



## **T22/20**

Project Name: Construction of Buildings and Landscapes  
at the Billabong – (Select Tender)

AS4902 – 2000 (as amended) General conditions of  
contract

## FORMAL INSTRUMENT OF AGREEMENT

**THIS AGREEMENT** is made on the 19<sup>th</sup> day of June 2023

**BETWEEN**            **CAMPBELLTOWN CITY COUNCIL (ABN 31 459 914 087)** of Civic Centre, 91 Queen Street, Campbelltown NSW, 2560  
*(Principal)*

**AND**                    **LANDSCAPE SOLUTIONS AUSTRALIA PTY LTD (ABN 88 101 054 086)** of 16 Distribution Place, Seven Hills NSW, 2147  
*(Contractor)*

### 1. BACKGROUND

- A.    The *Principal* wishes to engage the *Contractor* to construct *the Works* in accordance with the requirements of the *Contract*.
- B.    The *Principal* and the *Contractor* agree that the *Contractor* must construct *the Works* for the *Principal* on the terms of this *Contract*.

### 2. OPERATIVE PROVISIONS

#### 2.1 Performance

- (a)    The *Contractor* must construct *the Works* in accordance with the *Contract*.
- (b)    The *Principal* must pay the *Contractor* the *contract sum* at the times and in the manner provided for in the *Contract*.
- (c)    The *contract sum* is the lump sum of **\$14,684,553.77** (which excludes GST), subject to adjustment in accordance with the terms of the *Contract*.
- (d)    Each of the parties must perform the obligations imposed on it by the *Contract*.

#### 2.2 Contract Documents

The *Contract* comprises the following documents:

Document Description	Where Found
<i>Formal Instrument of Agreement</i>	This document
Amended Australian Standard AS 4902–2000 - general conditions of contract for construct only (including Annexure Parts A, B, C, D, E, F, G, H, J, K, L and M and N).	Attached to this document
<i>Principal's project requirements.</i>	Attached to this document in Annexure Part I.

### 3 Prior Work

- 3.1    The terms of the *Contract* apply to all of the work performed by the *Contractor* in connection with *the Works* under the *Contract*, even if it was performed prior to the *date of the Contract*.

- 3.2 Any payment made to the *Contractor* by the *Principal* prior to the *date of the Contract* in connection with *the Works* under the *Contract* will be treated as a payment under the *Contract* and will be in part discharge of the *Principal's* obligation to pay the *contract sum*.

#### **4. Entire Agreement**

The only enforceable obligations and liabilities of the parties in relation to *the Works* under the *Contract* are those contained in the *Contract*, which is the entire agreement between the parties on the subject matter. All other statements, representations, communications and prior agreements in relation to *the Works* under the *Contract* are merged in and superseded by the *Contract*.

#### **5. Order of Precedence**

Without limiting any part of the *Contract Conditions*, in the event of any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the *Contract* or between different parts of any documents comprising of the *Contract*, the following order of precedence will apply:

- (a) *Formal Instrument of Agreement*;
- (b) *Contract Conditions* (clauses 1 to 51);
- (c) Annexure Part A;
- (d) the *Principal's project requirements* in Annexure Part I; and
- (e) all other Annexures or attachments.

**EXECUTED** as an agreement

**Executed** for and on behalf of  
**CAMPBELLTOWN CITY COUNCIL**  
**(ABN 31 459 914 087)** by its authorised  
officer:



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Signature of Authorised Officer

**Rochelle Whipps**  
Name of Authorised Officer

**Executed** by **LANDSCAPE SOLUTIONS**  
**AUSTRALIA PTY LTD (ABN 88 101 054**  
**086)** in accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*



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Signature of Director

**Timothy Buckle**

---

Name of Director in full

---

N/A

Signature of Secretary/other Director

---

N/A

Name of Secretary/other Director in full

# Australian Standard™

## General conditions of contract for construct only

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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The following are represented on Committee OB-003:

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Australian Chamber of Commerce and Industry  
Australian Procurement and Construction Council  
AUSTROADS  
Construction Industry Engineering Services Group  
Construction Policy Steering Committee  
Electricity Supply Association of Australia  
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*This Standard was issued in draft form for comment as DR 97528.*

Australian Standard™

**General conditions of contract for  
construct only**

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Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). 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 is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **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;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) **Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.**

**This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).**

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

- (2) **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 consider whether that design should form part of the preliminary design.**



- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.**
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.**
- (5) 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 construct only

**1 Interpretation and construction of Contract**

In the *Contract*, except where the context otherwise requires:

***Act of Prevention*** means:

- (a) a breach of the *Contract* by the *Principal*;
  - (b) except as otherwise provided in the *Contract*, a *variation*;
- or

any other act or omission of the *Principal*.

***Approvals*** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the commencement, carrying out, use and occupation of *the Works*, including any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements from or of any *Authority* in connection with *WUC*;

***Associates*** means as the context indicates:

- a) in relation to the *Principal*, officers, employees, agents, contractors and subcontractors (except for the *Contractor*), licensees, consultants, invitees, client or customers of the *Principal* and any other persons for whom the *Principal* is responsible or vicariously liable in relation to the *Contractor*; and
- b) in relation to the *Contractor*, officers, employees, agents, contractors and subcontractors (including any *selected subcontractor*), licensees, consultants, invitees, clients or customers of the *Contractor* and any other persons for whom the *Contractor* is responsible or vicariously liable in relation to the *Principal*;

***Authority*** means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to *the Works* or the *WUC*;

***business day*** means any day other than:

- a) a Saturday, Sunday or public holiday in the State of New South Wales; or
  - b) 27, 28, 29, 30 or 31 December,
- in each year;

- certificate of practical completion** has the meaning in subclause 34.6;
- claim** means any claim of any nature whatsoever, whether pursuant to contract, in tort (including negligence), pursuant to statute, in equity or otherwise at law;
- Cleanup** means the taking of all necessary action to remediate any *Contamination* caused by the *Contractor* or the *Contractor's Associates* for the purpose of restoring any land, structure or waters to a condition as close as practical to the condition the land, structure or waters were in before being affected by that *Contamination*;
- codes of practice** means any applicable industry codes of practice made under, or in connection with any *WH&S Legislation*;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- construction program (from 'program')** means a document showing, amongst other things, the dates by which or the period within which, the *hold points* and *milestones* of *WUC* are to be carried out or completed;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contamination** means:
- a) any waste, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste, asbestos or special waste or any constituent of any such substance or waste in any water, soil or in the air;
  - b) the presence of a solid, liquid, gas or odour or substance or property of any substance, which:
    - i) makes, or has the potential to make, the *site* (or any part of it, including groundwater) unsafe, unfit or harmful for habitation, use or occupation by any person;
    - ii) causes, or has the potential to cause, damage to the *site* (or any part of it);
    - iii) causes, or has the potential to present, a risk to the *Environment* or any environmental value; or
    - iv) does not satisfy any *legislative requirements* in relation to the *Environment* or any criteria or standards published or adopted by any relevant *Authority* having powers, duties or responsibility in relation to the *Environment*; and
  - c) without limiting subclause (a) or (b), any contamination falling within the definition of contamination in section 5 of the Contaminated Land Management Act 1997 (NSW);
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;

- (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by 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*;
- contract sum breakdown*** means the breakdown of the *contract sum* as at the *date of the Contract* into component amounts as set out in Annexure Part B;
- Contractor*** means the person bound to carry out and complete *WUC*;
- Contractor's Warranty Deed*** means a Contractor's Warranty Deed to be executed by the *Contractor* pursuant to subclause 9.6(b), in the form contained in Annexure Part J;
- Corporations Law*** means the Corporations Act 2001 (Cth);
- Council*** means the *Principal*;
- COVID-19*** means the coronavirus disease as defined by the World Health Organisation as COVID-19.
- COVID Delay*** means a delay by reason of a change to *WUC*, necessitated by a change in a *legislative requirement* relating to COVID-19, which change could not have been anticipated by a reasonably competent and experienced contractor at the *date of the Contract*.
- date for practical completion*** means:
- a) where *Item 7(a)* provides a date for *practical completion*, the date; or
  - b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any expert determination or litigation, it means the date resulting therefrom;
- date of acceptance of tender*** means the date which appears on the written notice of acceptance of the tender or, if there is no such written notice, the *date of the Contract*;
- date of practical completion*** means:
- a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - b) where another date is determined in any expert determination or litigation as the date upon which *practical completion* was reached, that other date;
- date of the Contract*** means the date when the *Formal Instrument of Agreement* has been signed by both the *Principal* and the *Contractor*;
- deed of guarantee, undertaking and substitution*** has the meaning in subclause 5.6;

**defects** means:

- a) any *work* or material that is not in strict accordance with the *Contract*, including any fault, error, omission, shrinkage or other defect;
- b) a deficiency in the undertaking of any construction work that forms part of the *WUC*, including, in relation to the standard or quality of *the Works*; or
- c) the failure to undertake any construction work that forms part of the *WUC* (also known as omissions);

**defects liability period** has the meaning in clause 35;

**design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created for the construction of *the Works*;

**direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

**dispute** has the meaning in clause 42;

**Drawings and Specifications** has the meaning in the *Principal's Project Requirements*.

**Environment** means all:

- a) physical factors including the land (both subsurface and submarine), weather, waters, atmosphere, climate (including wind), sounds, odours, tastes;
  - b) biological factors of animals and plants;
  - c) social factors of aesthetics; and
  - d) properties and occupants of those properties,
- at, around, nearby to or otherwise affecting the *site*;

**Environmental Law** means any *legislative requirements* regulating or relating to the *Environment* including those concerning land use, planning or heritage, water catchments, pollution of air or water, noise, soil or groundwater *Contamination*, chemicals and waste, used hazardous or dangerous goods or substances, building regulations, public and work health and safety, flora, fauna and wildlife, noxious trades and any other aspect of protection of the *Environment* or person or property, and includes the requirements of the NSW Government Environmental Management Systems Guidelines: Edition 3 (published August 2013);

**EOT (from 'extension of time')** has the meaning in subclause 34.3;

**excepted risk** has the meaning in subclause 14.3;

**final certificate** has the meaning in subclause 37.4;

**final payment** has the meaning in clause 37;

**final payment claim** means the final payment claim referred to in subclause 37.4;

- force majeure event*** means any of the following events provided they are not caused by the *Contractor* or are outside of the control of the *Contractor* and could not have been prevented or avoided by the *Contractor* taking reasonably prudent steps:
- (a) acts of government, civil unrest or acts of terrorism;
  - (b) flood, fire, earthquake, volcanic eruptions, tsunami, hurricane, cyclone or other natural disaster;
  - (c) ionising radiation;
  - (d) man-made disasters; or
  - (e) a pandemic (excluding *COVID-19* and/or a *COVID Delay*).
- Formal Instrument of Agreement*** means the Formal Instrument of Agreement to which these General Conditions of Contract are attached;
- GIPA*** means the *Government Information (Public Access) Act 2009 (NSW)*;
- Heavy Vehicle National Law*** means the *Heavy Vehicle National Law (NSW) No 42a* any other legislative requirements, as amended from time to time.
- hold point*** has the meaning set out in subclause 2.1 and 32.2, and as listed in the *Principal's Project Requirements*;
- Information Documents*** means:
- a) all information, data, test results, sample reports (including the *site information* any other reports of geotechnical or other investigations) or documents provided to the *Contractor* by the *Principal*, the *Superintendent* or *Superintendent's Representative* or the *Principal's Associates* which are expressly stated to be "Information Documents" or which do not form part of the *Contract*; and
  - b) any other information, data or document which is referred to or incorporated by reference in the information, data or documents referred to in subclause (a) above;
- intellectual property right*** means any patent, registered design, trademark or name, copyright, right in relation to an invention, plant variety, design, or circuit layout, right resulting from intellectual activity in industrial, scientific, literary or artistic fields, or other protected right;
- Item*** means an *Item* in Annexure Part A;
- latent condition*** has the meaning in subclause 25.1;
- legislative requirement*** includes:
- a) Acts, Ordinances, regulations, by-laws, orders, awards, proclamations and other instruments of legal effect of the Commonwealth, the jurisdiction where *WUC* or the particular part thereof is being carried out and any other relevant State or Territory;
  - b) certificates, licences, consents, permits, approvals and requirements of *Authorities* and other organisations having jurisdiction in connection with the carrying out of *WUC*;



- c) directions by any person exercising statutory powers regarding Council, *the Works* or the *site*; and
  - d) fees and charges payable in connection with the foregoing;
- maintenance period*** has the meaning in clause 52;
- maintenance services*** has the meaning in clause 52;
- Material*** means anything in relation to which *intellectual property rights* arise;
- Milestone*** means the milestones (if any) listed in Annexure Part L;
- Moral Right*** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the laws of that jurisdiction;
- Open Access Licence*** means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions, which licence may include any Australian Government open access licence and any creative commons attribution licence (see <http://creativecommons.org.au/learn-more/licences>);
- other contractors*** means any persons, other than the *Contractor* and its *Associates*, engaged or otherwise permitted by the *Principal* to carry out *work* at the *site*, including:
- a) the persons named in *Item 9A* of Annexure Part A; and
  - b) any other person notified by the *Superintendent* to the *Contractor* in writing as being an 'other contractor';
- PPSA*** means the Personal Property Securities Act 2009 (Cth);
- practical completion*** is that stage in the carrying out and completion of *WUC* when:
- a) the *Works* are complete except for minor *defects*:
    - i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
    - ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
    - iii) the 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) the *Contractor* has provided evidence to the *Superintendent* of its compliance with all applicable fire regulations and that it has only used fire rated materials where fire rated materials are required and the *Contractor* has provided the

*Superintendent* with a certificate from a consultant that the fire services will function under normal and simulated emergency operating conditions and in accordance with the requirements of the *Contract*;

- d) the *Contractor* has provided written evidence to the *Superintendent* that *the Works* are otherwise complete (other than to the extent provided in paragraph (a) above);
- e) all services and installations performed in accordance with the terms of the *Contract* both under normal operating conditions and under simulated emergency operating conditions;
- f) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied by the *Contractor*;
- g) the *Contractor* has obtained and provided to the *Principal* an occupation certificate (for the purposes of the Environmental Planning and Assessment Act 1979 (NSW)), for the occupation and use of the whole of *the Works*; and
- h) all other requirements in the *Contract* for *practical completion* have been satisfied by the *Contractor*;

***prescribed notice*** has the meaning in subclause 41.1;

***Principal*** means the Principal stated in *Item 1*;

***Principal-supplied items*** means the materials and other items listed in *Item 27A*;

***Principal's Code of Conduct*** means Council's 'Code of Conduct' adopted on 24 September 2002, as revised on 14 May 2019, accessible at [[click here](#)]

means Council's 'Code of Conduct' adopted on 24 September 2002, as revised on 14 May 2019. Refer to: <https://www.campbelltown.nsw.gov.au/files/assets/public/document-resources/councilcouncillors/policies/codeofconduct.pdf>

***Principal's project requirements*** means the *Principal's* written requirements for *the Works* in Annexure Part 1.

***program*** has the meaning in clause 32;

***progress certificate*** has the meaning in subclause 37.2;

***Proportionate Liability Legislation*** means Part 4 of the Civil Liability Act 2002 (NSW);

***provisional sum*** has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

***public liability policy*** has the meaning in clause 17;

***qualifying cause of delay*** means:

- a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants or agents (not being employed by the *Contractor*) other than an act, default or omission that is authorised by (or in accordance with) the terms of the *Contract*;

- b) a *variation*, except where such variation is at the request of (or is caused by any act, default or omission of) the *Contractor*;
- c) a suspension pursuant to clause 33 where the reason for the suspension was a breach of the *Contract* by the *Principal*;
- d) a change to *the Works* necessitated by a change in a *legislative requirement*, which could not have been anticipated by a reasonably competent and experienced contractor at the *date of the Contract* (excluding any *COVID Delay*); or
- e) subject to compliance with clause 25, a *latent condition*;
- f) a *force majeure event*;
- g) any *COVID Delay*;

***schedule of rates*** means the schedule of rates in Annexure Part D and any other 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;

***security*** means:

- a) cash;
- b) retention moneys;
- c) an unconditional bank guarantee given by a financial institution approved by the *Principal*; or
- d) other form approved by the party having the benefit of the *security*;

***selected subcontract work*** has the meaning in subclause 9.3;

***selected subcontractor*** has the meaning in subclause 9.3;

***separable portion*** means each of *separable portion 1*, *separable portion 2*, *separable portion 3* and *any other* portion of *the Works* identified as a separable portion by the *Superintendent* pursuant to clause 4;

***separable portion 1*** means that portion of the *Works* in the area known as PSLP 1 as described in the drawing titled 'Masterplan - Reduced Scope' prepared by City Projects for the *Principal* dated 16 March 2023 of the *Drawings and Specifications*.

***separable portion 2*** means the portion of the *Works* in the area known as PSLP 2 as described in the drawing titled 'Masterplan - Reduced Scope' prepared by City Projects for the *Principal* dated 16 March 2023 of the *Drawings and Specifications*.

***separable portion 3*** means the portion of the *Works* in the area known as CBP as described in the drawing titled 'Masterplan - Reduced Scope' prepared by City Projects for the *Principal* dated 16 March 2023 of the *Drawings and Specifications*.

- 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*;
- site information** means any information issued to the *Contractor* by or on behalf of the *Principal* prior to the *date of the Contract*, including any information relevant to subsurface conditions at the *site*;
- SOP Legislation** means the Building and Construction Industry Security of Payment Act 1999 (NSW);
- subcontractor** in clause 9 includes a consultant;
- Subcontractors' Warranties** means the warranty to be provided by *subcontractors* pursuant to subclause 9.6(a) in the form set out in Annexure Part K;
- Superintendent** means the person stated in *Item 5* 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 an individual appointed in writing by the *Superintendent* under clause 21;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- Suppliers' Warranties** means the warranty to be provided by suppliers pursuant to subclause 9.6(a) in the form set out in Annexure Part K (Schedule 2);
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Principal's project requirements* and other requirements of the *Contract*, including *variations* provided for by the *Contract*, except for the *maintenance services* as described in clause 52, which by the *Contract* is to be handed over to the *Principal*;
- variation** means any addition, decrease or omission, to or from the *WUC*;
- WH&S Legislation** means the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2017 (NSW) and any other *legislative requirements* relating to work health and safety;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract*, except for the *maintenance services* as described in clause 52, and includes *variations*, *remedial work*, *construction plant* and *temporary works*,  
and like words have a corresponding meaning.

In the *Contract*:

- a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- b) time for doing any act or thing under the *Contract* shall, if it ends on a day that is not a *business day*, be deemed to end on the day next following which is a *business day*;
- c) clause headings and subclause headings in these General Conditions of *Contract* shall not form part of these General Conditions of *Contract*, nor be used in the interpretation of, the *Contract*;
- d) 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;
- e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- g) the words "including", "includes" and "include" must be read as if each of them is followed by the words "without limitation";
- h) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- i) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- j) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

- (a) The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract*.
- (b) The *Contractor* acknowledges that as at the *date of the Contract*, the *Works* consists of *hold points* as described in the *Principal's project requirements*.
- (c) The *Contractor* agrees to notify the *Superintendent* when the *Contractor* considers that it has reached completion of the relevant *hold point*. After receipt of a notice under this subclause, the *Superintendent* may:
  - (i) issue a certificate specifying that completion of the relevant work preceding the *hold point* has been reached ("**Hold Point Release Notice**"); or

- (ii) if it considers completion of the relevant work preceding the *hold point* has not been reached, notify the *Contractor* that the *Superintendent* does not agree that completion has been reached and set out the work in the *hold point* to be completed before completion of the *hold point* is reached.
- (d) The issue by the *Superintendent* of a *Hold Point Release Notice* is not evidence (or an admission by the *Principal*) that the *Works* in that *hold point* or any of them have been performed satisfactorily or in accordance with this *Contract*.
- (e) The *Contractor* further acknowledges that:
  - (i) it must not perform any portion of *the Works* beyond a *hold point* unless the *Superintendent* has issued a *Hold Point Release Notice*; and
  - (ii) it will not be entitled to claim or receive any payment for *the Works* performed beyond a *hold point* unless the *Superintendent* has issued a *Hold Point Release Notice* specifying that completion of *the Works* preceding the *hold point* has been reached;
- (f) The *Principal* shall pay the *Contractor*:
  - (i) for *work* for which the *Principal* accepted a lump sum, the lump sum; and
  - (ii) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item, adjusted by any additions or deductions made pursuant to the *Contract*.
- (g) The *parties* acknowledge and agree that:
  - (i) the *Principal's* objectives are set out in the *Principal's project requirements* and that the *Principal* is relying on the *Contractor's* expertise as a builder of work, the same as or similar to *the Works*, to deliver the *Works* to budget, on time and meeting the quality objectives set out in the *Principal's project requirements*;
  - (ii) the *Contract* is a code in respect of the *Contractor's* entitlements to payment for *the Works*, to *EOTs* and to delay and disruption costs and the *Contractor* shall have no entitlement to make any claim unless that entitlement is expressly allowed for the *Contract*; and
  - (iii) the purpose of the *Contract* is for the *Contractor* to take the risk on performance of the *WUC* and delivery of *the Works* for the *contract sum*.
- (h) The *Contractor* warrants that the *contract sum*:
  - (i) is fixed and not subject to rise and fall; and
  - (ii) makes allowance for, and the *Contractor* will not be entitled to any additional payment for or in respect of:
    - (A) customs duties, sales tax, other taxes (including any tax relating to carbon emissions), tariffs and similar taxes and charges (except for any goods and services tax to which the *Contractor* is entitled expressly under a provision of this *Contract*) paid or payable on or in connection with all plant, materials, equipment and the *Works*;
    - (B) royalties, licence fees and similar payments for intellectual property rights in respect of all plant and materials and the *Works*; and
    - (C) fluctuations in the value of the Australian dollar against other currencies.

## 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
- (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
  - (ii) has examined the *Principal's project requirements*, notified the *Principal* of any *Buildability Problems* and satisfied itself that *the Works* can be constructed in accordance with the *Principal's project requirements*;
  - (iii) if subclause 9.4 applies, will accept the novation and retain the *Principal's* consultants for any *work* the subject of a prior contract with the *Principal*; and
  - (iv) will carry out and complete *WUC* so that *the Works*, when completed, shall:
    - (A) be fit for their stated purpose; and
    - (B) comply with the *Drawings and Specifications*, the *Principal's project requirements* and all other the requirements of the *Contract*;
  - (v) shall keep the *Principal* fully and promptly informed at all times of any material events or circumstances relating to the *WUC*;
  - (vi) in entering into the *Contract*, has not relied on any representations, information or advice given by or on behalf of the *Principal*, or the accuracy, completeness, suitability of any information or data including *Information Documents* supplied or made available by or on behalf of the *Principal* to the *Contractor*, except to the extent that such representations, information, advice or data are expressly stated to form part of the *Contract*;
  - (vii) shall execute the *WUC* in a proper and workmanlike manner and in accordance with the best practices of the various trades involved;
  - (viii) shall construct and complete the *WUC* without causing damage, nuisance or inconvenience to anyone lawfully on the *site*, the occupiers of adjoining properties or the public generally;
  - (ix) it shall transfer unencumbered title to all materials and equipment used in *the Works* to the *Principal* as those materials and equipment are incorporated into *the Works*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced.

### 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design *work* 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 *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*;  
or
- (d) any *variation*.

### 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

## 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

## 3 Provisional sums

A *provisional sum* included in the *Contract* is not payable by the *Principal*. *Work* the subject of a *provisional sum* shall not be performed unless an express written *direction* to perform same has been directed by the *Superintendent*. Where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent* (acting reasonably), and the *Contractor* will be entitled to claim that priced value.

For the purpose of payment, the *contract sum* will be adjusted by deducting each amount identified in the *contract sum breakdown* as a *provisional sum* and adding the priced value of the item of provisional sum work, if any, the *Contractor* has been directed to perform.

The pricing by the *Superintendent* will be exclusive of any amount for overhead and profit unless and until the amount included in the *contract sum breakdown* on account of a *provisional sum* is exceeded, in which event the *Contractor* will be entitled to an amount for profit and overheads on the difference between the actual cost and the amount included in the *contract sum* on account of a *provisional sum* ("*difference*"), calculated by the *Superintendent* applying the percentage stated in *Item 13* to the difference.

## 4 Separable portions

### 4.1 Separable portions

In this *Contract*:

- (a) the expressions:
  - (i) *practical completion*;
  - (ii) *date for practical completion*;
  - (iii) *date of practical completion*;
  - (iv) *defect*; and
  - (v) *defects liability period*,apply separately to each *separable portion* and any further *separable portion* directed by the *Superintendent* pursuant to clause 4.2; and
- (b) subclauses 9.6, 14.1, 14.2 and clauses 27, 29, 30, 34 and 35 apply separately to each *separable portion* and any further *separable* directed by the *Superintendent* pursuant to clause 4.2 and references therein to *the Works* and to the *WUC* are to so much of *the Works* and the *WUC* as is comprised in the relevant *separable portion*.

### 4.2 Superintendent may direct further separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:



- (a) portion of *the Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

## 5 Security

### 5.1 Provision

- (a) The *Contractor* must provide *security* in accordance with *Item 14* and in accordance with this clause 5.
- (b) The *security* is provided for the purpose of ensuring the *Contractor* complies with its obligations under the *Contract* and to enable the *Principal* to obtain immediate payment of debts and other claims that the *Principal* may have, notwithstanding any unresolved *disputes* between the parties. It is the intention that the *Contractor* will be out of pocket pending resolution of any *dispute* if the *Principal* exercises its right to have recourse to the *security*.

### 5.2 Recourse

The *Principal* may have recourse to any *security*:

- (a) where the *Principal* is entitled to exercise a right under the *Contract* in respect of the *security*;
- (b) where the *Principal* is required to pay any wages or related entitlements owing by the *Contractor* to the *Contractor's Associates* (including where the *Principal* makes a payment pursuant to clause 38.3) whether or not such monies may be the subject of dispute or litigation;
- (c) where the *Principal* believes that the *Contractor* is in breach of any of its obligations under the *Contract*;
- (d) where there is a debt payable by the *Contractor* to the *Principal*; or
- (e) subject to clause 37.4, to meet any claims that the *Principal* believes it may have against the *Contractor* arising out of or in connection with the *Contract*.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* for *the Works* (or, if there are *separable portions*, the issue of the *certificate of practical completion* for the last *separable portion* to reach *practical completion*), the *Principal's* entitlement to *security* (other than in *Item 14*) shall be reduced by 50% of the amount held and the reduction shall be released and returned within 14 calendar days to the *Contractor*.

The *Principal's* entitlement to *security* in *Item 14*(e) provided pursuant to subclause 37.3 shall cease 14 calendar days after incorporation into *the Works* of the unfixed plant and materials for which that *security* was provided.

The *Principal's* entitlement otherwise to *security* shall cease 14 calendar days after the date of the issue of the *final certificate* and payment of any amounts certified as due and payable by the *Contractor* to the *Principal* under subclause 37.6.

Upon the *Principal's* entitlement to *security* ceasing, the *Principal* shall release and return forthwith the *security* to the *Contractor*.

### 5.5 Trusts and interest

*Security* (and interest earned thereon) shall not be held in trust for the party providing the *security*.

Interest earned on security shall belong to the *Principal*.

### 5.6 Deed of guarantee, undertaking and substitution

Within 14 calendar days after receiving a written request from the *Principal* to do so, the *Contractor* shall provide a *deed of guarantee, undertaking and substitution* in the form of Annexure Part H, duly executed and enforceable.

## 6 Evidence of Contract

The *Principal* and the *Contractor* acknowledge and agree that the documents which constitute the *Contract* between them are identified in the *Formal Instrument of Agreement*.

## 7 Service of notices

- (a) A notice (and other documents) shall be deemed to have been given and received:
- (i) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
  - (ii) subject to subclause 7(b), on the earliest date of:
    - (A) actual receipt;
    - (B) confirmation of correct transmission of fax; or
    - (C) 3 *business days* after posting.
- (b) Notices under the *Contract* may be sent by email to the email addresses in Annexure Part A and shall be deemed to have been received once sent unless:
- (i) the sender receives notice that the email transmission has been unsuccessful or could not be delivered;
  - (ii) an out of office notice indicates that the recipient is unavailable; or
  - (iii) the email is sent on a day which is not a *business day*, in which case it shall be deemed to have been received on the next *business day*.

## 8 Contract documents

### 8.1 Discrepancies

In construing the *Contract*, the following rules of construction apply:

where inconsistent levels of quality or finishes are required or specified, or inconsistent numbers for the supply of any component or thing are required or specified, the higher level or number shall apply unless the *Superintendent*, in its absolute discretion, directs otherwise;

figured shall prevail over scaled dimensions in the event of a discrepancy; and

drawings showing particular parts of *WUC* shall take precedence over drawings for more general purposes.

If, notwithstanding the above and without limiting clause 8A, either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party

shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

Subject to clause 8A, if compliance with any other *direction* under this subclause 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 assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*. They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

## 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in the *Contract*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of *the Works*.

## 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

## 8.5 Confidential information

The *Contractor* shall not (without the prior written consent of the *Principal*) disclose to any third party any information relating to *WUC* or the *Contract*. Without limitation, the *Contractor* shall keep confidential all documents, samples, models, patterns and other information relating to *WUC* or the *Contract*.

If requested in writing by the *Principal*, the *Contractor* shall (and shall procure that its *Associates*) enter into a separate agreement (in a form acceptable to the *Principal* in its absolute discretion) not to disclose to anyone else any confidential matter even after issue of the *final certificate* or earlier termination of the *Contract*.

The obligations in this clause 8.6 shall survive termination of the *Contract*.

If, with the *Principal's* prior written consent, the *Contractor* discloses information relating to the *WUC* or the *Contract* to a third party, the *Contractor* must notify the receiving person that the information is confidential. The *Contractor* must not disclose the information unless the receiving person agrees to keep the information confidential.

The *Contractor* must secure all information relating to *WUC* or the *Contract* against loss, unauthorised access, use, modification or disclosure.

## \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

## 8.7 Signage

Other than signage required to be erected pursuant to a *legislative requirement*, the *Contractor* shall not erect any signage at the *site* or which publicises its association with *the Works* without the express approval of the *Superintendent*, which approval may be withheld in the *Superintendent's* absolute discretion.

## 8.8 Privacy

- (a) The *Contractor* shall not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle.
- (b) The *Contractor* shall comply with any directions, guidelines, determinations or recommendations of the Commonwealth, as notified to the *Contractor* in writing by the *Principal*, to the extent that they are consistent with the Australian Privacy Principles.
- (c) The *Contractor* shall notify the *Principal* immediately if it becomes aware of a breach of any of its obligations under this clause 8.9.
- (d) The provisions in this clause 8.9 shall survive termination of the *Contract*.

## 9 Assignment and subcontracting

### 9.1 Assignment

The *Contractor* shall not, without the *Principal's* prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

### 9.2 Subcontracting generally

- (a) The *Contractor* shall engage and retain the consultants identified in the *Contractor's* tender.
- (b) The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):
  - (i) subcontract or allow a *subcontractor* to subcontract any *work*; or
  - (ii) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

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\* See Preface

- (c) With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.
- (d) Within 14 calendar days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.
- (e) Approval may be conditional upon the subcontract including:
  - (i) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
  - (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 Annexure Part C.
  - (iv) For the purpose 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;
  - (v) where the subcontractor is a consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24€ and 24(d)*;
  - (vi) a right for the *Contractor* to terminate the subcontract for its convenience; and
  - (vii) without limiting subclause 9.2(e)(v), requirements for the *subcontractor* to effect and maintain insurances consistent with those that the *Contractor* is required to effect and maintain pursuant to this *Contract*.
- (f) The *Contractor* shall ensure that all *subcontractors* engaged by the *Contractor* in connection with the *Contract* or *WUC* are suitable for the *work* they are performing and are compliant with the requirements of the *Principal's Code of Conduct*.
- (g) The *Contractor* shall not be relieved of any liability by reason of the subcontracting of any part of *WUC*. The *Contractor* shall be responsible for all acts and omissions of its *subcontractors* and other *Associates*, even after termination of the engagement of any such *subcontractors* and other *Associates*.

### 9.3 Selected subcontract work

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

### 9.4 Novation

This subclause applies only where the *Principal's project requirements* the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part C, such deed being between the *Principal*, the

*Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *selected subcontract work*.

### 9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*.

### 9.6 Warranties

The *Contractor* shall:

- (a) ensure that the *Principal* and the *Contractor* have the joint and several benefit of any manufacturer, supplier or other subcontractor warranties (“***Subcontractors’ Warranties*** and ***Suppliers’ Warranties***”) for equipment, machinery and manufactured items incorporated into *the Works* in the form of Annexure Part K; and
- (b) on or before the *date of the Contract* and as a condition precedent to payment, provide the *Principal* with a duly executed *Contractor’s Warranty Deed* in the form of Annexure Part J.

### 9A Other contractors

- (a) The *Contractor* acknowledges that its access to the *site* will not be exclusive and that the *Principal* may arrange for *other contractors* to execute *work* on the *site* and/or to perform *work* concurrently with the *Contractor’s* execution of *WUC*.
- (b) The *Superintendent* shall notify the *Contractor* in writing of the identity of the *other contractors* (insofar as they are not listed in *Item 9A*).
- (c) The *Contractor* shall:
  - (i) promptly meet with the *other contractors* upon being notified of their identity, to agree any necessary timing, access, co-ordination and interface protocols that may be required so as not to disrupt the progress of either *WUC* or the *work* to be carried out by the *other contractors*;
  - (ii) provide to the *Superintendent* copies of any documentation setting out the protocols agreed between the *Contractor* and the relevant *other contractors* in relation to such matters;
  - (iii) provide *site* induction, work health and safety training, use of the *Contractor’s* loading and unloading areas, use of common amenities, water and temporary power supply, and any other facilities or things that the *Contract* requires the *Contractor* to provide for the *other contractors*; and
  - (iv) facilitate the *other contractors’* additional *site* requirements where practicable and provided that the *Contractor* will not be required to provide additional facilities or incur additional costs in respect of such additional *site* requirements.
- (d) During the carrying out of *WUC*, the *Contractor* shall:
  - (i) permit *other contractors* to carry out *work* on the *site*;
  - (ii) act in good faith and co-operate with the *other contractors* and all persons employed or engaged by them;
  - (iii) comply with any agreed timing, access, co-ordination and interface protocols so as not to disrupt the progress of either *WUC* or the *work* to be carried out by the *other contractors*; and

- (iv) ensure that *WUC* does not prevent the *other contractors* from accessing the *Site* or performing their *work*.
- (da) The *Contractor* acknowledges and agrees that:
  - (i) Crystal Pools Pty Ltd (***Crystal Pools***) is an *other contractor*;
  - (ii) *Crystal Pools* will be performing works on the *site* concurrently with the *Contractor's* works on the *site*;
  - (iii) in addition to, and without limiting its obligations to the *Principal* in relation to *Crystal Pools* in this clause 9A and otherwise:
    - (A) to the extent possible, the *Contractor* must arrange and attend a daily co-ordination meeting with *Crystal Pools*;
    - (B) the *Contractor* must co-operate and work in conjunction with *Crystal Pools* on a daily basis to ensure the *Contractor's* works and *Crystal Pools'* works are co-ordinated and planned;
    - (C) the *Contractor* must arrange for *Crystal Pools* to attend the *Contractor's* daily pre-start meetings;
    - (D) the *Contractor* must co-ordinate with *Crystal Pools* all works and items detailed in *Crystal Pools'* program contained Annexure Part N (***Crystal Pools program***) and any subsequent *Crystal Pools'* program provided to the *Contractor* by the *Superintendent* and all works associated with the Pool and associated plant, equipment, underground pipe work; and
    - (E) the *Contractor* must cooperate with *Crystal Pools* and do all things that are necessary to enable *Crystal Pools* to complete its works in accordance with the *Crystal Pools Program*; and
  - (iv) as principal contractor under clause 2993 of the WH&S Regulation, it is responsible for ensuring that *Crystal Pools* discharges its obligations under the WH&S Legislation.
- (e) The *Contractor*:
  - (i) warrants that the *contract sum* and the *date for practical completion* include adequate allowance for the matters the subject of this clause 9A;
  - (ii) acknowledges and agrees that it shall have no *claim* in connection with the matters the subject of this clause 9A; and
  - (iii) shall indemnify and keep indemnified the *Principal* against any *claim* by an *other contractor* for costs, monies, loss, damage, expense or liability arising out of or in connection with a breach by the *Contractor* of this clause 9A.

## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's project requirements*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

## 10.2 Intellectual property rights granted to Principal

The *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 10.3 Moral rights

The *Consultant*:

- (a) shall not, and ensure that its *subcontractors* do not, infringe any *Moral Right* in an artistic work in carrying out the *WUC*;
- (b) shall obtain irrevocable consent, including for the benefit of the *Principal*, from the author of any artistic work created in connection with the *WUC*, including any necessary consents from *subcontractors* and its *Associates* sufficient to allow the unimpeded use of the artistic work, including:
  - (i) any non-attribution or false attribution of the artistic work; and
  - (ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the whole or any part of the artistic work or the *design documents*; and
- (c) indemnifies the *Principal* against any *Claims* including claims against, or costs, losses or damages suffered or incurred by the *Principal* arising out of, or in any way in connection with, any breach by the *Contractor* of its obligations under this subclause 10.3.

The terms 'artistic work' and 'attribution' have the meanings given to them in the Copyright Act 1968 (Cth).

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements*, including all *Authority* requirements and conditions or requirements of *Approvals*, except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* written notice thereof.

### 11.1A Heavy Vehicle National Law

The *Contractor* must:

- (a) comply with the Heavy Vehicle National Law; and
- (b) ensure that its subcontractors and consultants comply with their respective obligations under Heavy Vehicle National Law; and
- (c) ensure that it does not do anything or fail to do anything that would cause the Contractor to be in breach of the Heavy Vehicle National Law.



## 11.2 Changes

If a *legislative requirement* (excluding any change in a *legislative requirement* relating to *COVID-19* or in respect of any *COVID Delay*):

- (a) necessitates a change:
  - (i) to the *Principal's project requirements*;
  - (ii) to *the Works*;
  - (iii) to so much of *WUC* as is identified in *Item 22(b)*;
  - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (v) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the *date of the Contract* but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 11.3 Work Health and Safety

11.3.1 In this subclause 11.3:

- (a) the terms "principal contractor", "construction work", "place of work", "structure", "duty holder", "provisional improvement notice", "health and safety representative", "high risk work", "high risk construction work", "high risk work licence" and "workers" have the same meanings as in the Work Health and Safety Act 2011 (NSW) (*WH&S Act*) and the Work Health & Safety Regulation 2017 (NSW) (*WH&S Regulation*); and
- (b) "WH&S Management Plan" (*WH&S Management Plan*) means a work health and safety management plan which meets the requirements of regulation 309 of the *WH&S Regulation*.

11.3.2 The *Contractor* must:

- (i) consult with the *Principal*:
    - (A) to identify whether there is an existing *WH&S Management Plan* in relation to the *site* or the proposed *Works*; and
    - (B) to ascertain whether there are any identified work health and safety hazards and risks or identified potential work health and safety hazards and risks which may apply to the *WUC*;
  - (ii) consult, cooperate and coordinate with all duty holders to identify all potential work health and safety issues that may arise or have arisen out of or in connection with the *WUC*;
  - (iii) identify all precautionary measures necessary to ensure the work health and safety of and the welfare of all workers and other persons who may be affected by the execution of the *WUC*, including the *Contractor's Associates* and the *Principal's Associates*, members of the public and other third parties;
  - (iv) exercise and implement all precautionary measures necessary to ensure the work health and safety of and the welfare of all workers and other persons who may be affected by the execution of *WUC*, including the *Contractor's Associates*, the *Principal's Associates*, members of the public and other third parties; and
  - (v) eliminate where possible work health and safety risks or where elimination is not possible, minimise work health and safety risks.
- (c) The *Contractor* acknowledges and agrees that the *Contractor*:

- (i) will have management and control of the *site* during the performance of the *WUC*; and
  - (ii) must ensure so far as is reasonably practicable, that the *site*, the means of entering and exiting the *site* and anything arising from the *site* are without risks to the health and safety of any person.
- (d) The *Contractor* must immediately notify the *Superintendent* in writing of any information or risk relating to work health and safety that arises or comes to the *Contractor's* attention in relation to work health and safety issues.

11.3.3 Without limiting the obligations of the *Contractor* under any other provision of the *Contract*:

- (a) the *Principal*:
  - (i) appoints the *Contractor* as the principal contractor under clause 293 of the *WH&S Regulation*; and
  - (ii) gives all necessary authority to the *Contractor* to enable the *Contractor* to exercise and fulfil the functions and obligations of the principal contractor under the *WH&S Regulation*; and
- (b) the *Contractor* must:
  - (i) exercise and fulfil all the functions and obligations of the principal contractor under Chapter 6 of the *WH&S Regulation*;
  - (ii) ensure that all workers, subcontractors, consultants and suppliers involved in or connected to the *WUC* and *other contractors* comply with their respective obligations under the *WH&S Legislation*;
  - (iii) ensure that no person carries out any high risk construction work unless they hold a high risk work licence for that class of work as required by regulation 81 of the *WH&S Regulation*; and
  - (iv) comply with all obligations under the *WH&S Legislation* in connection with the *WUC*.

11.3.4 The *Contractor* must, as a condition precedent to access to the *site*:

- (i) if required under the *WH&S Regulation*, give notice of its intention to commence construction work to the SafeWork NSW and provide a copy of the notice to the *Superintendent* or alternatively advise the *Superintendent* in writing that a notice to the SafeWork NSW is not required;
- (ii) if the *WUC* includes construction work on a structure and design has been prepared for the structure, obtain a written report from the designer of the structure identifying any hazards relating to the design of the structure and, if the designer is not engaged by the *Principal*, promptly provide the *Principal* with a copy of the report; and
- (iii) provide the *Superintendent* with:
  - (A) a *WH&S Management Plan* (which must as a minimum meet the requirements set out in schedule 1 of Annexure Part F); or
  - (B) if there is a *WH&S Management Plan* in existence:
    - (1) review the existing *WH&S Management Plan*;
    - (2) identify any inadequacies or work health and safety risks not addressed in the *WH&S Management Plan*;
    - (3) update and amend the *WH&S Management Plan* to address any inadequacies or work health and safety risks not addressed by the *Principal*; and
    - (4) verify in writing to the *Superintendent* that the updated *WH&S Management Plan* (which must as a minimum meet the requirements set out in schedule 1 of Annexure Part F) provided by the *Contractor* to the *Principal* addresses all

identified hazards and risks and potential work health and safety hazards and risks relating to the *WUC*;

- (iv) if requested by the *Superintendent* to do so, report on and provide information as requested on any aspect of its *WH&S* compliance or performance requested by the *Superintendent*; and
  - (v) provide certification to the *Principal* in the form of Annexure Part F confirming the matters referred to in Annexure Part F, section A.
- (c) The *Contractor* must not commence to carry out the *WUC* on the *site* until it has received written notice from the *Superintendent* of the *Contractor's* compliance with subclause 11.3.4(iii)(A).

11.3.5 The *Contractor* must comply, and keep complete records of its compliance, with:

- (i) the requirements of the *WH&S Act*, the *WH&S Regulation* and the associated work health and safety legislation (as defined in the *WH&S Act*);
  - (ii) any other *legislation requirements* in relation to work health and safety; and
  - (iii) any recommended practices in *codes of practice* published by the SafeWork New South Wales including but not limited to the Construction code of practice (July 2014), which are applicable or relevant to the execution of the *WUC*.
- (d) The *Contractor* must:
- (i) immediately notify the *Superintendent* of any information relating to work health and safety risks that arise or comes to the attention of the *Contractor* arising out of or in connection with the *WUC*; and
  - (ii) immediately submit to the *Superintendent* copies of all:
    - (A) notices, orders and directions received from the SafeWork NSW concerning the *WUC*; and
    - (B) provisional improvement notices or any written directions given by a health and safety representative.

11.3.6 The *Contractor* must provide a non-conformance report to the *Superintendent* promptly after any non-conformance by any person on *site* with the *WH&S Management Plan* is observed by the *Contractor* or is brought to the *Contractor's* notice by the *Superintendent* which includes details of the non-conformance or risk, the corrective action to be taken and the date by which the corrective action is to be completed.

- (a) The *Contractor* must provide to the *Superintendent* with each payment claim and as a condition precedent to payment a document titled “Contractor's WH&S Performance Report” for the preceding month, which includes:
- (i) further certification in the form of Annexure Part F confirming the matters set out in Annexure Part F, sections A and B; and
  - (ii) a statement setting out:
    - (A) the number of lost time injuries;
    - (B) the number of working person-days lost as a result of injuries;
    - (C) the current status of any injured person, damaged property, environmental damage including pollution;
    - (D) the number of “near misses” recorded or safety complaints received; and
    - (E) details of any corrective actions implemented.
  - (iii) In addition to the *Contractor's* obligations under subclauses 11.3.6(a) and (b), if requested by the *Superintendent* to do so, the *Contractor* must report on and provide information as

requested on any aspect of its *WH&S* compliance or performance requested by the *Superintendent*.

11.3.7 In addition to the *Principal's* rights to *site* access referred to elsewhere in the *Contract*, the *Contractor* acknowledges and agrees that:

- (a) the *Principal* may access the *site* at any time to audit compliance by the *Contractor*, and the *Contractor's Associates* with the requirements of this subclause 11.3 and all *legislative requirements* in relation to work health and safety, for the purpose of verifying that the duty holder is satisfying its work health and safety obligations; and
- (b) without limiting subclause 11.3.6, if requested by the *Superintendent*, the *Contractor* must give the *Superintendent* copies of and access to inspect either complete work health and safety records or work health and safety records for the periods requested, for the purpose of verifying that the duty holder is satisfying its work health and safety obligations.

11.3.8 Without limiting subclause 33.1, if the *Superintendent* considers that it is necessary to ensure the health and safety of any person on *site*, the *Principal* may at any time, undertake urgent action (with or without notice to the *Contractor*) either itself, by using others or by directing the *Contractor* to take or refrain from taking certain action. If the decision to undertake urgent action arose out of or in connection with any act, default or omission of the *Contractor* to fulfil its work health and safety obligations, any costs incurred by the *Principal* will be a debt due from the *Contractor* to the *Principal*.

11.3.9 The *Contractor*:

- (a) warrants that the *contract sum* and the *date for practical completion* include adequate allowance for the matters the subject of this clause 11.3 including meeting all its obligations under the *WH&S Legislation* with respect to *other contractors*;
- (b) acknowledges and agrees that it shall have no *claim* in connection with the matters the subject of this clause 11.3; and
- (c) to the extent permitted by law, shall indemnify the *Principal* against any costs, monies, loss, damage, expense or liability arising out of or in connection with a breach by the *Contractor* of this clause 11.3.

#### 11.4 Environmental compliance

- (a) Without limiting any other provision of the *Contract*, the *Contractor* must in performing the *WUC*:
  - (i) comply with all *Environmental Laws* and other requirements of the *Contract* for the protection of the *Environment*;
  - (ii) not pollute, *Contaminate* or otherwise damage the *Environment*;
  - (iii) ensure that its *subcontractors* comply with the requirements referred to in this subclause 11.4; and
  - (iv) *Cleanup* any pollution, *Contamination* or damage to the *Environment* arising out of, or in any way in connection with, the *WUC*, whether or not it has complied with all *Environmental Laws* or other requirements of the *Contract* for the protection of the *Environment*.
- (b) The *Contractor* indemnifies and holds harmless the *Principal* from and against:
  - (i) any liability to, or *claim* by, a third party; and
  - (ii) all fines, penalties, costs, losses or damages suffered or incurred by the *Principal*, arising out of or in connection with the *Contractor's* breach of this subclause 11.4.

### 11.5 Notification of residents

- (a) If the *Contractor* is to carry out any *work* that is likely to affect any resident, organisation or authority in the vicinity of *the Works*, the *Contractor* must notify them in accordance with this subclause prior to the commencement of *the Works*
- (b) The *Contractor* must draft a letter for distribution providing, as a minimum, the following details:
  - (i) the *Contractor's* name;
  - (ii) a contact number and name of the *Contractor's* representative supervising the *work*;
  - (iii) a statement that the *Contractor* has management and control of the *site* and is carrying out *the Works* on behalf *Principal*;
  - (iv) a brief description of the scope of *work* to be carried out;
  - (v) any disruption or access limitations likely to affect the resident, organisation or *Authority*; and
  - (vi) when the *work* that is the subject matter of the notification is due to commence and to be completed.
- (c) The *Contractor* must submit a copy of the draft letter to the *Superintendent* for the *Principal's* approval prior to distribution to any resident, organisation or authority.
- (d) Once the draft letter is approved in writing by the *Principal*, the letter must be delivered to all affected residents, organisations and authorities by the *Contractor* (at its own expense) not later than a 48 hours prior to the commencement of *the Work*.

### 11.6 *Principal's Code of Conduct*

The *Contractor*:

- (a) acknowledges and agrees that:
  - (i) the *Contractor* has reviewed a copy of the *Principal's Code of Conduct*; and
  - (ii) it shall carry out *WUC* in accordance with requirements of the *Principal's Code of Conduct*; and
- (b) indemnifies the *Principal* against any claims against, or costs, losses or damages suffered or incurred by the *Principal*, arising out of or in any way in connection with any actual or alleged infringement of the *Principal's Code of Conduct*, arising out of or in any way in connection with the *WUC* or *the Works*, except to the extent that the *Superintendent*, the *Principal* or the *Principal's Associates* caused the actual or alleged infringement.

### 11.7 GIPA obligations

- 11.8.1 The *Contractor* acknowledges that the *Principal* may disclose information in the *Contract* on its website established for disclosures of contracts in accordance with the Government Information (Public Access) Act 2009 (NSW) (*'GIPA Act'*).
- 11.8.2 The *Principal* will take reasonably practicable steps to consult with the *Contractor*, before providing any person with access to information relating to the *Contract* in response to an access application under the *GIPA Act*, if it appears that:
  - (a) the information:
    - (i) includes personal information about the *Contractor* or its employees;
    - (ii) concerns the *Contractor's* business, commercial, professional or financial interests;

- (iii) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the *Contractor*; or
  - (iv) concerns the affairs of a government of the Commonwealth or another State (and the *Contractor* is that government);
- (b) the *Contractor* may reasonably be expected to have concerns about the disclosure of the information; and
- (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- 11.8.3 If, following consultation between the *Principal* and the *Contractor*, the *Contractor* objects to disclosure of some or all the information, the *Contractor* must provide details of any such objection (including the information objected to and the reasons for any such objection) within seven (7) days of the conclusion of the consultation process.
- 11.8.4 In determining whether there is an overriding public interest against disclosure of government information, the *Principal* will take into account any objection received by the *Contractor*.
- 11.8.5 If the *Contractor* objects to the disclosure of some or all of the information but the *Principal* nonetheless decides to release the information, the *Principal* must not provide access until it has given the *Contractor* notice of the *Principal's* decision and notice of the *Contractor's* right to have that decision reviewed.
- 11.8.6 Where the *Principal* has given notice to the *Contractor* in accordance with subclause 11.8.5, the *Principal* must not provide access to the information:
- (a) before the period for applying for review of the decision under Part 5 of the *GIPA Act* has expired; or
  - (b) where any review of the decision duly applied for is pending.
- 11.8.7 The reference in subclause 11.8.6 to the period for applying for review of the decision under Part 5 of the *GIPA Act* does not include the period that may be available by way of extension of time to apply for review.

#### **11.8A Access to Information (GIPA Act, s. 121)**

- 11.8A.1 The *Contractor* must, within seven (7) days of receiving a written request by the *Principal*, provide the *Principal* with immediate access to the following information contained in records held by the *Contractor*:
- (a) information that relates directly to the performance of the services provided to the *Principal* by the *Contractor* pursuant to the *Contract*;
  - (b) information collected by the *Contractor* from members of the public to whom it provides, or offers to provide, the services pursuant to the *Contract*; and
  - (c) information received by the *Contractor* from the *Principal* to enable it to provide the services pursuant to the *Contract*.
- 11.8A.2 For the purposes of subclause 11.8A.1, information does not include:
- (a) information that discloses or would tend to disclose the *Contractor's* financing arrangements, financial modelling, cost structure or profit margin;
  - (b) information that the *Contractor* is prohibited from disclosing to the Agency by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or

- (c) information that, if disclosed to the *Principal*, could reasonably be expected to place the *Contractor* at a substantial commercial disadvantage in relation to the *Principal*, whether at present or in the future.

11.8A.3 The *Contractor* will provide copies of any of the information in subclause 11.8A.1 as requested by the *Principal*, at the *Contractor's* own expense.

## 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take 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.

If the *Contractor* damages property, the *Contractor* shall promptly rectify 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, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

## 13 Urgent protection

If urgent action is necessary to protect *WUC*, 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 *Superintendent* shall certify the cost incurred as moneys 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.

## 14 Care of the work and reinstatement of damage

### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of *the Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) 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 clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

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 to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination

of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

### 14.3 Excepted risks

The *excepted risks* causing loss or damage are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or *other contractors* (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts 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 its *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or *other contractors* (not being employed by the *Contractor*).

## 15 Damage to persons and property other than WUC

### 15.1 Indemnity by Contractor

Insofar as this subclause 15.1 applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or *other contractors* (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

The *Contractor* shall further indemnify the *Principal* from and against all loss and damage arising out of or in connection with any breach of the *Contract* by the *Contractor*.

This subclause shall not apply to:

- (i) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (ii) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (iii) claims in respect of the *Principal's* right to have *WUC* carried out.

### 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

#### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but 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 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;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in subparagraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

#### ***Alternative 2: Principal to insure***

Before the *date of acceptance of tender*, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

#### **16B Not used.**

#### **17 Public liability insurance**

Before commencing *WUC*, the *Contractor* shall effect a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third parties,

of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);

- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*;
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld); and
- (g) be maintained until the issue of the *Final Certificate*.

## 18 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

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

## 19 Inspection and provisions of insurance policies

### 19.1 Proof of insurance

- (a) Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.
- (b) Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.
- (c) Compliance with subclause 19.1 shall be a condition precedent to *site* access and to payment in respect of any *WUC*.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance with clause 16A, 16B, 17, 18 or 19, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. The *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

#### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

#### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement 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 insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

#### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting 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).

### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*.

The *Superintendent* will at all times give *directions* and carry out its functions under the *Contract* including its certification, valuation and assessment obligations, as the agent of the *Principal*, and not as an independent certifier, assessor or valuer.

Without limiting the generality of the preceding paragraph, the *Contractor* acknowledges that the *Superintendent* may be an employee of the *Principal*.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but 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* does so.

The *Contractor* shall comply with any *direction* by the *Superintendent*.

If the *Contractor* considers that any *direction* of the *Superintendent* is given in error or involves a *variation*, the *Contractor* shall, before complying with the *direction* and, in any event, within 5 *business days* after the *direction*, give written notification expressly identifying the error or the asserted *variation*. If the *Contractor* fails to comply with this notification requirement, the *Contractor* shall have no entitlement to make any *claim* in respect of the *direction*.

If the *Contractor* fails to comply with a *direction* given by the *Superintendent* in the manner or within the time stated in the *direction* (or if no time is stated, a reasonable time) then the *Principal* may engage others to execute the work (or any part thereof) the subject of the *direction* on the *Contractor's* behalf and the cost of so doing will be a debt due from the *Contractor* to the *Principal*.

## 21 Superintendent's representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
  - (i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
  - (ii) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

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

## 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access

Provided the *Contractor* has complied with all requirements of the *Contract* in respect of being granted access and/or possession, including the requirements in clause 8A and subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26*, give the *Contractor* non-exclusive access to sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* access to the whole *site*, the *Principal* shall give the *Contractor* access to such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Delay by the *Principal* in giving access shall not be a breach of the *Contract* but may entitle the *Contractor* to claim an *EOT* to the *date for practical completion* under subclause 34.3..

Non-exclusive access to the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal*, the *Principal's Associates* and persons authorised by the *Principal* may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC*

and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage;
- (b) comply with all relevant *legislative requirements*; and
- (c) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

### 24.4 Principal's use of partly completed works

The *Principal* and any persons authorised by it may use or occupy any completed part of *the Works* before the *Contractor* brings *the Works* to *practical completion*. The *Contractor* will not be entitled to any increase in the *contract sum*, any *EOT* for the *date for practical completion*, or any other additional payment or compensation because of that use or occupancy.

### 24.5 Work on adjoining properties

Where the nature of the *WUC* requires that the *Contractor* access or execute *work* over, on, to, under, near or in the vicinity of an adjoining property or other property outside of the *site*, the *Contractor* shall not be entitled to make any *claim* in respect of the same and shall:

- (a) obtain the written consent of the owners and/or occupiers of the adjoining or other site or property and comply with any conditions of such consent;
- (b) procure all consents from *Authorities* that may be necessary to execute any of the *WUC* over, on, to, under, near or in the vicinity of the adjoining property or other property;
- (c) without limiting its obligations pursuant to clause 12, not cause or contribute to any damage to such adjoining or other properties; and
- d) promptly rectify any damage to adjoining or other properties.

### 24A Site meetings

- (a) The *Contractor* shall attend project or site meetings as required by the *Superintendent* or *Principal* ("*site meeting*") to discuss matters relevant to *the Works* and progress of *WUC* which may be convened by the *Principal* or *Superintendent* by reasonable notice to the *Contractor*.
- (b) 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* in writing of the inaccuracy within 48 hours of receipt of the minutes. Failure to so notify will constitute deemed acceptance by the *Contractor* of the minutes as a true and accurate record of the *site meeting*.
- (c) Despite the recording of the minutes of any *site meeting*, none of the following shall constitute a direction unless and until the *Superintendent* gives a separate written *direction* to the *Contractor* confirming that fact:

- (i) any resolution;
- (ii) any communication; or
- (iii) any minutes recording any resolution or communication, made at or in respect of any *site meeting*.

## 25 Latent conditions

### 25.1 Scope

The *Contractor* acknowledges that:

- (a) the *contract sum* and the *construction program* allow for; and
- (b) it has assumed the risk of,

all *site* conditions that may be encountered in performing the *WUC*, with the exception of *latent conditions*.

*Latent conditions* are physical conditions under the *site*, including artificial things but excluding weather conditions and the effects thereof, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) the *site information* and all other written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

### 25.2 Notification

- (a) The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof
- (b) Promptly thereafter, and in any event within 5 *business days* after becoming aware of the *latent condition* and before commencing any *work* in connection with the *latent condition*, the *Contractor* must give the *Superintendent* a written statement of:
  - (i) the *latent condition* encountered and the respects in which it differs materially;
  - (ii) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
  - (iii) other details reasonably required by the *Superintendent*.
- (c) Notwithstanding any other clause of the *Contract*, compliance with subclauses 25.2(a) and (b) is a condition precedent to any *claim* arising out of or in connection with a *latent condition*.

### 25.3 Deemed variation

Subject to clause 25.2(c):

- (a) the *Contractor* shall be entitled to claim the actual costs associated with the removal and disposal of the *latent condition* as assessed by the *Superintendent* under subclause 36.4 and the assessed amount shall be added to the *contract sum*; and
- (b) the effect of the *latent condition* shall be a *qualifying cause of delay*.

## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 calendar days directs otherwise.

If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the *contract sum*.

### 26.3 Care of survey marks

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

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 calendar days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 27 Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 calendar days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* carried out by others,

the *Principal* may have that *work* so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

## 28 Materials, labour and construction plant

Except where 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.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

## 28A Principal-supplied items

- (a) The *Principal* is to supply the *Principal-supplied items* for incorporation into *the Works*.
- (b) The *Contractor* must notify the *Principal* of the date by which the *Contractor* requires the *Principal* to order the *Principal-supplied items*, such notice to be provided in sufficient time to enable the *Principal* to order the *Principal-supplied items* by the date stated in the notice.
- (c) The *Principal* must order the *Principal-supplied items* by the dates notified in accordance with clause 28A(b) and must pay the suppliers for the *Principal-supplied items*.
- (d) The *Contractor*, copying the *Principal* to any correspondence with the suppliers, shall make arrangements with the suppliers in respect of the time and location for delivery of the *Principal-supplied items*.
- (e) The *Contractor* must accept delivery of the *Principal-supplied items* in accordance with the arrangements made between the *Contractor* and the supplier pursuant to clause 28A(d).
- (f) At and from the time of delivery by the supplier, responsibility for and risk in respect of the *Principal-supplied items* shall be the *Contractor's* and the *Contractor* shall be responsible for the safe storage and/or transportation of the *Principal-supplied items*.
- (g) The *Contractor* warrants that it is aware of the nature of the *Principal-supplied items* and that, subject to clause 28A(h), the *Principal-supplied items* can be incorporated into *the Works* without there being any adverse affect on the *date for practical completion*, the *Principal-supplied items* or any other aspect of *the Works*.
- (h) The *Contractor* must inspect the *Principal-supplied items* on the date of delivery and must notify the *Principal* immediately (and in any event on the date of delivery) of any defect or deficiency in the *Principal-supplied items* and/or if the *Principal-supplied items* are unsuitable for their proposed use. Unless the *Contractor* gives such notice on the date of delivery, the *Contractor* shall have no *claim* in connection with any defect or deficiency in a *Principal-supplied item* or any failure of a *Principal-supplied item* to be suitable for its proposed use.
- (i) So long as the *Principal* orders the *Principal-supplied items* by the dates notified by the *Contractor* pursuant to clause 28A(b), the *Contractor* shall not be entitled to make any *claim* in connection with delay or disruption associated with the *Principal-supplied items* or their delivery.

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

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\* See Preface



## 29.2 Quality assurance

Unless otherwise stated in the Contract, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

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 discharge the *Contractor's* other obligations under the *Contract*.

## 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

## 29.4 Acceptance of defective work

- (a) Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.
- (b) The *Superintendent* is not obliged to give a *direction* pursuant to this clause 29.4 to assist the *Contractor*.

### 29.4A Variations due to defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct a *variation*. the *variation* shall be valued under subclause 36.4 and, in valuing the *variation* —

- (a) if the *variation* causes an increase or decrease in the value to the *Principal* of the *Works*, regard shall 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 subclause 29.3, regard shall also be had to the difference.

The *Superintendent* is not obliged to give a *direction* pursuant to this clause 29.4A to assist the *Contractor*.

### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

### 29.6 Quality of work

Without limiting any other provision of the *Contract* the *WUC* shall comply with:

- (a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979 (NSW), including any regulation or other instrument made under that Act);
- (b) all other relevant codes, standards and specifications that the *WUC* is required to comply with under any *legislative requirement*; and
- (c) the conditions of any *Approval*.

## 30 Examination and testing

### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

### 30.3 Who conducts

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

### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### 30.5 Delay

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

### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

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

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

### 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site* and in any event shall be in accordance with *legislative requirements* and the requirements of *Authorities*.

They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

### 32 Programming

#### 32.1 Programming Requirements

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

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

The *Principal* and the *Superintendent* shall not be obliged to give any 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 portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

The *Contractor* shall, within 10 *business days* of the *date of the Contract* (or as specified in the *Principal's project requirements*) and as a condition precedent to access to the *site*, give the *Superintendent* (in hard copy, in PDF format and in native file format) a proposed *construction program* prepared using Microsoft "programme", containing such information and being in a form as is reasonably directed by the *Superintendent*.

If the proposed *construction program* is in accordance with the requirements of the *Contract* and is otherwise acceptable to the *Superintendent*, the *Superintendent* will notify the *Contractor*, the proposed *construction program* will become the construction program ("**construction program**") and the *Contractor* shall not, without reasonable cause, depart from the *construction program*.

The *construction program* shall not form part of the *Contract* but may be used by the *Superintendent* and the *Principal* to monitor and assess the progress of the *WUC*.

No comment on, review, acceptance or rejection of the proposed construction program or the *construction program* by the *Superintendent* will relieve the *Contractor* from any of its liabilities or obligations under the *Contract*, including the obligation to achieve *practical completion* by the *date for practical completion*.

If an *EOT* has been granted pursuant to subclause 34.5, within 5 *business days* of a request by the *Superintendent*, the *Contractor* must amend the *construction program* and provide a copy of the amended *construction program* to the *Principal* and the *Superintendent* for approval.

If compliance with any *directions* under this clause, except those pursuant to the *Contractor's* default, 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 assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 32.2 Further Requirements

- (a) The *construction program* shall be based on a network analysis of activities associated with the construction of constituent parts of *the Works*, and shall allow for all limitations, restrictions and constraints imposed by the *Contract*. In addition to complying with the requirements set out in the *Principal's project requirements*, the *construction program* shall:
- (i) be presented in the form of:
    - (A) a network diagram of all activities comprising or related to the *WUC* (including any *Approvals*, procurement, services and utilities, installation and commissioning by others, and any other relevant activities having a bearing on the *WUC*), with each activity clearly identified, and reference to the relevant component of *the Works*; and
    - (B) a bar chart of those activities, also showing dates for all major deliveries of materials and equipment, all *hold points* identified in the *Principal's project requirements*, when *Milestones* will be achieved, special events and the *date for practical completion* for the *WUC*;
  - (ii) identify the proposed work hours, days and the dates of all days where no work will be carried out, including statutory holidays and rostered days off;
  - (iii) identify and allow for all *hold points* as set out in the *Principal's project requirements*;
  - (iv) contain a single critical path; and
  - (v) demonstrate how the *WUC* will reach *practical completion* by the *date for practical completion*.
- (b) In preparing the *construction program*, the *Contractor* shall:
- (i) take into account and allow for all obligations, restrictions and constraints set out in the *Contract*, including those concerning access to the *site*;
  - (ii) inform itself of all operation aspects relevant to the performance of the *WUC*; and
  - (iii) ensure the *construction program* is such that the performance of the *WUC* is in accordance with it and will not conflict with the requirements of the *Contract*.
- (c) The *Contractor* shall update the *construction program* and provide to the *Superintendent* such updated proposed construction program to be approved by the *Superintendent* in accordance with subclause 32.1, as well as:
- (i) on a monthly basis to accurately reflect any change in the progress of *the Works* (including any delay which may have occurred in respect of the progress of *the Works*); and
  - (ii) when otherwise reasonably required by the *Superintendent*.

## 33 Suspension

### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (i) the *Superintendent*, the *Principal* or the *Principal's Associates*; or
  - (ii) the *Contractor*, a *subcontractor* or either's employees or agents or *Associates*;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9 or pursuant to the *SOP Legislation*, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### 33.4 Cost

The *Contractor* shall bear the cost of any suspension and shall not be entitled to an *EOT* in connection with a suspension unless the reason for the suspension was a breach of the *Contract* by the *Principal*.

Except where the *Contractor* is required to bear the cost of a suspension, if the suspension causes the *Contractor* to incur more costs than otherwise would have been incurred, the *Contractor* is entitled to make a *claim* for reasonable additional costs incurred by reason of the suspension, subject to the limitation that the total amount of compensation payable for each day of suspension will not exceed the amount stated in *Item 31*.

## 34 Time and progress

### 34.1 Progress

- (a) The *Contractor* shall ensure that the *WUC* reaches *practical completion* by the *date for practical completion*.
- (b) The *Contractor* shall proceed with *WUC* with due expedition and without delay.

### 34.2 Notice of delay

If the *Contractor* becomes aware of anything which may delay the *WUC*, the *Contractor* shall promptly (but not later than within 5 *business days* after the date on which the event or circumstance giving rise to the probable cause of delay to the *WUC* occurs) notify the *Superintendent* in writing with details of the possible delay, the cause, estimated extent and effect of the delay. If the *Contractor* becomes aware that the estimated period of delay notified to the *Superintendent* will be exceeded, it shall immediately (but no less than within 1 *business day*) update the *Superintendent*.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time to the *date for practical completion* ('*EOT*'), if and only if:

- (a) the *Contractor* is or will be delayed:
  - (i) in reaching *practical completion* by a *qualifying cause of delay* which will prevent it from achieving *practical completion* by the *date for practical completion* unless that date is extended; or
  - (ii) after the *date for practical completion* by an *Act of Prevention* in a manner which will delay it in achieving *practical completion*;

- (b) the *Contractor* has complied with subclause 34.2 and the *Contractor* gives the *Superintendent*, within 10 *business days* after the occurrence of the delay, a written claim for an *EOT* setting out in detail:
- (i) the cause of delay;
  - (ii) the facts of the delay;
  - (iii) the extent and effect of the delay to the *WUC*;
  - (iv) the number of days *EOT* claimed in relation to the *date for practical completion*, or, if the *Contractor* does not know the number of days *EOT* to be claimed, its reasonably considered forecast of the number of days *EOT* claimed;
  - (v) date on which the cause of the delay first arose and the date the cause of the delay ceased, if the cause of delay has ceased; and
  - (vi) steps taken by the *Contractor* to minimise the consequences of the delay and prevent the occurrence of the delay,

and if the effect of the delay is continuing 10 *business days* after the claim for an *EOT* claim under subclause 34.3(c) is given, the *Contractor* shall, every 10 *business days* thereafter and until the delay ceased, provide a further updated written report setting out in detail the matters set out in subclauses 34.3(b)(iii), (iv) and (vi).

**34.4** In addition to the requirements of this subclause 34.3, it is a condition precedent to the *Contractor's* entitlement to an *EOT* that the *Contractor* has taken proper and reasonable steps to avoid or minimise the occurrence of the cause of the delay to the extent practicable and to avoid or minimise the effects thereof. **Assessment**

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

- (a) If the *Contractor* is entitled to an *EOT*, within 20 *business days* after receiving the *Contractor's* claim for an *EOT* (or such further time as may be agreed by the parties), the *Superintendent* shall determine the length of the *EOT* which the *Contractor* is entitled to and notify the *Contractor* in writing.
- (b) Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* and, without being obliged to do so for the benefit of the *Contractor* or otherwise, extend the *date for practical completion*.
- (c) The *Contractor* accepts the risk of and liability for bringing the *WUC* to *practical completion* by the *date for practical completion* notwithstanding the encountering of any delay or disruption in the execution of the *WUC* except to the extent provided in this clause 34.
- (d) The *Contractor* acknowledges and agrees that the *Contract* is a code in respect of the *Contractor's* entitlements to claim an *EOT* and delay damages and that it will have no entitlement to an *EOT*

or to make any other *claim* or to claim any relief from the *Principal's* entitlements to liquidated damages arising out of or in connection with any delay if it has not strictly complied with the obligations in subclauses 34.2 and 34.3.

- (e) If the *Contractor* would otherwise be entitled to an *EOT*, the *Superintendent* may instruct the *Contractor* to accelerate the *WUC* by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve *practical completion* by the *date for practical completion*.
- (f) If the *Superintendent* gives the *Contractor* an instruction to accelerate the *WUC* under subclause 34.5(e) and it only applies to part of the delay, the *Contractor's* entitlement to any *EOT* which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the *Contractor* to accelerate to overcome the delay.
- (g) If the *Superintendent* gives an instruction to the *Contractor* under subclause 34.5(e) and the *Contractor* (acting reasonably) has not notified the *Superintendent* in writing within 5 *business days* that it is not possible to accelerate the *WUC* in accordance with the *Superintendent's* instruction:
  - (i) the *Contractor* shall accelerate the *WUC* to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve *practical completion* by the *date for practical completion*;
  - (ii) if the *Contractor* would, but for the instruction, have been entitled to an *EOT* to the *date for practical completion* for the cause of delay, the *Contractor* will be entitled to be paid the extra costs reasonably incurred by it and directly attributable to accelerating the *WUC*; and
  - (iii) the *Contractor* will not be entitled to make any *claim* against the *Principal*, arising out of, or in any way in connection with, the cause of delay and the instruction other than for the amount which is payable by the *Principal* under subclause 34.5(g)(ii).
- (h) The *Principal's* rights to liquidated damages for a failure by the *Contractor* to achieve *practical completion* by the *date for practical completion* are not affected by the *Superintendent* giving the *Contractor* an instruction to accelerate under subclause 34.5(e).

### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 calendar days written 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 calendar days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

**34.7 Not Used****34.8 Not used****34.9 Not used****34A Force majeure event**

- (a) If a party is affected, or is likely to be affected, by a *force majeure event* ('Affected **Party**'), the Affected Party must promptly and in any event, within 5 *business days* of becoming aware of the *force majeure event*, give the other party written notice of that fact, which notice must include:
- (i) details of the *force majeure event*;
  - (ii) an estimate of the *force majeure event*'s likely duration (if known);
  - (iii) details of any obligations affected by the *force majeure event* and the extent of the effect of the *force majeure event* on those obligations; and
  - (iv) details of any steps taken to mitigate the effects of the *force majeure event*.
- (b) The Affected Party must use its best endeavours to remove, overcome or minimise the effects of the *force majeure event*.
- (c) Subject to notification being given in accordance with clause 34A(a), the parties' obligations under this *Contract* will be suspended to the extent and for the period that they are affected by the *force majeure event*.
- (d) The Affected Party must:
- (i) provide a notice to the other party every 20 *business days* updating the matters referred to in clauses 34A(a)(ii), 34A(a)(iii) and 34A(a)(iv) during the period that the Affected Party's obligations are prevented or delayed by the *force majeure event*; and
  - (ii) provide a written response within 5 *business days* to any reasonable request for information by the other party in connection with the *force majeure event* or its effects.
- (e) If the *Principal* forms the view that a *force majeure event* is, or the consequences of a *force majeure event* are, likely to continue for more than six (6) consecutive months the *Principal* may terminate this *Contract* by notice in writing to the *Contractor* (**Termination Notice**), effective from the time stated in the *Termination Notice* or, if no time is stated, at the time the *Termination Notice* is given.
- (f) If the *Principal* terminates the *Contract* pursuant to clause 34A(e), the *Contractor*, subject to subclause 37.2A, will be entitled to, on the date 10 *business days* after the date of the *Termination Notice*, submit a payment claim meeting the requirements of subclause 37.1 for the payment of the following amounts:
- (i) for work carried out prior to the *Termination Date*, the amount which would have been payable if the *Contract* had not been terminated and the *Contractor* had submitted a payment claim for work carried out to the *Termination Date*;
  - (ii) the cost of goods or materials reasonably ordered by the *Contractor* for the *Works* for which the *Contractor* is legally bound to pay provided that:
    - (A) the value of the goods or materials is not included in the amount payable under subclause 34A(f)(i); and



- (B) title in the goods and materials will vest in the *Principal* upon payment;
- (iii) the reasonable cost of removing from the *site* all labour, plant, equipment and other things used in the *WUC*.
- (g) The *Contractor* shall:
  - (i) take all reasonable steps to mitigate the costs referred to in clauses 34A(f)(ii) and 34A(f)(iii);
  - (ii) immediately hand over to the *Principal* all copies of documents provided by the *Principal*; and
  - (iii) cause to be delivered to the *Principal* any goods and materials referred to in clause 34A(f)(ii)(B).
- (h) The amount to which the *Contractor* is entitled under clause 34A(f) will be a limitation upon the *Principal's* liability to the *Contractor* arising out of, or in any way in connection with, termination of the *Contract* under clause 34A(e) and the *Contractor* may not make any *claim* against the *Principal* arising out of, or in any way in connection with, the termination of the *Contract* other than for the amount payable under clause 34A(f).
- (i) After the *Contractor* has satisfied its obligations under clause 34A(g), the *Principal* shall release any remaining *security* still held by the *Principal*.
- (j) The *Contractor* acknowledges and agrees that other than as expressly stated in this clause 34A, the *Contractor* shall have no entitlement to any *claim* against the *Principal* arising out of or in connection with a *force majeure event*.

### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible. Without limitation, the *Principal* may direct that the *Contractor* carry out rectification outside of business hours or on days that are not *business days* and the *Contractor* shall not be entitled to make any *claim* in connection with any such *direction*.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

If, prior to expiration of the *defects liability period*, the Superintendent discovers or becomes aware of what is (in the Superintendent's opinion) a *defect*, the Superintendent may (without limiting subclauses 29.4 and 29.4A) give the *Contractor* a *direction* to rectify the *defect*, which *direction*:

- (a) shall identify what is (in the Superintendent's opinion) the *defect* and the date for completion of rectification of the *defect*; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates (or, where no dates are stated, within a reasonable time), the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable to the *Principal*.

## 36 Variations

### 36.1 Directing variations

- (a) The *Contractor* shall not vary *WUC* unless it receives an express *direction* in writing from the *Superintendent* titled "Variation Direction" ("**Variation Direction**").
- (b) The *Superintendent* may, by giving the *Contractor* a *Variation Direction*, direct the *Contractor* to carry out a *variation*.
- (c) Where the *Contractor* considers any *direction* given by the *Superintendent* constitutes a *variation* even though not identified as such by the issue of a *Variation Direction*, the *Contractor* must notify the *Superintendent* within 5 *business days* after receiving the *direction* and before executing any *work* the subject of that *direction*. If the *Contractor* fails to give the notice as required, it will not be entitled to make any *claim* against the *Principal* in respect of the *direction*.
- (d) Following notification in accordance with clause 36.1(c), the *Superintendent* will either:
  - (i) notify the *Contractor* that it agrees that the *direction* constitutes a *variation* and either:
    - (A) issue a *Variation Direction*; or
    - (B) withdraw the *direction*; or
  - (ii) confirm that the *direction* does not constitute a *variation* in which event the *Contractor* must proceed with the *work* the subject of the *direction* but will not be precluded from disputing that the *direction* constituted a *variation*.

### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation* titled "Variation Proposal" ("**Variation Proposal**").

The *Contractor* shall as soon as practicable after receiving such *Variation Proposal*, and in any event within 10 *business days* after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including costs of all relevant warranties and all warranties and time-related costs, if any) of the proposed *variation*.

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

The *Contractor* shall have no *claim* against the *Principal* for complying with the requirements of this subclause 36.2.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

Subject to clause 36.4A, the *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) any pricing in response to a *Variation Proposal*, accepted in writing by the *Superintendent*, or any other written prior agreement;
- (b) applicable rates or prices in the *Schedule of Rates* or elsewhere in the *Contract*; and

- (c) reasonable rates or prices, to which an amount for profit and overheads shall be added by applying the percentage in *Item 36* to the net value of the *variation*,

and any deductions shall include a reasonable amount for profit, but not overheads, calculated by applying the percentage stated in *Item 37* to the net value of the *variation*.

That price shall be added to or deducted from the *contract sum*.

### 36.5 Omission

If a *variation* the subject of a *direction* by the *Superintendent* omits any part of *WUC*, the *Principal* may have the omitted work carried out by itself or an *other contractor*.

The *Contractor* acknowledges and agrees that the *Principal* may engage others to carry out omitted work or carry out omitted work itself.

## 37 Payment

### 37.1 Progress claims

If and only if the *Contractor* has satisfied the conditions precedent in the *Contract*, the *Contractor* may serve a written payment claim on the *Superintendent*:

- (a) once each month prior to the *date of practical completion*, in accordance with *Item 33*;
- (b) once within 10 *business days* after the *date of practical completion*; and
- (c) once in accordance with subclause 37.4.

Each payment claim shall be given in writing to the *Superintendent* and shall:

- (a) include details of the value of the *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*;
- (b) adequately describe the work to which the payment claim relates; and
- (c) be accompanied by a subcontractor statement meeting the requirements of subclause 38.1.

The *Contractor* agrees with the *Principal* that a payment claim submitted to the *Superintendent* under this subclause 37.1 and/or under the *SOP Legislation* is received by the *Superintendent* as agent for the *Principal*.

### 37.2 Certificates

The *Superintendent* shall, within 10 *business days* after receiving a payment claim, issue to the *Contractor* on behalf of the *Principal*, a progress certificate which sets out:

- (a) the amount of the payment which is then due under the *Contract* from the *Principal* to the *Contractor* or by the *Contractor* to the *Principal* (as the case may be);
- (b) the calculations employed to arrive at the amount;
- (c) amounts otherwise due under the *Contract* from:
  - (i) the *Principal* to the *Contractor*; and
  - (ii) the *Contractor* to the *Principal*;
- (d) amounts previously paid under the *Contract*;
- (e) the amount the *Principal* is entitled to retain, deduct, withhold or set-off under the *Contract*;
- (f) the amount (if any) which the *Principal* proposes to pay to the *Contractor* (the "*scheduled amount*"); and
- (g) if the *scheduled amount* is less than the amount claimed in the payment claim:

- (i) the reason why the *scheduled amount* is less than the amount claimed in the payment claim; and
- (ii) if the reason for the difference is that the *Principal* has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may nevertheless issue a *progress certificate*.

Failure by the *Superintendent* to set out in a progress certificate an amount which the *Principal* is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the *Contractor* by the *Principal* will not prejudice the *Principal's* right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the *Contract*.

The *Contractor* agrees that the *scheduled amount* referred to in the *progress certificate* is, for the purposes of the *SOP Legislation*, the amount of the "progress payment" (as defined in the *SOP Legislation*) calculated in accordance with the terms of the *Contract* which the *Contractor* is entitled to in respect of the *Contract*.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.2A Conditions Precedent

- (a) The *Contractor* will have no entitlement to make a payment claim, nor will the *Principal* be obliged to make any payment to the *Contractor*, until the *Contractor* has delivered to the *Principal*:
  - (i) written evidence, satisfactory to the *Principal*, that all insurances required under the *Contract* to be effected and maintained by the *Contractor*, have been effected and maintained and that the *Contractor* has complied with the requirements of subclause 37.1;
  - (ii) the *security* to be provided pursuant to subclause 5.1;
  - (iii) the 'Contractor's WH&S Performance Report' referred to in subclause 11.3.6(b), including an WH&S certificate in the form set out in Annexure Part F confirming the matters referred to in Annexure Part F for the period the subject of the payment claim;
  - (iv) a subcontractor statement in the form of Annexure Part G not dated earlier than the date of the payment claim;
  - (v) the *deed of guarantee, undertaking and substitution* required pursuant to subclause 5.6;
  - (vi) the proposed *construction program* to be provided pursuant to subclause 32.1;
  - (vii) a tax invoice from the *Contractor* for the scheduled amount as required under subclause 44.3; and
  - (viii) the *Contractor's Warranty Deed* to be provided pursuant to subclause 9.6(d).
- (b) Subject to subclauses 37.2A(a) and 37.4, the *Principal* shall pay the *Contractor* the *scheduled amount* in respect of all payment claims submitted prior to the *date of practical completion* within 15 *business days* after the submission by the *Contractor* of the payment claim.
- (c) Subject to subclauses 37.2A(a) and 37.4, the *Principal* shall pay the *Contractor* the *scheduled amount* in respect of the payment claim submitted within 10 *business days* following the *date of practical completion* within 15 *business days* after the submission by the *Contractor* of that payment claim.

If a *progress certificate* issued under this subclause 37.2A shows an amount owing by the *Contractor* to the *Principal*, the *Contractor* shall pay the *Principal* that amount within 5 *business days* of receipt by the *Contractor* of the *progress certificate*.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

### 37.3A Withholding payment under the *SOP Legislation*

- (a) The *Contractor* shall, if it becomes aware that a subcontractor is entitled to or has suspended any part of the *WUC* pursuant to the *SOP Legislation*, give the *Superintendent* written details of the entitlement to suspend or the suspension (as applicable).
- (b) The *Contractor* acknowledges that:
  - (i) the *Principal* may have to withhold payment to the *Contractor* if the *Principal* has been served with a withholding statement issued under the *SOP Legislation* by any subcontractor; and
  - (ii) any withholding of payment as a result of subclause 37.3A(b)(i) in accordance with a withholding statement lawfully issued under the *SOP Legislation* will not constitute a breach of the *Contract* by the *Principal* or a frustration of the *Contract* and will not entitle the *Contractor* to suspend the subcontract, to make any *claim* or take any other action.

### 37.3B Deduction of Moneys

Any debt due from the *Contractor* to the *Principal* or monies claimed by the *Principal* from the *Contractor* under or in connection with this *Contract* or the *WUC* may be deducted by the *Principal* from:

- (a) any moneys which may otherwise become payable to the *Contractor* by the *Principal*; and
- (b) any *security* held by the *Principal*.

This subclause 37.3B does not affect the right of the *Principal* to recover the debt, the moneys claimed or any balance after exercising any rights under this subclause by any other means available under this *Contract* or at law.

### 37.4 Final payment claim and certificate

- (a) Within 28 days after the last to occur of:
  - (i) the rectification by the *Contractor* of all *defects* in accordance with clause 35;
  - (ii) the completion of all obligations of the *Contractor* under the *Contract*;
  - (iii) the receipt of a certificate from the *Superintendent* certifying that *the Works* are complete and that all *defects* have been rectified; and
  - (iv) expiry of the last *defects liability period*,

the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' ("**Final Payment Claim**") being a claim that complies with the requirements of clause 37.1 and that includes all other claims whatsoever in connection with the subject matter of the *Contract*.

- (b) The *Superintendent* shall, within 10 *business days* after receiving a *Final Payment Claim*, issue to the *Contractor* on behalf of the *Principal* a document titled "final certificate" ("**final**

*certificate*") certifying the amount of payment which is then due under the *Contract* from the Principal to the *Contractor* or from the *Contractor* to the Principal (as applicable) and setting out:

- (i) the amount the *Principal* is entitled to retain, deduct, withhold or set off pursuant to subclause 37.3A or otherwise under the *Contract*;
- (ii) the *scheduled amount* which the *Principal* proposes to pay to the *Contractor*; and
- (iii) if the *scheduled amount* is less than the amount claimed in the *Final Payment Claim*:
  - (A) the reasons why the *scheduled amount* is less than the amount claimed in the *Final Payment Claim*; and
  - (B) if the reasons for the difference is that the *Principal* has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off of payment.
- (c) If moneys are certified in the *final certificate* as due and payable:
  - (i) by the *Contractor* to the *Principal*, those moneys shall be paid by the *Contractor* to the Principal within 10 *business days* after the *Contractor* receives the final certificate; and
  - (ii) by the *Principal* to the *Contractor*, subject to subclause 37.2A, those moneys shall be paid by the *Principal* to the *Contractor* within 15 *business days* after the *Principal* receives the *Final Payment Claim*.
- (d) Any amount not paid by the *Contractor* to the *Principal* within 5 *business days* after issue of the final certificate will be a debt due and payable from the *Contractor* to the *Principal*.

### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

## 38 Payment of workers, consultants and subcontractors

### 38.1 Workers and *subcontractors*

The *Contractor* shall give in respect of each payment claim, a subcontractor statement and the other information (if any) requested in Annexure Part G.

### 38.2 Withholding payment

The *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may:

- (a) pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:
  - (i) permitted by law;
  - (ii) given a court order in favour of the worker, *consultant* or *subcontractor*; or
  - (iii) requested in writing by the *Contractor*.

- (b) in its absolute discretion (including where the *Principal* becomes aware that a subcontractor is entitled to suspend work which forms part of the *WUC* pursuant to the *SOP Legislation*) pay out of any moneys due or to become due to the *Contractor* any moneys owing by the *Contractor* to a subcontractor or worker in relation to the *WUC*, subject to the *Principal* not paying any amount greater than the amount specified as payable in declarations or documents provided to the *Superintendent* under subclause 38.1.

The parties agree that:

- (c) any payment made under this subclause 38.3 and any other payment made to a worker or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be; and
- (d) If an amount equal to or greater than the amount paid by the *Principal* on the *Contractor's* behalf is not or never becomes due by the *Principal* to the *Contractor*, the amount paid by the *Principal* shall be a debt due from the *Contractor* to the *Principal*.

## 39 Default or insolvency

### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
- (i) not used;
  - (ii) provide *security*;
  - (iii) provide evidence of insurance;
  - (iv) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (v) adequately resource *WUC*; or
  - (vi) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *construction program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing a subcontractor statement and/or the other information (if any) requested in Annexure Part G which contains an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions of Contract;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;

- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 *business days* after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

#### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) subject to law, terminate the *Contract*.

#### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (ii) contract with such of the *consultants* and *subcontractors*; and
  - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

#### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction 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*.

#### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by certified post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

#### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:



- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 *business days* after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* 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*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or

- (d) in relation to a party being a corporation:
- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) it enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for its winding up and not stayed within 14 calendar days;
  - (v) a winding up order is made in respect of it;
  - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (vii) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:
- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
  - (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The parties acknowledge and agree that:

- (e) each of the events in subclauses 39.11(a) to 39.11(d)(vii) is an insolvency event ("***Insolvency Event***"); and
- (f) each *Insolvency Event* is a deemed substantial breach of this *Contract* which is not capable of remedy.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### **40 Termination by frustration**

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (iii) the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

## 40A Termination for convenience

### 40A.1 Termination for convenience

Without prejudice to any of the *Principal's* other rights under the *Contract*, the *Principal* may:

- (a) at any time for its sole convenience, and for any reason (which reason need not be disclosed by the *Principal*), terminate the *Contract* by written notice to the *Contractor* ("**Termination Notice**"), effective from the time stated in the *Termination Notice* or, if no such time is stated, at the time the notice is given to the *Contractor* ("**Termination Date**"); and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of *the Works* either itself or by engaging *other contractors*.

### 40A.2 Costs

- (a) If the *Principal* terminates the *Contract* under subclause 40A.1, the *Contractor*, subject to clause 37, will be entitled to, on the date 7 days after the *Termination Date*, submit a payment claim meeting the requirements of subclause 37.1 for the payment of the following amounts only:
  - (i) for work carried out prior to the *Termination Date*, the amount which would have been payable if the *Contract* had not been terminated and the *Contractor* had submitted a payment claim for work carried out to the *Termination Date*;
  - (ii) the cost of goods or materials reasonably ordered by the *Contractor* for *the Works* for which the *Contractor* is legally bound to pay provided that:
    - (A) the value of the goods or materials is not included in the amount payable under subclause 40A.2(a)(i); and
    - (B) title in the goods and materials will vest in the *Principal* upon payment; and
  - (iii) the reasonable cost of removing from the site all labour, plant, equipment and other things used in the *WUC*.
- (b) The parties acknowledge and agree that if the *Contract* is terminated pursuant to subclause 40A.1, there shall only be one "reference date" for the purpose of the *SOP Legislation*, being the date 7 days after the *Termination Date*.
- (c) The *Contractor* shall:
  - (i) take all reasonable steps to mitigate the costs referred to in subclauses 40A.2(a)(ii) and 40A.2(a)(iii);
  - (ii) immediately hand over to the *Principal* all copies of documents provided by the *Principal*; and
  - (iii) immediately cause to be delivered to the *Principal* any goods and materials referred to in subclause 40A.2(a)(ii)(B).
- (d) The amount to which the *Contractor* is entitled under subclause 40A.2(a) will be a limitation upon the *Principal's* liability to the *Contractor* arising out of, or in any way in connection with, termination of the *Contract* under subclause 40A.1 and the *Contractor* may not make any *claim* against the *Principal* arising out of, or in any way in connection with, the termination of the *Contract* other than for the amount expressly payable under this subclause 40A.2. Without limiting the generality of the foregoing, the *Contractor* is not entitled to bring any *Claim* for profit that, but for termination pursuant to this clause 40A, would or could have been made by the *Contractor* in connection with *the Works* or the *Contract*.
- (e) After the *Contractor* has satisfied its obligations under this subclause 40A.2, the *Principal* shall release any remaining *security* still held by the *Principal*.

#### 40B Contractor's obligations on termination

If this *Contract* is terminated before *practical completion* pursuant to clauses 39.4, 39.9, 29.11, 40 or 40A, the *Contractor* must:

- (a) vacate the *site* on the date the *Contract* is terminated or as directed by the *Superintendent*;
- (b) at the request of the *Principal*, promptly demolish and remove from the *site* all *WUC* which:
  - (i) has not been carried out in accordance with the *Approvals*; or
  - (ii) has not been carried out in a proper and workmanlike manner and otherwise in accordance with the *Contract*,
- (c) leave the *site* in a safe and secure condition;
- (d) remove all rubbish from the *site* and leave it clean and tidy;
- (e) remove from the *site* furniture, loose equipment, goods and other items owned by the *Contractor* but which do not form part of *the Works* or the *site* or which are not affixed (or intend to be affixed) to the *site* or *the Works*. The *Contractor* must not remove anything affixed to the *site* or *the Works* or anything intended to be affixed to the same without the *Principal's* consent;
- (f) assign to the *Principal* all of the *Contractor's* right, title and interest (or, if it does not own all of the right, title and interest, must procure the owner of any right, title and interest to assign) to any *intellectual property right* in any *Approval* obtained by the *Contractor* in connection with *the Works*; and
- (g) deliver to the *Principal* all documentation in the possession or control of the *Contractor* relating to those *intellectual property rights* and any other documentation relating to the *WUC* as required by the *Principal*.

#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

Within 5 *business days* of the first occurrence of any fact, matter or event in respect of which the *Contractor* believes it may be entitled to make a *claim* in connection with the subject matter of the *Contract*, the *Contractor* shall give to the *Principal* and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

##### 41.2 Liability for failure to communicate

The failure of the *Contractor* to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the *Principal* to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

##### 41.3 Superintendent's decision

If within 28 calendar days of giving the *prescribed notice* the *Contractor* does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 calendar days of receipt 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 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a dispute or a difference (together called a "*dispute*") between the *Contractor* and the *Principal* arises out of or in connection with the Contract or the *WUC*, a party must before instituting any proceedings against the other party give a written notice titled "Notice of Dispute" ("*notice of dispute*"), by hand or by facsimile, of the dispute to the other party specifying the nature of the dispute.

The party which receives the *notice of dispute* shall respond by hand or by facsimile to the *notice of dispute* within 14 calendar days after receipt.

### 42.2 Conference

- (a) If the party which gave the notice is dissatisfied with the response given under subclause 42.1 or no response is received, that party shall request the *Superintendent* to convene a without prejudice meeting between both parties with the objective of settling the *dispute*.
- (b) The *Superintendent* must give notice of the time and place for the meeting within seven (7) days of the request to convene it and each party shall attend the meeting. The time for the meeting shall be within 21 days after the request to convene the meeting is made under subclause 42.2(a).
- (c) At the meeting, each party must endeavour to settle the *dispute*.

### 42.3 Further Proceedings

- (a) If the dispute is not resolved within 5 *business days* of a meeting being convened under subclause 42.2 (or within such further time as the parties may agree) and, if the parties so agree within that time, the *dispute* may be:
  - (i) made the subject of mediation before a mediator agreed between the parties, such mediation being conducted in accordance with the then current edition of the 'Mediation Rules' of The Resolution Institute; or
  - (ii) referred to an independent person agreed between the parties ("*Expert*"), who is experienced in dealing with the matters which are the subject of the dispute, for an opinion on the dispute,

and each party must bear its own costs in respect of such mediation or referral to the *Expert*, and must bear one half of the cost of the mediator or the *Expert* and of the mediation or referral process costs.
- (b) The parties agree that nothing in subclause 42.3(a) constitutes an arbitration agreement within the meaning of the Commercial Arbitration Act 2010 (NSW).
- (c) Subject to subclause 42.4, the *dispute* may not be referred to litigation by either party unless:
  - (i) a party fails to attend a without prejudice meeting convened in accordance with subclause 42.2;
  - (ii) the parties fail to agree within the time period referred to in subclause 42.3(a) that the *dispute* is to be made the subject of mediation or is to be referred to an *Expert* for an opinion;
  - (iii) fourteen (14) calendar days have elapsed after a party has terminated the mediation by written notice to the other party and the mediator; or
  - (iv) fourteen (14) calendar days have elapsed after a party has given written notice to the other party that it disagrees with the *Expert's* opinion.

### 42.4 Summary relief

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

#### 42.5 Contractor must continue to perform

Notwithstanding the existence of a *dispute*, the *Contractor* must continue to perform the *Contract* unless directed otherwise by the *Superintendent* in writing.

#### 43 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 written consent of the parties.

#### 44 GST

##### 44.1 GST Exclusive supplies

Unless otherwise stated in the *Contract* all dollar amounts are exclusive of GST.

Notwithstanding any other provision in this *Contract*, if any party to this *Contract* (“*Supplier*”) is or becomes liable to pay GST in connection with any supplies made pursuant to this *Contract*, (“*the affected supplies*”):

- (a) the *Supplier* may add to *the price* of all *affected supplies* the amount of *GST* for which the *Supplier* is or becomes liable in respect of those *affected supplies*, as calculated by *Supplier* in accordance with the *GST Law*;
- (b) the party providing consideration for the affected supplies (“*Recipient*”) will pay the amounts or provide any other consideration required to be provided under other provisions of this *Contract* for the affected supplies (in this clause “*the price*”) plus the calculated amount in respect of *GST*;
- (c) the additional amount or amounts will be payable at the same time or times as *the price* is required to be provided to the *Supplier* under the other provisions of this *Contract*; and
- (d) the *Supplier* will issue a tax invoice which enables the *Recipient*, if permitted by the *GST Law*, to claim a credit or refund of *GST* on the same date as the *Recipient* is required to pay the additional amounts.

##### 44.2 Necessary adjustments

If the additional amount on account of *GST* recovered by the *Supplier* from the *Recipient* on any supply made under this *Contract* differs for any reason from the amount of *GST* paid or payable by the *Supplier* to the Commissioner of Taxation, including by reason of:

- (a) an amendment to the *GST Law*;
- (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
- (c) a decision of any tribunal or court; and
- (d) any adjustment to the consideration under this *Contract*,

the difference between the two said amounts will be payable by the *Supplier* or the *Recipient* as appropriate. Where an adjustment event (as defined in the *GST Law*) has occurred in relation to any supply under this *Contract*, the *Supplier* will provide an adjustment note to the *Recipient* within 10 days of the date of the adjustment event.

##### 44.3 Definitions

“*GST*”, “*GST Law*” and other terms used in this clause 44 have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), except that “*GST Law*” includes any applicable rulings issued by the Commissioner of Taxation.

#### 44.4 General

Notwithstanding any other provision of this *Contract*, a party will not be obliged to pay any amount in respect of *GST* to the other party (whether under this clause 44 or otherwise) unless and until a tax invoice that complies with the *GST Law* has been issued by the *Supplier* in respect of that taxable supply.

#### 45 Proportionate liability

The parties agree that, to the extent permitted by law, the operation of *Proportionate Liability Legislation* is excluded in relation to all and any rights, obligations and liabilities under the *Contract* whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.

#### 46 Obligations Joint and Several

Where the Contractor comprises two or more persons, each person will be jointly and severally bound by the Contractor's obligations under the *Contract*.

#### 47 Indemnities

- (a) Each indemnity in this *Contract* is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this *Contract*.
- (b) The Contractor acknowledges and agrees that it is not necessary for the *Principal* or, the *Principal's Associates*, to incur expense or to make any payment before enforcing a right of indemnity conferred by this *Contract*.
- (c) Without limiting or restricting the *Principal's* rights pursuant to the *Contract* or otherwise at law, the Contractor must pay the *Principal*, any sum claimed by the *Principal* pursuant to an indemnity on demand from the *Principal* and without any deduction or set-off.
- (d) The *Principal* holds for itself and on trust for the *Principal's Associates*, the benefit of each indemnity in this *Contract* expressed to be for the benefit of the *Principal's Associates*

#### 48 PPSA

The parties acknowledge and agree that, in relation to the *PPSA*, the Contractor shall:

- (a) provide all assistance to the *Principal* and the *Superintendent* as is necessary to enable the Contractor or the *Principal* to exercise any right in connection with the *PPSA*;
- (b) keep the *Principal* and the *Superintendent* regularly informed of any matters in relation to the *PPSA* as requested by *Superintendent*; and
- (c) shall have no *claim* for any monies or damage or otherwise, arising out of or in connection with this clause 48.

#### 49 Industrial relations

- (a) The Contractor agrees that:
  - (i) it will assume responsibility for and manage all aspects of industrial relations with respect to its employees and workers including but not limited to complying with the obligations of the Contractor in this clause 49;
  - (ii) it shall ensure that the rates of pay and terms and conditions of employment specified in all relevant industrial instruments and any relevant laws, for all employees and workers engaged by the Contractor, are always observed in full; and

- (iii) it shall ensure that any *directions* given by the *Principal* from time to time in relation to *the Works*, the entry and exit of vehicles to and from the *site*, the delivery of materials to the *site*, the storage of materials at the *site*, the parking of vehicles at the *site*, and all other such matters affecting the *Project* as a whole are strictly observed.
- (b) The *Principal* may request the *Contractor* to provide documents to or confirming compliance by the *Contractor* with the obligations pursuant to subclause 49(a) and the *Contractor* must promptly comply with any such request.
- (c) If the *Principal* incurs a delay, loss or damage, a cause of which is any industrial dispute involving the *Contractor's* employees, workers, agents or subcontractors, the *Contractor* shall be wholly liable for the delay, loss or damage and any additional cost incurred by the *Contractor* including additional wages for its workers and any loss or damage incurred by the *Principal* as a debt due and payable from the *Contractor* to the *Principal*.
- (d) The *Contractor* shall not be entitled to any payment, damages or compensation as a result of any industrial dispute that affects the *WUC*.
- (e) The *Contractor* acknowledges and agrees that the *contract sum* allows for all payments to be made to its employees and workers in accordance with all terms and conditions stated in any applicable industrial instrument or *legislative requirements* relating to industrial relations.
- (f) Without limiting its obligations under clause 32 or otherwise under the *Contract*, the *Contractor* shall coordinate the *WUC* with the *construction program* and make available the necessary workforce to maintain the progress of *the Works* in accordance with the *construction program*.

## 50 Services

### 50.1 Charges

- (a) The *Contractor* acknowledges and agrees that it must pay on time all charges imposed by any *Authority* for the supply of any *Services* to the *site* throughout the duration of the *WUC* which includes all amounts in connection with the supplying, renting, operating, maintaining, servicing, repairing and replacing the *Services* and upgrading the *Services* to comply with any *legislative requirement*.
- (b) If the *Contractor* does not pay such charges when they become due, the *Principal* may notify the *Contractor* that those charges remain unpaid and, within 20 *business days* from such notification, pay the same. Any sum or sums so paid (including any penalties for late payment) may be recovered by the *Principal* from the *Contractor* as a debt due.

### 50.2 Connection of Services

The *Contractor* acknowledges and agrees that it must connect *the Works* to all the required *Services* and to the extent identified in the *Contract*, upgrade, disconnect, cap-off or relocate existing *Services* necessary to accommodate the *WUC* and *the Works* at its own cost.

### 50.3 Availability of Services

The *Contractor* may not:

- (a) terminate the *Contract*;
- (b) stop or reduce the *WUC* or any payment which is due under the *Contract* from the *Contractor* to the *Principal*; or
- (c) make any *claim*,

because of an interruption or failure in the supply of a *Service* or in respect of the connection to or duplication of any *Service*.



#### 50.4 *Contractor's obligations in respect of Services*

- (a) The *Contractor* acknowledges that it has carefully inspected and examined in detail all existing *Services* (including both underground and above-ground *Services*) on, adjacent to and/or connected to the *site*.
- (b) The *Contractor* shall ensure that:
  - (i) it does not carry out (or otherwise cause or contribute to) any disruptions to, any interruptions or disconnections of, or any interferences with *Services* ("**Disruptions**"), whether on a temporary basis or otherwise, without the prior written approval of the *Principal* and relevant *Authorities*;
  - (ii) to the extent that *Disruptions* to *Services* are permitted under subclause 50.4(b)(i), the *Disruptions* are minimised
  - (iii) it complies with the conditions of any *Approvals* relevant to any *Disruptions* to *Services*; and
  - (iv) without limiting the *Contractor's* obligations pursuant to clause 12, no *Services* are damaged or destroyed in connection with the *WUC*.
- (c) Subject to clause 25.3, the *Contractor* shall have no *claim* as a result of complying with its obligations under this clause 50.4.

### 51 Licences

#### 51.1 Licence Requirement

The *Contractor* shall hold and maintain and ensure all subcontractors employed in relation to the Contract hold and maintain, all permits and licences required to lawfully undertake the *WUC*, including any required licence with the New South Wales Department of Fair Trading.

#### 51.2 Breach of licence requirements

If the *Contractor* is unable to perform any of the *WUC* which requires a licence because it has failed to, been refused or been unable to obtain a licence, has had its licence suspended or cancelled, has had conditions imposed on its licence or is otherwise in breach of subclause 51.1, the *Principal* may, without giving a notice to show cause, exercise a right under subclause 39.4(a) or (b).

#### 51.3 Electronic Execution

- (a) The parties consent to the use of an electronic signature to fulfil the requirement of a signature to execute the *Contract*, which may include the use of software programs such as DocuSign.
- (b) The *Contractor* acknowledges and agrees that the electronic signature technology, if used by the *Principal*:
  - (i) is sufficient to identify the person and to indicate the person's approval of the contents;
  - (ii) is as reliable as is appropriate for the purposes of the communication;
  - (iii) is an agreed method for the purposes of the parties' execution of the *C*; and
  - (iv) is binding on the parties.

## 52 Maintenance

### 52.1 Maintenance Services

The *Contractor* must carry out the *maintenance services* as described in the maintenance schedule in the *Drawings and Specifications* in Annexure Part 1 for a period of 12 months following the *date of practical completion* (“*maintenance period*”).

### 52.2 Maintenance Fee

The *Contractor* acknowledges and agrees that the lump sum *contract sum* includes the provision of the *maintenance services*.

## 53 Design Amendments

The parties acknowledge and agree that:

- a) the *Drawings and Specifications* included in the *Principal's project requirements* will be amended after the *date of the Contract* to reflect the reduced scope in the document titled "Masterplan - Reduced Scope" in Annexure Part O and in the *Contract Sum Breakdown* in Annexure Part B (*Reduced Scope Documents*).
- b) the *Contract Sum* and the *Contract Sum Breakdown* included in the *Contract* have been prepared in reliance on the matters referred to in clause 52(a);
- c) after the *date of the Contract*, the *Contractor* will act as the *Principal's* agent for the purpose of ensuring that the *Principal's* design consultants amend the *Drawings and Specifications* to reflect the *Reduced Scope Documents* in a diligent and timely manner;
- d) the *Contractor* will have no entitlement to make any claim for a *contract sum* adjustment, time, monies or otherwise arising out of or in connection with the amendments to the *Drawings and Specifications* to reflect the *Reduced Scope Documents* or any delay, action or inaction by the *Principal's* design consultants in preparing the amended *Drawings and Specifications* to reflect the *Reduced Scope Documents*; and
- e) if the *Superintendent* directs a change to the quantities, scope, design or other allowances allowed for in the *Contract Sum Breakdown*, this will constitute a *variation*.