall confirm in writing whether or not the direction is a variation to the work under the Contract. If the Superintendent confirms that the direction is a variation to the work under the Contract, the variation will be valued under Clause 40.5.

Unless the Contractor gives the notice required under this Clause and:

- (a) the Superintendent confirms that the direction is a variation to the work under the Contract within 14 days of the Contractor's notice; or
- (b) the Contractor gives a prescribed notice under Clause 46 within 21 days of its first notice under this Clause,

the Contractor may not make a claim against the Principal in respect of the work the subject of the direction whether under the Contract or (insofar as is permitted by law) pursuant to any other principle of law.

40A INNOVATIVE SOLUTIONS

40A.1 Innovation

During the term of this Contract, the parties may separately or together develop a solution or solutions (“**Innovative Solutions**”) by which the Contractor makes new works, services or goods available on a commercial basis and such new works, services or goods are:

- (a) a viable substitute for any of the Works (or part of the Works); or
- (b) ancillary to or broadly related to the Works; and/or
- (c) either or both of the parties have developed an innovation to improve value for money outcomes to the Principal including but not limited to improved outcomes, efficiency savings or cost reductions.

40A.2 Development

- (a) During the development of any Innovative Solutions, the Principal may:
 - (i) require a business case to be produced by the Contractor to the Superintendent or the Principal; and
 - (ii) extend the Date for Practical Completion at its absolute discretion.
- (b) If the parties wish to allow for any Innovative Solutions in this Contract from time to time, the parties shall work collaboratively to attempt to reach in-principle agreement in relation to:
 - (i) any variation to the Contract Sum, the Specifications and the reporting requirements to implement the Innovative Solutions; and
 - (ii) the ownership of the intellectual property in the Innovative Solution.
- (c) Each party shall bear its own costs associated with the initiation and development of any Innovative Solutions (irrespective of whether those Innovative Solutions are implemented), unless otherwise agreed in writing by the Principal and the Contractor on a case by case basis.
- (d) If no agreement is reached is reached between the parties as to a variation to any part of the Contract (including the Contract Sum) or the ownership of intellectual property in the Innovative Solution, the Contract is not varied and any intellectual property developed during the development of the Innovative Solution vests in the Principal.
- (e) Nothing in this Clause shall bind the Principal to implement an Innovative Solution or to a variation to any part of the Contract (including the Contract Sum) unless the Principal or Superintendent directs the Contractor to implement (as opposed to develop) the Innovative Solution and a variation is approved by the Superintendent under Clause 40.

40A.3 Implementation

- (a) Innovative Solutions will be binding on the parties once:

- (i) the matters in Clause 40A.2(b) have been determined by the parties; and
 - (ii) the implementation of the Innovative Solution has been directed in writing by the Principal.
- (b) As of the date of the Principal's direction under Clause 40A.3(a)(ii), the Innovative Solution is deemed to be:
- (i) incorporated as part of the Works; and
 - (ii) otherwise incorporated into this Contract (as applicable).

40B WORK TAKEN OUT OF THE HANDS OF THE CONTRACTOR

The Superintendent may, under Clause 40, give a direction to the Contractor which has the effect of deleting from the work to be performed by the Contractor under the Contract the whole or any part of the work under the Contract. The Superintendent may give such a direction in circumstances where the Principal either intends to or does carry out that work itself or engages another contractor to carry out that work (whether or not the work is carried out as part of other work which the other contractor has been or is engaged to carry out or is the only work for which the other contractor has been engaged).

41 DAYWORK

In determining the value of Daywork regard shall be had to—

- (a) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(a);
- (c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed between the Superintendent and the Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Superintendent;
- (d) the amounts paid for services, subcontract work and professional fees;
- (e) the actual cost to the Contractor at the Site of all materials supplied and required for the work; and
- (f) the charge stated in the Annexure or, if no charge is stated, a charge agreed between the Superintendent and the Contractor, to cover overheads, administrative costs, Site supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Superintendent.

Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

At the times for payment claims or upon completion of the stages of the work under the Contract stated in the Annexure and upon the issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.5, the Contractor shall deliver to the Superintendent payment claims supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require. Payment claims shall include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then otherwise due to the Contractor arising out of the Contract.

If the time for any payment claim under the preceding paragraph falls due on a day which is Saturday, Sunday, Statutory or Public Holiday the Contractor shall submit the claim either on the day before or next following that date which itself is not a Saturday, Sunday, Statutory or Public Holiday.

If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Superintendent to issue the payment schedule in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.

Within 15 Business Days of receipt of a payment claim, the Superintendent shall assess the claim and shall issue to the Principal and to the Contractor a payment schedule stating the amount of the payment which, in the Superintendent's opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal. The Superintendent shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference. The Superintendent shall also set out, as applicable, in any payment schedule issued pursuant to Clause 42, the allowances made for—

- (a) the value of work carried out by the Contractor in the performance of the Contract to the date of the claim;
- (b) amounts otherwise due from—
 - (i) the Principal to the Contractor; and
 - (ii) the Contractor to the Principal;
- (c) amounts assessed under Clause 46.4 and not duly disputed;
- (d) amounts paid previously under the Contract;
- (e) amounts previously deducted for retention moneys pursuant to the Annexure; and
- (f) retention moneys to be deducted pursuant to the Annexure,

arising out of the Contract resulting in the balance due to the Contractor or the Principal, as the case may be.

If the Contractor fails to make a payment claim under this Clause 42.1, the Superintendent may nevertheless issue a payment schedule and the Principal or the Contractor, as the case may be, shall pay the amount so certified within 15 Business Days of that Certificate.

Subject to the provisions of the Contract, within 20 Business Days of receipt by the Superintendent of a payment claim or within 10 Business Days of issue by the

Superintendent of the Superintendent's payment schedule, whichever is the earlier, and within 10 Business Days of the issue of a Final Certificate, the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in such certificate as due to the Contractor or to the Principal, as the case may be, or if no payment schedule has been issued, the Principal shall pay the amount of the Contractor's claim. A payment made pursuant to this Clause 42.1 shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 42.6.

If the Contract provides that the Contractor must complete a specified task, submit a specified document or fulfil some other requirement before it is entitled to make a payment claim then notwithstanding Clause 42.1, the Contractor shall not be entitled to make a payment claim and the Principal shall not be obliged to make payment until the Contractor has complied with that provision of the Contract.

The parties agree that, in the absence of any payment schedule issued by the Principal after any payment schedule issued by the Superintendent, the payment schedules issued by the Superintendent under Clause 42.1 of the General Conditions shall be valid payment schedules under the BIF Act and shall be taken to be issued by the Principal for the purposes of the BIF Act.

If the Contractor lodges a payment claim earlier than the times specified by this Clause and/or which does not include all information or evidence required by the Contract, the Superintendent shall not be obliged to issue a payment schedule in respect of the payment claim earlier than would have been the case had the Contractor submitted its payment claim in accordance with the Contract.

Despite the issue of a payment schedule by the Superintendent, the Principal shall not be liable to pay any amount certified which relates to an unliquidated claim for damages or any amount in respect of which it is entitled to a set-off under Clause 42.8.

The Contractor warrants and agrees that ownership of and property in any plant or material incorporated or to be incorporated in the Works shall pass to the Principal upon payment to the Contractor of the amount claimed by the Contractor in respect of that plant or material.

42.1A Correction of Payment Schedules

At any time and from time to time, the Superintendent may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Practical Completion or Final Certificate.

42.2 Unfixed Plant and Material

The Principal shall be obliged to pay for any item of unfixed plant and materials (notwithstanding that the item has not been incorporated into the Works) where that item is listed in the Annexure if the Contractor—

- (a) provides the amount of additional security stated in the Annexure separately approved by the Principal under Clause 5.3; and
- (b) establishes to the satisfaction of the Superintendent that the Contractor has paid for the item, the item is properly stored, labelled the property of the Principal and is adequately protected.

Upon payment to the Contractor of the amount which includes the value of the item, and upon the release of any security, the item shall be the property of the Principal free of any lien or charge.

Any additional security provided for any item of unfixed plant and materials shall be released in accordance with Clause 5.9.

Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

42.3 Certificate of Practical Completion

The Contractor shall give the Superintendent at least 14 days notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Superintendent to issue a Certificate of Practical Completion. Within 14 days of the receipt of the request, the Superintendent shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

When the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

42.4 Effect of schedules and Certificates

The issue of a payment schedule or a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Principal or the Contractor.

42.5 Final Payment Claim

Within 28 days of the expiry of the Defects Liability Period, or where there is more than one, the last to expire, the Contractor shall provide the Superintendent with a final payment claim and endorse it 'Final Payment Claim'.

In addition to claims for payment required to be included in a payment claim under Clause 42.1, the Contractor shall include in the Final Payment Claim all claims for moneys which the Contractor considers to be due from the Principal arising out of any alleged breach of the Contract. All such claims, whether under Clause 42.1 or this Clause 42.5, which have not already been barred, shall be barred after the expiration of the period for lodging a Final Payment Claim.

42.6 Final Certificate

Within 15 Business Days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in Clause 42.5 for the lodgement of the Final Payment Claim by the Contractor, the

Superintendent shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate'. In the certificate the Superintendent shall certify the amount which, in the Superintendent's opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach thereof. In such Final Certificate the Superintendent shall also set out such of the allowances in Clause 42.1(a) to (f) inclusive as are appropriate to such Final Certificate.

Unless either party, either before the Final Certificate has been issued or not later than 21 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of—

- (a) fraud, dishonesty or fraudulent concealment relating to the work under the Contract or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

Within 14 days after the issue of a Final Certificate, the Principal shall release to the Contractor any security, retention moneys or both then held by the Principal.

42.7 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in the Annexure or if no rate is stated, the rate shall be 18 per cent per annum. Interest shall be compounded at six monthly intervals.

42.8 Set Offs by the Principal

Without limiting the Principal's rights under the Contract or otherwise, and notwithstanding the provisions of Clauses 42.1 and 42.8 or the issue of any payment schedule by the Superintendent under those Clauses, the Principal may deduct from any moneys due to the Contractor or withhold moneys, including from any retention moneys, security or the proceeds of conversion of any security into money, any amounts required to be withheld by the Principal by law, any debt due from the Contractor to the Principal and any amount to cover any claim which the Principal may have against the Contractor:

- (a) whether or not the debt or claim arises by way of damages, debt, restitution or otherwise; and
- (b) whether or not the factual basis giving rise to the debt or claim arises out of this Contract, any other contract or is independent of any contract.

Nothing in this Clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or claim or any balance that remains owing. This Clause shall survive termination of the Contract.

42.9 Recourse for Unpaid Moneys

Where, within the time provided by the Contract, a party fails to pay the other party an amount due and payable under the Contract, the other party may, subject to Clause 5.6, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.

42.10 GST

(a) In this Clause:

- (i) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such Acts;
 - (ii) "Representative" means a representative member of a GST group to which the relevant supplier belongs; and
 - (iii) the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Contract are exclusive of GST.
- (c) Despite any other provision in this Contract, if GST is imposed on any supply made under this Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The recipient must pay the amount referred to in Clause 42.10(c) in addition to and at the same time as payment for the taxable supply is required to be made under this Contract.
- (e) If the amount of GST paid or payable by the supplier on any supply made under this Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case may be.
- (f) If this Contract requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("reimbursable expense") the amount required to be reimbursed or indemnified by the first party will be the amount of the reimbursable expenses net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("net amount") provided that should the reimbursement or indemnity be subject to GST, the net amount shall be increased in accordance with Clause 42.10(c).
- (g) A valid tax invoice or adjustment note must be delivered by a supplier to the recipient before the supplier is entitled to payment of an amount under Clause

42.10. The recipient can withhold payment of the amount until the supplier provides a valid tax invoice or adjustment note as appropriate.

- (h) The Principal is authorised to withhold from payments to the Contractor, such amounts as are required under the Pay as You Go (PAYG) system.
- (i) If this Contract requires the calculation of a price by the addition of a percentage margin to another rate or price, the percentage shall be applied to the rate or price exclusive of GST (or where the rate is expressed as being GST inclusive, then less any input tax credit the supplier is entitled to claim in respect of that item).
- (j) In the event that liability for payment of GST in respect of a supply under this Contract is imposed upon a Representative of a supplier this Clause 42.10 shall nonetheless apply and any amounts to be calculated pursuant to Clauses 42.10(c) and 42.10(e) shall be calculated in all respects as if the supplier was liable for the GST imposed on such supply and entitled to input tax credits properly allocated to the making of that supply.

42.11 Recipient created tax invoice

If at any time the Contractor does not submit a tax invoice to the Principal for payment of an amount otherwise due under this Contract, the Principal may in its absolute discretion issue to the Contractor a recipient created tax invoice for the amount stated in the relevant payment schedule as being due for payment.

43 PAYMENT OF WORKERS AND SUBCONTRACTORS

43.1 Payment of Workers

The Superintendent may, not less than 5 days before each payment schedule is due, in writing direct the Contractor to—

- (a) give the Superintendent 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 workers who have at any time been employed by the Contractor on work under the Contract have at the date of the direction been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and
- (b) provide documentary evidence to the Superintendent that at the date of the direction all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.

43.2 Payment of Subcontractors

Not earlier than 14 days after the Contractor has made each payment claim under Clause 42.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Superintendent 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 have been paid all moneys due and payable to them in respect of work under the Contract.

43.3 Withholding of Payment

If the Contractor fails—

- (a) to provide, within 5 days of the direction by the Superintendent pursuant to Clause 43.1, the statutory declaration or the documentary evidence, as the case may be; or
- (b) to comply with Clause 43.2,

then notwithstanding Clause 42.1, the Principal may withhold payment of moneys due to the Contractor until the statutory declaration or documentary evidence, as the case may be, is received by the Superintendent.

If the Contractor provides to the Superintendent satisfactory proof of the maximum amount due and payable to workers and subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.

43.4 Direct Payment

Where the Principal is entitled to or is required to make payment to a subcontractor of a sum certified by the Superintendent as owing to the subcontractor under a subcontract, the Principal may, on behalf of the Contractor, make the payment directly to the subcontractor and the amount so paid shall be a debt due from the Contractor to the Principal.

At the written request of the Contractor, and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

If a payment is made in respect of moneys referred to in Clause 43.1 or 43.2 by the Principal to or in respect of a worker or subcontractor in compliance with a Legislative Requirement, the amount paid shall be a debt due from the Contractor to the Principal.

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 43.1 or 43.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Act) in respect of the Contractor, the Principal shall not make any payment (other than a payment made pursuant to a Legislative Requirement) to a worker or subcontractor without the concurrence of the official receiver or trustee in bankruptcy of the estate of the bankrupt or the liquidator, as the case may be.

For the purposes of this paragraph, documentary evidence may include, without limitation, statutory declarations from workers or subcontractors specified by the Superintendent (in its absolute discretion).

43A INDUSTRIAL RELATIONS

The Contractor shall at its own cost and expense:

- (a) ensure all employees (including employees of subcontractors) carrying out the work under the Contract are employed in accordance with any applicable industrial laws, awards or agreements;
- (b) actively manage and do all things necessary to avoid disputes or disturbance in industrial relations; and

- (c) upon request by the Principal, consult fully with the Principal in connection with any actual or potential industrial dispute or disturbance.

43B LOCAL PARTICIPATION

The Contractor must in the performance of the Contract:

- (a) ensure that local personnel, suppliers and manufacturers are provided with a full, fair and reasonable opportunity to bid for the supply of goods and services relevant to the performance of the work under the Contract; and
- (b) endeavour to utilise local personnel, suppliers and manufacturers wherever reasonably practicable to do so.

44 DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

If a party breaches or repudiates the Contract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

44.2 Default by the Contractor

If the Contractor commits a substantial breach of contract and the Principal considers that damages may not be an adequate remedy, the Principal may give the Contractor a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) failing to perform properly the Contractor's Design Obligations;
- (b) failing to provide security;
- (c) failing to provide evidence of insurance;
- (d) failing to comply with a direction of the Superintendent pursuant to Clause 30.3;
- (e) failing to use the materials or standards of workmanship required by the Contract;
- (f) suspension of work in breach of Clause 33.1;
- (g) failing to proceed with due expedition and without delay in breach of Clause 33.1;
- (h) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue; and/or
- (i) suffering an Insolvency Event or a Liquidation Event.

44.3 Requirements of a Notice by the Principal to Show Cause

A notice given under Clause 44.2 shall—

- (a) state that it is a notice under Clause 44 of these General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 44.4;
- (d) specify the time and date by which the Contractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Contractor); and

- (e) specify the place at which cause must be shown.

Upon giving a notice under Clause 44.3, the Principal may suspend payments to the Contractor until the earlier of:

- (f) the date upon which the Contractor shows reasonable cause;
- (g) the date which is 7 days after the last date for showing cause in the notice under Clause 44.3.

The Contractor agrees that the Principal may determine in its absolute discretion whether the Contractor has failed to show reasonable cause why the Principal should not exercise a right referred to in Clause 34.4.

44.4 Rights of the Principal

If by the time specified in a notice given under Clause 44.2, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in this Clause 44.4, the Principal may by notice in writing to the Contractor—

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract (except where the substantial breach is an Insolvency Event).

Upon giving a notice under Clause 44.2, the Principal may suspend payments to the Contractor until the earlier of—

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 44.4(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.

If the Principal exercises the right under Clause 44.4(a), the Contractor shall not be entitled to any further payment unless a payment becomes due to the Contractor under Clause 44.6.

44.5 Procedure when the Principal Takes Over Work

If the Principal takes work out of the hands of the Contractor under Clause 44.4(a), the Principal shall complete that work and the Principal may without payment of compensation take possession of—

- (a) such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor; and
- (b) the Design Documents and other documents, information, materials and the like produced by the Contractor,

which are reasonably required by the Principal to facilitate completion of the work. The Principal shall keep records of the cost of completing the work.

If the Principal takes possession of Constructional Plant, Design Documents or other things, the Principal shall maintain them and, subject to Clause 44.6, on completion of the work, the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 44.5 which are surplus and, subject to Clause 13, the Design Documents.

44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

When work taken out of the hands of the Contractor under Clause 44.4(a) is completed, the Superintendent shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate pursuant to this Clause 44.6 to the Principal and the Contractor certifying—

- (a) the amount of that cost, and setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor; and
- (c) the difference.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor. In assessing the cost incurred in relation to work taken out of the Contractor's hands, the Superintendent must include the following additional items of cost to the Principal:

- (d) any costs being incurred by the Principal or the Site Owner by reason of its ownership or holding of the Site for any period;
- (e) any costs of funding (including interest); and
- (f) any other costs, losses, expenses or damages, arising from or in connection with the Contractor's breach.

44.7 Default of the Principal

If the Principal commits a substantial breach of contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) failing to make a payment due under the Contract;
- (b) failing to materially comply with its obligations under this Contract to the extent that such failure has a material adverse effect on the Contractor's ability to comply with its obligations under this Contract; and
- (c) suffering an Insolvency Event or a Liquidation Event.

44.8 Requirements of a Notice by the Contractor to Show Cause

A notice given under Clause 44.7 shall—

- (a) state that it is a notice under Clause 44 of these General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 44.9;
- (d) specify the time and date by which the Principal must show cause (which shall not be less than 7 clear days after the notice is given to the Principal); and
- (e) specify the place at which cause must be shown.

44.9 Rights of the Contractor

If by the time specified in a notice given under Clause 44.7, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 44.9, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

The Contractor shall lift the suspension if the Principal remedies the breach but if within 28 days of the date of suspension under this Clause 44.9, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice in writing to the Principal terminate the Contract.

The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

44.10 Rights of the Parties on Termination

If the Contract is terminated pursuant to Clause 44.4(b) or 44.9, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

If the Principal has terminated the Contract due to a substantial breach of the Contractor or due to the Contractor suffering an Insolvency Event or Liquidation Event, the Principal may also, without payment of compensation, take possession of the Design Documents.

If the Principal terminates the Contract, it may have recourse to any security or retention moneys provided by the Contractor.

If the Contractor terminates the Contract (whether under Clause 44.9 or otherwise at law), the Contractor will not be entitled to a quantum meruit.

44.11 Insolvency and Liquidation Events

- (a) If an Insolvency Event occurs in respect of the Contractor, the Principal may immediately give the Contractor a notice under Clause 44.4(a) without first giving the Contractor notice under Clause 44.2.
- (b) If a Liquidation Event occurs in respect of the Contractor, the Principal may immediately give the Contractor a notice under Clause 44.4(b) without first giving the Contractor notice under Clause 44.2.
- (c) The Contractor must immediately notify the Principal in writing if either an Insolvency Event or a Liquidation Event occurs in respect of the Contractor.

44.12 Principal May Remedy Contractor's Breach

In addition to any other rights of the Principal, the Principal may perform or have others perform at the Contractor's cost any obligation of the Contractor which the Contractor has failed to perform after reasonable notice from the Principal requiring such performance.

*

45 TERMINATION BY FRUSTRATION

If under the law governing the Contract, the Contract is frustrated or terminated due to a Force Majeure Event under Clause 22A.2, the Principal shall pay the Contractor—

- (a) the amount due to the Contractor shown in any unpaid payment schedule;
- (b) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had been entitled to and had made a payment claim on the date of frustration;
- (c) the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;
- (d) all cash security and retention moneys, except where the Principal has a claim against the Contractor or intends to claim against the security in which case the Principal's entitlement to the security shall continue and not lapse until, if the Principal does not exercise any right to have recourse to the security, the claim is otherwise resolved;
- (e) the reasonable cost of removal of Temporary Works and Constructional Plant; and
- (f) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration.

If the Principal has provided security, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise), the Contractor shall release the security provided by the Principal in respect of the Contract.

45B TERMINATION FOR CONVENIENCE

Notwithstanding any other provision of the Contract, the Principal may, without cause and in its absolute discretion, terminate the Contract at any time, by giving notice in writing to the Contractor. If the Principal terminates the Contract under this Clause, the Contractor shall:

- (a) immediately cease the execution of the work under the Contract and (if applicable) commence to demobilise from the Site;
- (b) deliver to the Superintendent documents produced by the Contractor for the purposes of the execution of the work under the Contract;
- (c) be entitled to payment for the work performed by it prior to the date of termination and for its reasonable costs of demobilisation from the Site (if applicable); and
- (d) not be entitled to claim or recover any loss of profit or other consequential loss in respect of the termination.

46 NOTIFICATION OF CLAIMS

46.1 Communication of Claims

The prescribed notice is a written notice under Clause **Error! Reference source not found.** or a notice of dispute under Clause 47.1.

The Principal shall not be liable upon any claim by the Contractor:

- (a) arising out of or in connection with a breach of the Contract by the Principal;
- (b) arising out of or in connection with the subject matter of the Contract;
- (c) arising out of or in connection with any direction or approval by the Principal or the Superintendent;
- (d) under any provision of the Contract;
- (e) for damages for negligence;
- (f) for damages or for any other remedy under any statute; or
- (g) upon a quantum meruit or for restitution or based on unjust enrichment,

unless within 28 days after the first day upon which the Contractor could reasonably have been aware of the breach or of the entitlement to make the claim, the Contractor has given to the Superintendent the prescribed notice. The prescribed notice is a notice in writing which includes particulars of all of the following:

- (i) the breach, act, omission, direction, approval or circumstance on which the claim is or will be based;
- (ii) the provision of the Contract or other basis for the claim or proposed claim; and
- (iii) the quantum or likely quantum of the claim.

This Clause 46 shall not have any application to:

- (iv) any claim for payment to the Contractor of the Contract Sum;
- (v) any claim for payment for a variation directed by the Superintendent under Clause 40.1; or
- (vi) any claim for an extension of time for Practical Completion.

In the event of an inconsistency between the time limits in Clause 46 and the provisions of any other Clause in the Contract requiring notice to be given or a Claim to be made by the Contractor within the time limits specified in that Clause, the time limits in that Clause shall prevail.

In this Clause 46, "Claim" includes an claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract or the work under the Contract including (without limitation) any claim, demand, action, proceeding or suit seeking payment of money, an adjustment to the Contract Sum, an extension of time to the Date for Practical Completion or any costs, expenses, loss or damages on any ground whatsoever including (without limitation) pursuant to the Contract, on a quantum meruit, pursuant to quasi-contract, for unjust enrichment, in tort and insofar as is permitted by law pursuant to any other principle of law.

46.2 Not used

46.3 Not Used

46.4 Superintendent's Decision

Within 10 Business Days of receipt by the Principal of the prescribed notice, the Superintendent shall assess the Claim and notify the parties in writing of the decision. Unless a party within a further 10 Business Days of such notification serves a notice of dispute under Clause 47.1 which includes such claim, the Superintendent shall include the amount of that assessment in the next payment schedule issued pursuant to Clause 42.

46.5 Time for Disputing Superintendent's Direction

If the Superintendent—

- (a) has given a direction (other than a decision under Clause 47.2) pursuant to the Contract; and
- (b) has served a notice in writing on each party that if a party wishes to dispute the direction, then that party is required to do so under Clause 47,

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by one party to the other party and to the Superintendent within 28 days of the date of service on that party of the notice pursuant to Clause 46.5(b).

47 DISPUTE RESOLUTION

47.1 Notice of Dispute

If a dispute between the Contractor and the Principal arises out of or in connection with the Contract, including a dispute concerning a direction given by the Superintendent, then either party shall deliver by hand or send by certified mail to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract and, subject to Clause 44, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clause 42.1.

47.2 Further Steps Required Before Proceedings

Alternative 1

Within 14 days of service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to mediation..

Alternative 2

A party served with a notice of dispute may give a written response to the notice to the other party and the Superintendent within 28 days of the receipt of the notice.

Within 42 days of service on the Superintendent of a notice of dispute or within 14 days of the receipt by the Superintendent of the written response, whichever is the earlier, the Superintendent shall give to each party the Superintendent's written decision on the dispute, together with reasons for the decision.

If either party is dissatisfied with the decision of the Superintendent or if the Superintendent fails to give a written decision on the dispute within the time required under this Clause 47.2, the parties shall, within 14 days of the date of receipt of the decision or within 14 days of the date upon which the decision should have been given by the Superintendent, confer at least once to attempt to resolve the dispute and failing resolution of the dispute, to explore and if possible agree on methods of resolving the dispute by other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute.

If the dispute has not been resolved within 28 days of the date the Superintendent has given a decision or should have given a decision, that dispute shall be and is hereby referred to mediation.

47.3 Mediation

Mediation of the dispute shall:

- (a) be conducted in Brisbane in accordance with the rules for mediation of commercial disputes published by the Resolution Institute in force at the Date of Acceptance of Tender;
- (b) be administered by the Queensland Chapter of the Resolution Institute;
- (c) be at the cost and expense of the parties equally (except that each party shall pay its own advisers, consultants, legal fees and expenses); and
- (d) take place within 28 days of the date of the written notice referring the dispute to mediation.

Other than to enforce any agreement reached at mediation, the parties shall maintain the confidentiality of mediation.

The mediator shall be the person agreed between the parties, or, if no agreement is reached between the parties within 7 days of the written notice referring the dispute to mediation, the mediator shall be nominated by the President of the Queensland Chapter of the Resolution Institute. The fees payable to the mediator (which the parties shall share equally) shall be as agreed between the parties and the mediator, or failing agreement as determined by the President of the Queensland Chapter of the Resolution Institute.

If the dispute is not resolved at mediation, either party may commence legal proceedings.

47.4 Summary or urgent Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

48 WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Principal in each instance.

Failure by the Principal or by the Superintendent acting on behalf of the Principal at any time and from time to time to enforce or require strict compliance with, or performance of any terms of the Contract will not constitute waiver of, or affect, or impair such terms in any way, nor shall such failure affect the right of the Principal to avail itself at any time of such remedies it may have for any subsequent breach of the terms by the Contractor.

49 MEETINGS AND REPORTS

If required by the Principal, the Contractor will attend fortnightly on-site meetings and fortnightly on-site quality inspection in the alternative week or as otherwise determined by the Superintendent and the Contractor must provide such reports as to the progress and quality of the Works as the Principal and/or Superintendent may reasonably require.

Such reports shall include a report as to the status of the Works, the progress achieved in the last month, and the planned activities for the following month at the time of the progress claim in a form as directed by the Superintendent.

50 PROJECT TRUST ACCOUNTS

50.1 Application of clause

This Clause 50.1 applies if a Project Trust Account is required for this Contract by operation of the BIF Act, or if the Annexure provides that this Contract is subject to the establishment of a Project Trust Account.

Terms defined by the BIF Act used (without separate definition) in this Clause 50.1, shall have the meaning given to them by Chapter 2, Part 2 of the BIF Act.

50.2 Definitions

In this Clause 50.2:

‘Project Trust Account’ has the meaning given by the BIF Act;

‘Project Trust Contract’ has the meaning given by the BIF Act;

‘Project Trust Account Details’ means the following details of a project trust account:

- (a) the name, Bank/State/Branch (BSB) number and account number of the account;
- (b) the name of the financial institution where the Project Trust Account is kept;

‘Subcontract’ means ‘first tier subcontract’ as defined in Chapter 1 of the BIF Act; and

‘Subcontractor’ means ‘subcontractor beneficiary’ as defined in Chapter 2 of the BIF Act.

50.3 Establishment of Project Trust Account

The Contractor must establish a Project Trust Account within the period by which the BIF Act requires a Project Trust Account to be established for this Contract.

The Contractor must notify the Principal of the Project Trust Account Details within 5 Business Days of opening the Project Trust Account, using the approved form, in accordance with section 18B of the BIF Act.

Nothing in this Clause affects or limits the Contractor's obligations in relation to subcontracting.

50.4 Change of Project Trust Account

If the Contractor, in relation to a Project Trust Account:

- (a) changes the name of the account;
- (b) closes the account; or
- (c) transfers the account;

the Contractor must give the Principal a notice in accordance with section 18B of the BIF Act within 5 Business Days of taking that action.

50.5 Change of financial institution

If the Contractor transfers the Project Trust Account to another the financial institution during the period which the Project Trust Account is in operation, the Contractor must immediately notify the Principal and each subcontractor in accordance with the BIF Act.

50.6 Payments to Contractor

A payment from the Principal to a Project Trust Account is taken to be a payment from the Principal to the Contractor, notwithstanding whether any monies are subsequently paid from the Project Trust Account to the Contractor's personal account or not.

50.7 Related entities to the Contractor

The Contractor will:

- (a) inform the commissioner about entering into a subcontract with a related entity to the Contractor within 5 Business Days of entering that subcontract, in the way required under section 25 of the BIF Act; and
- (b) inform the Principal about entering into a subcontract with a related entity to the Contractor within 5 Business Days of entering that subcontract.

50.8 Dissolving the Project Trust Account

A Contractor must not dissolve the Project Trust Account, by closing the account, except in accordance with the BIF Act.

The Contractor must provide to the Principal written notice of its intent to dissolve the Project Trust Account at least 5 Business Days before the account is closed.

The Contractor must provide written notice to the Principal with a printed copy of the final balance of the Project Trust Account at the time the Project Trust Account is dissolved.

50.9 Delegation of powers of the Contractor

If the Contractor delegates to another person any powers of the Contractor in relation to a Project Trust Account in accordance with section 51F of the BIF Act, the Contractor must provide notice to the Principal as soon as possible of the delegation made.

50.10 General Obligations

The Contractor must ensure that it does not do anything or fail to do anything that would cause it or the Principal to be in breach of the BIF Act.

51 RETENTION TRUST ACCOUNTS

51.1 Application of clause

This Clause 51 applies if a Retention Trust Account is required for this Contract by operation of the BIF Act.

Terms defined by the BIF Act as relevant to the operation of Chapter 2, Part 3 of the BIF Act and used (without separate definition) in this Clause 51, shall have the meaning given to them by the BIF Act.

51.2 Definitions

In this Clause 51:

‘**Retention Trust**’ has the meaning given by the BIF Act;

‘**Retention Trust Account**’ has the meaning given by the BIF Act;

‘**Withholding Contract**’ has the meaning given by the BIF Act;

‘**Retention Trust Account Details**’ means the following details of a retention trust account:

- (a) the name, Bank/State/Branch (BSB) number and account number of the account;
- (b) the name of the financial institution where the Retention Trust Account is kept;

‘**Subcontract**’ means ‘first tier subcontract’ as defined in Chapter 1 of the BIF Act;

‘**Subcontractor**’ means ‘subcontractor beneficiary’ as defined in Chapter 2 of the BIF Act.

51.3 Establishment of Retention Trust Account

If a Retention Trust is required under Chapter 2 of the BIF Act, the Principal must establish a Retention Trust Account.

51.4 General Obligations

The Principal must ensure that it does not do anything or fail to do anything that would cause it or the Contractor to be in breach of the BIF Act.

52 MODERN SLAVERY

- (a) In performance of the Contract, the Contractor must:

- (i) manage supply chains responsibly, ethically and in accordance with all laws and regulations; and
 - (ii) where requested by the Principal, promptly provide all information and evidence of responsible management of its supply chains to enable the Principal to comply with any obligations under the Modern Slavery Act. Such information may include Modern Slavery Statements published by the Contractor.
- (b) In providing the information under Clause 52(a)(ii), the Contractor must:
- (i) describe any risks of Modern Slavery practices in its operations and supply chains (including the operations and supply chains of its subcontractors);
 - (ii) describe the actions taken by the Contractor (including implementation of policies) to assess and address those risks, including due diligence and remediation processes; and
 - (iii) describe how the Contractor assesses the effectiveness of such actions; and
 - (iv) include any other information that the Contractor (and/or its subcontractors) considered relevant to ensure that the Principal complies with its obligations under the Modern Slavery Act.

ANNEXURE to the Australian Standard
General Conditions of Contract for Design
and Construct

Part A

This Annexure shall be completed and issued as part of the tender documents and subject to any amendments to be incorporated into the Contract, is to be attached to these General Conditions of Contract and shall be read as part of the Contract.

REFER TO SCHEDULE 1 TO THE FORMAL INSTRUMENT OF AGREEMENT.

Where the General Conditions of Contract refer to this annexure, the relevant item will instead be provided in Schedule 1 to the Formal Instrument of Agreement.

Item		
1.	The law applicable is that of the State or Territory of: (Clause 1)	Queensland (if nothing stated, the State or Territory where the Site is located)
2.	Payments under the Contract shall be made at: (Clause 1)	Brisbane
3.	The Principal: (Clause 2)	Redland City Council ABN 86 058 929 428
4.	The address of the Principal:	Cnr Bloomfield and Middle Streets Cleveland QLD 4163
5.	The Contractor: (Clause 2)	Insert Contractor Name in full ABN: ACN
6.	The address of the Contractor:	Insert Contractors Address
7.	The Superintendent: (Clause 2)	Kathy Rundle

- Redland City Council
-
- ACN (if applicable).....
8. The address of the Superintendent:
- Cnr Bloomfield and Middle Streets
Cleveland QLD 4163
9. # The Date for Practical Completion: 30 March 2027
(Clause 2)
OR
The period of time for Practical Completions:
- (Clause 2)
10. Preliminary Design: A Preliminary Design is not included in the Principal's Project Requirements.
(Clause 2)
11. The Principal's Project Requirements are described in the following documents (additional to those listed in the Annexure item for Preliminary Design): Documents describing the Principal's Project Requirements are:
(Clause 2) Section A – Part 4 Project Brief
(including Attachments Appendices A to E)
12. # Contractor shall provide security in the amount of: 5% of the Total Contract Sum is to be held in the form of 2 Bank Cheques or Bank Guarantees for 2.5% of the Contract Sum each
(Clause 5.2)
- 1 x 2.5% Bank Cheque or Bank Guarantee to be returned upon Superintendent approval of Practical Completion (50%); and
- 1 x 2.5% Bank Cheque or Bank Guarantee to be returned upon Superintendent approval of Final Completion (50%)
13. # Principal shall provide security in the amount of: Not Applicable
(Clause 5.2)

Where there are Separable Portions, these items shall be deleted.

- | | | | | | | | | |
|--|---|--|------------------|-------------------------|---------------------------|--|--|--|
| 14. | Retention moneys shall be deducted progressively as follows:
(Clauses 5.5 and 42.1) | Not Applicable. | | | | | | |
| 15.. | The period of notice required of a party's intention to convert security into cash or to have recourse to security or retention moneys:
(Clause 5.6) | Five (5) Business Days | | | | | | |
| 16. | The percentage to which the Principal's entitlement to security and retention moneys is reduced:
(Clause 5.8) | Fifty per cent (50%) | | | | | | |
| 17. | The percentage to which the Contractor's entitlement to security is reduced:
(Clause 5.8) | Fifty per cent (50%) | | | | | | |
| 18. | Holding of and interest on cash security and retention moneys—the Alternative applying:
(Clause 5.10) | Alternative 2 | | | | | | |
| 19. | The number of copies of documents to be supplied by the Principal:
(Clause 8.3) | One (1) copy | | | | | | |
| 20. | Documents, number of copies, and the times or design stages at which they are to be supplied by the Contractor:
(Clause 8.4) | <table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 33%;"><u>DOCUMENTS</u></td> <td style="text-align: center; width: 33%;"><u>NUMBER OF COPIES</u></td> <td style="text-align: center; width: 33%;"><u>TIME/ DESIGN STAGE</u></td> </tr> <tr> <td colspan="3"> <ul style="list-style-type: none"> One (1) original copy lodged online on Vendor Panel Other documentation is as defined in Section A – Part 4 Project Brief </td> </tr> </table> | <u>DOCUMENTS</u> | <u>NUMBER OF COPIES</u> | <u>TIME/ DESIGN STAGE</u> | <ul style="list-style-type: none"> One (1) original copy lodged online on Vendor Panel Other documentation is as defined in Section A – Part 4 Project Brief | | |
| <u>DOCUMENTS</u> | <u>NUMBER OF COPIES</u> | <u>TIME/ DESIGN STAGE</u> | | | | | | |
| <ul style="list-style-type: none"> One (1) original copy lodged online on Vendor Panel Other documentation is as defined in Section A – Part 4 Project Brief | | | | | | | | |
| 21. | The time within which the Superintendent must give a direction as to the suitability of documents:
(Clause 8.4) | Ten (10) Business Days | | | | | | |
| 22. | Work which cannot be subcontracted without approval:
(Clause 9.2) | The Contractor must obtain written approval for all subcontracted works and consultants in excess of Ten Thousand Dollars (A\$10,000) | | | | | | |

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|-----|---|---|
| 23. | Subcontractors or Selected Subcontractors whose contracts the Principal may direct be novated:
(Clause 10) | Not Applicable |
| 24. | The percentage for profit and attendance:
(Clause 11(d)) | Ten per cent (10%) |
| 25. | Intellectual property rights granted to the Principal—the Alternative applying:
(Clause 13.2) | Alternative 1 |
| 26. | Legislative Requirements not required to be satisfied by Contractor:
(Clause 14.1) | The Contractor is required to meet all Legislative requirements |
| 27. | Insurance of the work under the Contract—the Alternative applying:
(Clause 18)
If Alternative 1 applies | Alternative 1 for amount not less than the total contract sum |
| | (a) The amount for demolition and removal of debris:
(Clause 18(ii)) | Ten per cent (10%) of the total contract sum |
| | (b) The amount for consultants' fees:
(Clause 18(iii)) | Ten per cent (10%) of the total contract sum |
| | (c) The value of materials or things to be supplied by the Principal:
(Clause 18(iv)) | Not Applicable |
| | (d) The additional amount or percentage:
(Clause 18(v)) | Ten per cent (10%) of the total contract sum |
| 28. | Public liability policy of insurance—the Alternative applying:
(Clause 18A) | Alternative 1 |
| 29. | If Alternative 1 applies the amount of public liability insurance shall be not less than:
(Clause 18A) | Twenty Million Dollars (A\$20,000,000) |
| 30. | Amount of Contractor's professional indemnity insurance shall be not less than:
(Clause 21) | Five Million Dollars (A\$5,000,000) |

- | | | | | |
|-----------------|---|--|-----------------|------------------|
| 31. | Period for which Contractor's professional indemnity insurance shall be maintained after issue of the Final Certificate:
(Clause 21) | Three (3) Years | | |
| 32. | Categories of Consultants and amounts of Consultants' professional indemnity insurance:
(Clause 21) | <table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 50%;"><u>CATEGORY</u></td> <td style="text-align: center; width: 50%;"><u>AMOUNT \$</u></td> </tr> </table> | <u>CATEGORY</u> | <u>AMOUNT \$</u> |
| <u>CATEGORY</u> | <u>AMOUNT \$</u> | | | |
| 33. | Period for which each Consultant's professional indemnity insurance shall be maintained after issue of the Final Certificate:
(Clause 21) | Three (3) Years | | |
| 34. | The time by which access to the Site shall be given:
(Clause 27.1) | Within five (5) Business Days of the approved certified final design drawings; approval of any other permit approvals and documentation in accordance with contract being received by the Superintendent | | |
| 35. | The time for giving possession of the Site to enable commencement of further work:
(Clause 27.1) | Within five (5) Business Days of the approved certified final design drawings; approval of any other permit approvals and documentation in accordance with contract being received by the Superintendent | | |
| 36. | The time by, or periods within which the Superintendent is to furnish information, materials, documents or instructions to the Contractor:
(Clause 33.1) | Not Applicable | | |
| 37. | Events causing delay: <ul style="list-style-type: none"> — industrial conditions
(Clause 35.5(a)) — inclement weather
(Clause Clause 35.5A) | Limited to State or Nationwide strike action which has an impact on the works under the contract and is beyond the reasonable control of the Contractor

Applicable | | |
| 38. | Rate of liquidated damages:
(Clause 35.5A) | One Thousand, Six Hundred and Eighty Three Dollars and Forty Four Cents (\$1683.44) per day | | |
| 39. | Limit of liquidated damages:
(Clause 35.6) | Not Limited | | |
| 40. | Bonus for early Practical Completion: | Not Applicable | | |

	(Clause 35.7)	
41.	Limit of bonus: (Clause 35.7)	Not Applicable
42.	Other events for which extra costs for delay or disruption are payable: (Clause 36)	Not Applicable
43.	The Defects Liability Period (Clause 37)	Fifty-two (52) weeks
44.	The charge for overheads, administrative costs, site supervision, establishment costs, attendance and profit for Daywork: (Clause 41(f))	Ten per Cent (10%)
45.	Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works: (Clause 42.2)	Not Applicable
46.	The amount of additional security for unfixed plant and materials: (Clause 42.2)	Not Applicable
47.	The rate of interest on overdue payments: (Clause 42.7)	8 per cent (8%) per annum
48.	The delay in giving access to the Site which shall be a substantial breach: (Clause 44.2)	Twenty Eight (28) days
49.	The delay in giving possession of the Site or sufficient of the Site which shall be a substantial breach: (Clause 44.2)	Twenty Eight (28) days
50.	Further steps required before proceedings—the Alternative applying: (Clause 47.2)	Alternative 2
51.	The person to nominate an arbitrator: (Clause 47.3)	President of the Resolution Institute (Queensland Chapter)

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

Part B

DELETIONS, AMENDMENTS AND ADDITIONS

1. The following Clauses or parts of Clauses have been deleted from the General Conditions in AS 4300—1995:

Refer to marked-up General Conditions of Contract

2. The following Clauses have been amended and differ from the corresponding Clauses in AS 4300—1995:

Refer to marked-up General Conditions of Contract

3. The following Clauses have been added to those of AS 4300—1995:

Refer to marked-up General Conditions of Contract

SPECIAL CONDITIONS OF CONTRACT

SPECIAL CONDITIONS TO AS4300 – 1995

CLAUSE 2 INTERPRETATION

INSERT new paragraph:

“Consequential Loss” means special, indirect or consequential loss, not arising as a natural consequence of a breach or other event giving rise to a party's liability, of the following kinds:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of contract value;
- (iv) loss of anticipated profit; and
- (v) damages for lost opportunity.

INSERT new paragraph:

“Contract Documents” means:

- (i) the Formal Instrument of Agreement or Letter of Acceptance;
- (i) the Conditions of Tender;
- (ii) the General Conditions of Contract (AS4300-1995 including Annexures as amended by the Special Conditions of Contract);
- (iii) the Principal's Project Brief;
- (iv) other documents as are issued and/or referred to by the Principal for the purpose of tendering.

INSERT new paragraph:

“Insurance Declaration” means a statutory declaration that has the content and is in the form contained in the template Insurance Declaration included by the Principal in the tender documents.

CLAUSE 14 .6

INSERT NEW CLAUSE

14.6 Environmental Protection and Sustainability

Without limiting the generality of this Clause 14.6, the Contractor shall with respect to the Works and the Site, at the Contractor's cost:

- (a) properly dispose of all solid, liquid and gaseous contaminants in accordance with all legislation, subordinate legislation and regulatory requirements;
- (b) as it accumulates and regularly, remove from the Site all refuse resulting from the execution of the Works. For the purposes of refuse removal the Contractor shall employ adequate hoppers and shutters, chute or refuse buckets which are covered or are of such design as to confine the materials completely so as to prevent dust escape and odour emission;
- (c) take all possible precautions and use its best endeavours to avoid nuisance or trespass to, onto, or disturbance of, adjacent and adjoining properties to the Site, the occupiers thereof, and the general public caused by vehicular and pedestrian traffic, dust, debris, noise, obstruction, vibration, fuel handling and storage, stormwater, hazardous substances, wastes or by workmen (including those of subcontractors) or from any other cause whatsoever associated with the work under the Contract.”

CLAUSE 17 DAMAGE TO PERSONS AND PROPERTY

INSERT new clause as follows:

“17A Exclusion of liability for Consequential Loss

- (a) This clause does not apply to this Contract unless the Annexure provides that it will apply.
- (b) Except where otherwise expressly stated in this Contract, neither party is liable to the other under, or in connection with, this Contract or under contract, tort (including negligence), breach of statute or other cause of action at law or in equity, for any Consequential Loss.”

INSERT new clause as follows:

“17B Limitation of Liability

- (a) This clause does not apply to this Contract unless the Annexure provides that it will apply.
- (b) Subject to subclause 17B(c), on no account will the liability of the Contractor to the Principal, for claims and losses arising under or in relation to this Contract, exceed the liability cap inserted in Annexure Part A.
- (c) The cap on liability in subclause 17B(b) does not apply to limit or restrict in any way the Contractor's liability for any claims or losses in respect of:
 - (i) personal injury, including sickness and death;
 - (ii) an infringement of intellectual property rights or moral rights;
 - (iii) any fraudulent act or omission of the Contractor or its personnel; and
 - (iv) any breach by the Contractor or its personnel of a confidentiality or privacy obligation under the Contract.”
- (d) The cap on liability in subclause 17B(b) does not in any way limit the insurances to be held by the Contractor, and will not apply to limit the coverage provided under those insurances. Where liability arises which is insurable under a policy required to be held by the Contractor under this Contract, the liability cap in subclause 17B(b) applies in excess of the limits of insurance required to be held by the Contractor.

INSERT new clause as follows:

“21A Provision of Insurance Declaration with Payment Claims

- (a) The Contractor must provide to the Principal a signed Insurance Declaration in relation to the remaining aggregated cover available under its professional indemnity insurance policy upon every occasion that the Contractor submits a claim for payment under clause 42.
- (b) If the Principal considers that the remaining aggregated insurance limit cover under the Contractor's professional indemnity insurance policy is not sufficient to insure against liability in relation to any professional services required under this Contract, the Principal may request, and the Contractor must take out additional or separate professional indemnity insurance coverage to the satisfaction of the Principal's reasonable requirements.”

CLAUSE 22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

Add after Clause 22.1, the following:

“22.1B Subcontractors' insurance in lieu

At the sole discretion of the Principal, and subject to the Principal's written consent to be provided on a case by case basis, the Contractor may produce the certificates of currency of a subcontractor's insurance policy in lieu of its own certificate of currency, and in doing so:

- (a) will be taken to have discharged its obligations under clauses 18, 19, 20, 21 and this clause 22 to the extent such certificates prove the existence of insurance coverage that the Contractor would otherwise be required to obtain;
- (b) warrants that the insurance is procured for the benefit of the Principal;
- (c) warrants that the Contractor will take all steps necessary to call on the policy for the benefit of the Principal;
- (d) agrees that the Principal can step into the shoes of the Contractor for the purpose of pursuing a claim under such a subcontractor's insurance policy; and
- (e) indemnifies the Principal to the extent of any loss suffered as a result of the insurance being provided by the subcontractor as opposed to being provided by the Contractor directly"

Add after Clause 22.1B, the following:

"22.1C No Requirement to provide commercial-in-confidence material

Nothing in clauses 22.1, 22.1A, and 22.1B requires the Contractor to provide to the Principal material that is commercial-in-confidence."

INSERT at the end of subclause 27.2, new paragraphs as follows:

Notwithstanding clause 27.1, the Contractor acknowledges that:

- (a) the Principal is not obliged to provide the Contractor with sole possession of or access to the Site; and
- (b) the Principal may give the Principal's employees, consultants or other contractors possession of or access to the Site for the purpose of executing work on the Site or adjacent to the Site.

The Contractor shall be responsible for coordination of its work under the Contract with the work of the Principal's employees, consultants or other contractors at no cost to the Principal and agrees that:

- (i) it will not delay, disrupt, impede or adversely affect those employees, consultants or other contractors in the execution of their work and the Contractor shall indemnify the Principal for any liability it may incur to the Principal's employees, consultants or other contractors as a result of the Contractor's failure to comply with this Clause 27.2; and
- (ii) it will ensure that the Contractor's work under the Contract is not delayed, disrupted, impeded or adversely affected by any work of the Principal's employees, consultants or other contractors.

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

Part C

APPROVED FORM OF UNCONDITIONAL UNDERTAKING (Clause 5.3)

At the request of ACN (“the Contractor”)
and in consideration of ACN (“the Principal”)
accepting this undertaking in respect of the contract for
..... (“the Project”)
..... ACN (“the Financial Institution”)
unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by
the Principal to a maximum aggregate sum of \$
(.....).

The undertaking is to continue until notification has been received from the Principal that the sum is no longer
required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the
Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by
for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or
parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments
to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the
Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the
Principal the sum of \$
(.....)
less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be
required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall
immediately cease.

§ This undertaking shall expire on the day of 19

DATED at this day of 19

§ Delete as appropriate.

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

Part D

DEED OF NOVATION (Clause 9.2(iii))

This Deed made the day of 19
between ("Principal")
of ACN
and ("the Contractor")
of ACN
and ("the subcontractor")
of ACN
and ("the Incoming Contractor")
of ACN
witnesses that—

1. Upon receipt by the subcontractor of the sum certified by the Superintendent as owing under the prior secondary subcontract prescribed in the Schedule hereto—
 - (a) the prior secondary subcontract shall be discharged;
 - (b) the subcontractor shall release the Contractor from the further performance of the prior subcontract and from all claims and demands in connection with the prior secondary contract;
 - (c) the Incoming Contractor shall punctually perform the obligations of the Contractor under the prior contract as far as they are not performed. The Incoming Contractor acknowledges itself bound by the provisions of the prior contract as if the Incoming Contractor had been named in the prior contract and
 - (d) the subcontractor shall punctually perform like obligations and be bound to the Incoming Contractor as if the provisions of the prior contract were incorporated herein.
2. The Principal and subcontractor each warrant to the Incoming Contractor that—
 - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
 - (b) all claims and demands in connection with the prior contract have been made to the Contractor.
3. The Principal and subcontractor each indemnifies the Incoming Contractor from all claims and demands of the Contractor, Principal and the subcontractor in connection with the prior contract.
4. A dispute or difference between—
 - (a) the Principal and the subcontractor in connection with the Superintendent's certification of the sum owing under the prior contract; or
 - (b) the Incoming Contractor and the subcontractor in connection with Clause 1(c) or 1(d),
 shall be resolved pursuant to the provisions of AS 4303—1995 General Conditions of Subcontract for Design and Construct which for the purposes of this Clause 4 are incorporated herein.
5. This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and the Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in that State or Territory in which the project is being carried out.

Schedule

Documents:

.....

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.....

.....

.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of (Principal)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (subcontractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Incoming Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

Part E

PRELIMINARY DESIGN DEED (Clause 10)

This Deed made the day of 19.....
between ("Principal")
ofACN
and..... ("the Contractor")
ofACN
and..... ("the subcontractor")
ofACN

witnesses that—

1. Upon receipt by the subcontractor of all moneys owing under the prior secondary contract—
 - (a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract;
 - (b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein; and
 - (c) the Principal and the subcontractor shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
2. The Principal and the subcontractor each warrant to the Contractor that preliminary design or Selected Subcontract Work, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
3. This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and the Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in the State or Territory in which the project is being carried out.

Schedule

Documents:
.....
.....
.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of (Principal)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (subcontractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

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